

## Memorandum 72-50

Subject: Study 36.400 - Condemnation (Comprehensive Statute)

We have sent to each Commissioner a green binder containing amendments, additions, and repeals of codified and uncodified sections. There are additional uncodified sections that will require amendment or repeal, but time did not permit us to reproduce these for the July meeting. Also, there are some special procedural sections in the special district acts and codified acts that will require careful study before we can determine what disposition should be made of the sections; we have not included these sections in the binder.

We do not plan to go through the amendments, additions, and repeals at the July meeting. We will prepare a memorandum for a future meeting that will provide an analysis of, and that will serve as the vehicle for Commission review and action on, the amendments, additions, and repeals. However, you should bring the binder containing these provisions to each meeting (including the July meeting) at which we consider condemnation; we will be referring to various sections as we consider the general provisions of the comprehensive statute that replace them.

In drafting the numerous amendments and repeals, we have attempted to eliminate all references to Title 7 and all special provisions relating to condemnation. The basis of this approach is the concept that provisions dealing with procedure, more necessary public use, substitute condemnation, and the like should be eliminated since these matters will be covered by the general provisions of the comprehensive statute. All that should be found in the various statutes granting condemnation authority is the grant of the power of eminent domain. Unfortunately, most of the special district acts contain very long sections that must be amended if we are to eliminate duplicating and conflicting provisions from them. The effort to amend these sections is necessary, however, if we are to have all condemnation actions governed by our carefully drafted general provisions.

Considering the volume of amendments, additions, and repeals, we believe that it will not be possible to distribute conforming changes for comment generally; we suggest that only the State Bar Committee be provided with this material. After review and revision by the Commission (taking into account any comments of the State Bar Committee), the entire statute should be prepared in bill form, and the bill should be introduced and referred for interim study. Then we can publish a pamphlet containing our tentative recommendation (including the proposed legislation and comments). After reviewing the comments we receive on the printed tentative recommendation, we can make any necessary revisions and publish a pamphlet containing our recommendation to the Legislature.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

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DISTRICT AGRICULTURAL ASSOCIATIONS

Agricultural Code § 4054 (amended)

Sec. . Section 4054 of the Agricultural Code is amended  
to read:

4054. If the board of an association, by resolution adopted by vote of two-thirds of all its members, finds and determines that the public interest and necessity require the acquisition of any building or improvement which is situated on property that is owned by the association, in trust or otherwise, or of any outstanding rights to such property, ~~the association may, with the approval of the department, acquire such building, improvement, or outstanding rights by condemnation.~~

The use by the association of its property shall be considered a more necessary public use than the use of the property by any grantee, lessee, or licensee for the purposes which are specified in Section 4051 of this chapter.

and the  
association

may be acquired by  
eminent domain

Notwithstanding any provision of Sections 14256 and 14792 of the Government Code, the board of an association, by resolution adopted by vote of two-thirds of all its members, may purchase materials and lease equipment for not in excess of twenty thousand dollars (\$20,000) when such purchase or lease is made in conjunction with donated labor construction improvements on the grounds of the association.

Comment. Section 4054 is amended to conform to the policy expressed in Section 15855 of the Government Code. See also Agri. Code § 4051(b) (property acquisitions by association subject to Property Acquisition Law).

CIVIL CODE § 1001

Tentatively approved April 1970

DELEGATION OF CONDEMNATION AUTHORITY

Civil Code § 1001 (repealed)

Sec. . Section 1001 of the Civil Code is repealed.

~~1001. Any person may, without further legislative action, acquire private property for any use specified in Section 1238 of the Code of Civil Procedure either by consent of the owner or by proceedings had under the provisions of Title VII, Part III, of the Code of Civil Procedure; and any person seeking to acquire property for any of the uses mentioned in such Title is "an agent of the State," or a "person in charge of such use," within the meaning of those terms as used in such Title. This section shall be in force from and after the fourth day of April, eighteen hundred and seventy-two.~~

ALL IN  
STRIKEOUT

Comment. Section 1001 is repealed because it and Section 1238 of the Code of Civil Procedure (also repealed) are superseded by Section 1240.010 of the Code of Civil Procedure and by specific statements of the condemnation authority of particular persons for particular public uses which are found in the various codes. See Comment to former Code Civ. Proc. § 1238. See also Code Civ. Proc. § 1240.020 (condemnation permitted only where authorized by statute).

Staff draft May 1972

DISQUALIFICATION OF JUDGES

Code of Civil Procedure § 170 (amended)

Sec. . Section 170 of the Code of Civil Procedure is amended to read:

170. No justice or judge shall sit or act as such in any action or proceeding:

1. To which he is a party; or in which he is interested other than as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation;

2. In which he is interested as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation;

3. When he is related to either party, or to an officer of a corporation, which is a party, or to an attorney, counsel, or agent of either party, by consanguinity or affinity within the third degree computed according to the rules of law, or when he is indebted, through money borrowed as a loan, to either party, or to an attorney, counsel or partner of either party, or when he is so indebted to an officer of a corporation or unincorporated association which is a party; provided, however, that if the parties appearing in the action and not then in default, or the petitioner in any probate proceeding, or the executor, or administrator of the estate, or the guardian of the minor or incompetent person, or the commissioner, or the referee, or the attorney for any of the above named, or the party or his attorney in all other or special proceedings, shall sign and file in the action or matter, a stipulation in writing waiving the disqualification mentioned in this subdivision or in subdivision 2 or 4 hereof, the judge or court may proceed with the trial or hearing and the performance of all other duties connected therewith with the same legal effect as if no such disqualification existed;

4. When, in the action or proceeding, or in any previous action or proceeding involving any of the same issues, he has been attorney or counsel for any party; or when he has given advice to any party upon any matter involved in the action or proceeding; or when he has been retained or employed as attorney or counsel for any party within two years prior to the commencement of the action or proceeding;

5. When it is made to appear probable that, by reason of bias or prejudice of such justice or judge a fair and impartial trial cannot be had before him.



Staff Draft May 1972

Whenever a judge or justice shall have knowledge of any fact or facts, which, under the provisions of this section, disqualify him to sit or act as such in any action or proceeding pending before him, it shall be his duty to declare the same in open court and cause a memorandum thereof to be entered in the minutes or docket. It shall thereupon be the duty of the clerk, or the judge if there be no clerk, to transmit forthwith a copy of such memorandum to each party, or his attorney, who shall have appeared in such action or proceeding, except such party or parties as shall be present in person or by attorney when the declaration shall be made.

In justice courts when, before the trial, either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before the judge before which the action is pending, by reason of the interest, prejudice or bias of the judge, the court may order the transfer of the action, and the provisions of Section 398 shall apply to such transfer.

Whenever a judge of a court of record who shall be disqualified under the provisions of this section, to sit or act as such in any action or proceeding pending before him, neglects or fails to declare his disqualifications in the manner hereinbefore provided, any party to such action or proceeding who has appeared therein may present to the court and file with the clerk a written statement objecting to the hearing of such matter or the trial of any issue of fact or law in such action or proceeding before such judge, and setting forth the fact or facts constituting the ground of the disqualification of such judge. Copies of such written statement shall forthwith be served by the presenting party on each party, or his attorney, who has appeared in the action or proceeding and on the judge alleged in such statement to be disqualified.

Within 10 days after the filing of any such statement, or 10 days after the service of such statement as above provided, whichever is later in time, the judge alleged therein to be disqualified may file with the clerk his consent in writing that the action or proceeding be tried before another judge, or may file with the clerk his written answer admitting or denying any or all of the allegations contained in such statement and setting forth any additional fact or facts material or relevant to the question of his disqualifications. The clerk shall forthwith transmit a copy of the judge's consent or answer to each party or his attorney who shall have appeared in such action or proceeding. Every such statement and every such answer shall be verified by oath in the manner prescribed by Section 446 for the verification of pleadings. The statement of a party objecting to the judge on the ground of his disqualification, shall be presented at the earliest practicable opportunity, after his appearance and discovery of the facts constituting the ground of the judge's disqualification, and in any event before the commencement of the hearing of any issue of fact in the action or proceeding before such judge.

Staff draft May 1972

No judge of a court of record, who shall deny his disqualification, shall hear or pass upon the question of his own disqualification; but in every such case, the question of the judge's disqualification shall be heard and determined by some other judge agreed upon by the parties who shall have appeared in the action or proceeding, or, in the event of their failing to agree, by a judge assigned to act by the Chairman of the Judicial Council, and, if the parties fail to agree upon a judge to determine the question of the disqualification, within five days after the expiration of the time allowed herein for the judge to answer, it shall be the duty of the clerk then to notify the Chairman of the Judicial Council of that fact; and it shall be the duty of the Chairman of the Judicial Council forthwith, upon receipt of notice from the clerk, to assign some other judge, not disqualified, to hear and determine the question.

If such judge admits his disqualification, or files his written consent that the action or proceeding be tried before another judge, or fails to file his answer within the 10 days herein allowed, or if it shall be determined after hearing that he is disqualified, the action or proceeding shall be heard and determined by another judge or justice not disqualified, who shall be agreed upon by the parties, or, in the event of their failing to agree, assigned by the Chairman of the Judicial Council; provided, however, that when there are two or more judges of the same court, one of whom is disqualified, the action or proceeding may be transferred to a judge who is not disqualified.

A judge who is disqualified may, notwithstanding his disqualification, request another judge, who has been agreed upon by the parties, to sit and act in his place.

6. In an action or proceeding brought in any court by or against the Reclamation Board of the State of California, or any irrigation, reclamation, levee, swamp-land or drainage district, or trustee, officer or employee thereof, affecting or relating to any real property, or an easement or right-of-way, levee, embankment, canal, or any work provided for or approved by the Reclamation Board of the State of California, a judge of the superior court of the county, or a judge of the municipal court or justice court of the judicial district, in which such real property, or any part thereof, or such easement or right-of-way, levee, embankment, canal or work, or any part thereof is situated shall be disqualified to sit or act, and such action shall be heard and tried by some other judge assigned to sit therein by the Chairman of the Judicial Council, unless the parties to the action shall sign and file in the action or proceeding a stipulation in writing, waiving the disqualification in this subdivision of this section provided, in which case such judge may proceed with the trial or hearing with the same

CODE OF CIVIL PROCEDURE § 170

Staff draft May 1972

legal effect as if no such legal disqualification existed. If, however, the parties to the action shall sign and file a stipulation, agreeing upon some other judge to sit or act in place of the judge disqualified under the provisions of this subdivision, the judge agreed upon shall be called by the judge so disqualified to hear and try such action or proceeding; provided, that nothing herein contained shall be construed as preventing the judge of the superior court of such county, or of the municipal court of such judicial district, from issuing a temporary injunction or restraining order, which shall, if granted, remain in force until vacated or modified by the judge designated as herein provided.

7. When, as a judge of a court of record, by reason of permanent or temporary physical impairment, he is unable to properly perceive the evidence or properly conduct the proceedings.

8. Notwithstanding anything contained in subdivision 6 of this section, a judge of the superior court or a judge of the municipal court or justice court of the judicial district, in which any real property is located, shall not be disqualified to hear or determine any matter in which the opposing party shall have failed to appear within the time allowed by law, or as to each of the opposing parties who shall have failed to appear within the time allowed by law, and as to which matter or parties the same shall constitute purely a default hearing; provided, that nothing in this section contained shall be construed as preventing the judge of the superior court of such county, or of the municipal court of such judicial district, from issuing an order for immediate possession in proceedings in eminent domain.

prior to entry  
of judgment

Nothing in this section contained shall affect a party's right to a change of the place of trial in the cases provided for in Title 4 (commencing with Section 392) of Part 2 of this code.

Comment. Section 170 is amended to conform to the language used in Section 1255.210. The reference to the judge of the municipal court is deleted because eminent domain proceedings may be brought only in the Superior Court. See Section \_\_\_\_\_.

CODE OF CIVIL PROCEDURE §§ 1237-1273.06

Tentatively approved--various dates

GENERAL CONDEMNATION STATUTE

Code of Civil Procedure §§ 1237-1273.06 (repealed)

Sec. . Title 7 (commencing with Section 1237) of Part 3 of the Code of Civil Procedure is repealed.

Note. The text of each section in Title 7 is set out in the Appendix. The disposition of the provisions of these sections is indicated in the Comments that follow the text of the sections in the Appendix.

SCHOOL DISTRICTS

Education Code § 1047 (added)

Sec. . Section 1047 is added to the Education Code, to read:

1047. The governing board of any school district may acquire by eminent domain any property necessary to carry out any of the powers or functions of the district.

Comment. Section 1047 grants a school district (defined in Section 41) the power of eminent domain to acquire any property necessary to carry out any of the powers or functions of the district. The section supersedes the grant of condemnation authority formerly contained in subdivision 3 of Section 1238 of the Code of Civil Procedure (condemnation authorized.. for "public buildings and grounds for the use . . . of any . . . school district"). It continues the prior authority of school districts to condemn for school purposes. E.g., Hayward Union High School Dist. v. Madrid, 234 Cal. App.2d 100, 121, 44 Cal. Rptr. 268, (1965)("The district had the right to condemn for any school purpose and on acquisition, to change to some other school purpose any time during its ownership of the property."). Kern County High School Dist. v. McDonald, 180 Cal. 7, 179 P. 180 (1919). See also Anaheim Union High School Dist. v. Vieira, 241 Cal. App.2d 169, 51 Cal. Rptr. 94 (1966) (future use); Hayward Union High School Dist. v. Madrid, supra (temporary use for school purposes with resale to follow within several years); Woodland

EDUCATION CODE § 1047

Tentatively approved March 1970  
Revised April 1970

School Dist. v. Woodland Cemetery Ass'n, 174 Cal. App.2d 243, 344 P.2d 326 (1959)(school purposes may be a more necessary public use than private cemetery).

The authority granted by Section 1047 is, of course, subject to specific limitations that may be imposed on the exercise of the power of eminent domain. See Educ. Code § 1048.

In some cases, a particular statute may expressly grant school districts the power of eminent domain for a particular purpose. E.g., Educ. Code § 6726 (operation of a technical, agricultural, and natural resource conservation school). These specific grants of condemnation authority are not to be construed to limit the broad grant of such authority under Section 1047.

Private schools which are not of the collegiate grade may not exercise the power of eminent domain. Yeshiva Torah Emeth Academy v. University of So. Cal., 208 Cal. App.2d 618, 25 Cal. Rptr. 422 (1962). It is also not permissible for a private citizen to acquire property by eminent domain for the operation of a public school. People v. Oken, 159 Cal. App.2d 456, 324 P.2d 58 (1958).

EDUCATION CODE § 1048

Tentatively approved March 1970

Education Code § 1048 (added)

Sec. . Section 1048 is added to the Education Code,  
to read:

1048. The governing board of a school district may acquire property in an adjoining school district by lease, or purchase and dispose of such property in the same manner as property within the boundary of the district is purchased and disposed of, where the acquisition of such property is deemed necessary by the governing board for use as garages, warehouse, or other utility purposes.

The power of eminent domain shall not be applicable and such acquisitions by purchase shall be subject to the approval of the governing board of school district in which the property is located.

Comment. Section 1048 continues without change the provisions of former Education Code Section 16003.

EDUCATION CODE § 15007.5

Tentatively approved March 1970

Education Code § 15007.5 (repealed)

Sec. . Section 15007.5 of the Education Code is repealed.

~~15007.5. The governing board of any school district may enter into an agreement with the governing body of any public agency for the joint exercise by such school district and such agency of their respective powers of eminent domain, whether or not possessed in common, for the acquisition of real property as a single parcel. Such agreement shall be entered into and performed pursuant to the provisions of Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, and each public agency therein designated is authorized to enter into such an agreement with the governing board of any school district for such purpose.~~

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Comment. Section 15007.5 is superseded by Section 1240.060 of the Code of Civil Procedure.



EDUCATION CODE § 15009

Staff recommendation

Education Code § 15009 (amended)

Sec. . Section 15009 of the Education Code is amended  
to read:

15009. The governing board of a school district may acquire a site for a school building contiguous to the boundaries of the district and upon the acquisition of such site it shall become a part of the district. The site shall not be acquired until the county committee on school district organization of the county or of each of the counties concerned, augmented as provided in Section 3205, has received the proposal for acquisition of the site and reported its recommendations thereon to the governing boards of the districts concerned and to each county superintendent of schools concerned. The report of the county committee shall be made within 60 days from the time the proposal for acquisition of the site was submitted to it. The power of eminent domain may be used for the

purposes of this section.

A school site is contiguous for the purpose of this section although separated from the boundaries of the district by a road, street, stream, or other natural or artificial barrier or right-of-way.

Comment. Section 15009 is amended to make clear that the power of eminent domain may be used to acquire a school site on property contiguous to the district. Cf. Educ. Code § 1048 (power of eminent domain may not be used to acquire property outside district for use as garage, warehouse, or other utility purpose).

EDUCATION CODE § 16003

Tentatively approved March 1970

Education Code § 16003 (repealed)

Sec. . Section 16003 of the Education Code is repealed.

~~16003. The governing board of a school district may acquire property in an adjoining school district by lease, or purchase and dispose of such property in the same manner as property within the boundary of the district is purchased and disposed of, where the acquisition of such property is deemed necessary by the governing board for use as garages, warehouse, or other utility purposes.~~

~~The power of eminent domain shall not be applicable and such acquisitions by purchase shall be subject to the approval of the governing board of school district in which the property is located.~~

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Comment. Section 16003 is superseded by Section 1048 of the Education Code.

Tentatively approved March 1970  
Revised April 1970  
Revised June 1970  
Revised December 1971

UNIVERSITY OF CALIFORNIA

Education Code § 23151 (amended)

Sec. . . . Section 23151 of the Education Code is amended

to read:

acquire by eminent domain 23151. The Regents of the University of California may ~~condemn any property or interest therein for the public buildings and grounds of the University of California under the provisions of the Code of Civil Procedure relating to eminent domain.~~ The Regents of the University of California shall not commence any such proceeding in eminent domain unless it first adopts ~~a resolution~~ by a two-thirds vote ~~declaring that the public interest and necessity require the acquisition, construction or completion by the Regents of the University of California of the public improvement for which the property or interest therein is required and that the property or interest therein described in such resolution is necessary for the public improvement.~~ a resolution that meets the requirements of Article 2 (commencing with Section 1240.110) of Chapter 4 of Title 7 of Part 3 of the Code of Civil Procedure.

necessary to carry out any of the powers or functions

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Comment. Section 23151 is amended to make clear that the condemnation authority of the Regents of the University of California is broad enough to acquire any property or right or interest in property necessary to carry out the functions of the University of California even though the property is to be acquired for a project that does not clearly fall within the former language "public buildings and grounds of the University of California." In some cases, a particular statute may expressly grant the Regents of the University of

EDUCATION CODE § 23151

Tentatively approved March 1970

Revised April 1970

Revised June 1970

Revised December 1971

California the power of eminent domain for a particular purpose. E.g.,  
Educ. Code § 23582.1. These specific grants of condemnation authority are  
not to be construed to limit the broad grant of such authority under Section  
23151.

Before the Regents may commence an eminent domain proceeding, it must  
adopt by a two-thirds vote a resolution of necessity that satisfies the  
requirements of the Eminent Domain Law. These requirements are found in  
Code of Civil Procedure Section 1240.010 et seq.

EDUCATION CODE § 23152

Tentatively approved December 1971

Education Code § 23152 (repealed)

Sec. . Section 23152 of the Education Code is repealed.

~~23152 The resolution of the Regents of the University of California shall be conclusive evidence:~~

(a) Of the public necessity of such proposed public improvement.

(b) That such property or interest therein is necessary therefor.

(c) That such proposed public improvement is planned or ~~located in a manner which will be most compatible with the greatest public good and the least private injury.~~

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Comment. Section 23152 of the Education Code, specifying the effect given to the resolution of necessity of the Regents of the University of California, is superseded by Section 1240.150 of the Code of Civil Procedure.

Tentatively approved December 1971

STATE COLLEGE SYSTEM

Education Code § 24503 (amended)

Sec. . Section 24503 of the Education Code is amended

to read:

24503. The board, for the purposes of this article (commencing with Section 24501), has power and is hereby authorized, in addition to and amplification of all other powers conferred upon said board by the Constitution of the State of California or by any statute of the State of California:

(a) To acquire subject to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, by grant, purchase, gift, devise, lease, ~~or by the exercise of the right of eminent domain~~ and to hold and use any real or personal property necessary or convenient or useful for the carrying on of any of its powers pursuant to the provisions of this article (commencing with Section 24501).

(b) To construct, operate and control any project.

(c) To fix rates, rents or other charges for the use of any project acquired, constructed, equipped, furnished, operated or maintained by the board, or for services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the board with respect to the fixing of such rates, rents or charges.

(d) To enter into covenants to increase rates or charges from time to time as may be necessary pursuant to any such contract or agreement with the holders of any bonds of the board.

(e) At any time and from time to time, with the approval of the State Board of Control, to issue revenue bonds in order to raise funds for the purpose of establishing any project or of acquiring lands for any project, or of acquiring, constructing, improving, equipping or furnishing any project, or of refinancing any project, including payment of principal and interest on revenue bond anticipation notes, or for any combination of such purposes, which bonds may be secured as hereinafter provided.

(f) At any time and from time to time, with the approval of the State Board of Control, to issue revenue bond anticipation notes pursuant to Section 24503.1.

~~(g) To exercise, subject to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the right of eminent domain for the condemnation of private property or any right or interest therein.~~

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EDUCATION CODE § 24503

Tentatively approved December 1971

(h)

(g) To adopt such rules and regulations as may be necessary to enable the board to exercise the powers and to perform the duties conferred or imposed upon the board by this article (commencing with Section 24501).

(i)

(h) Nothing contained in this section or elsewhere in this article shall be construed directly or by implication to be in anywise in derogation of or in limitation of powers conferred upon or existing in the board by virtue of provisions of the Constitution or statutes of this state.

Comment. Section 24503 of the Education Code is amended to delete the reference to the power of eminent domain since the Trustees of the State Colleges have no independent condemnation authority. The State Public Works Board may condemn property for state college purposes with the consent of the trustees. Govt. Code §§ 15853-15855. Cf. Educ. Code §§ 23752, 24503 (acquisition of property for specified purposes pursuant to Property Acquisition Law).

NONPROFIT EDUCATIONAL INSTITUTIONS OF COLLEGIATE GRADE

Education Code § 30051 (added)

Sec. . Chapter 3 (commencing with Section 30051) is added to Division 21 of the Education Code, to read:

Chapter 3. Eminent Domain

30051. Any educational institution of collegiate grade, within this state, not conducted for profit, may acquire by eminent domain any property necessary to carry out any of its powers or functions.

Comment. Section 30051 continues the grant of condemnation authority formerly found in subdivision 2 of Section 1238 of the Code of Civil Procedure ("Public buildings and grounds for the use of . . . any institution within the State of California which is exempt from taxation under the provisions of Section 1a, of Article XIII of the Constitution of the State of California"). See University of So. Cal. v. Robbins, 1 Cal. App.2d 523, 37 P.2d 163 (1934), cert. denied, 295 U.S. 738 (1935); Redevelopment Agency v. Hayes, 122 Cal. App.2d 777, 266 P.2d 105 (1954). Private schools which are not of the collegiate grade may not exercise the power of eminent domain. Yeshiva Torath Emeth Academy v. University of So. Cal., 208 Cal. App.2d 618, 25 Cal. Rptr. 422 (1962).



Tentatively approved December 1971

DEPARTMENT OF FISH AND GAME

Fish & Game Code § 1348 (amended)

Sec. . Section 1348 of the Fish and Game Code is amended

to read:

1348. ~~The board shall authorize the acquisition of such lands, rights in land, water, or water rights as may be necessary to carry out the purposes of this chapter. The board may authorize such acquisition by the department, but the department shall not acquire any of such property by eminent domain proceedings except such property as may be necessary to provide access roads or rights of way to areas to be used for fishing the coastal waters of the Pacific Ocean, and then only if the board of supervisors of the affected county has agreed by resolution to such proceedings for each parcel of land and has further agreed by resolution to maintain the road or right of way. The board may authorize such acquisition by the State Public Works Board, which is hereby empowered to effect such acquisitions pursuant to the Property Acquisition Act.~~

approved by the Wildlife Conservation Board as

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shall be made only

subject

Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.

Comment. Section 1348 of the Fish and Game Code is amended to delete the acquisition authority of the Department of Fish and Game and the restrictions on the acquisition authority of the department and to require that the property acquisitions approved by the Wildlife Conservation Board be accomplished only through the Public Works Board, subject to the provisions of the Property Acquisition Law. See Govt. Code § 15850 et seq. Such acquisition may be by eminent domain. Govt. Code § 15854.

GOVERNMENT CODE § 184

Tentatively approved April 1970

GENERAL CONDEMNATION AUTHORIZATION

Government Code § 184 (repealed)

Sec. . Section 184 of the Government Code is repealed.

~~184. The State may acquire or authorize others to acquire title to property for public use in the cases and in the ways provided by law.~~

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Comment. Section 184 is repealed as unnecessary. See Code Civ. Proc.

§§ 1240.010, 1240.020.

PROTECTIVE CONDEMNATION

Government Code §§ 190-196 (repealed)

Sec. . Article 4.5 (commencing with Section 190) of Chapter 1 of Division 1 of Title 1 of the Government Code is repealed.

Comment. Sections 190-196 of the Government Code, relating to protective condemnation, are superseded by Section 1240.050 of the Code of Civil Procedure. Restrictions on the disposition of surplus property are continued in other provisions and in local ordinances and charters. See, s.g., Charter of the City and County of San Francisco § 7.401 (1971).

Note. The text of the repealed sections is set out below.

190. "Land" when used in this article includes any interest, easement, or reservation in land.

191. Whenever the State or any city or county may acquire land in excess of the land actually needed or used for public purposes in connection with the establishing, laying out, widening, enlarging, extending, or maintaining of memorial grounds, streets, squares, parkways, or reservations, the acquisition, maintenance, and use of such land and the sale, disposition, and conveyance and the establishment in connection therewith of any reservations concerning the future use and occupation of such land so as to protect the public works or improvements and their environs which it adjoins and to preserve the view, appearance, light, air, and usefulness of such public works shall be conducted and maintained pursuant to this article.

192. Every act of the State authorizing the State, any city or county to acquire land for the purposes of establishing, laying out, widening, enlarging, extending, or maintaining memorial grounds, streets, squares, parkways, or other public places, shall be construed as including among its purposes the acquisition of land in excess of the land actually needed or used for public purposes.

193. If the State, any city, or county acquires any land under Section 14½ of Article I of the Constitution or this article, which land is in excess of the land actually needed or used for public purposes, the State, city, or county may sell such land or any interest therein and may reserve in the land any reservation, easement, interest, or right that public interest, necessity, or convenience requires to preserve the view, appearance, light, air, and usefulness of any public memorial grounds, streets, squares, parkways, places, or works.

Tentatively approved July 1971

194. No such sale shall be made by a city or county except by its legislative body, nor until after notice has been published in the jurisdiction of the legislative body pursuant to Section 6064. The notice shall:

- (a) Describe the land or lands to be sold.
- (b) Set forth in general terms the interests, easements, or reservations to be reserved by the public.
- (c) State the time and place of the sale.
- (d) Call for sealed bids in writing.

195. At the time and place set for the sale, the legislative body shall open any bids received in response to the notice and shall sell the land to the highest bidder, except that it may at that time or at any time to which the sale is continued receive any higher bids and may reject any bid failing to comply with the terms of purchase set forth in the notice.

196. Money derived from the sale of land pursuant to this article shall be immediately paid into the fund from which payment was made for the land. If the land was purchased with funds derived from the levy of any assessment or tax upon property benefited, the money derived from the sale of the land shall be distributed as refunds to the persons paying those assessments or taxes in proportion to the amounts levied or assessed against them or thereafter to be levied or assessed against them to meet any bonds as yet unpaid by them. Money to be refunded to any person pursuant to this article shall first be applied to any indebtedness of such person or his successor in interest on account of any tax or assessment levied or any bond issued to pay the cost of any improvement done or performed by the public body; all or part of the cost of which is levied or taxed against the land of that person.

Tentatively approved September 1971

ACQUISITION OF PROPERTY BY COUNTY OR CITY  
FOR OPEN SPACE

Sec. . The heading for Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of the Government Code is amended to read:

CHAPTER 12. PURCHASE-OF-INTERESTS-AND-RIGHTS-IN-REAL

PROPERTY ACQUISITION OF PROPERTY FOR OPEN SPACE

Government Code § 6950 (amended)

Sec. . Section 6950 of the Government Code is amended to read:

6950. It is the intent of the Legislature in enacting this chapter to provide a means whereby any county or city may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment.

condemnation

Comment. See Comment to Section 6953.

GOVERNMENT CODE § 6952

Tentatively approved September 1971

Government Code § 6952 (amended)

Sec. . Section 6952 of the Government Code is amended to read:

6952. The Legislature hereby declares that it is necessary for sound and proper urban and metropolitan development, and in the public interest of the people of this State for any county or city to expend or advance public funds for, or to accept by, purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest or right in real property to acquire, maintain, improve, protect, limit the future use of or otherwise conserve open spaces and areas within their respective jurisdictions.

condemnation

Comment. See Comment to Section 6953.

Tentatively approved September 1971

Government Code § 6953 (amended)

Sec. . Section 6953 of the Government Code is amended

to read:

(a) 6953. The Legislature further declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced, ~~and that any~~ county or city may acquire, by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to achieve the purposes of this chapter. Notwithstanding Section 1240.150 of the Code of Civil Procedure, where property is sought to be acquired under this section by condemnation, the resolution of necessity adopted pursuant to Section 1240.120 of the Code of Civil Procedure is not conclusive on the matters referred to in Section 1240.030 of the Code of Civil Procedure.

¶ (b) Any  
condemnation

¶ (c)

Any county or city may also acquire the fee to any property for the purpose of conveying or leasing said property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of this chapter.

Comment. Section 6953 is amended to make clear that a city or county may exercise the power of eminent domain to acquire property for open space

Tentatively approved September 1971

use under this chapter. The former law was unclear, but condemnation for open space probably was not authorized. Compare Note, Property Taxation of Agricultural and Open Space Land, 8 Harv. J. Legis. 158 text at n.1 (1970) (implying that condemnation was authorized) with Ops. Cal. Legis. Counsel (Oct. 24, 1969)(concluding that condemnation was not authorized). Cities are authorized to acquire "urban open space lands" (Govt. Code § 38002) by condemnation (Govt. Code § 38010) under the Parks and Playground Act of 1909. See Cal. Stats. 1970, Ch. 645. Cf. Govt. Code §§ 51058 (last paragraph), 51065. Compare, e.g., Pub. Res. Code §§ 5540, 5541 (authorizing condemnation by regional park district for "natural areas" and "ecological and open space preserves"); Cal. Stats. 1970, Ch. 268 (Orange County Flood Control Act § 2.4--authorizing condemnation for "natural areas" and "ecological and open space preserves"); Cal. Stats. 1971, Ch. 760 (Marin County Flood Control and Water Conservation District Act (Cal. Stats. 1953, Ch. 666) § 5(13), (15)--authorizing condemnation "to acquire, preserve, and enhance lands or interests in lands within the County of Marin contiguous to its properties, for the protection and preservation of the scenic beauty and natural environment for such properties or such lands"); Cal. Stats. 1971, Ch. 803 (Los Angeles County Flood Control Act § 2(6)(15)--authorizing condemnation "to acquire, preserve, and enhance lands or interests in lands contiguous to its properties for the protection and preservation of the scenic beauty and natural environment for such properties or such lands."). Where



GOVERNMENT CODE § 6953

Tentatively approved September 1971

property is acquired by condemnation under this chapter, the resolution of necessity is not conclusive on the issues of public interest and necessity.

The power of eminent domain provided in Section 6953 will facilitate compliance with Section 6556<sup>4</sup> (requiring local open space plans to incorporate an "action program" consisting of specific programs the city or county intends to pursue in implementing its open space plan). See also Govt. Code §§ 25350.5 and 37350.5 (power of cities and counties to condemn to carry out city and county functions). The power of eminent domain will also provide a means to compel open space preservation where zoning fails. See Govt. Code § 65912 (open space zoning may not be used to take or damage property for public use without payment of just compensation). Cf. Govt. Code §§ 50575-50628 (open space maintenance districts).

For limitations on the right to acquire property under this chapter, see Section 6955.

Note. See Assembly Bill 2140 (1972 Regular Session).

Government Code § 6955 (added)

Sec. . Section 6955 is added to the Government Code, to read:

6955. Property may be acquired under this chapter only if its acquisition is consistent with the local open space plan adopted by the city or county pursuant to Section 65563.

Comment. Section 6955 makes clear that cities and counties may acquire open space or open area only if such acquisition is consistent with the local open space plan adopted pursuant to Section 65563 (requiring every city and county to prepare and adopt, by June 30, 1972, a local open space plan for the comprehensive and long-range preservation and conservation of open space land within its jurisdiction). Section 6955 is thus merely a specific application of Section 65566 (requiring all acquisitions of open space land to be consistent with the local open space plan). See also Section 65567 (prohibiting issuance of building permits, approval of subdivision maps, or adoption of open space zoning ordinances unless consistent with the local open space plan) and Section 65302 (general plan must contain land use element designating open space use).

Section 6955 parallels Section 65910 (requiring cities and counties to adopt open space zoning ordinances consistent with the local open space plan by January 1, 1973). By providing that the acquisition of open space--by purchase, condemnation, or otherwise--must be consistent with the local open space plan, Section 6955 recognizes that acquisition of property is an alternative to open space zoning.

GOVERNMENT CODE § 6956

Tentatively approved September 1971

Government Code § 6956 (added)

Sec. . Section 6956 is added to the Government Code, to read:

6956. (a) A city or county may divert property from use as open space or open area only after it has obtained replacement property for the property to be diverted. Any replacement property, whether substituted or received in exchange, shall be substantially equivalent in usefulness and location for permanent open space or open area as the property it replaces and must be held subject to all the provisions of this chapter. Money received for property diverted from use as open space or open area shall be used to acquire the replacement property or shall be held in a trust fund to be used only to acquire other open space or open area subject to the provisions of this chapter.

(b) This section applies only to property acquired under this chapter after June 30, 1974.

(c) This section does not apply where property or a right or interest therein is conveyed or otherwise subjected to uses that are compatible with its character as open space or open area and that do not significantly adversely affect such character.

Comment. Before open space or open area may be diverted to other use, Section 6956 requires that substantially equivalent property be acquired for open space or open area. The equivalent property may be acquired, for example, in exchange for the diverted property, by purchase with funds available for open space acquisition, or (if the city or county uses the open space or open area for its own public project) by public funds available for the project.

GOVERNMENT CODE § 6956

Tentatively approved September 1971

It should be noted that the restriction contained in Section 6956 is not the only restriction upon disposal of open space property by cities and counties. Section 65566 requires that acquisition, disposition, restriction, or regulation of open space property be in accordance with the local open space plan. This requirement applies to property acquired for open space under this chapter or under any other provision of law.

Subdivision (a). Subdivision (a) of Section 6956, which requires substitution of equivalent property, adopts the substance of the limitation found in 42 U.S.C. § 1500c (limitation on conversion of open space to another use if federal assistance used to acquire the open space). See also the 1970 Cumulative State Legislative Program (1969) of the Advisory Commission on Intergovernmental Relations, containing suggested state legislation including a similar limitation. For a somewhat comparable provision, see Pub. Res. Code § 5096.27 (property acquired by local entity with state grant under Cameron-Unruh Beach, Park, Recreational, and Historical Facilities Bond Act of 1964 to be used only for purpose for which state grant funds requested unless otherwise permitted by specific act of the Legislature). Compare Pub. Res. Code § 5540 (authorization by voters or by act of Legislature required for conveyance of property used for park purposes by regional park district).

Subdivision (b). The requirements of subdivision (a) apply only to open space property acquired after the time cities and counties have been granted the power of eminent domain to acquire open space. Nonetheless, the requirements apply not only to open space acquired by eminent domain but also to such property acquired by any other method.

GOVERNMENT CODE § 6956

Tentatively approved September 1971

Subdivision (c). The requirements of subdivision (a) do not affect the right of cities and counties to convey or lease open space property, or a right or interest therein, under such covenants or other contractual arrangements as will limit its future use in accordance with the provisions of this chapter. See Section 6953. Subdivision (c) permits improvements in the open space area that do not significantly adversely affect its usefulness as open space. If, however, the improvement significantly adversely affects the usefulness of the open space area as open space, subdivision (a) is applicable.

DEPARTMENT OF COMMERCE--CALIFORNIA INDUSTRY  
AND WORLD TRADE

Government Code § 8324 (amended)

Sec. . . Section 8324 of the Government Code is amended to read:

8324. The Department of Commerce may do any or all things which it may deem necessary, useful, or convenient in carrying out the objects and purposes of this chapter, ~~except that it shall not exercise the power of eminent domain or issue~~

The

may not be exercised nor may bonds of any nature be issued to carry out the objects and purposes of this chapter .

Comment. Section 8324 is amended to make clear that the power of eminent domain may not be exercised to carry out the objects and purposes of this chapter. Absent this amendment, it could be argued that property could be taken by eminent domain for such objects and purposes under the Property Acquisition Law (Section 15850 et seq.)

DIRECTOR OF GENERAL SERVICES

Government Code § 14661 (repealed)

Sec. . Section 14661 of the Government Code is repealed.

~~14661 The director may institute and maintain in the name of the state condemnation proceedings for the acquiring of any land authorized by law to be obtained for any state agency, except land to be acquired by the Department of Public Works for highway purposes, if no other state agency is specifically authorized and directed to institute such proceedings.~~

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Comment. Section 14661 of the Government Code is obsolete because condemnation of real property for state agencies is to be accomplished by the Public Works Board under the Property Acquisition Law (Section 15850 et seq.) with the exception of condemnations by those agencies that have been specifically authorized to condemn property under independent statutory grants. Agencies of the state, other than the Public Works Board, that may condemn property are the Department of Public Works (Sts. & Hwys. Code §§ 102 and 30400), the Department of Water Resources (Water Code §§ 250 and 11575), the Regents of the University of California (Educ. Code § 23151), and the State Reclamation Board--Sacramento and San Joaquin Drainage District (Water Code § 8593).

Tentatively approved December 1971

Government Code § 14662 (amended)

Sec. . Section 14662 of the Government Code is amended  
to read:

14662. The Director of General Services may acquire, ~~by condemnation or other means,~~ any easements or rights-of-way which he determines to be necessary for the proper utilization of real property owned or being acquired by the state.  
This section does not apply to land, easements, or rights-of-way to be acquired by the Department of Public Works.

Comment. Government Code Section 14662 is amended to delete the reference to the power of eminent domain because the Director of General Services has no independent condemnation authority. All acquisitions by eminent domain for the state are accomplished by the Public Works Board with limited exceptions. See Govt. Code §§ 15853-15855. The authority of the Public Works Board to condemn any right or interest in property, including easements and rights of way, necessary for the proper utilization of real property owned or being acquired by the state is continued in Sections 1230.070, 1240.040, and 1240.050 of the Code of Civil Procedure.

Contracts for the acquisition of real property by state agencies require approval of the Director of General Services. See Govt. Code § 11005.



STATE ESTABLISHMENTS IN NAPA COUNTY

Government Code § 14715 (amended)

Sec. . Section 14715 of the Government Code is amended  
to read:

14715. The Veterans' Home of California, for all purposes including irrigation and domestic, shall have the first and prior right to all available water stored in Rector Dam on state property in Napa County. Said right shall be prior to any allocation of said waters for the use of any other state institutions, including the State Game Farm and the Napa State Hospital. In the event that there is more water available than necessary to meet the requirements of the Veterans' Home of California, the department may take and conduct from the dam such quantity of surplus water as may be determined by the Department of Water Resources to be necessary for the use of the Napa State Hospital and other state establishments located in the County of Napa, including the State Game Farm, and may-acquire rights-of-way may be acquired, pursuant to the Property Acquisition Law (Part 11, commencing with Section 15850, of Division 3 of Title 2), by purchase, lease, or condemnation for that purpose.

Comment. Section 14715 is amended to conform to the policy expressed in Section 15855.

RESTORATION OF DESTROYED STATE RECORDS

Sec. . Article 7 (commencing with Section 14770) is added to Chapter 5 of Part 5.5 of Division 3 of Title 2 of the Government Code, to read:

Article 7. Restoration of Records Destroyed by  
Public Calamity

Government Code § 14770 (added)

14770. (a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Public record plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of such person or which is used by him in his business.

(b) If public records of any state agency have been lost or destroyed by conflagration or other public calamity, the director may acquire the right to reproduce such portion of a public record plant as is necessary for the purpose of restoring or replacing the records or their substance.

GOVERNMENT CODE § 14770

Tentatively approved June 1970

Comment. Section 14770 is new but reflects the same policy as subdivision 15 of former Code of Civil Procedure Section 1238 which applied only to certain local public entities.

The broad authority to acquire the "right to reproduce" lost or destroyed records permits the reproduction of records by such means as making copies, obtaining a computer printout or other visual representation of records preserved in data processing equipment, or duplicating magnetic tapes or other means for preserving such records in data processing equipment.

Cross Reference:

Similar authority for local public entities, Govt. Code § 53030.

Tentatively approved December 1971

PROPERTY ACQUISITION LAW

(Govt. Code §§ 15853, 15854, 15855, 15856, 15858, 15859)

Government Code § 15853 (amended)

Sec. . Section 15853 of the Government Code is amended to read:

15853. (a) The board shall is authorized to select and acquire, in the name of and on behalf of the State, with the consent of the state agency concerned, suitable-and-adequate the fee or any lesser right or interest in any real property necessary for such purposes-as-may-be-specified-in-the-legislation-making-funds-available for-such-acquisition any state purpose or function .

(b) \_\_\_\_\_ Where moneys are appropriated by the budget act for any fiscal year or by any other act for the acquisition of land or other real property, subject to the provisions of the Property Acquisition Law, such moneys and acquisitions shall be subject to the provisions of this part and said moneys shall be expended in accordance herewith, notwithstanding any other provisions of law.

either (1) or (2) for any state agency for whom property is acquired by the board,

~~The board may acquire any interest in real property pursuant to this part which it deems advisable.~~

The board may acquire furnishings which the owner thereof agrees to sell and which are contained within improvements acquired by the board. Cost of acquisition of such furnishings shall be charged to the appropriation available for acquisition of the real property.

such  
with the provisions of this part,

(c)

Comment. Government Code Section 15853 is amended to make clear that the Public Works Board may acquire property for any public use by the state. With some significant exceptions, the Public Works Board is the agency that

GOVERNMENT CODE § 15853

Tentatively approved December 1971

condemns property needed for the use of the state. See Section 15855.

Property may be acquired only with the approval of the agency for which the board undertakes the acquisition. This generalizes a comparable restriction formerly found in Section 15854.1. Cf. Fish & Game Code § 1348 (approval of Wildlife Conservation Board required). See also Sections 14730 (index or record of title of lands owned or acquired by state), 15791 (purchase of improved property in lieu of construction).

The broad authority granted by Section 15853 is not limited by other specific grants of condemnation authority.

Note. The extent to which a condemnor may or must acquire personal property in an eminent domain proceeding is a matter under study by the Law Revision Commission.

Government Code § 15854.1 (repealed)

Sec. . Section 15854.1 of the Government Code is repealed.

~~15854.1. The board shall not select or acquire a site for the use of the California State Colleges unless, prior to the selection, the trustees have, by resolution, approved of the selection of the site.~~ } ALL IN  
STRIKEOUT

Comment. Section 15854.1 of the Government Code is superseded by the general requirement that the Public Works Board may acquire property only with the consent of the agency concerned. See Section 15853.

Government Code § 15855 (repealed)

Sec. . Section 15855 of the Government Code is repealed.

~~15855. Before commencing condemnation proceedings the~~  
board shall adopt a resolution declaring that public interest  
and necessity requires the acquisition, construction, or comple-  
tion by the State of the improvements for which the real  
property or interest therein is required and that the real prop-  
erty or interest therein described in the resolution is necessary  
for the improvement.

The resolution of the board shall be conclusive evidence:

(a) Of the public necessity of the proposed public improve-  
ment.

(b) That the real property or interest therein is necessary  
for the improvement.

(c) That the improvement is planned or located in a manner  
~~which will be compatible with the greatest public good and the  
least private injury.~~

ALL IN  
STRIKEOUT

Comment. Section 15855 is superseded by the more general provisions  
of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq. relat-  
ing to the resolution of necessity.

Government Code § 15855 (added)

Sec. . Section 15855 is added to the Government Code, to read:

15855. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), the State Public Works Board is the only state agency that may exercise the power of eminent domain to acquire property needed by any state agency for any state purpose or function.

(b) Subdivision (a) does not affect or limit the right of the Department of Public Works, Department of Water Resources, State Reclamation Board, or the Regents of the University of California to exercise the power of eminent domain.

Comment. Government Code Section 15855 is added to make clear that, subject to some significant exceptions, the Public Works Board is the agency that condemns property needed for state purposes. The exceptions are specified in subdivision (b):

(1) The Department of Public Works. See Sts. & Hwys. Code §§ 102 (state highway) and 30100 (toll bridges).

(2) The Department of Water Resources. See Water Code §§ 250 and 11575 (state dam and water projects).



GOVERNMENT CODE § 15855

Tentatively approved December 1971

(3) The State Reclamation Board. See Water Code § 8590 (Reclamation Board condemns for Sacramento and San Joaquin Drainage District).

(4) The Regents of the University of California. See Educ. Code § 23151 (University of California); Cal. Const., Art. IX, § 9.

Section 15855 supersedes former provisions of numerous codes that granted various agencies of the state independent condemnation authority. E.g., provisions formerly found in Fish & Game Code § 1348 (Department of Fish and Game); Govt. Code §§ 14661-14662 (Director of General Services), 54093 (Department of Parks and Recreation); Mil. & Vets. Code § 437 (Adjutant General); Pub. Res. Code §§ 5006 (Department of Parks and Recreation), 6808 (State Lands Commission).

Government Code § 15856 (repealed)

Sec. . Section 15856 of the Government Code is repealed.

~~15856. In any condemnation proceeding brought for the acquisition of real property pursuant to this part, the use for which the property is condemned shall be deemed a public use more necessary than any other public use to which the property is devoted at the time the action is commenced.~~

} ALL IN  
STRIKEOUT

Comment. Government Code Section 15856 is superseded by the more general provisions of the Eminent Domain Law relating to condemnation for more necessary public use. Section 1240.640 of the Code of Civil Procedure provides that use by the state is more necessary than use by any other person. See Code Civ. Proc. § 1240.640 and Comment thereto.

Government Code § 15858 (repealed)

Sec. . Section 15858 of the Government Code is repealed.

~~15858. Whenever property which is devoted to or held for some other public use for which the power of eminent domain may be exercised is taken for state purposes pursuant to this part, with the consent of the person or agency in charge of such other public use, the board may condemn other real property and exchange it with such other person or agency for the real property to be taken for state purposes. Transfer of the property so acquired shall be made in accordance with the stipulation entered into pursuant to Section 15857.~~

ALL IN  
STRIKEOUT

Comment. Government Code Section 15858 is superseded by the more general provisions of Code of Civil Procedure Section 1240.310 et seq. relating to condemnation of property for substitute purposes. See especially Code Civ. Proc. § 1240.320 and Comment thereto.

GOVERNMENT CODE § 15859

Tentatively approved December 1971

Government Code § 15859 (repealed)

Sec. . Section 15859 of the Government Code is repealed.

~~15859. The board may abandon any condemnation proceeding. Nothing in this part extends the time specified in Section 1255a of the Code of Civil Procedure for the abandonment of condemnation proceedings.~~

} ALL IN  
STRIKEOUT

Comment. Government Code Section 15859 is superseded by the more general provisions of Code of Civil Procedure Section \_\_\_\_\_ relating to the right to abandon an eminent domain proceeding and specifying time limits thereon.

CONDEMNATION DEPOSITS FUND

Sec. . Article 10 (commencing with Section 16429.1) is added to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, to read:

Article 10. Condemnation Deposits Fund

Government Code § 16429.1 (added)

16429.1. The Condemnation Deposits Fund in the State Treasury is continued in existence. The fund consists of all money deposited in the State Treasury under Chapter 7 (commencing with Section 1255.010) of Title 7 of Part 3 of the Code of Civil Procedure and all interest earned or other increment derived from its investment. The State Treasurer shall receive all such moneys, duly receipt for, and safely keep the same in the fund, and for such duty he is liable upon his official bond.

Comment. Sections 16429.1-16429.3 restate the substance of a portion of subdivision (h) and all of subdivisions (i) and (j) of former Code of Civil Procedure Section 1254.

Government Code § 16429.2 (added)

16429.2. (a) Money in the Condemnation Deposits Fund may be invested and reinvested in any securities described in Section 16430 or deposited in banks as provided in Chapter 4 (commencing with Section 16500).

(b) The Pooled Money Investment Board shall designate at least once a month the amount of money available in the fund for investment in securities or deposit in bank accounts, and the type of investment or deposit and shall so arrange the investment or deposit program that funds will be available for the immediate payment of any court order or decree. Immediately after such designation the State Treasurer shall invest or make deposits in bank accounts in accordance with the designations. For the purposes of this subdivision, a written determination signed by a majority of the members of the Pooled Money Investment Board shall be deemed to be the determination of the board. Members may authorize deputies to act for them for the purpose of making determinations under this section.

Comment. See the Comment to Section 16429.1.

Government Code § 16429.3 (added)

16429.3. Interest earned and other increment derived from investments or deposits made pursuant to this article, after deposit of money in the State Treasury, shall be deposited in the Condemnation Deposits Fund. After first deducting therefrom expenses incurred by the State Treasurer in taking and making delivery of bonds or other securities under this article, the State Controller shall apportion as of June 30th and December 31st of each year the remainder of such interest earned or increment derived and deposited in the fund during the six calendar months ending with such dates. There shall be apportioned and paid to each plaintiff having a deposit in the fund during the six-month period for which an apportionment is made, an amount directly proportionate to the total deposits in the fund and the length of time such deposits remained therein. The State Treasurer shall pay out the money deposited by a plaintiff in such manner and at such times as the court or a judge thereof may, by order or decree, direct.

Comment. See Comment to Section 16429.1.

GOVERNMENT CODE § 25350.5

Tentatively approved April 1970

COUNTIES

Government Code § 25350.5 (added)

Sec. . Section 25350.5 is added to the Government Code, to read:

25350.5. The board of supervisors of any county may acquire by eminent domain any property necessary to carry out any of the powers or functions of the county.

Comment. Section 25350.5 supersedes the grant of condemnation authority formerly contained in various subdivisions of Section 1238 of the Code of Civil Procedure and supplements the specific grants of such authority contained in this and other codes. E.g., Govt. Code § 26020 (airports); Sts. & Hwys. Code § 943 (highways). Its purpose is to give a county adequate authority to carry out its functions.

Specific limitations may, of course, be imposed on the exercise of the power of eminent domain. See Penal Code § 4106 (no industrial farm may be established on land outside county without consent of the affected county). On the other hand, where a statute authorizes the acquisition of property by means not specifically including eminent domain, such authorization does not preclude the use of eminent domain under this section. See, e.g., Pub. Res. Code § 5157 (county may acquire land for public park).



MOBILIZATION, TRAINING, AND SUPPLY STATIONS

Government Code § 25431 (amended)

Sec. . Section 25431 of the Government Code is amended  
to read:

~~25431. The acquisition of land for the establishment of a permanent mobilization, training, and supply station for any military purposes authorized by any law of the United States is a public use, and the right of eminent domain is granted and extended to every county availing itself of the provisions of this article for every purpose of condemnation, appropriation, or disposition intended by this article and any county may condemn and appropriate all lands and rights whatsoever~~

Any

exercise the right of eminent domain to acquire any property

~~necessary or convenient for carrying out the provisions of this article. The right of eminent domain may be exercised on behalf of such public use in accordance with the provisions of Title 7, Part 3 of the Code of Civil Procedure.~~

Comment. Section 25431 is amended to delete unnecessary portions. Code of Civil Procedure Section 1240.010 makes portions declaring that the acquisition is for a public use unnecessary. Code of Civil Procedure Section 1235.010 makes the last sentence unnecessary.

CITIES

Government Code § 37350.5 (added)

Sec. . Section 37350.5 is added to the Government Code, to read:

37350.5. The legislative body of any city may acquire by eminent domain any property necessary to carry out any of the powers or functions of the city.

Comment. Section 37350.5 supersedes the grant of condemnation authority formerly contained in various subdivisions of Section 1238 of the Code of Civil Procedure and supplements the specific grants of such authority contained in this and other codes. E.g., Govt. Code § 37501 (public assembly or convention halls); Sts. & Hwys. Code § 4090 (streets, walks, parking places). Its purpose is to give a city adequate authority to carry out its municipal functions.

Specific limitations may, of course, be imposed on the exercise of the power of eminent domain under some circumstances. See Govt. Code § 37353(c) (no existing golf course may be acquired by eminent domain). On the other hand, where a statute authorizes the acquisition of property by means not specifically including eminent domain, such authorization does not preclude the use of eminent domain under this section. See Comment to Section 25350.5 (authority of county to condemn for county functions).

CITY REVOLVING FUND

Government Code § 43424 (amended)

Sec. . . Section 43424 of the Government Code is amended  
to read:

43424. It may advance money from the revolving fund  
and deposit it in court as security upon commencing as probable  
just compensation pursuant to Chapter 7 (commencing  
with Section 1255.010) of Title 7 of Part 3 of the  
Code of Civil Procedure in any eminent domain proceeding to acquire lands, rights of way, or other property necessary in establishing, laying out, opening, widening, extending, or straightening any street or other public way.

Comment. Section 43424 is amended to conform to the revised eminent domain provisions dealing with obtaining possession prior to final judgment.

GOVERNMENT CODE § 50366

Staff recommendation May 1972

PROPERTY TO BE USED FOR FEDERAL PURPOSES

Government Code § 50366 (amended)

Sec. . Section 50366 of the Government Code is amended

to read:

50366. ~~The acquisition of land for use by the United States pursuant to this article is a public use, and the right of eminent domain is granted to a local agency availing itself of this article to condemn and appropriate lands and rights~~ may exercise the right of eminent domain to acquire any property necessary or convenient to carry out this article. A

Comment. Section 50366 is amended to delete the portion which is made unnecessary by Code of Civil Procedure Section 1240.010.

Tentatively approved October 1971

AIRPORT HAZARDS

Government Code § 50485.2 (amended)

Sec. . Section 50485.2 of the Government Code is amended to read:

50485.2. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of the aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; ~~and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power~~ by appropriate exercise of the police power or the authority conferred by Article 2.6 (commencing with Section 21652) of Part 1 of Division 9 of the Public Utilities Code.

and

It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which a city or county may raise and expend public funds and acquire land or property interests therein.

GOVERNMENT CODE § 50485.2

Tentatively approved October 1971

Comment. The amendment to Section 50485.2 is necessitated by the repeal of Section 50485.13. Notwithstanding the statement of policy regarding use of the police power contained in Section 50485.2, Section 50485.13 permitted acquisition of airport approach protection by means other than police power regulation "[i]n any case in which . . . it appears advisable." The result was creation of a broad discretion in local governments as to the means to be employed in acquiring airport approach protection. The language of Section 50485.2 has been amended to achieve approximately the same statement as was formerly derived from reading Sections 50485.2 and 50485.13 together. See Public Utilities Code Sections 21652 and 21653, dealing with acquisitions for airport approach protection.

GOVERNMENT CODE § 50485.13

Tentatively approved September 1971

Government Code § 50485.13 (repealed)

Sec. . Section 50485.13 of the Government Code is repealed.

~~50485.13. In any case in which: (a) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (b) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this article; or (c) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the city or county within which the property or nonconforming use is located or the city or county owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which a city or county is authorized to acquire real property for public purposes, such air right, air navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this article. In the case of the purchase or grant of any property or any easement or estate or interest therein or the acquisition of the same by the power of eminent domain by a city or county making such purchase or exercising such power, there shall be included in the damages for the taking, injury or destruction of property the cost of the removal and relocation of any structure or public utility which is required to be moved to a new location.~~

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GOVERNMENT CODE § 50485.13

Tentatively approved September 1971

Comment. Section 50485.13, granting to cities and counties the power of eminent domain to eliminate airport hazards, is superseded by other sections.

The power to condemn for the elimination of airport hazards is continued in Public Utilities Code Section 21652. To the extent that entities were limited in their exercise of eminent domain under Section 50485.13 to situations in which zoning would have been inadvisable or unconstitutional, the limitation is not continued. Any entity authorized to condemn for airports may condemn to eliminate airport hazards without limitation under Public Utilities Code Section 21652. It should be noted that cities and counties may achieve this end by appropriate use of its police or eminent domain power. Govt. Code § 50485.2.

The requirement that cities and counties pay the cost of relocation of structures when acquiring property to eliminate airport hazards is continued in Public Utilities Code Section 21653.

The authority of cities and counties to condemn property outside their limits for airport purposes is retained in Government Code Section 50470.



Tentatively approved June 1970

RESTORATION OF DESTROYED LOCAL PUBLIC RECORDS

Sec. . Article 2.5 (commencing with Section 53030) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.5. Restoration of Records Destroyed by

Public Calamity.

Government Code § 53030 (added)

53030. (a) As used in this section:

(1) "Acquire" includes acquisition by gift, purchase, lease, eminent domain, or otherwise.

(2) "Local public entity" means any public entity other than the state.

(3) "Public record plant" means the plant, or any part thereof, or any record therein, of any person engaged in the business of searching or publishing public records or insuring or guaranteeing titles to real property, including copies of public records and abstracts or memoranda taken from public records, which is owned by or in the possession of such person or which is used by him in his business.

(b) If public records of a local public entity have been lost or destroyed by conflagration or other public calamity, the local public entity may acquire the right to reproduce such portion of a public record plant as is necessary for the purpose of restoring or replacing the records or their substance.

GOVERNMENT CODE § 53030

Tentatively approved June 1970

Comment. Section 53030 is derived from and reflects the same policy as subdivision 15 of former Code of Civil Procedure Section 1238. However, the provision is broadened to cover all local public entities and is limited to acquiring the "right to reproduce" such records and does not permit permanent acquisition of the public records plant itself.

The broad authority to acquire the "right to reproduce" lost or destroyed records permits the reproduction of records by such means as making copies, obtaining a computer printout or other visual representation of records preserved in data processing equipment, or duplicating magnetic tapes or other means for preserving such records in data processing equipment.

Cross Reference:

Similar authority for state agencies, Govt. Code § 14770.

INTEREST ON DEPOSITS

Government Code § 53844 (amended)

Sec. . Section 53844 of the Government Code is amended

to read:

53844. In any county which qualifies as set forth in Section 53840 to use the foregoing procedure for short-term financing, all interest payments on the loans may, in the discretion of the board of supervisors, be charged to the general fund of any district or fund for which loans have been made. All interest earned on funds in the county treasury shall be credited to said general fund of the county, excepting therefrom the interest on deposits of school districts which shall accrue to the general funds of the respective school districts, the interest earned on specific investments of a local agency as authorized by Section 53601 of this code or by Section 5007 of the Education Code, and moneys on deposit in court in eminent domain actions pursuant to order of court to secure immediate possession. Chapter 7 (commencing with

Section 1255.010) of Title 7 of Part 3 of the Code of Civil Procedure .

Comment. The reference to "immediate possession" in Section 53844 is replaced by a reference to the pertinent provisions of the Code of Civil Procedure relating to deposits made in eminent domain proceedings prior to judgment.

DEPARTMENT OF PARKS AND RECREATION

Government Code § 54093 (amended)

Sec. . Section 54093 of the Government Code is amended

to read:

54093. The Department of Parks and Recreation, on behalf of the State, may acquire by appropriate means, ~~including by right of eminent domain,~~ easements in property owned, operated or controlled by any city, county or other local agency in order to provide free public access to any public beach. However, any such easement shall terminate if the property is developed by the city, county or other public agency in a manner which would not be compatible with the use of such easement for access purposes and if the city, county or other public agency refunds to the State the amount of money the State paid for such easement.

Comment. Section 54093 is amended to delete the reference to the power of eminent domain since the Department of Parks and Recreation has no independent condemnation authority. Any condemnation of property for the Department of Parks and Recreation is to be accomplished by the Public Works Board. See Govt. Code §§ 15853-15855. The state's right to condemn property owned by local public entities is expressed more generally in Code of Civil Procedure Sections 1240.510 et seq. and 1240.610 et seq. (acquisition of property appropriated to public use).

GOVERNMENT CODE § 55003

Staff recommendation May 1972

JOINT SANITATION PROJECTS

Government Code § 55003 (amended)

Sec. . Section 55003 of the Government Code is amended  
to read:

55003. When it is necessary to ~~take or damage private~~  
property in the construction of any outfall sewer or conduit  
pursuant to this chapter, the property may be ~~taken by eminent~~  
domain ~~pursuant to the Code of Civil Procedure.~~

require

acquired

Comment. The amendment of Section 55003 merely conforms  
the wording of the section to the language used in the Eminent  
Domain Law and makes no substantive change.

GOVERNMENT CODE § 61610

Staff recommendation May 1972

COMMUNITY SERVICES DISTRICT

Government Code § 61610 (amended)

Sec. . Section 61610 of the Government Code is amended  
to read:

61610. A district may ~~take or~~ acquire real or personal property of every kind within or without the district by grant, purchase, gift, devise, lease, or ~~condemnation pursuant to eminent domain proceedings in accordance with Title 7, Part 3 of the Code of Civil Procedure,~~ provided the district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location.

Comment. Section 61610 is amended to ~~delete~~ the specific reference to former Title 7 of Part 3 of the Code of Civil Procedure, this reference being unnecessary. See Code of Civil Procedure Section 1235.010.

GOVERNMENT CODE § 66657

added Stats. 1969, Ch. 713, § 14  
Staff draft July 1972

SAN FRANCISCO BAY CONSERVATION AND  
DEVELOPMENT COMMISSION

Government Code § 66657 (amended)

Sec. . Section 66657 of the Government Code is amended  
to read:

including but  
not limited  
to

66657. In eminent domain or inverse condemnation proceedings for any property within the area of the commission's jurisdiction, in determining ~~just compensation, as used in Section 14 of Article I of the California Constitution, or value, damage, or benefits, as used in Section 1248 of the Code of Civil Procedure,~~ the influence of the San Francisco Bay Plan, in effect at the time of the taking or damaging of the property, upon the value of the property or the interest being valued, shall be inadmissible as evidence and not a proper basis for an opinion as to the value of the property.

Comment. The amendment to Section 66657 merely deletes the specific references to sections of the Constitution and Code of Civil Procedure. It makes no substantive change in the section.

HARBOR IMPROVEMENT DISTRICT

Harbors & Navigation Code § 5900.4 (amended)

Sec. . Section 5900.4 of the Harbors and Navigation Code is amended to read:

5900.4. The board may exercise the right of eminent domain, ~~in the manner provided by law for the condemnation of private property for public use, to take any property necessary or convenient to the exercise of the powers conferred by this part. In exercising the right of eminent domain the district has the same rights, powers, and privileges as are by law possessed by a municipal corporation.~~

to acquire

Comment. Section 5900.4 is amended to delete unnecessary language. See Code Civ. Proc. § 1235.010 (procedure).



HARBORS & NAVIGATION CODE § 6076

added Stats. 1937, Ch. 368, § 6076  
Staff draft July 1972

HARBOR DISTRICT

Harbors & Navigation Code § 6076 (amended)

Sec. . Section 6076 of the Harbors and Navigation Code is amended to read:

6076. It may exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use and take any property necessary or convenient to the exercise of its powers. In the proceedings relative to the exercise of such right the district has the same rights, powers and privileges as a municipal corporation.

to acquire

Comment. Section 6076 is amended to delete unnecessary language. See Section 1235.010 of the Code of Civil Procedure.

HARBORS & NAVIGATION CODE § 6296

Added Stats. 1937, Ch. 368, § 6296  
Staff draft July 1972

PORT DISTRICT

Harbors & Navigation Code § 6296 (amended).

Sec. . Section 6296 of the Harbors and Navigation Code is amended to read:

6296. It may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. It may take any property necessary to carry out any of the objects or purposes of the district, whether the property is already devoted to the same use or otherwise. In the exercise of the right of eminent domain, the district has the same right, power and privileges as a municipal corporation.~~

to acquire

Comment. Section 6296 is amended to delete unnecessary language. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. § 1240.510 et seq. (compatible use).

RIVER PORT DISTRICT

Harbors & Navigation Code § 6896 (amended).

Sec. . Section 6896 of the Harbors and Navigation Code is amended to read:

6896. It ~~has and it~~ may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. It may take any property~~ necessary or convenient to carry out any of its purposes, ~~whether the property is already devoted to the same use or otherwise. In the exercise of the right of eminent domain, a district has the same right, power and privileges as an incorporated city under the laws of this State. A district shall proceed in the name of the district in condemnation proceedings.~~

to acquire

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Comment. Section 6896 is amended to delete unnecessary language. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. § 1240.510 et seq. (compatible use).

SMALL CRAFT HARBOR DISTRICT

Harbors & Navigation Code § 7147 (amended)

Sec. . Section 7147 of the Harbors and Navigation Code is  
amended to read:

7147. The district may acquire by eminent domain ~~pro-  
ceedings in the manner provided by law lands and properties~~  
necessary, convenient or useful to the exercise of its powers,  
but may exercise the power to acquire ~~lands and~~ property out-  
side the district by eminent domain only with the consent of  
the governing body of the county, or city if any, in which the  
property is located. ~~In the proceedings relative to the exercise  
of the right of eminent domain the district has the same rights,  
powers and privileges as a municipal corporation.~~

any property

Comment. Section 7147 is amended to delete unnecessary  
language. See Code Civ. Proc. § 1235.010 (procedure). See  
also Code Civ. Proc. § 1230.070 (defining "property").

NONPROFIT HOSPITALS

Health & Safety Code § 438.4 (amended)

Sec. . Section 438.4 of the Health and Safety Code is amended to read:

438.4. The voluntary area health planning agency, acting upon an application originally or reviewing a recommendation of a voluntary local health planning agency or the consumer members of a voluntary area health planning agency acting as an appeals body, and the Health Planning Council shall make one of the following decisions:

- (a) Approve the application in its entirety;
- (b) Deny the application in its entirety;
- (c) Approve the application subject to modification by the applicant, as recommended by the body involved.

A decision shall become final when all rights to appeal have been exhausted. Approval shall terminate 12 months after the date of such approval unless the applicant has commenced construction or conversion to a different license category, OR

an action to condemn property pursuant to

Section 1427,

and is diligently pursuing the same to completion as determined by the voluntary area health planning agency; or unless the approval is extended by the voluntary area health planning agency for an additional period of up to 12 months upon the showing of good cause for the extension. If the Health Planning Council finds that the voluntary area health planning agency has dissolved, it may grant such extension upon a showing by the applicant of good cause for the extension.

Comment. Section 1427 requires that health planning agency approval be secured before a nonprofit hospital may condemn property for hospital facilities. The amendment to Section 438.4 recognizes that condemnation may require more than a year and provides that approval automatically is extended at the end of 12 months if condemnation has been commenced and is diligently pursued.

HEALTH & SAFETY CODE § 1427

Tentatively approved September 1971

Health & Safety Code § 1427 (added)

Sec. . Section 1427 is added to the Health and Safety Code, to read:

1427. (a) As used in this section, "nonprofit hospital" means any institution, place, building, or agency currently licensed under this chapter to provide 24-hour inpatient services for the diagnosis, care, and treatment of various physical or mental illnesses or ailments of humans, in multiple departments having an organized medical or medical-dental staff, and which is owned and operated by a fund, foundation, or corporation, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. "Non-profit hospital" does not include institutions the primary purpose of which is to provide convalescent, rehabilitative, nursing, or resident care.

(b) Any nonprofit hospital may exercise the right of eminent domain to acquire property necessary for the establishment, operation, or expansion of the hospital if both the following requirements are met:

(1) A final and favorable decision concerning the project for which the property is sought to be condemned has been made by the voluntary area health planning agency approved pursuant to Section 437.7, the consumer members of such a voluntary area health planning agency acting as an appeals body, or the Health Planning Council.

Tentatively approved September 1971

(2) The Director of the State Department of Public Health has certified that (i) the acquisition of the property sought to be condemned is necessary for the establishment, operation, or expansion of the hospital, (ii) the public interest and necessity require the proposed project, and (iii) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(c) The certificate of the Director of the State Department of Public Health pursuant to subdivision (b) establishes a presumption that the matters referred to in Sections 1240.030 and 1240.040 of the Code of Civil Procedure are true. This presumption is a presumption affecting the burden of proof.

Comment. Section 1427 supersedes former Code of Civil Procedure Section 1238.3.

Subdivision (a). The term "nonprofit" has the same meaning under subdivision (a) as under former Code of Civil Procedure Section 1238.3. However, the definition of "hospital" in subdivision (a) has been narrowed to include only those institutions that are licensed to provide diversified, professional, short-term services and to exclude institutions that provide only long-term or specialized services. The definition is in keeping with the Administrative Code definitions of "hospital" and "general hospital." See 9 Cal. Admin. Code § 515; 17 Cal. Admin. Code, Ch. 1, § 230.

HEALTH & SAFETY CODE § 1427

Tentatively approved September 1971

Subdivision (b). Subdivision (b) grants broader authority to condemn than was provided by Code of Civil Procedure Section 1238.3, for it permits acquisition of property to establish a newly-organized and licensed hospital, dispenses with the requirement that the property be "immediately adjacent" to existing holdings, and no longer requires that the hospital condemnor be engaged in "scientific research or an educational activity." The limitation to property immediately adjacent unduly restricted the ability of existing hospitals to acquire one parcel in a large tract needed for expansion. The limitation to hospitals engaged in scientific research or education was both narrow and ineffective and no longer serves a limiting function since nearly all medical institutions conduct some research or education. Also, the limitation to expansion of existing hospitals was undesirable in view of the equal or greater need of new hospitals for the right of eminent domain.

In place of the restrictions contained in former Section 1238.3, Section 1427 makes the necessity and desirability of each hospital condemnation project subject to a triple review process: by local health facilities planning authorities, by the State Director of Public Health, and by the court in an eminent domain proceeding. The new scheme is intended to aid expansion to meet public needs as determined by authorized agencies.

New hospital projects must be submitted for approval to local health services planning boards (voluntary area health planning agencies or voluntary local health planning agencies) before they can be licensed to be operated. The local boards are instructed to determine whether proposed



HEALTH & SAFETY CODE § 1427

Tentatively approved September 1971

projects are necessary and convenient to the community and to approve those projects conducive to comprehensive community medical services. Decisions of the local boards may be appealed, either by the applicant for approval or by members of the local planning boards; in any case, the final decision rests with the Health Planning Council. See Health & Saf. Code §§ 437.7, 437.8, 437.9, 438, 438.1, 438.2, 438.4, 438.5. Approval, once granted, expires within a year but may be extended if a project has been started and, in the opinion of the local planners, is diligently pursued, or for other good cause shown. Health & Saf. Code § 438.4. Applications for licensure of new projects must indicate (1) that the applicant has submitted the project for local board approval and has participated in hearings to that end and (2) that approval was granted or that 12 months have passed since a decision on the project was reached. See Health & Saf. Code §§ 1402.1, 1402.2. In view of the latter provision, it is possible to acquire a license for a new hospital project even though the project has been disapproved by local planning authorities so long as the decision of the local authorities is at least one year old. Paragraph (1) of subdivision (b) requires that a project be actually approved by local authorities before condemnation will be authorized, regardless of whether the project might later be licensed even though it had never been approved.

Paragraph (2) continues the requirement of former Code of Civil Procedure Section 1238.3 that the Director of the Department of Public Health certify that

HEALTH & SAFETY CODE § 1427

Tentatively approved September 1971

the acquisition is necessary. The Department of Public Health makes and enforces detailed regulations for construction or alterations of hospital buildings. Health & Saf. Code § 1411; Cal. Admin. Code §§ 265, 400-499. See West Covina Enterprises, Inc. v. Chalmers, 49 Cal.2d 754, 322 P.2d 13 (1956). In addition, paragraph (2) requires the certificate to indicate the public interest and necessity for the acquisition. Cf. Code Civ. Proc. § 1240.030.

Subdivision (c). Subdivision (c) establishes and classifies the presumption of necessity afforded the certificate of the Director of the Department of Public Health for the purposes of Sections 1240.030 and 1240.040 of the Code of Civil Procedure.

SEWER CONSTRUCTION

Health & Safety Code § 4967 (added)

Sec. . Section 4967 is added to the Health and Safety Code, to read:

4967. The owner of property that may be benefited by the acquisition, construction, extension, or operation of the works referred to in this chapter may file with the district a request that a particular work be undertaken. The request may, but need not, include the descriptions and estimates referred to in Section 4966 and shall not be denied without a public hearing.

Comment. Section 4967 is added to the Health and Safety Code to expressly authorize initiation of sewerage construction and extension proposals by individual property owners. The request may be made of any city, county, city and county, or any municipal or public corporation or district which is authorized to acquire, construct, own, or operate a sewer system. See Section 4951. In reviewing a property owner's request, the district should consider both the necessity for the requested action and its relative hardship on any party whose land is sought to be used compared with the benefit to the requester. For a comparable provision relating to access road construction, see Sts. & Hwys. Code § 4120.1. Cf. Water Code §§ 7020-7026 (county may open private irrigation, drainage, or seepage canal).

HEALTH & SAFETY CODE § 4967

Tentatively approved April 1971

Under prior law, private individuals under certain circumstances were authorized to condemn property for a sewer easement. Linggi v. Garovotti, 45 Cal.2d 20, 286 P.2d 15 (1955). Private individuals no longer have a right to condemn property for this purpose. See the Comment to subdivision 8 of former Code of Civil Procedure Section 1238. Instead, Section 4967 provides a procedure whereby the property owner can initiate proceedings to have the public entity acquire a sewer easement or any other necessary property. The public entity is authorized to acquire the necessary property by gift, purchase, condemnation, or otherwise. See Sections 5000, 5001.

Tentatively approved April 1970

PUBLIC CEMETERY DISTRICTS

Health & Safety Code § 8961 (amended)

Sec. . . Section 8961 of the Health and Safety Code is amended to read:

8961. The district may maintain a cemetery or cemeteries, and for this purpose may take and hold title to property by grant, gift, devise, condemnation, lease, or any other method. Cemeteries shall be

limited in use to burial in the ground of residents or taxpayers of the district or former residents or taxpayers of the district who purchased lots or plots while residents or taxpayers of the district or members of their families. Families shall be limited to a spouse, parents, grandparents, children and brothers and sisters.

Comment. Section 8961 is amended to make clear the right of public cemetery districts to acquire and hold title to realty for cemetery purposes. See 14 Ops. Cal. Atty. Gen. 252 (noting the confusion engendered by the recodification of Sections 8961, 8962, and 8963). The term "condemnation" preserves the grant of condemnation authority formerly contained in subdivision 14 of Section 1238 of the Code of Civil Procedure (condemnation authorized for "cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof").

HEALTH & SAFETY CODE § 33720

added Stats. 1968, Ch. 1392, § 1  
Staff draft July 1972

RENEWAL AREA AGENCY

Health & Safety Code § 33720 (amended)

Sec. . Section 33720 of the Health and Safety Code is  
amended to read:

33720. The power of eminent domain shall not be exer-  
cised by the renewal area agency ~~without the specific authority~~  
unless ~~of the legislative body,~~ has adopted a resolution of  
necessity.

Comment. Sections 33720, 33721, and 33723 are amended to  
conform to the Eminent Domain Law. See Code Civ. Proc. §  
1240.110 et seq.

HEALTH & SAFETY CODE § 33721

added Stats. 1968, Ch. 1392, § 1  
Staff draft July 1972

Health & Safety Code § 33721 (amended)

Sec. . Section 33721 of the Health and Safety Code is amended  
to read:

33721. ~~The authorization shall be contained in a certificate of  
the legislative body specifying that~~ resolution of necessity may be  
adopted only after a public hearing, it has determined that the  
acquisition of the property by eminent domain and the construction of  
the housing on the property is in the public interest and necessary  
for the public use. by the legislative body and shall contain all of the  
following:

(a) A general description of the proposed project with a reference  
to the specific statute or statutes authorizing the renewal area agency  
to acquire property for such project.

(b) A description of the property to be acquired for the proposed  
project and its use in the proposed project.

(c) A declaration that the legislative body has found and determined  
each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that  
will be most compatible with the greatest public good and the least  
private injury.

HEALTH & SAFETY CODE § 33721

added Stats. 1968, Ch. 1392, § 1  
Staff draft July 1972

(3) The property described in the resolution is necessary for  
the proposed project.

Comment. See the Comment to Section 33720.



HEALTH & SAFETY CODE § 33723

added Stats. 1968, Ch. 1392, § 1  
Staff draft July 1972

Health & Safety Code § 33723 (amended)

Sec. . Section 33723 of the Health and Safety Code is  
amended to read:

The resolution  
of necessity

33723. ~~A duly certified copy of the certificate of the legis-~~  
~~lative body~~ is conclusive evidence of the matters ~~certified in it~~  
referred to in Sections 1240.030 and 1240.040  
of the Code of Civil Procedure

in any proceeding in eminent domain to acquire property or  
any part of it set forth in the ~~certificate~~ resolution.

Comment. See the Comment to Section 33720.

HEALTH & SAFETY CODE § 34325

added Stats. 1951, Ch. 710, § 1  
Staff draft July 1972

HOUSING AUTHORITY

Health & Safety Code § 34325 (amended)

Sec. . Section 34325 of the Health and Safety Code is  
amended to read:

34325. Pursuant to the Code of Civil Procedure an author-  
ity may acquire by eminent domain any real property which it  
deems necessary for its purposes under this chapter <sup>(An)</sup> after the  
~~adoption by it of a resolution declaring that the acquisition of~~  
~~the real property described in it is necessary for such purposes.~~  
~~Property already devoted to a public use may be acquired by~~  
~~eminent domain, but real~~ <sup>(-)</sup> property belonging to the city, the  
county, the State, or any of its political subdivisions shall not  
be acquired without its consent.

Real

Comment. The deleted portions of Section 34325 are unnecessary. See  
Code Civ. Proc. §§ 1235.010 (procedure), 1240.110 et seq. (resolution of  
necessity), 1240.610 (more necessary public use).

HEALTH & SAFETY CODE § 34875

added Stats. 1951, Ch. 710, § 1  
Staff draft July 1972

LIMITED DIVIDEND HOUSING CORPORATIONS

Health & Safety Code § 34875 (amended)

Sec. . Section 34875 of the Health and Safety Code is  
amended to read:

34875. The power of eminent domain shall not be exercised by a corporation ~~except with the specific authorization of the commission-~~ has adopted a resolution of necessity. unless

Comment. Sections 34875, 34876, and 34878 are amended to conform to the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

Health & Safety Code § 34876 (amended)

Sec. . Section 34876 of the Health and Safety Code is amended to read:

34876. ~~The authorization shall be contained in a certificate of the commission specifying that~~ resolution of necessity may be adopted only after a public hearing by the commission has determined that the acquisition of the property by eminent domain and the construction of the housing on the property is in the public interest and necessary for the public use. and shall contain all of the following:

(a) A general description of the proposed project with a reference to the specific statute or statutes authorizing the corporation to acquire property for such project.

(b) A description of the property to be acquired for the proposed project and its use in the proposed project.

(c) A declaration that the commission has found and determined each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

HEALTH & SAFETY CODE § 34876

added Stats. 1951, Ch. 710, § 1  
Staff draft July 1972

(3) The property described in the resolution is necessary for  
the proposed project.

Comment. See the Comment to Section 34875.

HEALTH & SAFETY CODE § 34878

added Stats. 1951, Ch. 710, § 1  
Staff draft July 1972

Health & Safety Code § 34878 (amended)

Sec. . Section 34878 of the Health and Safety Code is

amended to read:

The resolution  
of necessity

34878. ~~A duly certified copy of the certificate of the com-  
mission is conclusive evidence of the matters certified in it~~  
referred to in Sections 1240.030 and 1240.040  
of the Code of Civil Procedure in  
any proceeding in eminent domain to acquire property or any  
part of it set forth in the ~~certificate-~~ resolution.

Comment. See the Comment to Section 34875.

HEALTH & SAFETY CODE § 35167

Tentatively approved June 1970

LAND CHEST CORPORATIONS

Health & Safety Code § 35167 (added)

Sec. . Section 35167 is added to the Health and Safety Code, to read:

35167. When the commissioner has approved a housing project, the corporation may acquire the property necessary for the project by gift, bequest, purchase, or eminent domain.

Comment. Sections 35167-35171 retain the substance of subdivision 21 of former Code of Civil Procedure Section 1238 insofar as that subdivision may have applied to land chest corporations (nonprofit corporations formed for the purpose of providing "housing in rural and suburban areas for families of low income"). Sections 35167-35171 use the same language as Sections 34874-34878 relating to limited dividend housing corporations (corporations formed for the purpose of providing housing for families of low income or reconstructing slum areas).

HEALTH & SAFETY CODE § 35168

Tentatively approved June 1970  
Staff revision July 1972

Health & Safety Code § 35168 (added)

Sec. . Section 35168 is added to the Health and Safety Code, to read:

35168. The power of eminent domain shall not be exercised by a corporation unless the commissioner has adopted a resolution of necessity.

Comment. See the Comment to Section 35167.



HEALTH & SAFETY CODE § 35169

Tentatively approved June 1970  
Staff revision July 1972

Health & Safety Code § 35169 (added)

Sec. . Section 35169 is added to the Health and Safety Code, to read:

35169. The resolution of necessity may be adopted only after a public hearing by the commissioner and shall contain all of the following:

(a) A general description of the proposed project with a reference to the specific statute or statutes authorizing the corporation to acquire property for such project.

(b) A description of the property to be acquired for the proposed project and its use in the proposed project.

(c) A declaration that the commissioner has found and determined each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(3) The property described in the resolution is necessary for the proposed project.

Comment. See the Comment to Section 35167.

HEALTH & SAFETY CODE § 35170

Tentatively approved June 1970

Health & Safety Code § 35170 (added)

Sec. . Section 35170 is added to the Health and Safety Code, to read:

35170. The hearing shall be held at a time and place designated by the commissioner. At least 10 days prior to the hearing, the corporation shall give notice of the hearing by publication in a newspaper designated by the commissioner and published or circulated in the city or county where the property is located.

Comment. See the Comment to Section 35167.

HEALTH & SAFETY CODE § 35171

Tentatively approved June 1970  
Staff revision July 1972

Health & Safety Code § 35171 (added)

Sec. . Section 35171 is added to the Health and Safety Code, to read:

35171. The resolution of necessity is conclusive evidence of the matters referred to in Sections 1240.030 and 1240.040 of the Code of Civil Procedure in any proceeding in eminent domain to acquire the property or any part of it set forth in the resolution.

Comment. See the Comment to Section 35167.

HOUSING AUTHORITY

Health & Safety Code § 36059 (amended)

Sec. . Section 36059 of the Health and Safety Code is amended to read:

36059. Within its area of operation, and with reference to farm labor centers, a housing authority may:

- (a) Own, hold, and improve real or personal property.
- (b) Purchase, lease, obtain options upon, acquire by gift, bequest, devise, or otherwise, any real or personal property or any interest therein.
- (c) Accept grants from any person or agency, public or private.
- (d) Borrow money and pledge any property, real or personal, as security.
- (e) Contract with any person or agency, public or private, with regard to operation of the farm labor centers.
- (f) Sell, lease, exchange, transfer, assign, purchase, or dispose of any real or personal property or interest therein.
- (g) Insure or provide for the insurance of any real or personal property or operations of any farm labor centers against any risks or hazards.
- (h) Employ such officers and employees, permanent and temporary, as may be required, determine their qualifications, duties and compensation, and delegate to one or more of them such powers or duties as may be necessary for the acquisition of any farm labor center.
- (i) Acquire any real property by eminent domain ~~after adopting a resolution declaring that the acquisition of the real property is necessary for the purposes of the housing authority.~~
- (j) Lease or rent any dwellings, accommodations, lands, buildings, structures, or facilities embraced in any farm labor center, and, subject to the requirements for occupancy contained in this part, establish the rents and charges therefor.

Comment. The language deleted from Section 36059 is unnecessary.

See Code Civ. Proc. § 1240.120.

MILITARY & VETERANS CODE § 437

Tentatively approved December 1971

ADJUTANT GENERAL

Military & Veterans Code § 437 (amended)

Sec. . . Section 437 of the Military and Veterans Code is amended to read:

437. ~~Under the provisions of the Code of Civil Procedure relating to eminent domain, the Adjutant General, in the name of the people of the State of California, with the approval of the Department of General Services, may condemn any property necessary for armory purposes. Armories are hereby declared to be public uses.~~

The

acquire

Comment. Section 437 is amended to delete the reference to the power of eminent domain since the Adjutant General no longer has this power. Condemnations for state purposes are made by the Public Works Board. See Govt. Code §§ 15853-15855.

The last sentence of Section 437, declaring armories a public use, is deleted as unnecessary. See Code Civ. Proc. § 1240.010.

Tentatively approved December 1971

Military & Veterans Code § 438 (repealed)

Sec. . Section 438 of the Military and Veterans Code is  
repealed.

~~438. Prior to the commencement of condemnation proceedings, the Adjutant General shall declare in writing that the public interest and necessity require the purchase or acquisition of the property by the state. Upon filing with the Department of General Services, such declaration shall be prima facie evidence (a) of the public necessity for the acquisition of such property; (b) that such property is necessary therefor; and (c) that such property is planned or located in the manner which will be most compatible with the greatest good and the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 438 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

PUBLIC RESOURCES CODE § 3320.1

added Stats. 1958, 1st Ex. Sess.,  
Ch. 73, § 1  
Staff draft July 1972

PREVENTION OF SUBSIDENCE IN OIL OR  
GAS PRODUCTION AREA

Public Resources Code § 3320.1 (amended)

Sec. . Section 3320.1 of the Public Resources Code is  
amended to read:

3320.1. (a) An agreement for the management, development and operation of two or more tracts in a pool or pools, or portions thereof, in a field as a unit without regard to separate ownerships for the production of oil and gas, including repressuring operations therein, and for the allocation of benefits and costs on a basis set forth in such agreement, shall be valid and binding upon those who consent thereto and may be filed with the supervisor for approval.

Any agreement for the co-operative management, development and operation of two or more tracts in a pool or pools, or portions thereof, in a field for the production of oil or gas, including repressuring operations therein, shall be valid and binding upon those who consent thereto and may be filed with the supervisor for approval.

If in the judgment of the supervisor a unit agreement or co-operative agreement filed for approval is not detrimental to the intent and purposes of this article to arrest or ameliorate subsidence, or otherwise unlawful, the supervisor may approve the same. No such agreement approved by the supervisor hereunder or heretofore approved pursuant to applicable law prior to the enactment of this article shall be held to violate any of the statutes of this State prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

(b) In the event that at the time of the approval by the supervisor of a unit or co-operative agreement under subdivision (a) of this section, the supervisor makes written findings that:

1. A primary purpose of the unit or co-operative agreement is the initiation and conduct of repressuring operations in the area covered thereby for the purpose of arresting or ameliorating subsidence; and

2. The initiation and conduct of repressuring operations in the area covered by the unit or co-operative agreement are feasible and compatible with the purposes of this article; and

PUBLIC RESOURCES CODE § 3320.1

added Stats. 1958, 1st Ex. Sess.,

Ch. 73, § 1

Staff draft July 1972

3. The persons who are entitled to 75 percent of the proceeds of production of oil and gas within the area covered by the unit or co-operative agreement (measured by the production of oil and gas therein in the last calendar year preceding the date of such approval) have become parties to such agreement by signing or ratifying it; and

4. It is necessary, in order to initiate and conduct such repressuring operations, that the properties of nonconsenting persons who own working interests or royalty interests in lands within the area covered by the unit or co-operative agreement become subject to such agreement; and

5. The agreement is fair and reasonable, and contains appropriate provisions to protect and safeguard the rights of all persons having an interest in oil and gas production in the area covered thereby; then the supervisor shall make and enter an order which shall provide that unless such nonconsenting persons shall, within 30 days after service upon such persons of the order in the manner specified by the supervisor, become parties to the agreement by signing or ratifying the same, the right of eminent domain may be exercised as hereinafter provided in subdivision (c) ~~hereof~~ for the purpose of acquiring the properties of such nonconsenting persons which are found by the supervisor to be necessary for the initiation and conduct of such repressuring operations.

In the event the supervisor shall make findings in accordance with the foregoing, such findings shall be prima facie evidence (1) of the public necessity of the development and operation of the said properties in accordance with the unit or co-operative agreement and of the repressuring operations to be initiated and conducted pursuant to such agreement; and (2) that the acquisition of the properties of the nonconsenting persons which are designated by the supervisor is necessary therefor; and (3) that the repressuring and other operations to be initiated and conducted pursuant to such agreement, and the improvements to be made in connection therewith are planned or located in the manner which will be most compatible with the greatest public good and the least private injury.

The acquisition and use of land, including oil and gas rights therein, and personal property used in the production of oil and gas within a subsidence area for the purposes and by the persons mentioned in this section under the circumstances herein specified, are public uses on behalf of which the right of eminent domain may be exercised.



PUBLIC RESOURCES CODE § 3320.1

added Stats. 1958, 1st Ex. Sess.,  
Ch. 73, § 1  
Staff draft July 1972

(c) Subject to the provisions of subdivision (b) ~~hereof~~, the right of eminent domain for the purposes therein mentioned may be exercised by any city, county, or city and county, which has agreed to commit the properties to be acquired to such unit or co-operative agreement, or which has agreed to convey all or a portion of said properties upon acquisition, for a price not less than the cost of acquiring the same, to working interest owners who are parties to such unit or co-operative agreement and who have agreed to commit such properties to said agreement.

Except as otherwise provided in subdivisions (b) and (c) ~~hereof~~, any condemnation action brought hereunder shall be governed by the provisions of ~~Title 7 (commencing at Section 1927) of Part 3 of the Code of Civil Procedure.~~ Law govern-  
ing the condemnation of property for public use  
by the city, county, or city and county.

If a condemnation action or actions to acquire the properties of the nonconsenting persons are promptly commenced and diligently prosecuted to final judgment by which such properties are acquired, no compulsory unit order affecting the area covered by such agreement shall be made by the supervisor under Section 3321 of this article with respect to such area.

Comment. The amendment of Section 3320.1 makes no substantive change; it merely substitutes a general reference for the specific reference to the former general eminent domain statute.

PUBLIC RESOURCES CODE § 3341

added Stats. 1958, 1st Ex. Sess.,  
Ch. 73, § 1  
Staff draft July 1972

PREVENTION OF SUBSIDENCE IN OIL OR  
GAS PRODUCTION AREA

Public Resources Code § 3341 (amended)

Sec. . Section 3341 of the Public Resources Code is

amended to read:

3341. At the termination of oil and gas production from a unit area established or approved pursuant to this article and the abandonment of attempts to obtain production therefrom, any interested municipal corporation or other public agency may acquire by eminent domain, in the manner provided by law for the condemnation of property for public use by the State, municipal corporation or other public agency, such oil production properties or facilities within the unit area as such municipal corporation or other public agency may deem necessary or essential to the maintenance of such pressures as will continue to arrest or ameliorate subsidence. ~~Such municipal corporation or other public agency shall proceed in its name, under the provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, which provisions are hereby made applicable for that purpose, and the use of the property which may be condemned, taken or appropriated under the provisions of this section is a public use.~~

ALL IN  
STRIKEOUT

Comment. The last sentence of Section 3341 is deleted as unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.010 (public use).

DEPARTMENT OF PARKS AND RECREATION

Public Resources Code § 5006 (amended)

Sec. . Section 5006 of the Public Resources Code is

amended to read:

5006. The department, with the consent of the Department of Finance, may acquire ~~by purchase or by condemnation proceedings brought in the name of the people of the State of California~~ title to or any interest in real and personal property which the department deems necessary or proper for the extension, improvement, or development of the state park system. ~~The department shall attempt to purchase property by negotiation with the owner before it commences condemnation proceedings.~~

the State  
Public  
Works Board  
may commence

An  
shall be made

~~Proceedings for the condemnation of any real or personal property or any interest therein shall be taken under the provisions of the Code of Civil Procedure relating to eminent domain. The department shall not commence any such proceedings unless the director first issues a declaration declaring that public interest and necessity require acquisition by the State of the property or interest therein, described in the declaration, and that such acquisition is necessary and proper for the extension, improvement, or development of the state park system.~~

ALL  
IN  
STRIKEOUT

Comment: Section 5006 is amended to delete the reference to the power of eminent domain because the Department of Parks and Recreation no longer has this power. Acquisitions by eminent domain for the state are made by the Public Works Board. Govt. Code §§ 15853-15855.

The requirement that the Director of Parks and Recreation declare the public interest, necessity, and propriety of the acquisition for the state park system is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

PUBLIC RESOURCES CODE § 5006

Tentatively approved December 1971

Note. The requirement that an attempt be made to purchase property by negotiation prior to initiation of eminent domain proceedings is a concept the Commission has under consideration. Cf. Govt. Code § 7267.1 (public entities must make reasonable effort to acquire property expeditiously by negotiation).

Tentatively approved December 1971

Public Resources Code § 5006.1 (repealed)

Sec. . Section 5006.1 of the Public Resources Code is repealed.

~~5006.1. The declaration of the director shall be prima facie evidence:~~

(a) Of the public necessity of such proposed acquisition.  
(b) That such real or personal property or interest therein is necessary therefor.

(c) That such proposed acquisition is planned or located ~~in a manner which will be most compatible with the greatest public good and the least private injury.~~

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Comment. Section 5006.1, specifying the effect given a declaration of necessity of the Director of Parks and Recreation, is superseded by provisions of the Eminent Domain Law. Under these provisions, the Public Works Board adopts a resolution of necessity for property required by the department, and that resolution is given conclusive effect on the issues formerly mentioned in this section. See Code Civ. Proc. §§ 1240.110 and 1240.150.

Tentatively approved December 1971

STATE LANDS COMMISSION

Public Resources Code § 6808 (amended)

Sec. . Section 6808 of the Public Resources Code is amended to read:

6808. The commission, if it deems such action for the best interests of the State, may ~~condemn~~ acquire, and possess in the name of the State any right of way or easement, including surface rights, for any operation authorized or contemplated under this chapter, that may be necessary for the development and production of oil and gas from State-owned land and for their removal, transportation, storage, and sale. ~~The commission may, for such purposes, in the name of the people of the State, institute condemnation proceedings pursuant to Section 14 of Article I of the Constitution and the Code of Civil Procedure relating to eminent domain. The acquisition of such interests is hereby declared a public use.~~

Prior to the institution of such condemnation proceedings, the commission shall adopt a resolution declaring that the public interest and necessity require the acquisition of such interest in lands for the purpose of performance of the duties vested in the commission by this chapter and that the interest in the lands described in the resolution is necessary therefor. The resolution shall be conclusive evidence:

- (a) Of the public necessity of such proposed public use.
- (b) That such property is necessary therefor.
- (c) That such proposed public use is planned or located in ~~the manner which is most compatible with the greatest public good and the least private injury.~~

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Comment. Section 6808 is amended to delete the reference to the condemnation power because the State Lands Commission no longer has this power. Acquisitions of property by eminent domain are to be accomplished under the Property Acquisition Law by the Public Works Board. See Govt. Code §§ 15853-15855.

PUBLIC RESOURCES CODE § 6808

Tentatively approved December 1971

The provision of Section 6808 declaring acquisitions under authority of this section a public use is deleted as unnecessary. See Code Civ. Proc. § 1240.010.

The requirement of a resolution of necessity and the specification of its effect is superseded by the more general provisions of the Eminent Domain Law. Under those provisions, the resolution is rendered by the Public Works Board and is given conclusive effect on the matters formerly referred to in Section 6808. See Code. Civ. Proc. §§ 1240.110 and 1240.150.

PUBLIC RESOURCES CODE § 8030

Tentatively approved September 1971

LANDS EXEMPT FROM CONDEMNATION

Sec. . Article 11 (commencing with Section 8030) is added to Chapter 4 of Part 3 of Division 6 of the Public Resources Code, to read:

Article 11. Exemption From Condemnation

Public Resources Code § 8030 (added)

8030. Notwithstanding any other provision of law, all 16th and 36th sections, both surveyed and unsurveyed, owned by the state or the United States, which are now or may hereafter be included within the exterior boundaries of a national reservation, a reserve, or lands withdrawn from public entry, are exempt from taking by eminent domain.

Comment. Section 8030 continues without substantive change the limitation upon condemnation of the lands described in subdivision 2 of former Code of Civil Procedure Section 1240.

[Note. This section is approved subject to reconsideration upon receipt of further information.]



PUBLIC RESOURCES CODE § 13070.1

Tentatively approved April 1970

RESORT IMPROVEMENT DISTRICT

Public Resources Code § 13070.1 (added)

Sec. . Section 13070.1 is added to the Public Resources Code, to read:

13070.1. As used in this chapter, "acquire" includes but is not restricted to taking by condemnation, purchase, or lease and receiving by donation or dedication.

Comment. Section 13070.1 is added to give the term "acquire" used in Section 13070 its broadest possible meaning and to insure that the repeal of Code of Civil Procedure Section 1238 will not affect adversely the districts formed under the Resort Improvement District Law.

PUBLIC UTILITIES CODE § 610

Tentatively approved March 1970

PRIVATELY OWNED PUBLIC UTILITIES

Sec. . Article 7 (commencing with Section 610) is added to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 7. Eminent Domain

Public Utilities Code § 610 (added)

610. This article applies only to a corporation or person that is a public utility.

Comment. Section 610 is included to make clear that this article extends the right of eminent domain only to "public utilities" as defined in Section 216 ("service is performed for or the commodity delivered to the public or any portion thereof") and not to persons or corporations that are not subject to regulation and rate control. It has been held that the exercise of the right of eminent domain conclusively evidences an intention to devote the property so acquired to a public use, thereby rendering the condemnor a public utility. Producers Transp. Co. v. Railroad Comm'n, 176 Cal. 499, 505, 169 P. 59, \_\_ (1917). Compare McCullagh v. Railroad Comm'n, 190 Cal. 13, 210 P. 264 (1922). This section is consistent with the holding in the Producers Transp. Co. case.

PUBLIC UTILITIES CODE § 611

Tentatively approved March 1970

Public Utilities Code § 611 (added)

611. A railroad corporation may condemn any property necessary for the construction and maintenance of its railroad.

Comment. Section 611 grants a "railroad corporation" (defined in Section 230) the right of eminent domain to acquire property necessary for the construction and maintenance of its "railroad." "Railroad" is defined in Section 229 to mean in substance all railroad property devoted to public use in the transportation of persons or property. Thus, Section 611 authorizes condemnation of any property necessary to carry out the regulated activities of the railroad. It retains in substance the authority formerly found in subdivision (g) of Section 7526 of the Public Utilities Code and in Section 1238 of the Code of Civil Procedure. See, e.g., Southern Pac. Co. v. Los Angeles Mill Co., 177 Cal. 395, 170 P. 829 (1918)(spur tracks); Vallejo & N. R.R. v. Reed Orchard Co., 169 Cal. 545, 147 P. 238 (1915) (land for wharves for transfer of freight between railroad cars and boats where reasonably necessary for railroad corporation's future business); Central Pacific Ry. v. Feldman, 152 Cal. 303, 92 P. 849 (1907)(land adjacent to station grounds required for a freight house); Southern Pac. R.R. v. Raymond, 53 Cal. 223 (1878)(workshop); Madera Ry. v. Raymond Granite Co., 3 Cal. App. 668, 87 P. 27 (1906)(spur tracks). Cf. City of Los Angeles v. Los Angeles Pac. Co., 31 Cal. App. 100, 159 P. 992

PUBLIC UTILITIES CODE § 611

Tentatively approved March 1970

(1916)(land for pole line for transmission of power to public railway). Section 611 would not, however, permit condemnation by a railroad corporation of land to be used, for example, as an industrial park.

Section 611 supersedes provisions formerly contained in the Public Utilities Code and Code of Civil Procedure insofar as those provisions related to privately owned public utilities. See subdivision (g) of Section 7526 of the Public Utilities Code (right to condemn lands "to be used in the construction and maintenance of its roads, and all necessary appendages and adjuncts"); Section 1238 of the Code of Civil Procedure, subdivision 4 ("steam, electric and horse railroads"), subdivision 11 (railroads "for quarrying, logging or lumbering purposes"). See also Section 1238, subdivision 9 ("roads for transportation by traction engines or road locomotives").

Section 611 has no effect on various specific grants of the power to railroads to condemn private property. See Pub. Util. Code §§ 7533 (additional tracks), 7535 (railroad intersections), 7536 (railroad crossings). See also Pub. Util. Code § 7508 (right of eminent domain in transferee of railroad corporation).

PUBLIC UTILITIES CODE § 612

Tentatively approved March 1970

Public Utilities Code § 612 (added)

§ 612. An electrical corporation may condemn any property necessary for the construction and maintenance of its electric plant.

Comment. Section 612 grants an "electrical corporation" (defined in Section 218) the right of eminent domain to acquire property necessary for the construction and maintenance of its "electric plant." "Electric plant" is defined in Section 217 to mean in substance all property devoted to public use in the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power. Thus, Section 612 authorizes condemnation of any property necessary to carry out the regulated activities of the electrical corporation. It retains and possibly broadens the authority formerly found in subdivisions 12 and 13 of Section 1238 of the Code of Civil Procedure and supersedes those subdivisions insofar as they applied to privately owned public utilities. See also the Comment to Section 613. Insofar as subdivision 13 permitted acquisition of property for future use, this authority is continued in Section 1240 210 of the Code of Civil Procedure.

PUBLIC UTILITIES CODE § 613

Tentatively approved March 1970

Public Utilities Code § 613 (added)

613. A gas corporation may condemn any property necessary for the construction and maintenance of its gas plant.

Comment. Section 613 grants a "gas corporation" (defined in Section 222) the right of eminent domain to acquire property necessary for the construction and maintenance of its "gas plant." "Gas plant" is defined in Section 221 to include all property used in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power. Thus, Section 613 authorizes condemnation of any property necessary to carry out the regulated activities of the gas corporation.

Sections 612, 613, and 614 largely supersede subdivision 17 of Section 1238 of the Code of Civil Procedure. Insofar as subdivision 17 permitted acquisition of property for future use, this authority is continued in Section 1240.210 of the Code of Civil Procedure.

PUBLIC UTILITIES CODE § 614

Tentatively approved March 1970

Public Utilities Code § 614 (added)

614. A heat corporation may condemn any property necessary for the construction and maintenance of its heating plant.

Comment. Section 614 grants a "heat corporation" (defined in Section 224) the right of eminent domain to acquire property necessary for the construction and maintenance of its "heating plant." "Heating plant" is defined in Section 223 to include all property used in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of heat for domestic, business, industrial, or public use. Thus, Section 614 authorizes condemnation of any property necessary to carry out the regulated activities of the heat corporations. See the Comment to Section 613.

PUBLIC UTILITIES CODE § 615

Tentatively approved March 1970

Public Utilities Code § 615 (added)

615. A pipeline corporation may condemn any property necessary for the construction and maintenance of its pipeline.

Comment. Section 615 grants a "pipeline corporation" (defined in Section 228) the right of eminent domain to acquire property necessary for the construction and maintenance of its "pipeline." "Pipeline" is defined in Section 227 to include all property used in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipelines. Thus, Section 615 authorizes condemnation of any property necessary to carry out the regulated activities of the pipeline corporation.

Section 615 supersedes subdivision 10 of Section 1238 of the Code of Civil Procedure (authorizing condemnation for "oil pipelines") insofar as that subdivision related to privately owned public utilities.



PUBLIC UTILITIES CODE § 616

Tentatively approved March 1970

Public Utilities Code § 616 (added)

616. A telephone corporation may condemn any property necessary for the construction and maintenance of its telephone line.

Comment. Section 616 grants a "telephone corporation" (defined in Section 234) the right of eminent domain to acquire property necessary for the construction and maintenance of its "telephone line." "Telephone line" is defined in Section 233 to include all property used in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. Thus, Section 616 authorizes condemnation of any property necessary to carry out the regulated activities of the telephone corporation.

Section 616 supersedes a portion of subdivision 7 of Section 1238 of the Code of Civil Procedure (authorizing condemnation for "telephone . . . lines, systems and plants") insofar as that subdivision related to privately owned public utilities.

PUBLIC UTILITIES CODE § 617

Tentatively approved March 1970

Public Utilities Code § 617 (added)

617. A telegraph corporation may condemn any property necessary for the construction and maintenance of its telegraph line.

Comment. Section 617 grants a "telegraph corporation" (defined in Section 236) the right of eminent domain to acquire property necessary for the construction and maintenance of its "telegraph line." "Telegraph line" is defined in Section 235 to include all property used in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires. Thus, Section 617 authorizes condemnation of any property necessary to carry out the regulated activities of the telegraph corporation.

Section 617 supersedes a portion of subdivision 7 of Section 1238 of the Code of Civil Procedure (authorizing condemnation for "telegraph . . . lines, systems and plants") insofar as that subdivision related to privately owned public utilities.

PUBLIC UTILITIES CODE § 618

Tentatively approved March 1970

Public Utilities Code § 618 (added)

618. A water corporation may condemn any property necessary for the construction and maintenance of its water system.

Comment. Section 618 grants a "water corporation" (as defined in Section 241) the right of eminent domain to acquire property necessary for the construction and maintenance of its "water system." "Water system" is defined in Section 240 to include all property used in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement of water for power, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use. Thus, Section 618 authorizes condemnation of any property necessary to carry out the regulated activities of the water corporation.

Section 618 supersedes portions of subdivisions 3 and 4 of Section 1238 of the Code of Civil Procedure insofar as those portions related to condemnation by privately owned public utilities.

PUBLIC UTILITIES CODE § 621

Tentatively approved March 1970  
Revised May 1970

Public Utilities Code § 621.(added)

621. A street railroad corporation may condemn any property necessary for the construction and maintenance of its street railroad.

Comment. Section 621 grants a "street railroad corporation" (defined in Section 232) the right of eminent domain to acquire property necessary for the construction and maintenance of its "street railroad" (defined in Section 231). It replaces in substance the authority formerly found in subdivision (g) of Section 7526 and incorporated by reference by Section 7801 and in Section 1238 of the Code of Civil Procedure. See the Comment to Section 611.

PUBLIC UTILITIES CODE § 622

Tentatively approved March 1970  
Revised February 1971

Public Utilities Code § 622 (added)

622. (a) As used in this section, "motor carrier" means:

- (1) A highway common carrier as defined in Section 213.
- (2) A passenger stage corporation as defined in Section 226.

(b) As used in this section, "water carrier" means a common carrier operating upon any waterway in this state between fixed termini or over a regular route.

(c) A motor carrier or water carrier may condemn any property necessary for the construction and maintenance of terminal facilities for the receipt, transfer, or delivery of the passengers or property it carries.

Comment. Section 622 grants certain motor carriers and water carriers the right of eminent domain to acquire property necessary for terminal facilities. Sections 621 and 622 supersede subdivision 22 of Section 1238 of the Code of Civil Procedure which granted condemnation authority for "terminal facilities, lands or structures for the receipt, transfer or delivery of passengers or property by any common carrier operating upon any public highway or waterway in this state between fixed termini or over a regular route, or for other terminal facilities of any such carrier."

PUBLIC UTILITIES CODE § 623

Tentatively approved March 1970

Public Utilities Code § 623 (added)

623. A warehouseman may condemn any property necessary for the construction and maintenance of its facilities for storing property.

Comment. Section 623 grants a "warehouseman" (defined in Section 239) the right of eminent domain to acquire property necessary for storing property. Section 623 supersedes a portion of subdivision 4 of Section 1238 of the Code of Civil Procedure (granting authority to condemn for "warehouses") insofar as that portion related to privately owned public utilities.

PUBLIC UTILITIES CODE § 624

Tentatively approved February 1971

Public Utilities Code § 624 (added)

624. A sewer system corporation may condemn any property necessary for the construction and maintenance of its sewer system.

Comment. Section 624 grants a "sewer system corporation" (defined in Section 230.6) the right of eminent domain to acquire property necessary for the construction and maintenance of its "sewer system." "Sewer system" is defined in Section 230.5 to include all property used in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes. Thus, Section 624 authorizes condemnation of any property necessary to carry out the regulated activities of sewer system corporations. Section 624 does not, however, authorize condemnation for a sewer system which merely collects sewage on the property of a single owner (Section 230.5); nor does it authorize condemnation by anyone other than a public utility subject to the jurisdiction, control, and regulation of the Public Utilities Commission.

Section 624 supersedes portions of subdivisions 3, 4, and 8 of Section 1238 of the Code of Civil Procedure insofar as those portions related to condemnation by privately owned public utilities.

PUBLIC UTILITIES CODE § 1503

added Stats. 1965, Ch. 1752, § 1  
Staff draft July 1972

EXTENSION OF SERVICE INTO AREA SERVED BY  
PRIVATE UTILITY

Public Utilities Code § 1503 (amended)

Sec. . Section 1503 of the Public Utilities Code is  
amended to read:

1503. The Legislature finds and declares that whenever a political subdivision constructs facilities to provide or extend water service, or provides or extends such service, to any service area of a private utility with the same type of service, such an act constitutes a taking of the property of the private utility for a public purpose to the extent that the private utility is injured by reason of any of its property employed in providing the water service being made inoperative, reduced in value or rendered useless to the private utility for the purpose of providing water service to the service area, and such taking shall be compensable under Section 14 of Article I of the Constitution of California.

Comment. The last clause of Section 1503 is deleted as unnecessary in view of the last sentence of Section 1504.



MUTUAL WATER COMPANIES

Public Utilities Code § 2729 (added)

Sec. . Section 2729 is added to the Public Utilities Code,  
to read:

2729. A mutual water company may exercise the power of eminent domain for water, water rights, canals, ditches, dams, poundings, flumes, aqueducts and pipes for irrigation of lands furnished with water by such company.

Comment. Section 2729 specifies the condemnation authority of a mutual water company (defined in Section 2725). The section continues without substantive change the authority to condemn formerly conferred by Code of Civil Procedure Section 1238(4) (condemnation authorized for "water, water rights, canals, ditches, dams, poundings, flumes, aqueducts and pipes for irrigation of lands furnished with water by corporations supplying water to the lands of the stockholders thereof only").

Mutual water companies are not generally subject to the jurisdiction of the Public Utilities Commission. See Pub. Util. Code § 2705. However, it is possible that exercise of the power of eminent domain by a mutual water company may demonstrate an intention to devote the property so acquired to public use and thereby render the company subject to regulation as a public utility. See Corona City Water Co. v. Public Utilities Comm'n, 54 Cal.2d 834, 357 P.2d 301, 9 Cal. Rptr. 245 (1960); Lamb v. California Water & Tel. Co., 21 Cal.2d 33, 129 P.2d 371 (1942). Nevertheless, the authority granted by this section is not dependent upon whether a company is or is not held to be a public utility by exercising such authority.

RAILROAD CORPORATIONS

Public Utilities Code § 7526 (amended)

Sec. . Section 7526 of the Public Utilities Code is amended

to read:

7526. Every railroad corporation has all of the following powers:

(a) To make such examination and surveys as are necessary to the selection of the most advantageous route for the railroad. The officers, agents, and employees of the corporation may enter upon the lands or waters of any person, for this purpose, subject to liability for all damages which they do thereto.

(b) To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property as are made to it to aid and encourage the construction, maintenance, and accommodation of the railroad.

(c) To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as is necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road.

(d) To lay out its road, not exceeding 10 rods wide, and to construct and maintain it, with one or more tracks, and with such appendages and adjuncts as are necessary for the convenient use of the road.

(e) To construct its roads across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property. The corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad does not unnecessarily impair its usefulness or injure its franchise.

(f) To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of the other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections. Every corporation whose railroad is intersected by any new railroad shall unite with the owners of the new railroad in forming the intersections and connections, and grant facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor, or the points

PUBLIC UTILITIES CODE § 7526

Tentatively approved September 1971

or the manner of the crossings, intersections, and connections, such matters shall be ascertained and determined as is provided in Title 7, Part 3 of the Code of Civil Procedure.

acquire

(g) To ~~purchase~~ lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, ~~or acquire them in the manner provided in Title 7, Part 3 of the Code of Civil Procedure, for the condemnation of lands.~~

(h) To change the line of its road, in whole or in part, whenever a majority of the directors so determine, as provided in Section 7531, but the change shall not vary the general route of the road, as contemplated in its articles of incorporation.

Comment. The authority to condemn for lands, timber, stone, gravel, or other materials used in the construction or maintenance of a railroad is deleted from subdivision (g) of Section 7526 because it duplicates and is more restrictive than the general power of railroad corporations to condemn any property necessary for the construction and maintenance of its railroad provided by Section 611.

PUBLIC UTILITIES CODE § 12703

added Stats. 1951, Ch. 764, § 12703,  
Staff draft July 1972

MUNICIPAL UTILITY DISTRICT

Public Utilities Code § 12703 (amended)

Sec. . . . Section 12703 of the Public Utilities Code is  
amended to read:

12703. A district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. A district may take any~~ <sup>may</sup> property necessary or convenient to the exercise of the powers granted in this division, whether the property is already devoted to the same use or otherwise. <sup>to acquire</sup> ~~In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this division. A district shall proceed in the name of the district in condemnation proceedings.~~

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Comment. Section 12703 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq (more necessary public use).

PUBLIC UTILITY DISTRICT

Public Utilities Code § 16404 (amended)

Sec. . . . Section 16404 of the Public Utilities Code is amended to read:

16404. A district may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use and may take any property necessary or convenient to the exercise of the powers granted in this division, whether such property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right to condemn property the district has the same rights, powers, and privileges as a municipal corporation.~~ to acquire

Comment. Section 16404 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 16405

added Stats. 1953, Ch. 72, § 2  
Staff draft July 1972

Public Utilities Code § 16405 (repealed)

Sec. . Section 16405 of the Public Utilities Code is  
repealed:

~~16405. A district may proceed in the name of the district  
in condemnation proceedings.~~

Comment. Section 16405 is unnecessary. See Code  
Civ. Proc. §

STATE DEPARTMENT OF AERONAUTICS

Public Utilities Code § 21633 (amended)

Sec. . Section 21633 of the Public Utilities Code is amended to read:

21633. For the purposes of this article, the department, by purchase, gift, devise, lease, ~~condemnation~~, or otherwise, may acquire real or personal property, or any interest therein ~~including easements in airport hazards or land outside the boundaries of an airport or airport site, necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, obstruction marking, or obstruction lighting of airport hazards, or to prevent the establishment of airport hazards.~~

Comment. Section 21633 as amended continues the authority of the Department of Aeronautics to acquire property for airport purposes but deletes the reference to the condemnation authority since the department no longer has this authority. Acquisitions of property by eminent domain are accomplished under the Property Acquisition Law through the Public Works Board. See Govt. Code §§ 15853-15855. The portion of Section 21633 that formerly authorized acquisition of property for the elimination of airport hazards is continued in Section 21652.

Tentatively approved September 1971

Public Utilities Code § 21634 (repealed)

Sec. . Section 21634 of the Public Utilities Code is  
repealed.

~~21634. The department may contract or otherwise provide, by condemnation if necessary, for the removal or relocation of any airport hazard or the removal or the relocation of all private structures, railways, highways, mains, pipes, conduits, wires, cables, poles, and all other facilities and equipment which may interfere with the location, expansion, development, or improvement of the airports and other air navigation facilities or with the safe approach thereto or takeoff therefrom by aircraft, and may pay the cost of the removal or relocation. When exercising its power of removal or relocation, the department shall pay the cost of removal and relocation of any private structures, railways, mains, pipes, conduits, wires, cables, poles, or any other structure or equipment required to be moved to a new location.~~

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Comment. The substance of Section 21634 is continued in  
Section 21653.



PUBLIC UTILITIES CODE § 21635

Tentatively approved September 1971

Public Utilities Code § 21635 (repealed)

21635. Section 21635 of the Public Utilities code is repealed.

~~21635. In the condemnation of property, the department shall proceed in the name of the state in the manner provided by the Code of Civil Procedure. For the purpose of making surveys and examinations relative to any condemnation proceedings, it is lawful to enter upon any land. The power of the department, by condemnation, to acquire or require the relocation of any railway, highway, main, pipe, conduit, wires, cables, poles, and all other facilities and equipment or other property held for or devoted to a public use shall be exercised only after the court in which the condemnation proceedings are pending finds that the taking or relocation for the public use of the department is of greater public necessity than the public use for which the property is presently held or used. The court may fix the terms and conditions for the enjoyment of a right of common use, in lieu of taking or relocation, as it determines will best suit the public interest and necessity.~~

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Comment. Section 21635 is not continued. The Department of Aeronautics may not condemn property in the name of the state. See Comment to Section 21631. The rules governing the conduct of eminent domain proceedings generally are prescribed in the Eminent Domain Law. See Code Civ. Proc. § 1235.010. Particular aspects of Section 21635 are dealt with in the sections of the Code of Civil Procedure indicated below.

<u>Section 21635</u>	<u>New Provisions</u>
Entry for survey and examination . . . . .	§ 1240.810
More necessary use requirement . . . . .	§ 1240.610 <u>et seq.</u>
Right of common use. . . . .	§ 1240.510 <u>et seq.</u>

PUBLIC UTILITIES CODE § 21652

Tentatively approved September 1971

AIRCRAFT HAZARD OR DISTURBANCE ELIMINATION

Sec. . Article 2.6 (commencing with Section 21652) is added to Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, to read:

Article 2.6. Hazard Elimination; Flight Disturbance

Public Utilities Code § 21652 (added)

21652. (a) Any person authorized to exercise the power of eminent domain for airport purposes may acquire by purchase, gift, devise, lease, condemnation, or otherwise:

(1) Any property necessary to permit the safe and efficient operation of the airport, or to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards, or to prevent the establishment of airport hazards.

(2) Airspace or an easement in such airspace above the surface of property where necessary to permit imposition upon such property of excessive noise, vibration, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value, due to the operation of aircraft to and from the airport.

(3) Remainder property underlying property taken pursuant to paragraph (2), where permitted by Section 1240.420 of the Code of Civil Procedure.

PUBLIC UTILITIES CODE § 21652

Tentatively approved September 1971

(b) As used in this section, "property" includes real and personal property and any right or interest therein, whether within, beyond, adjacent to, or in the vicinity of, the boundaries of an airport or airport site, and, by way of illustration and not by way of limitation, includes air rights, airspace, air easements, and easements in airport hazards.

Comment. Section 21652 continues the authority of the state (formerly found in Section 21633), of cities, of counties, and of airport districts (formerly found in Code Civ. Proc. §§ 1239.2 and 1239.4 and Govt. Code § 50485.13) to condemn or otherwise acquire property for the elimination and prevention of airport hazards. See Pub. Util. Code § 21017 ("airport hazard" defined). In addition, it extends this authority to entities previously not covered by a specific grant, e.g., San Diego Unified Port District. See Harb. & Nav. Code App. 1, §§ 4, 5, 27 (West Supp. 1967). For statutes granting the power of eminent domain for airport purposes, see Govt. Code §§ 26020 (counties), 50470 (cities, counties); Pub. Util. Code §§ 21633 (state), 22553 (port districts); Harb. & Nav. Code App. 1, §§ 4, 5, 27 (West Supp. 1967)(San Diego Unified Port District).

Section 21652 also continues and expands the authority (formerly found in Code Civ. Proc. § 1239.3) of cities, counties, airport districts, and the San Diego Unified Port District to condemn to provide areas where flight disturbance will result in damage that might otherwise be the subject of actions for property damage. Cf. Pub. Util. Code § 21688. Section 21652

PUBLIC UTILITIES CODE § 21652

Tentatively approved September 1971

extends this authority to the state and to any other airport condemnors previously not covered by specific grant.

Subdivision (a). Paragraph (1) of subdivision (a) is based on language formerly found in Public Utilities Code Section 21633 (authority of Department of Aeronautics). As a specific authorization of condemnation for airport protective purposes, it duplicates the more general authority found in Section 1240.050 of the Code of Civil Procedure, but this duplication has been retained because it provides useful detail.

Paragraph (2) of subdivision (a) retains the substance of former Code of Civil Procedure Section 1239.3 that airspace or airspace rights may be taken in any area to which flight disturbance will penetrate.

Paragraph (3) of subdivision (a) permits airport condemnors to take-- in addition to airspace interests--land and other property for the purpose of providing areas of flight disturbance where a taking pursuant to paragraph (2) would leave a physical or financial remnant. The procedures and standards applicable to such takings are those set forth in Section 1240.420 of the Code of Civil Procedure. The right to take pursuant to Section 1240.420 entails the right to dispose of property thus acquired pursuant to Section 1240.440 of the Code of Civil Procedure.

Subdivision (b). Subdivision (b) makes clear that property of any character or degree may be condemned for airport protective or flight disturbance

PUBLIC UTILITIES CODE § 21652

Tentatively approved September 1971

purposes. As such, it supersedes the restrictive language of former Code of Civil Procedure Sections 1239.2 and 1239.3, and it is consistent with the more general definition of property found in Code of Civil Procedure Section 1230.070.

The provision formerly found in Code of Civil Procedure Section 1239.4, authorizing acquisition of land, reserving an "irrevocable free license" in the former owner to use and occupy such land has not been continued since subdivision (b) defines "property" so broadly that a condemnor may take land subject to such an interest where necessary.

[Note. Section 1240.420 of the Code of Civil Procedure, as presently drawn, speaks in terms of the remainder of a larger parcel rather than in terms of remaining interests in property. This draft of Public Utilities Code Section 21652 is predicated on the assumption that Section 1240.420 will be reworded to accomodate property interests.

The effect of the California Supreme Court decision imposing liability on public entities on a nuisance theory for aircraft noise will be considered and possibly this section will be further revised.]

PUBLIC UTILITIES CODE § 21653

Tentatively approved September 1971

Public Utilities Code § 21653 (added)

21653. Any person authorized to exercise the power of eminent domain for airport purposes may provide, by purchase, gift, devise, lease, condemnation, or otherwise, for the removal or relocation of any airport hazard or the removal or relocation of all facilities, structures, and equipment that may interfere with the location, expansion, development, or improvement of the airport and other air navigation facilities or with the safe approach thereto and takeoff therefrom by aircraft. Any person acting under authority of this section shall pay the cost of such removal or relocation.

Comment. Section 21653 continues the authority of the state (formerly found in Pub. Util. Code § 21634) and of cities and of counties (formerly found in Govt. Code § 50485.13) to require the removal or relocation of airport hazards. See Pub. Util. Code § 21017 ("airport hazard" defined). In addition, it extends this authority to entities previously not covered by a specific grant, e.g., airport districts. See Pub. Util. Code § 22553.

Section 21653 also continues the authority of the state to require the removal and relocation of structures, facilities, and equipment that might interfere with the location, expansion, development, or improvement of the airport and its facilities and extends this authority to other public entities. In addition, it requires payment for relocation or removal of airport hazards generally.

PUBLIC UTILITIES CODE § 21653

Tentatively approved September 1971

While Section 21653 is phrased as a separate grant of authority to require removal or relocation, such authority can be exercised in connection with an eminent domain proceeding brought under Section 21652.

It should be noted that the removal or relocation of property held for or devoted to a public use may be required only after the court in which proceedings are pending finds that the relocation for airport purposes is of greater public necessity than the public use for which the property was previously held or used. See Code Civ. Proc. § 1240.610 et seq.; see Comment to former Pub. Util. Code § 21635.

TRANSIT DISTRICT--ALAMEDA OR CONTRA COSTA COUNTY

Public Utilities Code § 25703 (amended)

Sec. . Section 25703 of the Public Utilities Code is

amended to read:

25703. A district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. A district may take~~ any property necessary or convenient to the exercise of the powers granted in this division, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this division. A district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location.

may

to acquire

ALL  
IN  
STRIKEOUT

Comment. The deleted portions of Section 25703 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).



PUBLIC UTILITIES CODE § 28953

added Stats. 1957, Ch. 1056, § 3  
Staff draft July 1972

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Public Utilities Code § 28953 (amended)

Sec. . Section 28953 of the Public Utilities Code is  
amended to read:

28953. The district ~~shall have or exercise~~ <sup>may</sup> the right of eminent domain in the manner provided by law for the condemnation of private property for public use. <sup>to acquire</sup> ~~The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this act or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

ALL IN STRIKEOUT

ALL IN STRIKEOUT

Comment. The deleted portions of Section 28953 are unnecessary.

See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 28954

added Stats. 1957, Ch. 1056, § 3  
Staff draft July 1972

Public Utilities Code § 28954 (repealed)

Sec. . . Section 28954 of the Public Utilities Code is  
repealed.

~~28954. Whenever the district shall determine to exercise  
the right of eminent domain, it shall adopt a resolution declar-  
ing that the public interest and necessity require the acquisi-  
tion of any described real property or right or interest therein.  
Such resolution, if adopted by a vote of two-thirds of the  
members of the board of directors, shall be conclusive evidence  
of the following:~~

- ~~(a) The public necessity of such acquisition.~~
- ~~(b) That such property, rights, or interests are, and that  
the acquisition of the fee or other interest therein is, neces-  
sary therefor.~~
- ~~(c) That such proposed acquisition is planned or located in  
a manner which will be most compatible with the greatest  
public good and cause the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 28954 is superseded by the more general  
provisions of the Eminent Domain Law. See Code Civ. Proc. §  
1240.110 et seq.

added Stats. 1964, 1st Ex. Sess.,  
Ch. 62, § 1  
Staff draft July 1972

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

Public Utilities Code § 30503 (amended)

Sec. . Section 30503 of the Public Utilities Code is

amended to read:

30503. The district may ~~take or~~ acquire real or personal property of every kind within the district, ~~by condemnation pursuant to the eminent domain proceedings in accordance with Title 7 (commencing with Section 1237), Part 3 of the Code of Civil Procedure, or, in the alternative, in accordance with Chapter 8 (commencing with Section 1401), Part 1, Division 1 of this code, whether the property is already devoted to the same use or otherwise.~~

by eminent domain

ALL IN STRIKEOUT

No such taking or acquisition by the district which would involve the abandonment, removal, relocation or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical and efficient service.

Comment. The deleted portion of Section 30503 is unnecessary.

See Code Civ. Proc. § 1235.010 (procedure), \_\_\_\_\_ (alternative of valuation by Public Utilities Commission), 1240.610 et seq. (more necessary public use), 1240.510 (compatible use).

PUBLIC UTILITIES CODE § 30504

added Stats. 1964, 1st Ex. Sess.,  
Ch. 62, § 1  
Staff draft July 1972

Public Utilities Code § 30504 (repealed)

Sec. . Section 30504 of the Public Utilities Code is  
repealed.

~~30504. The district is a rapid transit district within the  
meaning of Section 1241 of the Code of Civil Procedure.~~

Comment. Section 30504 is superseded by Code of Civil  
Procedure Section 1240.610 et seq. (more necessary public use).  
See also Code Civ. Proc. § 1240.510 et seq. (compatible use).

ORANGE COUNTY TRANSIT DISTRICT

Public Utilities Code § 40162 (amended)

Sec. . . . Section 40162 of the Public Utilities Code is

amended to read:

40162. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property within the boundaries of the district for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers and privileges of a county and all rights, powers and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district in exercising such power shall, in addition to the damage for the taking, injury or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railway, mains, pipes, conduits, cables or poles of any public utility which is required to be moved to a new location. ~~Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

may  
to acquire

ALL  
IN  
STRIKEOUT

No such taking or acquisition by the district which would involve the abandonment, removal, relocation, or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation, or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical, and efficient service.

Comment. The deleted portions of Section 40162 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

STOCKTON METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 50162 (amended)

Sec. . Section 50162 of the Public Utilities Code is

amended to read:

50162. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ ~~The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility or public district which is required to be moved to a new location.~~ ~~No action in eminent domain to acquire property or interests therein within any incorporated city or any county shall be commenced unless the legislative body of the affected city or county has consented to such acquisition by resolution.~~

to acquire

may

ALL  
IN  
STRIKEOUT

Comment. The deleted portions of Section 50162 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 70162

added Stats. 1964, 1st Ex. Sess., Ch. 92,  
§ 1.  
Staff draft July 1972

TRANSIT DISTRICT--MARIN COUNTY

Public Utilities Code § 70162 (amended)

Sec. . . Section 70162 of the Public Utilities Code is  
amended to read:

70162. The district shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property within the boundaries of the district for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers and privileges of a county and all rights, powers and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district in exercising such power shall, in addition to the damage for the taking, injury or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railway, mains, pipes, conduits, cables or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

may  
to acquire  
ALL  
IN  
STRIKEOUT

Comment. The deleted portions of Section 70162 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

SAN DIEGO COUNTY TRANSIT DISTRICT

Public Utilities Code § 90402 (amended)

Sec. . Section 90402 of the Public Utilities Code is

amended to read:

90402. The district ~~shall have or, exercise the right of~~ **may**  
~~eminent domain in the manner provided by law for the con-~~  
~~demnation of private property for public use. The district may~~  
**to acquire** ~~take any property necessary or convenient to the exercise of~~  
~~the powers granted in this act, whether the property is already~~  
~~devoted to the same use or otherwise. In the proceedings,~~  
~~venue, and trial relative to the exercise of the right the district~~  
has all the rights, powers, and privileges of an incorporated  
city and all rights, powers, and privileges conferred in this act.  
~~The district shall proceed in the name of the district in con-~~  
~~demnation proceedings.~~ **ALL**  
**IN**  
**STRIKEOUT**  
The district, in exercising such power  
shall, in addition to the damage for the taking, injury, or  
destruction of property, also pay the cost of removal, recon-  
struction, or relocation of any structure, railways, mains, pipes,  
conduits, cables, or poles of any public utility which is re-  
quired to be moved to a new location.

No such taking or acquisition by the district which would  
involve the abandonment, removal, relocation or use of the  
property of a railroad corporation, as defined in Section 230  
of this code, shall be permitted, unless the Public Utilities  
Commission, after hearing, shall find and determine that the  
public interest and necessity require the abandonment, re-  
moval, relocation or use of such property and that such taking  
or acquisition will not unreasonably impair the ability of the  
railroad corporation involved to provide safe, adequate, eco-  
nomical and efficient service.

Comment. The deleted portions of Section 90402 are unnecessary.

See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more  
necessary public use).



SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 96002 (amended)

Sec. . Section 96002 of the Public Utilities Code is amended to read:

96002. ~~The district shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables or poles of any public utility or public district which is required to be moved to a new location.

to acquire

may

ALL  
IN  
STRIKEOUT

No action in eminent domain to acquire property or interests therein within any incorporated city or any county shall be commenced unless the legislative body of the affected city or county has consented to such acquisition by resolution.

No such taking or acquisition by the district which would involve the abandonment, removal, relocation, or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation, or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical, and efficient service.

Comment. The deleted portions of Section 96002 are unnecessary.

See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 98212

added Stats. 1967, Ch. 978, § 1  
Staff draft July 1972

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 98212 (amended)

Sec. . Section 98212 of the Public Utilities Code is  
amended to read:

98212. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take~~ any property necessary or convenient to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power, in addition to the damage for the taking, injury, or destruction of property, shall also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility or public district which is required to be moved to a new location.

may

to acquire

ALL  
IN  
STRIKEOUT

Comment. The deleted portions of Section 98212 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 100130.5

added Stats. 1969, Ch. 180, § 1  
Staff draft July 1972

SANTA CLARA COUNTY TRANSIT DISTRICT

Public Utilities Code § 100130.5 (repealed)

Sec. . Section 100130.5 of the Public Utilities Code is  
repealed.

~~100130.5. Whenever a portion of a parcel of real property  
is to be taken for district purposes and the remainder is to be  
left in such state or condition as to be of little value to its  
owner, or to give rise to claims or litigation concerning sev-  
erance or other damage, the district may acquire the whole  
parcel and may sell the excess portion or exchange it for other  
property suitable for district purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 100130.5 is superseded by the more general  
provision of the Eminent Domain Law. See Code Civ. Proc. §  
1240.410 et seq.

SANTA CLARA COUNTY TRANSIT DISTRICT

Public Utilities Code § 100131 (amended)

Sec. . . . Section 100131 of the Public Utilities Code is

amended to read:

100131. The district shall ~~have or exercise the right of~~ <sup>may</sup> eminent domain in the manner provided by law for the condemnation of private property for public use. The district ~~may~~ <sup>to acquire</sup> take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district, in exercising such power, shall in addition to the damages for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location. ~~Notwithstanding any other provision of this part or any other law, no~~ property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. <sup>ALL IN STRIKEOUT.</sup>

Comment. The deleted portions of Section 100131 are unnecessary.

See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 101177

added Stats. 1971, Ch. 1161, § 1  
Staff draft July 1972

GREATER BAKERSFIELD METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 101177 (amended)

Sec. . Section 101177 of the Public Utilities Code is  
amended to read:

101177. The district ~~shall have and~~ may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. The district may take~~ any property necessary or convenient to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise. In~~ to acquire the proceedings, venue, and trial relative to the exercise of the right, the district shall have all the rights, powers, and privileges of an incorporated city and all of the rights, powers, and privileges conferred by this part. The district shall ~~proceed in the name of the district in any such condemnation proceeding.~~ In the exercise of such power, in addition to the damage for the taking, injury, or destruction of property, the district shall also pay the cost of removal, reconstruction, or relocation of any railways, mains, pipes, conduits, cables, poles, or other structures or facilities of any public utility or public agency which is required to be moved to a new location. ~~Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

ALL IN STRIKEOUT

Comment. The deleted portions of Section 101177 are unnecessary. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use).

PUBLIC UTILITIES CODE § 102241

added Stats. 1971, Ch. 1374, § 1  
Staff draft July 1972

SACRAMENTO REGIONAL TRANSIT DISTRICT

Public Utilities Code § 102241 (repealed)

Sec. . Section 102241 of the Public Utilities Code is  
repealed.

~~102241. Whenever a portion of a parcel of real property  
is to be taken for district purposes and the remainder is to be  
left in such state or condition as to be of little value to its  
owner, or to give rise to claims or litigation concerning sev-  
erance or other damage, the district may acquire the whole  
parcel and may sell the excess portion or exchange it for other  
property suitable for district purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 102241 is superseded by the more general  
provision of the Eminent Domain Law. See Code Civ. Proc. §  
1240.410 et seq.

SACRAMENTO REGIONAL TRANSIT DISTRICT

Public Utilities Code § 102242 (amended)

Sec. . Section 102242 of the Public Utilities Code is  
amended to read:

102242. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ <sup>may</sup>  
to acquire <sup>⊖</sup>  
The district, in exercising such power, shall in addition to the damages for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, except as provided in Section 102243, no property in public use shall be taken by the district, except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. <sup>ALL IN STRIKEOUT</sup>

Comment. The deleted portions of Section 102242 are superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010 (procedure).

STREETS & HIGHWAYS CODE § 100.3

added Stats. 1939, Ch. 687, § 4  
Staff draft July 1972

DEPARTMENT OF PUBLIC WORKS--HIGHWAYS

Streets & Highways Code § 100.3 (amended)

Sec. . . Section 100.3 of the Streets and Highways Code is amended to read:

100.3. From and after the adoption of a resolution by the California Highway Commission declaring any section of State highway to be a freeway, the highway described in such resolution shall have the status of a freeway for all purposes of section 100.2.

Such declaration shall not affect private property rights of access, and any such rights taken or damaged ~~within the meaning of Article I, section 14, of the State Constitution~~ for such freeway for which the state Constitution requires just compensation to be paid shall be acquired in a manner provided by law.

No State highway shall be converted into a freeway except with the consent of the owners of abutting lands or the purchase or condemnation of their right of access thereto.

Comment. The amendment of Section 100.3 merely substitutes a general reference for the specific reference to the State Constitution; the amendment makes no substantive change.



STREETS & HIGHWAYS CODE § 102

added Stats. 1935, Ch. 29, § 102  
Tentatively approved December 1971

Streets & Highways Code § 102 (amended)

Sec. . Section 102 of the Streets and Highways Code is  
amended to read:

102. In the name of the people of the State of California, the department may condemn, for State highway purposes, ~~under the provisions of the Code of Civil Procedure relating to eminent domain, any real property or interest therein which it is authorized to acquire.~~ The department shall not commence any such proceeding in eminent domain unless the commission first adopts a resolution declaring that public interest and necessity require the acquisition, construction or completion by the State, acting through the department, of the improvement for which the real property or interest therein is required and that the real property or interest therein described in such resolution is necessary for the improvement.

acquire by eminent domain any property necessary

ALL IN  
STRIKEOUT

Comment. The portion of Section 102 that related to the adoption of a resolution of necessity by the Highway Commission is continued in Code of Civil Procedure Section 1240.110 et seq.

STREETS & HIGHWAYS CODE § 103

Tentatively approved December 1971

Streets & Highways Code § 103 (repealed)

Sec. . Section 103 of the Streets and Highways Code is  
repealed.

~~103. The resolution of the commission shall be conclusive  
evidence:~~

(a) Of the public necessity of such proposed public improve-  
ment.

(b) That such real property or interest therein is necessary  
therefor.

(c) That such proposed public improvement is planned or  
~~located in a manner which will be most compatible with the  
greatest public good and the least private injury.~~

ALL IN

STRIKEOUT

Comment. The substance of Section 103 is continued in Code of  
Civil Procedure Section 1240.150.

STREETS & HIGHWAYS CODE § 103.5

added Stats. 1937, Ch. 931, § 2  
Staff recommendation July 1972

Streets & Highways Code § 103.5 (amended)

Sec. . . . Section 103.5 of the Streets and Highways Code is amended to read:

103.5. The Subject to Sections 1240.670, 1240.780, and 1240.690 of the Code of Civil Procedure, the real property which the department may acquire by eminent domain, or otherwise, includes any property dedicated to park purposes, however it may have been dedicated, when the commission has determined by ~~such~~ resolution that such property is necessary for State highway purposes.

Comment. Section 103.5 is amended to make reference to provisions that limit the right to acquire park property under Section 103.5.

STREETS & HIGHWAYS CODE § 104.1

Tentatively approved July 1970

Streets & Highways Code § 104.1 (repealed)

Sec. . Section 104.1 of the Streets and Highways Code is  
repealed.

~~104.1. Wherever a part of a parcel of land is to be taken  
for State highway purposes and the remainder is to be left  
in such shape or condition as to be of little value to its owner,  
or to give rise to claims or litigation concerning severance or  
other damage, the department may acquire the whole parcel  
and may sell the remainder or may exchange the same for  
other property needed for State highway purposes.~~

ALL IN

STRIKEOUT

Comment. Section 104.1 is superseded by Code of Civil Procedure  
Section 1240.410 et seq.

STREETS & HIGHWAYS CODE § 104.2

Staff draft May 1972

Streets & Highways Code § 104.2 (repealed)

Sec. . Section 104.2 of the Streets and Highways Code  
is repealed.

~~104.2. Whenever property which is devoted to or held for  
some other public use for which the power of eminent domain  
might be exercised is to be taken for State highway purposes,  
the department may, with the consent of the person or agency  
in charge of such other public use, condemn, in the name of  
the people of the State of California, real property to be  
exchanged with such person or agency for the real property  
so to be taken for State highway purposes. This section  
does not limit the authorization to the department to acquire  
other than by condemnation, property for such purposes.~~

ALL IN  
STRIKEDOUT

Comment. Section 104.2 is superseded by Section 1240.320 of  
the Code of Civil Procedure.

Tentatively approved July 1971

Streets & Highways Code § 104.3 (repealed)

Sec. . Section 104.3 of the Streets and Highways Code  
is repealed.

~~104.3. The department may condemn real property or any interest therein for reservations in and about and along and leading to any State highway or other public work or improvement constructed or to be constructed by the department and may, after the establishment, laying out and completion of such improvement, convey out any such real property or interest therein thus acquired and not necessary for such improvement with reservations concerning the future use and occupation of such real property or interest therein, so as to protect such public work and improvement and its environs and to preserve the view, appearance, light, air and usefulness of such public work; provided, that land so condemned under authority of this section shall be limited to parcels lying wholly or in part within a distance of not to exceed one hundred fifty feet from the closest boundary of such public work or improvement; provided that when parcels which lie only partially within such limit of one hundred fifty feet are taken, only such portions may be condemned which do not exceed two hundred feet from said closest boundary.~~

ALL IN  
STRIKEOUT

Comment. Section 104.3 is superseded by Section 1240.050 of the Code of Civil Procedure.

STREETS & HIGHWAYS CODE § 104.7

added Stats. 1939, Ch. 686, § 7  
Staff draft July 1972

Streets & Highways Code § 104.7 (repealed)

Sec. . . . Section 104.7 of the Streets and Highways Code is  
repealed.

~~104.7. None of the provisions of sections 104, 104.1, 104.2,  
104.3, or 104.6 is intended to limit, or shall limit, the provi-  
sions of any other of said sections, each of which is a distinct  
and separate authorization.~~

Comment. Section 104.7 is repealed because it is  
unnecessary.

Streets & Highways Code § 104.15 (amended)

Sec. . Section 104.15 of the Streets and Highways Code  
is amended to read:

all or any 104.15. Whenever land has been acquired pursuant to former Section 104.1, the department may, in its discretion, lease to a local agency for park purposes or pursuant to Article 5 (commencing with Section 1240.410) of Chapter 4 of Title 7 of Part 3 of the Code of Civil Procedure ~~such~~ portion of the remainder ~~not to exceed 200 feet~~ from the ~~closest~~ boundary of the state highway or public work or improvement, when such use will protect such highway, public work or improvement and its environs, and will preserve its view, appearance, light, air and usefulness. Such lease shall be made in accordance with procedures, terms and conditions to be prescribed by the commission ~~California Highway Commission~~. Such terms and conditions shall include all of the following:

- (a) Provisions requiring the local agency to develop and maintain such portion of the remainder as a park.
- (b) Provision that whenever such portion of the remainder is needed for state highway purposes, the lease shall terminate.
- (c) Provision that whenever such portion of the remainder ceases to be used for park purposes, the lease shall terminate.

Comment. Section 104.15 is amended to substitute a reference to the statutory provisions that superseded Section 104.1 and to delete the 200-foot restriction. Cf. Code Civ. Proc. § 1240.050.



Tentatively approved July 1970

COUNTY--HIGHWAYS

Streets & Highways Code § 943.1 (repealed)

Sec. . Section 943.1 of the Streets and Highways Code is repealed.

~~943.1. Whenever a part of a parcel of land is to be taken for county highway purposes and the remainder of such parcel is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damages, the county may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for county highway purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 943.1 is superseded by Section 1240.410 et seq. of the Code of Civil Procedure.

STREETS & HIGHWAYS CODE § 943.2

added Stats. 1965, Ch. 1347, § 1  
Staff draft July 1972

COUNTY ROADS

Streets & Highways Code § 943.2 (repealed).

Sec. . Section 943.2 of the Streets and Highways Code is  
repealed.

~~943.2. Whenever property which is devoted to or held for  
some other public use for which the power of eminent domain  
might be exercised is to be taken for county highway purposes,  
the county may, with the consent of the person or agency in  
charge of such other public use, condemn, in the name of the  
people of the county, real property to be exchanged with such  
person or agency for the real property so to be taken for  
county highway purposes. This section does not limit the au-  
thorization to the county to acquire other than by condemna-  
tion, property for such purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 943.2 is superseded by the more general  
provision of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

STREETS & HIGHWAYS CODE § 943.4

added Stats. 1965, Ch. 1735, § 1  
Staff draft July 1972

COUNTY ROADS

Streets & Highways Code § 943.4 (repealed).

Sec. . Section 943.4 of the Streets and Highways Code is  
repealed.

~~943.4. Whenever real property is sought to be taken for  
the purpose of county highway widening which is devoted to  
or held for some other public use by a person or public agency  
that has the power of eminent domain, the county may, with  
the consent of the person or public agency, condemn in the  
name of the county the real property to be exchanged with  
such person or public agency for the real property so to be  
taken for county highway purposes. This section does not limit  
the authorization of the county to acquire, other than by con-  
demnation, property for such purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 943.4 is superseded by the more general  
provision of the Eminent Domain Law. See Code Civ. Proc. §  
1240.310 et seq.

STREETS & HIGHWAYS CODE § 4008

Tentatively approved April 1970

STREET OPENING ACT OF 1903

Streets & Highways Code § 4008 (amended)

Sec. . Section 4008 of the Streets and Highways Code is amended to read:

4008. "Street" includes public streets, avenues, roads, highways, squares, lanes, alleys, courts or places.

byroads,

Comment. The addition of "byroads" to Section 4008 makes clear that byroads--roads, open to public use, that furnish access to an existing public road from or primarily from otherwise isolated property--may be established under the Street Opening Act of 1903. See Section 4008.1 defining "byroad." This addition probably codifies existing law. Cf. City of Oakland v. Parker, 70 Cal. App. 295, 233 P. 68 (1924).

STREETS & HIGHWAYS CODE § 4008.1

Tentatively approved April 1970

Streets & Highways Code § 4008.1 (added)

Sec. . Section 4008.1 is added to the Streets and Highways Code, to read:

4008.1. "Byroad" means a road, open to public use, that furnishes access to an existing public road from or primarily from otherwise isolated property.

Comment. The definition of "byroad" in Section 4008.1 is based on the discussion in Sherman v. Buick, 32 Cal. 242 (1867). It adopts substantially the definition formerly incorporated in Section 1238(6) of the Code of Civil Procedure; however, any restriction in utilization of the property served by the byroad is eliminated.

STREETS & HIGHWAYS CODE § 4120.1

Tentatively approved April 1970  
Revised June 1970

Streets & Highways Code § 4120.1 (added)

Sec. . Section 4120.1 is added to the Streets and Highways Code, to read:

4120.1. The owner of any property that may be benefited by a proposed improvement may file with the legislative body a request that the improvement be undertaken. Such request may, but need not, include the maps, plats, plans, profiles, specifications, and other information referred to in Sections 4120 and 4122 and shall not be denied without a public hearing.

Comment. Section 4120.1 is added to the Street Opening Act of 1903 to expressly authorize initiation of improvement proposals by individual property owners. Similar procedures already exist in many counties and cities. In reviewing a property owner's request, the board of supervisors should consider the necessity for the improvement and the relative hardship to the party whose land is sought to be used for the improvement compared to the one seeking the improvement. For a comparable provision relating to sewer construction, see Health & Saf. Code § 4967. Cf. Water Code §§ 7020-7026 (county may open private way for irrigation, drainage, or seepage canal).

STREETS & HIGHWAYS CODE § 25052

added Stats. 1943, Ch. 284  
Staff draft July 1972

JOINT HIGHWAY DISTRICT

Streets & Highways Code § 25052 (repealed)

Sec. . Section 25052 of the Streets and Highways Code is  
repealed.

~~25052. Before exercising the right of eminent domain the board of directors of the district shall adopt a resolution describing the lands or rights of way sought to be acquired and declaring that the public interest and necessity require the acquisition thereof for the purposes of the district. The adoption of the resolution shall be conclusive evidence that:~~

- ~~(a) The public necessity requires the improvement for which the condemnation is proposed.~~
- ~~(b) The condemnation and acquisition of the property or rights of way is necessary for the improvement.~~
- ~~(c) The proposed improvement is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 25052 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110  
et seq.

STREETS & HIGHWAYS CODE § 25280

added Stats. 1943, Ch. 284  
Staff draft July 1972

Streets & Highways Code § 25280 (amended)

Sec. . Section 25280 of the Streets and Highways Code is amended to read:

25280. The board of directors of the district may request the board of supervisors and the proper officers of any county situated within the district to condemn and acquire property or rights of way within that county which are necessary for the projects of the district. Upon receipt of the request, the board of supervisors shall undertake the condemnation and acquisition requested by the board of directors and the cost thereof shall be a proper deduction from any levy made by the district upon or within that county. Any excess in such cost over and above the amount of any such levy shall be paid to the county by the district out of any funds provided for that purpose. The proceedings required to be taken by any county or county officers under the provisions of this section may include the taking of ~~immediate~~ possession of any property or rights of way necessary for district purposes.

prior to  
judgment

Comment. Section 25280 is amended to substitute language conforming to that used in the ~~Mainent~~ Domain Law. See Code Civ. Proc. § 1255.010 et seq.



BRIDGE AND HIGHWAY DISTRICT

Streets & Highways Code § 27166 (amended).

Sec. . Section 27166 of the Streets and Highways Code is  
amended to read:

27166. The district may to acquire ~~have and exercise, in the name of the district, the right of eminent domain for the condemnation of any property, whether such property is already devoted to the same use or another public use, or otherwise,~~ necessary for the construction of bridges, or the approaches thereto, or highways leading thereto, or for the operation of the interim system of buses and ferries specified in Section 4.5 of Chapter 805 of the Statutes of 1969, or for the purpose of acquiring such portion of the Northwest Pacific Railroad Company's right of way, as may be needed to implement a proposed plan for transit services submitted by the district pursuant to Section 4.5 of Chapter 805 of the Statutes of 1969. The district may condemn any existing highway, or right-of-way, or any portion thereof, whether the same be publicly or privately owned. ~~In any proceeding to exercise the right of eminent domain, the district shall have the same rights, powers, and privileges as the State of California. If property is condemned by the district, the district may take possession and use the property in accordance with the provisions of Section 1251 of the Code of Civil Procedure.~~

ALL  
IN  
STRIKEOUT

Comment. Section 27166 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1255.010 (possession prior to judgment).

Tentatively approved December 1971

DEPARTMENT OF PUBLIC WORKS--TOLL BRIDGES

Streets & Highways Code § 30404 (repealed)

Sec. . Section 30404 of the Streets and Highways Code is repealed.

~~30404. The department shall commence any such proceedings in eminent domain whenever the authority first passes a resolution declaring that public interest and necessity require the acquisition, construction, or completion by the State acting through the department of any such bridge or highway crossing, transportation facilities, or additional transportation facilities or the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements, and that such bridge or highway crossing, transportation facilities or additional transportation facilities of any such bridge or other highway crossing, real estate, personal property, franchises, rights, privileges, or easements are necessary therefor. Such resolution shall be conclusive evidence:~~

(a) Of the public necessity of such acquisition, construction, or completion.

(b) That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.

(c) That such proposed acquisition, construction, or completion is planned or located in a manner which will be most ~~compatible with the greatest public good and the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 30404 is superseded by the more general provisions of the Eminent Domain Law. The requirement that the Toll Bridge Authority authorize by resolution condemnations for its purposes by the Department of Public Works is continued in Sections 1240.110 and 1240.120 of the Code of Civil Procedure. The contents of the resolution are specified in Section 1240.130 of the Code of Civil Procedure. The effect given the resolution is indicated in Section 1240.150 of the Code of Civil Procedure.

STREETS & HIGHWAYS CODE § 30405

added Stats. 1947, Ch. 176  
Staff draft July 1972

CALIFORNIA TOLL BRIDGE AUTHORITY

Streets & Highways Code § 30405 (repealed)

Sec. . Section 30405 of the Streets and Highways Code is  
repealed.

~~30405. The department may condemn and take, in fee or otherwise as the authority determines, in the name of the State, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.

ALL  
IN  
STRIKEOUT

Comment. Section 30405 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 (substitute condemnation).

FOLSOM LAKE BRIDGE AUTHORITY

Streets & Highways Code § 31003 (repealed)

Sec. . Section 31003 of the Streets and Highways Code is  
repealed.

~~31003. The authority shall commence any such proceedings in eminent domain whenever it first passes a resolution declaring that public interest and necessity require the construction of the toll bridge and that the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements is necessary therefor. Such resolution shall be conclusive evidence:~~

- ~~(a) Of the public necessity of such construction.~~
- ~~(b) That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~
- ~~(c) That such proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 31003 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

STREETS & HIGHWAYS CODE § 31004

added Stats. 1967, Ch. 1264  
Staff draft July 1972

Streets & Highways Code § 31004 (repealed)

Sec. . . . Section 31004 of the Streets and Highways Code is  
repealed.

~~31004. The authority may condemn and take, in fee or otherwise as the authority determines, in the name of the authority, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.

ALL  
IN  
STRIKEOUT

Comment. Section 31004 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

EL DORADO COUNTY TOLL  
TUNNEL AUTHORITY

Streets & Highways Code § 31203 (repealed)

Sec. . Section 31203 of the Streets and Highways Code is  
repealed.

~~31203. The authority shall commence any such proceedings in eminent domain whenever it first passes a resolution declaring that public interest and necessity require the construction of the toll tunnel and that the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements is necessary therefor. Such resolution shall be conclusive evidence:~~

- ~~(a) Of the public necessity of such construction.~~
- ~~(b) That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~
- ~~(c) That such proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

ALL  
IN  
STRIKEOUT

Comment. Section 31203 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

Streets & Highways Code § 31204 (repealed)

Sec. . Section 31204 of the Streets and Highways Code is  
repealed.

~~31204. The authority may condemn and take, in fee or otherwise as the authority determines, in the name of the authority, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

~~Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.~~

ALL  
IN  
STRIKEOUT

Comment. Section 31204 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

WATER CODE § 250

amended Stats. 1961, Ch. 672, § 1  
Tentatively approved December 1971

DEPARTMENT OF WATER RESOURCES

Water Code § 250 (amended)

Sec. . Section 250 of the Water Code is amended to read:

250. In the name of the people of the State of California, the department may ~~condemn~~ for state water and dam purposes, ~~under the provisions of the Code of Civil Procedure relating to eminent domain, any real property or interest therein which it is authorized to acquire.~~ The department shall not commence any such proceeding in eminent domain unless the project for which the property is being acquired has been authorized, funds are available therefor, ~~and the director first issues a declaration, concurred in by resolution of the~~ California Water Commission, declaring that public interest and necessity require the acquisition, construction or completion by the State, acting through the department, of the improvement for which the real property or interest therein is required and that the real property or interest therein ~~described in such declaration is necessary for the improvement.~~

acquire by eminent domain any property necessary

and

ALL  
IN  
STRIKEOUT

Comment. The portion of Section 250 that required a declaration of necessity by the Director of Water Resources, concurred in by the California Water Commission, before the Department of Water Resources could condemn property, is superseded by Code of Civil Procedure Section 1240.110 et seq. This requirement is applicable in case of any acquisition by eminent domain of the Department of Water Resources, regardless what other prerequisites or approvals may be required by law. Cf. Water Code § 346. Under Code of Civil Procedure Section 1240.110 et seq., a resolution of necessity adopted by the California Water Commission is required, but the requirement of a declaration of necessity by the director is not continued.



Water Code § 251 (repealed)

Sec. . . Section 251 of the Water Code is repealed.

~~251. The declaration of the director shall be conclusive evidence:~~

(a) Of the public necessity of such proposed public improvement.

(b) That such real property or interest therein is necessary therefor.

(c) That such proposed public improvement is planned or ~~located in a manner which will be most compatible with the greatest public good and the least private injury.~~

ALL IN  
STRIKEOUT

Comment. Section 251 is superseded by Section 1240.150 of the Code of Civil Procedure.

WATER CODE § 251.1

added Stats. 1957, Ch. 2104, § 1  
Staff draft July 1972

Water Code § 251.1 (repealed)

Sec. . Section 251.1 of the Water Code is repealed.

~~251.1. Property already appropriated to public use shall not be taken unless for a more necessary public use than that to which it has already been appropriated.~~

Comment. Section 251.1 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use).

WATER CODE § 254

Tentatively approved July 1970

Water Code § 254 (repealed)

Sec. . . Section 254 of the Water Code is repealed.

~~254. Whenever a part of a parcel of land is to be taken for state dam or water purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for state dam or water purposes.~~

ALL IN  
STRIKEOUT

Comment. Section 254 is superseded by Section 1240.410 et seq.  
of the Code of Civil Procedure.

WATER CODE § 255

added Stats. 1957, Ch. 2104; § 1  
Staff draft July 1972

Water Code § 255 (repealed)

Sec. . . Section 255 of the Water Code is repealed.

~~255. Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state dam or water purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state dam or water purposes. This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes.~~

ALL  
IN  
STRIKEOUT

Comment. Section 255 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

WATER CODE § 256

Tentatively approved July 1971

Water Code § 256 (repealed)

Sec. . . Section 256 of the Water Code is repealed.

~~256. The department may condemn real property or any interest therein for reservations in and about and along and leading to any state dam or water facility or other public work or improvement constructed or to be constructed by the department and may, after the establishment, laying out and completion of such improvement, convey out any such real property or interest therein thus acquired and not necessary for such improvement with reservations concerning the future use and occupation of such real property or interest therein, so as to protect such public work and improvement and its environs and to preserve the view, appearance, light, air and usefulness of such public work; provided, that land so condemned under authority of this section shall be limited to parcels lying wholly or in part within a distance of not to exceed 500 feet from the closest boundary of such public work or improvement; provided, that when parcels which lie only partially within such limit of 500 feet are taken, only such portions may be condemned which do not exceed 600 feet from said closest boundary.~~

ALL IN  
STRIKEOUT

Comment. Section 256 is superseded by Section 1240.050 of the Code of Civil Procedure.

WATER CODE § 8304

added Stats. 1943, Ch. 369, § 1  
Tentatively approved December 1971

Water Code § 8304 (amended)

Sec. . Section 8304 of the Water Code is amended to read:

8304. The department may obtain or condemn any right of way necessary for any construction under this chapter, ~~and shall proceed, if necessary, to condemn under the terms of the Code of Civil Procedure relating to such proceedings.~~ ①

Comment. The deleted portion of Section 8304 is unnecessary.

See Code Civ. Proc. § 1235.010.

WATER CODE § 8590

amended Stats. 1957, Ch. 1769, § 1.  
Staff draft July 1972

SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT

Water Code § 8590 (amended)

Sec. . Section 8590 of the Water Code is amended to read:

8590. The board may do any of the following:

(a) Acquire either within or without the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights of way, easements, property or material necessary or requisite for the purpose of bypasses, weirs, cuts, canals, sumps, levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes.

(b) Construct, clear, and maintain bypasses, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works.

(c) Construct, maintain, and operate ditches, canals, pumping plants, and other drainage works.

(d) Make contracts in the name of the drainage district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this division, or arising out of the use, taking, or damage of any property for any of the purposes of this division.

~~(e) Whenever real property which is devoted to or held for some other public or quasi-public use is required by the drainage district for any of the purposes set forth in this part, the board may acquire in fee or in any lesser estate in interest in the name of the drainage district real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the drainage district as aforesaid for the purposes set forth in this part.~~

ALL  
IN  
STRIKEOUT

Comment. The deleted portion of Section 8590 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

WATER CODE § 8590.1

Tentatively approved July 1970

Water Code § 8590.1 (repealed)

Sec. . . Section 8590.1 of the Water Code is repealed.

~~8590.1. Wherever a part of a parcel of land is to be taken for purposes as set forth in Section 8590 of this code and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the board may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for purposes as set forth in Section 8590 of this code.~~

ALL IN  
STRIKEOUT

Comment. Section 8590.1 is superseded by Section 1240.410 et seq.  
of the Code of Civil Procedure.



WATER CODE § 8593

added Stats. 1943, Ch. 369, § 1  
Tentatively approved December 1971

STATE RECLAMATION BOARD--SACRAMENTO AND  
SAN JOAQUIN DRAINAGE DISTRICT

Water Code § 8593 (amended)

Sec. . Section 8593 of the Water Code is amended to read:

8593. The board may ~~condemn~~ in the name of the drainage district for any of the purposes set forth in this part, ~~under the provisions of the Code of Civil Procedure relating to eminent domain, any property or interest in property which it is authorized to acquire.~~ acquire by eminent domain ~~any property necessary~~

Comment. Section 8593 is amended to conform to the Eminent Domain Law. See, e.g., Code Civ. Proc. §§ 1235.010 (procedure), 1230.070 (defining "property").

WATER CODE § 8594

Tentatively approved December 1971

Water Code § 8594 (repealed)

Sec. . . Section 8594 of the Water Code is repealed.

~~8594. The board shall not commence any proceeding in eminent domain unless it first adopts a resolution declaring that the public interest and necessity require the acquisition, construction, or completion of the improvement for which the property or interest in property is required, or will be required, and that the property or interest described in the resolution is necessary for the improvement.~~

ALL IN  
STRIKEOUT

Comment. Section 8594 is superseded by the more general provisions of Code of Civil Procedure Section 1240.110 et seq.

WATER CODE § 8595

Tentatively approved December 1971

Water Code § 8595 (repealed)

Sec. . . Section 8595 of the Water Code is repealed.

~~8595. The resolution of the board shall be conclusive evidence of all of the following:~~

(a) The public necessity for the proposed public improvement.

(b) That the property or interest is necessary for the proposed public improvement.

(c) That the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

ALL IN  
STRIKEOUT

Comment. Section 8595 is superseded by Code of Civil Procedure Section 1240.150.

WATER CODE § 11575.1

added Stats. 1957, Ch. 2101, § 2  
Staff draft July 1972

CENTRAL VALLEY PROJECT

Water Code § 11575.1 (repealed)

Sec. . . Section 11575.1 of the Water Code is repealed.

~~11575.1. The authority conferred by Section 11575 to acquire property for water purposes, includes authority to acquire property necessary for future needs.~~

Comment. Section 11575.1 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.210 et seq.

WATER CODE § 11575.2

Tentatively approved July 1970

Water Code § 11575.2 (repealed)

Sec. . Section 11575.2 of the Water Code is repealed.

~~11575.2. Whenever a part of a parcel of land is to be taken for state water development purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and shall sell the remainder or shall exchange the same for other property needed for state water development purposes.~~

ALL IN  
STRIKEOUT

Comment. Section 11575.2 is superseded by Section 1240.410 et seq. of the Code of Civil Procedure.

WATER CODE § 11580

amended Stats. 1957, Ch. 1932, § 313.  
Tentatively approved December 1971

DEPARTMENT OF WATER RESOURCES

Water Code § 11580 (amended)

Sec. . Section 11580 of the Water Code is amended to read:

11580. When the department cannot acquire any necessary property by agreement with the owner, the department may ~~condemn and take the property in the name of the State under the provisions of the laws of this State relating to eminent domain proceedings.~~ if the project for

exercise the power  
of eminent domain  
to acquire

which the property is being acquired has been  
authorized and funds are available therefor.

Comment. Section 11580 is amended to continue the final portion of former Section 11581.

Water Code § 11581 (repealed)

Sec. . . Section 11581 of the Water Code is repealed.

~~11581. The department has no power to commence any proceedings in eminent domain unless and until the director first makes a declaration, concurred in by resolution of the California Water Commission, that public interest and necessity require the acquisition of the property; provided, the project for which the property is being acquired has been authorized and funds are available therefor.~~

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Comment. Section 11581 is superseded by the more general provisions of Code of Civil Procedure Section 1240.110 et seq. which makes a resolution of necessity adopted by the governing body of the condemning entity prerequisite to condemnation. The final portion of Section 11581 is preserved in Section 11580. Under Code of Civil Procedure Section 1240.110 et seq., a resolution of necessity adopted by the California Water Commission is required, but the requirement of a declaration of necessity by the director is not continued.

Tentatively approved December 1971

Water Code § 11582 (repealed)

Sec. . Section 11582 of the Water Code is repealed.

~~11582. The written declaration of the department shall be  
conclusive evidence of all of the following:~~

- ~~(a) The public necessity of the acquisition.~~
- ~~(b) That the property is necessary.~~
- ~~(c) That the proposed acquisition is planned in a manner  
which will be most compatible with the greatest public good  
and the least private injury.~~

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Comment. Section 11582 is superseded by the more general provisions  
of Code of Civil Procedure Section 1240.150.



WATER CODE § 11583

amended Stats. 1957, Ch. 2101, § 5  
Staff draft July 1972

Water Code § 11583 (repealed)

Sec. . . . Section 11583 of the Water Code is repealed.

~~11583. Property already appropriated to public use shall not be taken unless for a more necessary public use than that to which it has already been appropriated.~~

Comment. Section 11583 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use).

WATER CODE § 11587

amended Stats. 1957, Ch. 1932, § 319  
Staff draft July 1972

Water Code § 11587 (repealed)

Sec. . . Section 11587 of the Water Code is repealed.

~~11587. The department in the name of and for the State may take immediate possession and use of any property required for the construction, operation, or maintenance of the project upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction, and thereupon giving such security in the way of money deposited as the court in which the proceedings are pending directs, and in such amounts as the court determines to be reasonably adequate to secure to the owner of the property sought to be taken immediate compensation for the taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property.~~

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Comment. Section 11587 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1255.01C et seq.

WATER CODE § 22229

added Stats. 1943, Ch. 372, § 1.  
Staff draft July 1972

IRRIGATION DISTRICT

Water Code § 22229 (repealed)

Sec. . . Section 22229 of the Water Code is repealed.

~~22229. A district may enter upon any land to make surveys and determine the location for its necessary works on any land which may be deemed best for their location.~~

Comment. Section 22229 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.810 et seq.

Tentatively approved September 1971

Water Code § 22425 (amended)

Sec. . Section 22425 of the Water Code is amended to read:

22425. A district may acquire by any means any property or interest in property to carry out its purposes, including any of the following:

(a) Property for the construction, improvement, and operation of works in this state or in any other state or in a foreign nation.

(b) Works being constructed.

(c) Stock of domestic or foreign corporations owning water, water rights, canals, waterworks, franchises, concessions, or rights.

(d) Works by which land has been or may be supplied with water for irrigation.

(e) Property not otherwise authorized herein that may be required as a condition to obtaining state financial assistance for local projects as set forth in Chapter 5 (commencing with Section 12880), of Part 6, Division 6, of the Water Code.

(f) Public buildings and grounds.

Comment. Subdivision (f) is added to Section 22425 to preserve the authority of irrigation districts to condemn property for public buildings and grounds for their use. This addition was necessitated by the repeal of subdivision 3 of Section 1238 of the Code of Civil Procedure which authorized the exercise of the power of eminent domain for "public buildings and grounds . . . for the use of any . . . irrigation district." See former Code Civ. Proc. § 1238 and Comment thereto.

WATER CODE § 22455

added Stats. 1943, Ch. 372, § 1  
Staff draft July 1972

Water Code § 22455 (repealed)

Sec. . . . Section 22455 of the Water Code is repealed.

~~22455. Eminent domain proceedings may be brought by a  
district pursuant to the provisions of Title 7, Part 3 of the  
Code of Civil Procedure.~~

Comment. Section 22455 is unnecessary. See Code Civ. Proc.

§ 1235.010.

WATER CODE § 31044

added Stats. 1949, Ch. 274, § 1  
Staff draft July 1972

COUNTY WATER DISTRICT

Water Code § 31044 (repealed)

Sec. . . Section 31044 of the Water Code is repealed.

~~31044. Eminent domain proceedings may be brought by  
a district pursuant to the provisions of Title 7, Part 3 of the  
Code of Civil Procedure.~~

Comment. Section 31044 is unnecessary. See Code Civ. Proc.

§ 1235.010.

WATER CODE § 35625

added Stats. 1951, Ch. 390, § 1.  
Staff draft July 1972

CALIFORNIA WATER DISTRICT

Water Code § 35625 (repealed)

Sec. . Section 35625 of the Water Code is repealed.

~~35625. Eminent domain proceedings may be brought by a  
district pursuant to the provisions of Title 7, Part 3 of the Code  
of Civil Procedure.~~

Comment. Section 35625 is unnecessary. See Code Civ. Proc.

§ 1235.010.

WATER CODE § 43531

amended Stats. 1963, Ch. 239, § 2  
Staff draft July 1972

WATER STORAGE DISTRICT

Water Code § 43531 (repealed)

Sec. . Section 43531 of the Water Code is repealed.

~~43531. In condemnation proceedings the board shall proceed in the name of the district under the provisions of Section 14 of Article I of the Constitution of this State, and Title 7, Part 3 of the Code of Civil Procedure, except as otherwise provided in this article.~~

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Comment. Section 43531 is unnecessary. See Code Civ. Proc.

§ 1235.010.



Water Code § 43532 (repealed)

Sec. . . Section 43532 of the Water Code is repealed.

~~43532. The board shall not commence any proceedings in eminent domain unless it first adopts a resolution declaring that the public interest and necessity require acquisition, construction or completion of the improvement for which the property or interest in property is required, or will be required, and that the property or interest described in the resolution is necessary for the improvement; provided, when the board adopts such resolution by two-thirds (2/3) of all its members, the resolution shall be conclusive evidence of all of the following:~~

- ~~(a) The public necessity for the proposed improvement;~~
- ~~(b) That the property or interest is necessary for the proposed public improvement; and~~
- ~~(c) That the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

~~The resolution provided for in this section, however, shall not constitute conclusive evidence of the matters specified in subdivisions (a), (b) and (c) in the case of taking property located within a county in which the district is located but outside of the boundaries of the district, unless the board of supervisors of the county in which such property is situated declares to the contrary.~~

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Comment. Section 43532 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

WATER CODE § 43532.5

added Stats. 1963, Ch. 239, § 3.5  
Staff draft July 1972

Water Code § 43532.5 (amended)

Sec. . . Section 43532.5 of the Water Code is amended to read:

43532.5. Notwithstanding any other provision in this article, the board shall not commence any proceedings in eminent domain with respect to property located outside of a county in which the district is located unless the board of supervisors of the county in which such property is situated gives its approval to such proceedings. ~~In the event that the board of supervisors gives its approval, a resolution adopted by the board pursuant to the provisions of Section 43532 shall be deemed conclusive evidence of the matters specified in subdivisions (a), (b) and (c) specified in Section 43532.~~

Comment. The last sentence of Section 43532.5 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 et seq.

Water Code § 43533

Tentatively approved July 1970

Water Code § 43533 (repealed)

Sec. . . Section 43533 of the Water Code is repealed.

~~43533. Whenever a part of a parcel of land is to be acquired pursuant to this article and any portion of the remainder is to be left in such shape or condition as to be of little value to its owner, the board may acquire and sell such portion or may exchange the same for other property needed to carry out the powers conferred on said board.~~

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Comment. Section 43533 is superseded by Section 1240.410 et seq.  
of the Code of Civil Procedure.

WATER REPLENISHMENT DISTRICT

Water Code § 60230 (amended)

Sec. . Section 60230 of the Water Code is amended to read:

60230. For the purposes of replenishing the ground water supplies within the district, a district shall have power:

- (1) To have perpetual succession.
- (2) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals.
- (3) To adopt a seal and alter it at pleasure.
- (4) To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the district, necessary or convenient to the full exercise of its power.
- (5) Within or outside of the district to construct, purchase, lease, or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery and facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin within said district, or to augment the common water supplies of said district.
- (6) For the common benefit of said district, to store water in underground water basins or reservoirs within or outside of said district, to appropriate and acquire water and water rights within or outside of said district, to import water into said district, and to conserve water within or outside of said district.

(7) To carry out the purposes of this act, to commence, maintain, intervene in, defend and compromise, in the name of said district, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to determine or adjudicate all or a portion of the rights to divert, extract, or use waters within the district, or within any segments thereof or subbasins therein, as between owners of or claimants to said rights, to prevent any interference with water or water rights used or useful to the lands, inhabitants, owners, operators, or producers within said district, or to prevent the diminution of the quantity or quality of the water supply of said district, or to prevent unlawful exportation of water from said district.

(8) ~~To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the district or any portion thereof with replenish-~~

to acquire

ment water, except (a) water and water rights already devoted to beneficial use, and (b) property (other than water and water rights) already appropriated to public use unless the taking be for a more necessary public use than that to which the property is already appropriated; provided, the district in exercising such power shall in addition to the damage for taking, injuring, or destruction of property also pay the cost of removal, reconstruction or relocation of any structure, including, but not limited to, railways, mains, pipes, conduits, wires, cables, towers, or poles of any public utility which is required to be removed to a new location. No use by a district of property owned, at the time the action to condemn is brought, by an existing agency having powers to provide for the replenishment of ground waters, shall constitute a more necessary public use than the use to which the property is already appropriated. ~~In proceedings relative to the exercise of such right, the district shall have all of the rights, powers and privileges of a city.~~

A district shall not exercise the right of eminent domain ~~under this subdivision for the condemnation of property outside the boundaries of the principal county in which the district is situated unless it first obtains the consent thereto of the board of supervisors of the county in which such property is located.~~

to acquire

(9) To act jointly with or co-operate with the United States or any agency thereof, and, under the applicable laws of this State, co-operate and act jointly with the State of California, or any county or agency thereof, or any political subdivision or district therein, including flood control districts, public and private corporations, and any person, to the end that the purposes and activities of this district may be fully and economically performed.

(10) To cause assessments and/or charges to be levied as hereinafter provided to accomplish the purposes of this act and to maintain such reserve funds for the future purchase of water for replenishment purposes as are hereinafter authorized to be levied.

(11) To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

(12) To carry on technical and other investigations of all kinds, necessary to carry out the provisions of this act, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

(13) To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof; also to issue warrants to pay the

WATER CODE § 60230

amended Stats. 1961, Ch. 585, § 4  
Staff draft July 1972

formation expenses of the district, which warrants may bear interest at a rate not exceeding 6 percent a year from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings, but shall not include the expenses of holding and conducting the formation election.

(14) To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the district, including its formation expenses and any warrants issued therefor.

(15) To fix the rates at which water shall be sold for replenishment purposes, and to establish different rates for different classes of service or conditions of service, provided the rates shall be uniform for like classes and conditions of service.

(16) To fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end a district may become a party to such contract and pay from district funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the district are directly or indirectly benefited by the resulting replenishment.

Comment. Section 60230 is amended to delete portions made unnecessary by Section 1235.010 of the Code of Civil Procedure.

MUNICIPAL WATER DISTRICT

Water Code § 71693 (amended)

Sec. . Section 71693 of the Water Code is amended to read:

71693. A district may exercise the right of eminent domain and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to supply the district or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person. In proceedings relative to the exercise of such right, the district shall have all of the rights, powers, and privileges of a city; provided, the district, in exercising such power, shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be removed to a new location.

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Comments. Section 71693 is amended to delete provisions made unnecessary by the enactment of general provisions in the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use). See especially Code Civ. Proc. § 1240.650 (use by public entity more necessary than use by other persons).

WATER CODE § 71694

amended Stats. 1971, Ch. 618, § 1  
Staff draft July 1972

Water Code § 71694 (amended)

Sec. . Section 71694 of the Water Code is amended to read:

~~71694. A district may exercise the right of eminent domain and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any powers of the district. In proceedings relative to the exercise of such right, the district shall have all of the rights, powers, and privileges of a city; provided,~~  
The ~~the~~ district, in exercising such right, shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be removed to a new location.

to acquire

A district shall not exercise the right of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for any purpose, unless it first obtains the consent thereto of the board of supervisors of the county in which such property is located; provided, however, that a district may exercise the right of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for the acquisition of rights-of-way in any county in which territory of the district is located or in any county adjacent to such county without obtaining the consent of the board of supervisors thereof.

When a district proposes to exercise the power of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for the acquisition of rights-of-way in any county in which territory of the district is located or in any county adjacent to such county, it shall give written notice, at least two weeks prior to condemning the property, to the board of supervisors of the county in which the property is located. Such written notice shall contain a description of the property to be condemned.

Comment. Section 71694 is amended to delete portions

made unnecessary by the Eminent Domain Law. See Code Civ. Proc.



WATER CODE § 74553

Added Stats. 1965, Ch. 75, § 1  
Staff draft July 1972

WATER CONSERVATION DISTRICT

Water Code § 74553 (amended)

Sec. . . Section 74553 of the Water Code is amended to read:

74553. A district may exercise the right of eminent domain ~~and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to be used for dams, damsites, reservoirs, reservoir sites, canals, ditches and conduits, spreading basins, sinking wells or sinking basins, or otherwise necessary to accomplish the purposes of this division, or to operate or to make use of such works.~~

to acquire

Comment. The deleted portion of Section 74553 is unnecessary.

See Code Civ. Proc. § 1235.010.

WATER CODE § 74555

added Stats. 1965, Ch. 75, § 1.  
Staff draft July 1972

Water Code § 74555 (repealed)

Sec. . . Section 74555 of the Water Code is repealed.

~~74555. Whenever real property which is devoted to or held for some other public or quasi-public use is required by a district for any purpose authorized by this division, the district may acquire by condemnation or agreement real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

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Comment. Section 74555 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 (substitute condemnation).

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Monterey Peninsula Airport District Act, § 3 (Stats. 1941, Ch. 52)(amended)

Sec. . Section 3 of the Monterey Peninsula Airport District Act (Chapter 52 of the Statutes of 1941) is amended to read:

Sec. 3. Corporate Powers. Said Monterey Peninsula Airport District is hereby declared to be, and established as, a body corporate and politic, and, in addition to other powers herein granted, shall have and is hereby granted the following powers, namely:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of, real or personal property of every kind within or without the district necessary to the full exercise of its power.
5. To acquire or contract to acquire lands, rights of way, easements, privileges and property of every kind, and construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve, any works or improvements acquired by it as herein authorized.
6. To ~~have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to the same use by any~~



Monterey Peninsula Airport District Act,  
§ 3 (Stats. 1941, Ch. 52)

~~district, or other public corporation or agency, or otherwise,  
and to condemn any existing works or improvements in said  
district now used for airport purposes.~~

7. To incur indebtedness, and to issue bonds in the manner herein provided.

7a. Borrowing Money From Federal Agencies, Etc. In addition to the powers given in the next preceding subsection, to borrow money from the United States of America, or any agency or department thereof, or from any person, or from any corporation organized under the laws of this State, or elsewhere, for the acquisition of lands and improvement thereof for airport district purposes authorized under this act, and to repay the same in annual installments over a period of not to exceed twenty (20) years, with interest at a rate not to exceed five per cent (5%) per annum, payable semiannually; and, without the necessity of an election, when authorized so to do by resolution of the board of directors of said district, and as evidences of such indebtedness, said district is hereby authorized to execute and deliver a note, or a series of notes or bonds, or other evidences of indebtedness, signed by the chairman of said board of directors, and the secretary thereof, which notes, bonds or other evidences of indebtedness, shall be negotiable instruments if so declared in said resolution providing for their issuance, and said notes, bonds or other evidences of indebtedness may have interest coupons attached to evidence interest payments, signed by the facsimile signature of the chairman of said board. All applications for such loans shall specify the particular airport district work or project or projects for which the funds will be expended, and when received, the money shall be deposited in a special fund, and expended for those purposes only which are described and referred to in the application, or applications. If a surplus remains after the completion of said work, said surplus shall be applied to the payment of the note, notes, bonds, or other evidences of indebtedness executed, as aforesaid, for the loan, including interest coupons. The board of supervisors, on demand of the board of directors of the district, shall annually levy a tax upon the taxable property therein sufficient

Monterey Peninsula Airport District Act,  
§ 3 (Stats. 1941, Ch. 52)

to pay the interest and installments of principal, as the same shall become due and payable, under any loan made pursuant to the authority of this section, and to create and maintain a reserve fund to assure the prompt payment thereof, as may be provided by resolution of said board of supervisors; provided, however, that the amount of taxes levied in any fiscal year, pursuant to the provisions of this subsection, shall pro tanto, reduce to the extent of such special taxes the authority of said board of directors to demand, and of the board of supervisors, during any such year, to levy taxes under Sections 19 and 23 of this act, but this proviso shall not be a limitation upon the power and duty to levy and collect taxes under this subsection.

Limitation on Amount Borrowed. Notwithstanding anything in this subsection to the contrary, the total amount which said district may borrow under the authority of any and all the provisions of this subsection is limited to and shall not exceed in the aggregate two hundred fifty thousand dollars (\$250,000).

7b. Such Bonds as Legal Investments. Such bonds or notes, when declared negotiable instruments, as in Subsection 7a hereinabove provided, shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, trust companies, and for the State Department of Finance, and State school funds, and whenever any money or funds may by law, now in effect or hereafter enacted, be invested in bonds of cities, cities and counties, counties, or school districts, in the State of California, such money or funds may be invested in the said negotiable bonds or notes of said Monterey Peninsula Airport District; provided, however, no bank shall invest or loan more than 5 per centum of its assets on any one such bond or note issue.

8. Taxes. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner herein provided.

9. Exercise of Powers—Contracts. To make contracts, and to employ persons and labor, and to do all acts necessary for the full exercise of all powers vested in said district, or in any of the officers thereof, by this act.

Monterey Peninsula Airport District Act,  
§ 3 (Stats. 1941, Ch. 52)

10. Disposal of Property. To lease, sell or dispose of any property (or any interest therein) acquired in fee, or otherwise, whenever in the judgment of said board of directors said property, or any interest therein or part thereof, is no longer required for the purposes of said district, or may be leased for any purpose without interfering with the use of the same for the purposes of said district, and to pay any compensation received therefor into the general fund of said district and use the same for the purposes of this act.

11. Operation and Concession Agreements. To make contracts for the operation, or operation maintenance, of any airport of said district, or for any concession thereupon necessary or convenient thereto.

12. Police Powers of District. To adopt ordinances and resolutions and make regulations for the protection of the public peace, health, or safety, in or upon any airport of the district, or in or upon any approach thereto, owned or controlled by the district and to prescribe penalties for the violation thereof; provided, that the police powers of said district, hereby granted, shall be limited strictly to the provisions of this subsection.

Violation of any such ordinance, resolution or regulation shall constitute a misdemeanor.

13. General Powers. To possess and exercise all powers necessary or appropriate to a public airport district which are not prohibited by the Constitution, including all powers granted by, or which may be hereafter granted by, any general law of the State to any public airport district therein, and all powers incidental to, and necessary or convenient in connection with, the exercise of the powers generally or specifically granted to the district by the provisions of this act.

Comment. Subdivision 6 of Section 3 is amended to delete unnecessary language and to conform to the provisions of the Eminent Domain Law relating to more necessary public use. See Code Civ. Proc. §§ 1235.010 (procedure), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. § 1240.510 (compatible use).

6.1

Drainage District Act of 1885, § 19  
(Stats. 1885, Ch. 158)

Drainage District Act of 1885, § 19 (Stats. 1885, Ch. 158)(repealed)

Sec. . Section 19 of the Drainage District Act of 1885.  
(Chapter 158 of the Statutes of 1885) is repealed.

~~Sec. 19. The provisions of title seven, part three, of the  
Code of Civil Procedure, are applicable to, and condemnation here-  
in provided for must be made thereunder.~~

Comment. Section 19 is unnecessary. See Code Civ. Proc. §

1235.010.

Drainage District Act of 1903, § 14 (Stats. 1903, Ch. 238)(amended)

Sec. . Section 14 of the Drainage District Act  
of 1903 (Chapter 238 of the Statutes of 1903) is amended  
to read:

SEC. 14. The board shall have the power and it shall be their  
duty, to manage and conduct the business and affairs of the  
district; make and execute all necessary contracts; to adopt a  
seal for the district to be used in the attestation of proper docu-  
ments; provide for the payment, from the proper fund, of all  
the debts and just claims against the district; employ and  
appoint when necessary, engineers to survey, plan, locate, and  
estimate the cost of the works necessary for drainage and the  
land needed for right of way, including drains, canals, sluices,  
water-gates, embankments and material for construction, and  
to construct, maintain, and keep in repair all works necessary  
for the purpose of drainage. The board and its agents and  
~~employees shall have the right to enter upon any land to make~~  
surveys, and may locate the necessary drainage works and the  
line for any canals, sluices, water-gates and embankments, and  
~~the necessary branches for the same, on any lands which may~~  
~~be deemed best for such location.~~ Said board shall also have the  
right to acquire, hold and possess either by donation, purchase  
or condemnation, any ~~land or other~~ property, necessary for the  
construction, use, maintenance, repair, and improvement of any  
works required for the purpose of drainage as provided herein.  
The board may establish equitable by-laws, rules and regula-  
tions necessary or proper for carrying on the business herein  
contemplated, and generally may perform all such acts as shall  
be necessary to fully carry out the purposes of this act.

ALL  
IN  
STRIKEOUT

Comment. The deleted portions of Section 14 are superseded  
by provisions of the Eminent Domain Law.

See Code Civ. Proc. §§ 1235.010 (uniform procedure),  
1240.810 (preliminary location), 1240.030 (requirement of proper  
location), 1230.070 ("property" defined), 1240.040 (right to  
acquire any interest or right in property).



6.2

Drainage District Act of 1903,  
§ 16 (Stats. 1903, Ch. 238)

Drainage District Act of 1903, § 16 (Stats. 1903, Ch. 238)(repealed)

Sec. . Section 16 of the Drainage District Act of 1903  
(Chapter 238 of the Statutes of 1903) is repealed.

~~SEC. 16. In case of condemnation proceedings, the board shall proceed, in the name of the district, under the provisions of title seven, part three, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose, and it is hereby declared that the use of the property which may be condemned, taken, or appropriated under the provisions of this act, is a public use, subject to regulation and control of the state in the manner prescribed by law.~~

ALL  
IN  
STRIKEOUT

Comment. Section 16 is unnecessary. See Code Civ. Proc.  
§§ 1235.010 (uniform procedure), 1240.010 (declaration of public  
use unnecessary).

6.3

Knights Landing Ridge Drainage  
District Act, § 5 (Stats. 1913,  
Ch. 99)

Knights Landing Ridge Drainage District Act, § 5 (Stats. 1913, Ch. 99)  
(amended)

Sec. . Section 5 of the Knights Landing Ridge Drainage District  
Act (Chapter 99 of the Statutes of 1913) is amended to read:

Sec. 5. The board of drainage commissioners shall have power to adopt by-laws not in conflict with general laws; to appoint an executive committee with such powers as shall not be in conflict with general laws; to employ engineers and others to survey, plan, locate and estimate the cost of the works necessary for the drainage of the lands of the district; to thereafter, at any time, in its discretion, modify or change such original plan or plans, or adopt new, supplemental or additional plan or plans, when in its judgment the same shall have become necessary; *provided*, that said board of drainage commissioners must report to the reclamation board such original plan or plans of the work and every new, supplemental or additional plan, if any, together with the estimates of the cost of the works necessary for the drainage of the lands of the district, in pursuance of any such plan or plans, together with an estimate of incidental expenses; to acquire ~~from private persons, reclamation, swamp land, levee or other public agencies or protection districts or corporations, all rights of way, easements, property and material, whether outside or~~ <sup>any</sup> within the limits of the district, necessary or requisite for levees, canals and other drainage works, by donation, contract, purchase or by proceedings under the provisions of title VIII part 2 of the Code of Civil Procedure of the State of California for condemnation thereof in the name of the district or any other provision of law in relation to the right of eminent domain; to sue and be sued in the name of said drainage district and to do all other acts or things necessary or requisite for the full exercise of its powers or necessary for the promotion of the drainage of lands within said drainage district. It shall be the duty of said board of drainage commissioners to take such steps as may be necessary to open a cut through Knight's Landing Ridge in Yolo county, and to construct

6.3

Knights Landing Ridge Drainage  
District Act, § 5 (Stats. 1913,  
Ch. 99)

canal leading from said cut for the purpose of draining and disposing of the waters of Colusa basin by carrying the same to the head of the proposed Yolo by-pass in section eight, township 10 north, range 3 east, M. D. B. and M., in said county of Yolo, as defined by and in accordance with the general plan of the California debris commission, transmitted to the speaker of the house of representatives of the United States by the secretary of war, on the 27th day of June, 1911, with such modifications or amendments as may hereafter be adopted by said reclamation board, and in accordance with such plan as shall be approved by said reclamation board, or made in accordance with law and in the manner hereinafter provided. The said canal shall be of such size and the embankments thereof of sufficient strength and dimensions as to prevent the waters therein from overflowing its banks. No water shall be permitted to flow through any cut or excavation in said ridge provided to be made in this act until the canal to be constructed as hereinbefore provided shall have been completed so as to convey the waters flowing or to flow through said cut to the head of said proposed Yolo by-pass in said section eight, in a manner satisfactory to the said reclamation board. Said reclamation board shall have power to direct the method of the construction of said cut, canal and levees. Said drainage commissioners shall also have power to construct such gates in said canal or ridge, or in or near Sycamore slough where the same enters the Sacramento river above said ridge, as may be necessary to carry out such plan. If required by the said reclamation board, such gates must be constructed before such ridge is cut or excavated.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law.)

See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to acquire any interest or right in property). See also Code Civ. Proc. §§ 1230.070 ("property" defined), 1235.020 (acquisition by means other than condemnation).

6.4

Drainage District Act of 1919,  
§ 22 (Stats. 1919, Ch. 354)

Drainage District Act of 1919, § 22 (Stats. 1919, Ch. 354)(amended)

Sec. . . Section 22 of the Drainage District Act of 1919  
(Chapter 354 of the Statutes of 1919) is amended to read:

Sec. 22. It shall be the duty of the engineer of construction where possible, to obtain options on rights of way necessary to the carrying out of the plans and specifications and to submit the same to the board of supervisors for ratification. Whenever the board of supervisors of any county in which a district is formed under this act can not purchase at a reasonable price or procure ~~the right of way, or any lands~~ found by them to be necessary in order to carry out the plans and specifications for the proposed drainage of any such district, or procure the consent of all parties interested to join or connect with any existing ditches or outlets, the board may proceed to condemn the same ~~under the provisions of title seven, part three of the Code of Civil Procedure.~~

any property

The costs of such ~~rights of way~~, or such condemnation proceedings shall be paid by the county, but the amount thereof shall thereupon become a charge upon the contractor as provided in section eighteen of this act.

property


Comment. The deleted portions of Section 22 are superseded by provisions of the Eminent Domain Law.

See Code Civ. Proc. §§ 1235.010 (uniform procedure),  
1240.040 (right to acquire any interest or right in property).  
See also Code Civ. Proc. §§ 1230.070 ("property" defined),  
1325.020 (acquisition by means other than condemnation).

Flood Control and Water Conservation  
 District Act (Stats. 1931, Ch. 641),  
 § 7.5 (added Stats. 1949, Ch. 144, § 1)

Flood Control and Water Conservation District Act (Stats. 1931, Ch. 641),  
 § 7.5 (added Stats. 1949, Ch. 144, § 1) (amended)

Sec. . . Section 7.5 of the Flood Control and Water  
 Conservation District Act (Chapter 641 of the Statutes of  
 1931) is amended to read:

Sec. 7.5. The flood control and conservation district shall  
 have the power to condemn ~~land or other~~ property for the pur-  
 pose of constructing and protecting dams, protection barriers  
 and other improvements and works necessary to carry out the  
 project of flood control and flood water conservation in the man-  
~~ner provided by law for the condemnation of private property~~   
~~for public use.~~

Comment. The deleted portions of Section 7.5 are superseded  
 by provisions of the Eminent Domain Law.

See Code Civ. Proc. §§ 1235.010 (uniform procedure),  
 1240.040 (right to acquire any interest or right in property).  
 See also Code Civ. Proc. § 1230.070 ("property" defined).

## 8.3

Alameda County Flood Control and Water Conservation District Act, § 5 (Stats. 1949, Ch. 1275) as amended Stats. 1963, Ch. 2029, § 4

Alameda County Flood Control and Water Conservation District Act, § 5  
(Stats. 1949, Ch. 1275)(amended)

Sec. . Section 5 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.

4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost

Alameda County Flood Control and Water  
Conservation District Act, § 5 (Stats.  
1949, Ch. 1275) as amended Stats. 1963,  
Ch. 2029, § 4

and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district: provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such

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powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To co-operate, and to act in conjunction with or contribute funds to, the United States or the State of California or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Alameda, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary



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to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with or necessary to comply with an act of authorization of the United States; or any state, county, district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Alameda County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Alameda County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

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13. To exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared, that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.~~

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~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.~~

8.3

Alameda County Flood Control and Water Conservation District Act, § 5 (Stats. 1949, Ch. 1275) as amended Stats. 1963, Ch. 2029, § 4

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

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Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Alameda County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

No action in eminent domain to acquire water rights outside the boundaries of the County of Alameda shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

14. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control, drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic benches and tables, bathhouses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.

15. The powers hereinabove granted shall include the design, construction, or maintenance of any levees, seawalls,

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groins, breakwaters, jetties, outlets, channels, harbors, basins, or other work pertaining thereto, in such manner as to render them adaptable and useful to shoreline, beach, harbor, navigation, park or marina development or use, and to do such work in co-operation with any other public or quasi-public agency or corporation concerned with such development or use.

16. To establish and maintain building setback lines along the banks of any river, creek, stream or other waterway, in any case where the board determines that such setback line is necessary for any of the following reasons:

- (a) To prevent impediment of the natural flow of water;
- (b) To protect life and property;
- (c) To prevent damage from flooding, bank caving, or erosion;
- (d) To prevent the pollution of waters.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined). The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the power of eminent domain is limited to the types of property enumerated in those subdivisions. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.3

Alameda County Flood Control and  
Water Conservation District Act,  
(Stats. 1949, Ch. 1275), § 28.1  
(added Stats. 1957, Ch. 987, § 1)

Alameda County Flood Control and Water Conservation District Act (Stats. 1949,  
Ch. 1275), § 28.1 (added Stats. 1957, Ch. 987, § 1) (repealed)

Sec. . Section 28.1 of the Alameda County Flood Control and  
Water Conservation District Act (Chapter 1275 of the Statutes  
of 1949) is repealed.

~~Sec. 28.1. Whenever land is to be condemned by the district  
for any of the uses and purposes permitted by law, and the  
taking of a part of a parcel of land would leave the remainder  
thereof in such size or shape or condition as to require the  
district to pay in compensation for the taking of such part an  
amount equal to the fair and reasonable value of the whole  
parcel, the resolution of the board may provide for the taking  
of the whole of such parcel and upon the adoption of any such  
resolution it shall be deemed necessary for the public use,  
benefit, safety, economy, and general welfare that the district  
acquire the whole of such parcel.~~

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Comment. Section 28.1 is superseded by the more general  
provisions of the Eminent Domain Law. See Code Civ. Proc. §  
1240.410 et seq.

Alameda County Flood Control and Water Conservation District Act, § 28 (Stats. 1949, Ch. 1275)

Alameda County Flood Control and Water Conservation District Act, § 28 (Stats. 1949, Ch. 1275) (repealed)

Sec. . . Section 28 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949) is repealed.

~~Sec. 28. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~  
~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~  
~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.~~

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Comment. Section 28 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.4

American River Flood Control District Act, § 2 (Stats. 1927, Ch. 808) as amended Stats. 1931, Ch. 491, § 1

American River Flood Control District Act, § 2 (Stats. 1927, Ch. 808)  
(amended)

Sec. . Section 2 of the American River Flood Control District Act (Chapter 808 of the Statutes of 1927) is amended to read:

Sec. 2. The object and purposes of this act are to provide, to the extent that the board of trustees of said district may deem expedient and/or economical, for the control and disposition of the storm and flood waters of said district and to that end the American river flood control district is hereby declared to be a body corporate and politic and as such shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and/or contract to sell, lease, and/or dispose of real, personal, and/or mixed property of every kind within or without the district necessary, expedient or advantageous to the full exercise and economic enjoyment of its purposes.
- (e) To acquire or contract to acquire lands, rights of way, easements, privileges or property of every kind within or without the district, and construct, maintain and operate any and all works and improvements within or without the district necessary, convenient or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.
- (f) To ~~have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the state, any political subdivision or district thereof.~~

to take any property, either within or without the district, necessary to carry out any of the objects or purposes of this act.

(g) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains, poles, posts, wires, lamps, power plants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and/or complete the same.

American River Flood Control District Act, § 2 (Stats. 1927, Ch. 808) as amended Stats. 1931, Ch. 491, § 1

(h) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(i) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(j) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and collector and define their powers and duties, and fix and determine the amount of bond required of each appointee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board of trustees of said district. Said board shall have the power to combine any two or more offices in its discretion.

(k) To establish and fix the boundaries of zones in said district as in this act hereinafter provided; to make transfers of money from the general fund of said district to any special fund and to create and administer such special funds as in their discretion may seem advisable; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and, to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(l) To make and enter into contracts with the United States of America, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States of America, and/or any person, firm, association or corporation, jointly and/or severally, for the acquisition of property or rights and/or the construction, maintenance and/or operation in whole or in part of any and/or all works and/or improvements provided in this act.

(m) To lease and/or rent to or from any of the parties named in subdivision (l) of this section any property or rights necessary, in the opinion of the board of trustees of said district, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under such terms and conditions as may be agreed upon between the parties.

(n) To receive and accept any and all contributions in labor, materials or money from any of the parties named in subdivision (l) of this section, to be applied to the work or improvement herein provided for.

Comment. The deleted portion of subdivision (f) of Section

2 is superseded by Section 1235.010 of the Code of Civil Procedure. Consistent with subdivisions (d) and (e), subdivision (f) authorizes extraterritorial condemnation.



American River Flood Control District Act, § 23 (Stats. 1927, Ch. 808)

American River Flood Control District Act, § 23 (Stats. 1927, Ch. 808)  
(repealed)

Sec. . . . Section 23 of the American River Flood Control District Act (Chapter 808 of the Statutes of 1927) is repealed.

~~Sec. 23. In case of condemnation proceedings, the board of trustees shall proceed in the name of the district under the provisions of title VII, part III, of the Code of Civil Procedure of the State of California, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights of way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and said board of trustees of said district is hereby granted the same powers and rights with respect to the taking of property for the public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district.~~

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Comment. Section 23 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is public use unnecessary).

8.5

Contra Costa County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1617) as amended  
Stats. 1963, Ch. 2029, § 5

Contra Costa County Flood Control and Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1617)(amended)

Sec. . Section 5 of the Contra Costa County Flood Control and  
Water Conservation District Act (Chapter 1617 of the Statutes of 1951)  
is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights of way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and

Contra Costa County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1617) as amended  
Stats. 1963, Ch. 2029, § 5

to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds

Contra Costa County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1617) as amended  
Stats. 1963, Ch. 2029, § 5

within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To co-operate and to act in conjunction with the State of California or any of its engineers, officers, boards, commissions, departments, or agencies, the United States of America, or any federal department or agency, or with any public or private corporation, or with the County of Contra Costa or adjacent counties, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

Contra Costa County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1617) as amended  
Stats. 1963, Ch. 2029, § 5

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to

Contra Costa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1617) as amended Stats. 1963, Ch. 2029, § 5

store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district~~ in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, ~~and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use~~

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Contra Costa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1617) as amended Stats. 1963, Ch. 2029, § 5

No

~~than that to which it has already been appropriated, and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters, or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.~~

ALL IN STRIKEOUT

Nothing

~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.~~

ALL IN STRIKEOUT

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Contra Costa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1617) as amended Stats. 1963, Ch. 2029, § 5

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Contra Costa County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

14. To make contracts with the County of Contra Costa, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of Contra Costa.

15. To construct, accept, maintain, repair, or otherwise improve structures or channels for any purpose, in whole or in part, related to the purposes and powers of the district, or perform any act necessary or incidental to the complete exercise and effect of any of its powers.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the power of eminent domain is limited to the types of property enumerated in those subdivisions. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.



Contra Costa County Flood Control and Water Conservation District Act, § 29 (Stats. 1951, Ch. 1617)

Contra Costa County Flood Control and Water Conservation District Act, § 29 (Stats. 1951, Ch. 1617)(repealed)

Sec. . Section 29 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617 of the Statutes of 1951) is repealed.

~~Sec. 29. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 13 of the Public Utilities Act as amended by Chapter 856 of the Statutes of 1932.~~

ALL  
IN  
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Comment. Section 29 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.1

Del Norte County Flood Control  
District Act, § 6 (Stats. 1955,  
Ch. 166) as amended Stats. 1963,  
Ch. 2029, § 7

Del Norte County Flood Control District Act, § 6 (Stats. 1955, Ch. 166)  
(amended)

Sec. . Section 6 of the Del Norte County Flood Control  
District Act (Chapter 166 of the Statutes of 1955) is amended  
to read:

Sec. 6. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation,~~ construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter, and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or

8.6

Del Norte County Flood Control  
District Act, § 6 (Stats. 1955,  
Ch. 166) as amended Stats. 1963,  
Ch. 2029, § 7

without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in or flowing into the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses and watersheds outside of the district of streams flowing into the district.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Del Norte, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or for the purpose of controlling or abating mosquitoes within said district or for other purposes of sanitation therein, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and

8.6

Del Norte County Flood Control District Act, § 6 (Stats. 1955, Ch. 166) as amended Stats. 1963, Ch. 2029, § 7

~~without said district relating to watercourses of streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, as its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, and may survey and locate the same, but such must be located in the manner which will be most compatible with the greatest public good and the least private injury. The district, as its agents in charge of such public use, may enter upon such lands and make examinations, surveys, and maps thereof.~~

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the State, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district or any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Del Norte County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or indi-

For such purposes.

The district, through its authorized representatives.

through its authorized representatives

Del Norte County Flood Control District Act, § 6 (Stats. 1955, Ch. 166) as amended Stats. 1963, Ch. 2029, § 7

vidual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Del Norte County Flood Control District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to co-operate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

Comment. Subdivision 8 of Section 6 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvement).

The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under Section 7 is limited to the types of property enumerated in Section 6. Under Section 7, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in Section 8 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Del Norte County Flood Control District Act, § 7 (Stats. 1955, Ch. 166)

Del Norte County Flood Control District Act, § 7 (Stats. 1955, Ch. 166) (amended)

Sec. . . Section 7 of the Del Norte County Flood Control District Act (Chapter 166 of the Statutes of 1955) is amended to read:

SEC. 7. ~~The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act, or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that~~

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Nothing

Del Norte County Flood Control  
 District Act, § 7 (Stats. 1955,  
 Ch. 166)

~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.~~

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged ~~for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

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Comment. The deleted portions of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

Del Norte County Flood Control  
District Act, § 30 (Stats. 1955,  
Ch. 166)

Del Norte County Flood Control District Act, § 30 (Stats. 1955, Ch. 166)  
(repealed)

Sec. . Section 30 of the Del Norte County Flood Control  
District Act (Chapter 166 of the Statutes of 1955) is repealed.

~~Sec. 30. If by any agreement or judgment in condemnation  
the district shall be required to relocate any street, road, high-  
way, railroad, canal or other property subject or devoted to  
public use, the board shall have power to acquire in the name  
of the district, by agreement or condemnation, all rights of  
way and other property necessary or proper for compliance  
with said agreement or said judgment of condemnation and  
thereafter to make such conveyance of such relocated street,  
road, highway, railroad, canal, or other property as may be  
proper to comply with said agreement or judgment. It shall be  
provided in all agreements for exchange of property and judg-  
ments requiring relocation of other public uses as specified in  
this section and in Section 7 of this act, that in making such  
exchanges it shall be specifically provided that such property  
so condemned and exchanged be limited to public use by the  
party with whom such exchange is made.~~

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Comment. Section 30 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



Fresno Metropolitan Flood Control Act, § 8 (Stats. 1955, Ch: 503) as amended Stats. 1969, Ch. 888, §.1

Fresno Metropolitan Flood Control Act, § 8 (Stats. 1955, Ch. 503)(amended)

Sec. . Section 8 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955) is amended to read:

Sec. 8. Said district shall be and constitute a public corporation, and as such shall have the powers in this act enumerated, all powers necessarily or reasonably implied therefrom, and all powers necessarily or reasonably implied from the creation and existence of such district. Such powers shall include the following:

- 1. To have perpetual succession.
- 2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- 3. To have and exercise the power of eminent domain, either within or without the district, to take any property necessary to carry out any of the objects or purposes of this act .

4. To take by grant, purchase, gift, lease, devise or otherwise and to hold, use and enjoy real or personal property of every kind within or without the district necessary to or convenient for the full exercise of its powers.

5. To acquire lands, rights-of-way, easements, privileges and property of every kind and nature, to construct, maintain and operate any or all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements acquired by it as herein authorized, or any works or improvements owned or constructed by the City of Fresno, the County of Fresno, Fresno Irrigation District, or any other public agency, or any two or more thereof, and used in whole or in part for flood control or storm drain purposes.

6. To levy or cause to be levied as herein provided taxes upon the taxable real property in said district for the purpose of providing funds for such district and for paying any obligations thereof.

7. To incur indebtedness and to issue notes, bonds or other evidence of such indebtedness in the manner herein provided.

8. To make contracts and to employ appraisers, consultants, attorneys, engineers and other technical advisers and all employees necessary or convenient for the administration of said district, the maintenance and operation of any works under its jurisdiction, and the planning of any works or construction under this act.

Fresno Metropolitan Flood Control  
Act, § 8 (Stats. 1955, Ch. 503)  
as amended Stats. 1969, Ch. 888,  
§ 1

9. To contract with the City of Fresno, County of Fresno, Fresno Irrigation District, or any other public agency or any public utility for the use of any rights-of-way, easements, lands, works or property owned by any thereof which are necessary, convenient or useful to the district or necessary or convenient for the construction or operation of any flood control works or storm drain works proposed to be financed by the flood control district; to contract with any of such public agencies for the acquisition or construction by such public agency of any flood control or storm drain works financed by the district, or the maintenance and operation thereof, or for any or all of the foregoing, and such flood control district may carry out any or all of its powers either separately or in conjunction with one or more of said public agencies, and may make any contract or lease or accept any conveyance of property necessary or convenient for the accomplishment of the purposes of said flood control district. The powers granted by this subparagraph shall be liberally construed.

10. To develop property for recreational uses and purposes in connection with the use thereof for control or conservation of waters or to lease to or contract with individuals or public or private agencies for use or for development and use thereof for such recreational purposes.

11. To lease, let, sell, or dispose of real and personal property or any interest therein or part thereof whenever, in the judgment of two-thirds of the board of directors, such real or personal property or interest therein or part thereof is no longer required for the purposes of the district or may be leased or let for any purpose without interfering with the use thereof for the purposes of the district, and to pay any compensation received therefor into the general fund of the district and use the same for the purposes of this act.

Comment. Consistent with subdivisions 4 and 5, subdivision 3 of Section 8 authorizes extraterritorial condemnation.

Fresno Metropolitan Flood Control Act, § 26 (Stats. 1955, Ch. 503) as amended Stats. 1969, Ch. 888, § 2

Fresno Metropolitan Flood Control Act, § 26 (Stats. 1955, Ch. 503)(amended)

Sec. . Section 26 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955) is amended to read:

Sec. 26. ~~The power of eminent domain vested in the board of directors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary to carry out the purposes of this act. Such resolution shall be prima facie evidence (a) of the public necessity of the proposed public improvement, (b) that the fee simple or lesser estate to be taken is necessary therefor, and (c) that such proposed public improvement is placed or located in the manner which will be most compatible with the greatest public good and the least private injury.~~ The district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location.

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Comment. The deleted portion of Section 26 is superseded by the provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.040 (right to acquire any interest or right in property), 1240.110 et seq. (resolution of necessity).

Humboldt County Flood Control  
 District Act, § 6 (Stats. 1945,  
 Ch. 939) as amended Stats. 1963,  
 Ch. 2029, § 8

Humboldt County Flood Control District Act, § 6 (Stats. 1945, Ch. 939)  
(amended)

Sec. . Section 6 of the Humboldt County Flood Control  
 District Act (Chapter 939 of the Statutes of 1945) is amended  
 to read:

Sec. 6. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter, and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.

5. To furnish water for any of the purposes herein authorized and to construct all necessary facilities to distribute such water. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose of the district; to commence, maintain, intervene in, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful

Humboldt County Flood Control  
District Act, § 6 (Stats. 1945,  
Ch. 939) as amended Stats. 1963,  
Ch. 2029, § 8

use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in or flowing into the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses and watersheds outside of the district of streams flowing into the district.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Humboldt, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and

Humboldt County Flood Control District Act, § 6 (Stats. 1945, Ch. 939) as amended Stats. 1963, Ch. 2029, § 8

~~without said district relating to watercourses of streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access, to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, and may survey and locate the same, but such must be located in the manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use, may enter upon such lands and make examinations, surveys, and maps thereof.~~

For such purposes, the district

through its authorized representatives

The district, through its authorized representatives,

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the State, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Humboldt County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts

Humboldt County Flood Control  
District Act, § 6 (Stats. 1945,  
Ch. 939) as amended Stats. 1963,  
Ch. 2029, § 8

necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Humboldt County Flood Control District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to co-operate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided, including, but not limited to, the issuance of bonds on a district-wide or zone basis, the proceeds to be used for the works necessary to obtain, store, supply, and distribute water to the inhabitants of the district for any purposes herein authorized.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

Comment. The word "condemnation" is deleted from subdivisions 4 and 9 of Section 6 to avoid any implication that the broad grant of condemnation authority under Section 7 is limited to the types of property enumerated in Section 6. Under Section 7, any type of property or right or interest therein may be taken by eminent domain. See Code

Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in Section 6 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Subdivision 8 of Section 6 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvement).



8.8

Humboldt County Flood Control District Act, § 7 (Stats. 1945, Ch. 939)

Humboldt County Flood Control District Act, § 7 (Stats. 1945, Ch. 939)(amended)

Sec. . . Section 7 of the Humboldt County Flood Control District Act (Chapter 939 of the Statutes of 1945) is amended to read:

Sec. 7. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act, or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

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Humboldt County Flood Control  
District Act, § 7 (Stats. 1945,  
Ch. 939)

~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.~~

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Whenever real property which is devoted to or held for some other public or quasi public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.

Comment. The deleted portions of Section 7 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 ~~et seq.~~ (resolution of necessity), 1230.070 ("property" defined).

Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) as amended Stats. 1963, Ch. 2029, § 9

Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) (amended)

Sec. . Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, water and water rights, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To conserve all waters within said district, and to control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the water courses outside of the district of streams flowing into the district, and to develop waters within or without said district for domestic, irrigation, industrial and recreational uses, and to construct works therefor, including works for the storage and delivery of water; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such

Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) as amended Stats. 1963, Ch. 2029, § 9

powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

6. To co-operate and to act in conjunction with the federal government, the State of California, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Lake or adjacent counties, or with any other agencies, in the construction of any work for the storage or delivery of all waters within or without the district for domestic, irrigation, industrial and recreational uses and for the conservation of waters within said district, for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein.

7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to the beneficial use of waters within or without the district, including domestic, irrigation, industrial and recreational uses and to the conservation of water and to the control of floods both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district.

9. To incur indebtedness and to issue bonds in the manner herein provided.

Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) as amended Stats. 1963, Ch. 2029, § 9

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

12. To exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects~~

~~or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the~~

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district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new

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~~location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The~~

district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law.

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The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district ~~for any purpose authorized by this act, the district may~~

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Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) as amended Stats. 1963, Ch. 2029, § 9

~~condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

The district shall not condemn property outside the County of Lake unless the consent of the governing board of the county, in which the property to be condemned is located, has first been obtained.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Lake County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

13. To provide for the operation and maintenance of any works of any kind or channelways, which may be built or operated by the State of California or the federal government without cost to the district, for the control or disposition of flood and storm waters within the district whether such waters originate within or without the district.

14. To contract with the County of Lake, because of the interest of the County of Lake in the general welfare and preservation and promotion of land values in the county and in the maintenance, construction and improvement of public roads, bridges and other county property within any zone which may be damaged or destroyed by such flood and storm waters and which will be protected by proper control and disposition of such waters, for the participation by such county, on a percentage or other appropriate basis, in the amount or amounts that may be taxed or assessed from time to time against any lands in any zone by any taxing or assessing agency or authority, including the district, to provide funds for the operation and maintenance of any works of any kind or channelways which may be built, maintained or operated by the State of California or the federal government or the district for the benefit of such zone; and the County of Lake is hereby authorized to enter into any such contract with the Lake County Flood Control and Water Conservation District.

15. To levy assessments in any zone, on the basis of benefits as provided in Section 13.1 hereof, to raise funds for payment of expenses of operation and maintenance of works or channelways in any such zone and the cost of levying, calling and collecting such assessments.

Lake County Flood Control and  
Water Conservation District Act  
(Stats. 1951, Ch. 1544), § 5  
(added Stats. 1954, 1st Ex. Sess.,  
Ch. 62, § 8) as amended Stats.  
1963, Ch. 2029, § 9

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to acquire any interest or right in property), 1240.010 (declaration that use is public use unnecessary), 1240.310 et seq. (taking for exchange purposes), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1230.070 ("property" defined).

The word "condemnation" is deleted from subdivisions 4 and 8 to avoid any implication that the power of eminent domain is limited to the types of property enumerated in those subdivisions. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Lake County Flood Control and  
Water Conservation District Act  
(Stats. 1951, Ch. 1544), § 33  
(added Stats. 1954, 1st Ex. Sess.,  
Ch. 62, § 48)

Lake County Flood Control and Water Conservation District Act (Stats. 1951,  
Ch. 1544), § 33 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 48) (repealed)

Sec. . Section 33 of the Lake County Flood Control and  
Water Conservation District Act (Chapter 1544 of the Statutes of  
1951) is repealed.

~~Sec. 33. (a) If by any judgment in condemnation or agree-  
ment the district shall be required to relocate any street, road,  
highway, railroad, canal or other property subject or devoted to  
public use, the board shall have power to acquire in the name  
of the district, by agreement or condemnation, all rights of  
way and other property necessary or proper for compliance  
with said agreement or said judgment of condemnation and  
thereafter to make such conveyance of such relocated street,  
road, highway, railroad, canal, or other property as may be  
proper to comply with said agreement or judgment.~~

~~(b) In the event the district and any common carrier rail-  
road or other public utility fail to agree as to the character or  
location of new improvements or works sought to be performed  
by the district, the character and location of such new im-  
provements or works and any other controversy relating  
thereto shall be submitted to and determined by the Public  
Utilities Commission; and jurisdiction of such controversies is  
hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdic-  
tion of said commission may be instituted, maintained, and  
determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5,  
6, and 7 of subsection (c) of Section 43 of the Public Utilities  
Act as amended by Chapter 855 of the Statutes of 1960.~~

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Comment. Section 33 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)

Lassen-Modoc County Flood Control and Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127) (amended)

Sec. . Section 3 of the Lassen-Modoc County Flood Control and  
Water Conservation District Act (Chapter 2127 of the Statutes of 1959)  
is amended to read:

Sec. 3. The objects and purposes of this act are to provide, to the extent that the board may deem expedient or economical, for the control and disposition of the storm, flood, and other waters of said district and to that end the district is hereby created to be a body corporate and politic and as such shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and contract to sell, lease, or dispose of real, personal and mixed property of every kind within or without the district necessary, expedient or advantageous to the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, donation or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights-of-way, easements, privileges, material, and property of every kind within or without the district, to do all work and to acquire, construct, maintain and operate any and all works and improvements within or without the district, and to make, execute, carry out and enforce all contracts of every character, necessary, convenient, incidental, useful or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

Lassen-Modoc County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2127)

to take any

~~(f) To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof, except that such right shall be exercised only as against property located within the district. In condemnation proceedings, the district shall proceed under the provisions of Title 7 (commencing at Section 1927) of Part 3 of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district; provided, however, that no property shall be taken unless it is taken upon a finding of a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

necessary to carry out any of the objects or purposes of this act .

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or altering or otherwise changing existing works or structures shall be paid by the district; provided, however, that all costs of relocating or otherwise changing any portion of a state highway shall be paid for from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes.

Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)

(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, drains, tunnels, poles, posts, wires, lamps, power plants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payments.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and tax collector, and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish the same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface water and water rights, useful or necessary to make use of water for any of the purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, recreational and all other beneficial uses.

(r) To control flood and storm waters within the district and the flood and storm waters or streams outside the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of water in natural underground reservoirs and otherwise to

Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)

reduce the waste of water and to protect life and property from floods within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, on behalf of the landowners therein, or otherwise to assume the cost and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of the common benefit of any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions or proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare the rights in natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use, the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

(s) To co-operate and act in conjunction with the United States or with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the Counties of Lassen and Modoc, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

**Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)**

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Lassen-Modoc County Flood Control and Water Conservation District; to acquire by negotiation only the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water owned or controlled by the district or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit owned and controlled by the district; to enter into and do any acts necessary or proper

Lassen-Modoc County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2127)

for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual or any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Lassen-Modoc County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

(u) To co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purpose, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 (commencing at Section 23175) of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

(v) To construct, operate, and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of works for other beneficial uses and purposes, and to enter into contracts for the sale of such energy for a term not to exceed 50 years. Such energy may be marketed only at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy.

(w) Nothing herein contained shall be deemed to permit the district or its board of directors to acquire or interfere in existing water rights and water uses and facilities for distribution of the same on an involuntary basis, but nothing herein shall be deemed to prohibit negotiating and acquisition of existing rights, uses, and privileges in water by negotiation.

Comment. The deleted portions of Section 3 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is public use unnecessary), 1240.610 et seq. (more necessary public use), 1240.040 (right to acquire any interest or right in property). See also Code Civ. Proc. § 1230.070 ("property" defined).

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Los Angeles County Flood Control Act, § 2 (Stats. 1915, Ch. 755) as amended Stats. 1971, Ch. 803, § 1

Los Angeles County Flood Control Act, § 2 (Stats. 1915, Ch. 755)(amended)

Sec. . Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is amended to read:

Sec. 2. The objects and purposes of this act are to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district.

Said Los Angeles County Flood Control District is hereby declared to be a body corporate and politic, and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its power.
5. To acquire or contract to acquire lands, rights-of-way, easements, privileges and property of every kind, and construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements acquired by it as herein authorized. Construction or improvement of existing facilities may involve landscaping and other aesthetic treatment in order that the facility will be compatible with existing or planned development in the area of improvement.
6. To have and exercise the right of eminent domain, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and may condemn any existing works or improvements in said district now used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters.~~

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7. To incur indebtedness, and to issue bonds in the manner herein provided.
- 7a. In addition to the powers given in the next preceding subsection, to borrow money from the United States of America, any agency or department thereof, or from any nonprofit corporation, organized under the laws of this state, to which the Reconstruction Finance Corporation, a corporation organized and existing under and by virtue of an act of Congress, entitled "Reconstruction Finance Corporation



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Act," or other agency, or department, of the United States government, has authorized, or shall hereafter authorize, a loan to enable such nonprofit corporation to lend money to said Los Angeles County Flood Control District, for any flood control work authorized under this act, and to repay the same, in annual installments, over a period of not to exceed twenty (20) years, with interest at a rate of not to exceed four and one-fourth per centum (4¼%) per annum, payable semiannually, and, without the necessity of an election when authorized by resolution of the board of supervisors, as evidences of such indebtedness, said district is hereby authorized to execute and deliver a note, or a series of notes, or bonds, or other evidences of indebtedness, signed by the chairman of the board of supervisors of said district, which notes, bonds, or other evidences of indebtedness, shall be negotiable instruments if so declared in said resolution of the board of supervisors providing for their issuance, and said notes, bonds, or other evidences of indebtedness, may have interest coupons attached to evidence interest payments, signed by the facsimile signature of said chairman of said board. All applications for such loans shall specify the particular flood control work or projects for which the funds will be expended, and when received, the money shall be deposited in a special fund, and shall be expended for those purposes only which are described and referred to in the applications. If a surplus remains after the completion of said work, such surplus shall be applied to the payment of the note, notes, bonds, or other evidences of indebtedness, executed as aforesaid, for the loan including interest coupons. The board of supervisors shall annually, levy a tax upon the taxable real property of said district, clearly sufficient to pay the interest and installments of principal, as the same shall become due and payable, under any loan made pursuant to the authority of this section, and to create and maintain a reserve fund to assure the prompt payment thereof, as may be provided by said resolution of the board of supervisors; provided, however, that the amount of taxes levied in any year, pursuant to the provisions of this subsection, shall, pro tanto, reduce the authority of the board of supervisors, during any such year, to levy taxes under Section 14 of this act, but this proviso shall not be a limitation upon the power and duty to levy and collect taxes under this subsection.

Notwithstanding anything in this subsection 7a to the contrary, the total amount which said district may borrow under the authority of any or all of the provisions of this subsection is limited to and shall not exceed in the aggregate the sum of four million five hundred thousand dollars (\$4,500,000).

7b. The power granted in the next preceding subsection is hereby extended to authorize the issuance and sale of bonds or other evidences of indebtedness of said district to the County of Los Angeles and the purchase thereof by said county in accordance with "An act authorizing the investment and reinvestment and disposition of any surplus moneys in the treasury of any county, city and county, incorporated city or town or municipal utility district or flood control district," approved April 23, 1913, as amended; all subject to the provisions and limitations of the next preceding subsection relative to the disposition and use of funds, interest rate, period of repayment, tax rate and mode of issuance. The total amount of bonds or other evidence of indebtedness, in the aggregate, which the district may issue and sell under the authority of subsection 7a and of this subsection is limited to and shall not exceed four million five hundred thousand dollars (\$4,500,000).

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8. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner hereinafter provided.

9. To make contracts, and to employ for temporary services only, expert appraisers, consultants and technical advisers, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

10. To grant or otherwise convey to counties, cities and counties, cities or towns easements for street and highway purposes, over, along, upon, in, through, across or under any real property owned by said Los Angeles County Flood Control District.

11. To remove, carry away and dispose of any rubbish, trash, debris or other inconvenient matter that may be dislodged, transported, conveyed or carried by means of, through, in, or along the works and structures operated or maintained hereunder and deposited upon the property of said district or elsewhere.

12. To pay premiums on bonds of contractors required under any contract where-in the amount payable to the contractor exceeds five million dollars (\$5,000,000); provided, that the specifications in such cases shall specifically so provide and state that the bidder shall not include in his bids the cost of furnishing the required bonds.

13. To lease, sell or dispose of any property (or any interest therein) whenever in the judgment of said board of supervisors said property, or any interest therein or part thereof, is no longer required for the purposes of said district, or may be leased for any purpose without interfering with the use of the same for the purposes of said district, and to pay any compensation received therefor into the general fund of said district and use the same for the purposes of this act; provided, however, that nothing herein shall authorize the board of supervisors or other governing body of the district or any officer thereof to sell, lease or otherwise dispose of any water, water right, reservoir space or storage capacity or any interest or space therein except to public agencies for recreational purposes when such use is not inconsistent with the use thereof by the district for flood control and water conservation purposes; or except as hereinafter provided by Section 17 of this act; provided, however, that said district may grant and convey to the United States of America, or to any federal agency authorized to accept and pay for such land or interests in land, all lands and interests in land, now owned or hereafter acquired, lying within any channel, dam or reservoir site, improved or constructed, in whole or in part, with federal funds, upon payment to the district of sums equivalent to actual expenditures made by it in acquiring the lands and interests in land so conveyed and deemed reasonable by the Secretary of War and the Chief of Engineers.

14. To provide, by agreement with other public agencies or private persons or entities or otherwise, for the recreational use of the lands, facilities, and works of such district which shall not interfere, or be inconsistent, with the primary use and purpose of such lands, facilities, and works by such district.

15. In addition to its other powers, the district shall have the power to preserve and enhance its properties and, upon a finding by the board of supervisors that the acquisition is necessary for such purposes, to acquire, preserve, and enhance lands or interests in lands contiguous to its properties, for the protection and preservation of the scenic beauty and natural environment for such properties or such lands.

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The said district by or through its board of supervisors, or other board or officers at any time succeeding to the duties or functions of its board of supervisors, is hereby authorized and empowered to warrant and defend the title to all land and interests therein so conveyed to the United States of America or to any such agency and their respective assigns; to covenant and agree to indemnify and keep indemnified and to hold and save harmless and exonerated the United States of America or any such agency, to which such lands or any interest therein are so conveyed by said district, from and against all demands, claims, liabilities, liens, actions, suits, charges, costs, loss, damages, expenses and attorneys' fees of whatsoever kind or nature, resulting from, arising out of or occasioned by any defect or defects whatsoever in the title to any such land or interest in land so conveyed by said district; to reimburse and save harmless and exonerated the United States of America or any such agency for any and all amounts, paid, and expenses incurred, in the compromise or settlement of any demands, claims, liabilities, liens, actions, suits, charges, costs, loss, damages, expenses and attorneys' fees of whatsoever kind or nature, resulting from, arising out of or occasioned by any claim to or defect or defects whatsoever in the title to any such land or interests in land so conveyed by said district; to pay all just compensation, costs and expenses, which may be incurred in any condemnation proceeding deemed necessary by the United States of America or such agency, in order to perfect title to any such land or interests in land, including without limitation all attorneys' fees, court costs and fees, costs of abstracts and other evidences of title, and all other costs, expenses or damages incurred or suffered by the United States of America or such agency; and consent is hereby given to the bringing of suit or other legal proceedings against said district by the United States of America or such agency, as the case may be, in the proper district court of the United States, upon any cause of action arising out of any conveyance, contract or covenant made or entered into by said district pursuant to the authority granted in this act, or to enforce any claims, damages, loss or expenses arising out of or resulting from any defect whatsoever in the title to such land or any interest therein or any claims of others in or to such land or interest therein.

Comment. The deleted portions of subdivision 6 of Section 2 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use).

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Los Angeles County Flood Control  
Act, § 16 (Stats. 1915, Ch. 755)  
as amended Stats. 1953, Ch. 1139,  
§ 1

Los Angeles County Flood Control Act, § 16 (Stats. 1915, Ch. 755)(amended)

Sec. . Section 16 of the Los Angeles County Flood Control

Act (Chapter 755 of the Statutes of 1915) is amended to read:

Sec. 16. The said board of supervisors of said district shall have power to make and enforce all needful rules and regulations for the administration and government of said district, and to perform all other acts necessary or proper to accomplish the purposes of this act.

Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, ~~condemnation,~~ donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers conferred by this act, or arising out of the use, taking or damage of any property, rights of way or easements, for any of such purposes; to compensate any reclamation district, protection district, drainage district, irrigation district or other district, public corporation or agency or district, for any right of way, easement or property taken over or acquired by said Los Angeles County Flood Control District as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; to maintain actions to restrain the doing of any act or thing that may be injurious to carrying out any of the purposes of this act by said district, or that may interfere with the successful execution of said work, or for damages for injury thereto; to do any and all things necessary or incident to the powers hereby granted, or to carry out any of the objects and purposes of this act; to require, by appropriate legal proceedings, the

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Los Angeles County Flood Control Act, § 16 (Stats. 1915, Ch. 755) as amended Stats. 1953, Ch. 1139, § 1

owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal, so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed or any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to require the removal or alteration thereof for such purpose; provided, however, that nothing in this act contained shall be deemed to authorize said district in exercising any of its powers to take, damage or destroy any property or to require the removal, relocation, alteration or destruction of any bridge, railroad, wire line, pipeline, facility or other structure unless just compensation therefor be first made, in the manner and to the extent required by the Constitution of the United States and the Constitution of California.

In case of condemnation proceedings, the said board of supervisors shall proceed in the name of said district, ~~under the provisions of Title 7, Part 3, of the Code of Civil Procedure of the State of California, which such provisions are hereby made applicable for that purpose, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law,~~ and said board of supervisors of said district is hereby vested with full power to do all other acts or things necessary or useful for the promotion of the work of the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes, and to protect from damage from such storm or flood waters the harbors, waterways, public highways and property in said district; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons, to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless previous compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses; and provided further, that nothing in this act contained shall be construed as in any way affecting the plenary power of any incorporated city, city and county, or town, or municipal or county water district, to provide for a water supply of such public corporation, or as affecting the absolute control of any properties of

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such public corporations necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in said Los Angeles County Flood Control District, or in any officer thereof, or in any person referred to in this act; and provided further, that nothing in this act contained shall be deemed to authorize said board of supervisors to raise money for said district by any method or system other than that by the issuing of bonds, or the levying of a tax upon the assessed value of all the real property in said district in the manner in this act provided, except from the sale and lease of its property as herein provided.

Comment. The deleted portion of Section 16 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is public use unnecessary), 1240.610 et seq. (more necessary public use). The word "condemnation" is deleted from the second paragraph of Section 16 to avoid any implication that the broad grant of condemnation authority under Section 2 is limited to the types of property enumerated in Section 16. Under Section 16, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in Section 16 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-1/2 (added 1941, Ch. 373, § 1) as amended Stats. 1959, Ch. 699, § 1

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-1/2 (added Stats. 1941, Ch. 373, § 1)(repealed)

Sec. . Section 16-1/2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

~~Sec. 16. The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or easement, as the case may be, is necessary.~~

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn the fee simple or easement in real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.

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Comment. Section 16-1/2 is superseded by the more general provisions of the Eminent Domain Law. The first paragraph is superseded by Code of Civil Procedure Section 1240.040 (right to acquire any interest or right in property). See also Code Civ. Proc. §§ 1230.070 ("property" defined) and 1240.110 et seq. (resolution of necessity). The second paragraph is superseded by Code of Civil Procedure Section 1240.310 et seq.

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-5/8 (added Stats. 1953, Ch. 856, § 3)

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-5/8 (added Stats. 1953, Ch. 856, § 3) (repealed)

Sec. . Section 16-5/8 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

~~Sec. 16. Whenever a part only of a larger parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land of which the area required for public use is a part. Or, in lieu of such acquisition, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the said remainder for use by the public, including the owner of the land.~~

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Comment. Section 16-5/8 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 et seq.



Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-3/4 (added Stats. 1949, Ch. 449, § 7)

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16-3/4 (added Stats. 1949, Ch. 449, § 7)(repealed)

Sec. . Section 16-3/4 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

~~Sec. 163. Whenever a part only of a house or other structure must be taken or removed in order to use the land on which such structure is situated for flood control or water conservation purposes and the severance of such portion of the structure from the whole structure would cause a substantial damage to the structure, the Board of Supervisors of the Los Angeles County Flood Control District may condemn or otherwise acquire the entire house or structure and thereafter sell or otherwise cause the said structure to be removed from the portion of the land so required for a public use.~~

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Comment. Section 16-3/4 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 et seq.

Marin County Flood Control and Water Conservation District Act, § 5, (Stats. 1953, Ch. 666) as amended Stats. 1971, Ch. 760, § 1

Marin County Flood Control and Water Conservation District Act, § 5  
(Stats. 1953, Ch. 666)(amended)

Sec. . Section 5 of the Marin County Flood Control and Water Conservation District Act (Chapter 666 of the Statutes of 1953) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

- 1. To have perpetual succession.
- 2. To sue and be sued in the name of said district.
- 3. To adopt a seal.

4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act. Construction or improvement of existing facilities may involve landscaping and other aesthetic treatment in order that the facility will be compatible with existing or planned development in the area of improvement.

5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and

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expenses of, any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, al-

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though such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

7. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies or with the government of the United States, or with any municipality, public district or other public or private corporation or with the County of Marin, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives may enter upon such lands and make examinations, surveys, and maps thereof.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts

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necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Marin County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual, of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Marin County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain, within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district~~ in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, ~~and provided further, that notwithstanding any other provi-~~

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§ 5 (Stats. 1953, Ch. 666) as  
amended Stats. 1971, Ch. 760, § 1

~~tion of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or public district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the state in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.~~

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~~The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest as the case may be, is necessary; provided, however, that when the board of supervisors shall, by resolution or ordinance adopted by vote of four-fifths of all its members, have found and determined that the public interest and necessity require the acquisition, construction, or completion by said district of any public improvement for flood control purposes and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence (a) of the public necessity of such proposed public improvement, (b) that such property is necessary therefor, and (c) that such proposed public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury.~~

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Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or public district to provide for a water supply for

Marin County Flood Control and  
Water Conservation District Act,  
§ 5 (Stats. 1953, Ch. 666) as  
amended Stats. 1971, Ch. 760, § 1

such city and county or public district, or as affecting the absolute control of any properties of such city and county or public district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in Marin County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

14. To provide, by agreement with other public agencies or private persons or entities or otherwise, for the recreational use of the lands, facilities, and works of such district which shall not interfere, or be inconsistent, with the primary use and purpose of such lands, facilities, and works by such district.

15. In addition to its other powers, the district shall have the power to preserve and enhance its properties and, upon a finding by the board of supervisors that the acquisition is necessary for such purposes, to acquire, preserve, and enhance lands or interests in lands within the County of Marin contiguous to its properties, for the protection and preservation of the scenic beauty and natural environment for such properties or such lands.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1230.070 ("property" defined).

The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the power of eminent domain is limited to the types of property enumerated in those subdivisions. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.12

Marin County Flood Control and  
Water Conservation District Act,  
§ 28 (Stats. 1953, Ch. 666)

Marin County Flood Control and Water Conservation District Act, § 28  
(Stats. 1953, Ch. 666) (repealed)

Sec. . Section 28 of the Marin County Flood Control and  
Water Conservation District Act (Chapter 666 of the Statutes of  
1953) is repealed.

~~Sec. 28. (a) If by any judgment in condemnation or agree-  
ment the district shall be required to relocate any street, road,  
highway, railroad, canal or other property subject or devoted  
to public use or benefit, the board shall have power to acquire  
in the name of the district, by agreement or condemnation, all  
rights of way and other property necessary or proper for com-  
pliance with said agreement or said judgment of condemnation  
and thereafter to make such conveyance of such relocated street,  
road, highway, railroad, canal, or other property as may be  
proper to comply with said agreement or judgment. All costs of  
relocating or otherwise changing any portion of a state highway  
shall be paid from funds available for rights of way for flood  
control purposes and not from funds appropriated for state  
highway purposes.~~

~~(b) In the event the district and any common carrier rail-  
road or other public utility fail to agree as to the character or  
location of new improvements or works sought to be performed  
by the district, the character and location of such new improve-  
ments or works and any other controversy relating thereto shall  
be submitted to and determined by the Public Utilities Com-  
mission; and jurisdiction of such controversies is hereby vested  
in said commission.~~

~~(c) Proceedings under this section relating to the jurisdic-  
tion of said commission may be instituted, maintained, and  
determined in the mode prescribed in Sections 1206 to 1217, in-  
clusive, of the Public Utilities Code.~~

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Comment. Section 28 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



8.13

Mendocino County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1949, Ch. 995)

Mendocino County Flood Control and Water Conservation District Act, § 3  
(Stats. 1949, Ch. 995)(amended)

Sec. . Section 3 of the Mendocino County Flood Control and  
Water Conservation District Act (Chapter 995 of the Statutes of 1949)  
is amended to read:

SEC. 3. The objects and purposes of this act are to provide, to the extent that the board may deem expedient or economical, for the control and disposition of the storm and flood waters of said district and to that end the district is hereby created to be a body corporate and politic and as such shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and contract to sell, lease, or dispose of real, personal and mixed property of every kind within or without the district necessary, expedient or advantageous to the full exercise and economic enjoyment of its purposes.

(e) To acquire and contract to acquire by purchase, ~~condemnation~~, donation or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights of way, easements, privileges, material, and property of every kind within or without the district, to do all work and to acquire, construct, maintain and operate any and all works and improvements within or without the district, and to make, execute, carry out and enforce all contracts of every character, necessary, convenient, incidental, useful or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

(f) ~~To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof.~~ either within or without the

district, to take any property necessary to  
carry out any of the objects or purposes of  
this act,

Mendocino County Flood Control and Water Conservation District Act, § 3 (Stats. 1949, Ch. 995)

~~In condemnation proceedings, the district shall proceed under the provisions of Title 7, Part 3, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights of way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for the public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district.~~

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or otherwise changing any portion of a state highway shall be paid from funds available for rights of way for flood control purposes and not from funds appropriated for state highway purposes.

(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains, poles, posts, wires, lamps, power plants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

Mendocino County Flood Control and  
Water Conservation District Act, § 3.  
(Stats. 1949, Ch. 995)

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and collector and define their powers and duties, and fix and determine the amount of bond required of each appointee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property or rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

Mendocino County Flood Control and  
Water Conservation District Act, § 3  
(Stats. 1949, Ch. 995)

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface waters and water rights, useful or necessary to make use of water for any purposes authorized by this act.

(q) To control flood and storm waters within the district and the flood and storm waters of streams outside of the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of waters in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses.

(r) To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

Comment. The deleted portion of Section 3 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010

(declaration that use is public use unnecessary). Consistent with subdivision (e), subdivision (f) authorizes extraterritorial condemnation. The word "condemnation" is deleted from subdivision (e) to avoid any implication that the broad grant of condemnation authority under subdivision (f) is limited to the types of property enumerated in subdivision (e). Under subdivision (f), any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivision (e) does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.14

Monterey County Flood Control and  
Water Conservation District Act,  
§ 5 (Stats. 1947, Ch. 699) as  
amended Stats. 1971, Ch. 388, § 1

Monterey County Flood Control and Water Conservation District Act, § 5  
(Stats. 1947, Ch. 699)(amended)

Sec. . . . Section 5 of the Monterey County Flood Control and  
Water Conservation District Act (Chapter 699 of the Statutes of  
1947) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, defend or compromise, in the name of the district in behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, need or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun;

Monterey County Flood Control and Water Conservation District Act, § 5 (Stats. 1947, Ch. 699) as amended Stats. 1971, Ch. 388; § 1

to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district.

7. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Monterey, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access

For such purposes,

Monterey County Flood Control and Water Conservation District Act, § 5 (Stats. 1947, Ch. 699) as amended Stats. 1971, Ch. 388, § 1

through its authorized representatives

to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, and ~~may survey and locate the same, but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use,~~ may enter upon such lands and make examinations, surveys, and maps thereof.

The district, through its authorized representatives,

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the state, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Monterey County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Monterey County Flood

Monterey County Flood Control and Water Conservation District Act, § 5 (Stats. 1947, Ch. 699) as amended Stats. 1971, Ch. 388, § 1

Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for controlling flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

13. To buy, provide, sell and deliver water.

14. To exchange water.

15. To distribute water to persons in exchange for ceasing or reducing ground water extractions.

16. To transport, reclaim, purify, treat or otherwise manage and control water for the beneficial use of persons or property within the district.

17. To construct, maintain, improve, and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the district whether within or without the district, subject to the limitations as to eminent domain use for recreational purposes outside the district set forth in Section 4, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities including regulations imposing reasonable charges for the use thereof.

18. To regulate, inspect, and license all structures, including docks and wharves, or structures used as docks or wharves, and their anchorage or mooring system, that float on or are designed to float on the surface of reservoirs operated or contracted to be operated by the district or that are located within the area subject to its flowage easement, or that are located on real property of the district, and to charge a reasonable fee for licensing such structures. Any of such structures



Monterey County Flood Control and  
Water Conservation District Act,  
§ 5 (Stats. 1947, Ch. 699) as  
amended Stats. 1971, Ch. 388, § 1

that are unlicensed more than 30 days after notice to license the structure has been posted thereon, or any unlicensed structure that is neither anchored or moored, or is found on property owned in fee by the district is a nuisance. The district may have injunctive relief for any of such nuisances, or may summarily abate any untended structure floating on the surface of such reservoir that is neither anchored or moored, or any untended structure found on property owned in fee by the district. It shall be unlawful and it is hereby declared to be a misdemeanor to maintain, anchor, or moor or suffer to be maintained, anchored, or moored on property of which one is possessed any unlicensed structure when such structure is required to be licensed pursuant to the provisions of this act. Such misdemeanor shall be punishable by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment. Each day of violation of these provisions shall constitute a separate offense.

Comment. Subdivision 8 of Section 5 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvements).

The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under Section 6 is limited to the types of property enumerated in subdivisions 4 and 9.

Under Section 6, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Monterey County Flood Control and Water Conservation District Act, § 6 (Stats. 1947, Ch. 699)

Monterey County Flood Control and Water Conservation District Act, § 6 (Stats. 1947, Ch. 699) (amended)

Sec. . Section 6 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699 of the Statutes of 1947) is amended to read:

~~Sec. 6. The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of~~

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Monterey County Flood Control and  
Water Conservation District Act, § 6  
(Stats. 1947, Ch. 699)

any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.~~

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Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real ~~property required by the district as aforesaid for flood control or water conservation purposes.~~

Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

Monterey County Flood Control and Water Conservation District Act, § 29 (Stats. 1947, Ch. 699)

Monterey County Flood Control and Water Conservation District Act, § 29 (Stats. 1947, Ch. 699) (repealed)

Sec. . Section 29 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699 of the Statutes of 1947) is repealed.

~~Sec. 29. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment. It shall be provided in all agreements for exchange of property and judgments requiring relocation of other public uses as specified in this section and in Section 6 of this act, that in making such exchanges it shall be specifically provided that such property so condemned and exchanged be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1960.~~

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Comment. Section 29 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Napa County Flood Control and  
Water Conservation District Act,  
§ 5 (Stats. 1951, Ch. 1449)  
as amended Stats. 1963, Ch. 2029,  
§ 12

Napa County Flood Control and Water Conservation District Act, § 5  
(Stats. 1951, Ch. 1449)(amended)

Sec. . . Section 5 of the Napa County Flood Control and  
Water Conservation District Act (Chapter 1449 of the Statutes  
of 1951) is amended to read:

Sec. 5. The district is hereby declared to be a body corpo-  
rate and politic and as such shall have, in addition to the  
other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, con-  
tract, ~~condemnation~~, construction, or otherwise, and to hold,  
use, enjoy, sell, let, and dispose of real and personal property  
of every kind, including lands, structures, buildings, rights-of-  
way, easements, and privileges, and to construct, maintain,  
alter and operate any and all works or improvements, within  
or without the district, necessary or proper to carry out any  
of the objects or purposes of this act and convenient to the  
full exercise of its powers, and to complete, extend, add to,  
alter, remove, repair or otherwise improve any works, or im-  
provements, or property acquired by it as authorized by  
this act.
5. To store water in surface or underground reservoirs  
within or outside of the district for the common benefit of the  
district or of any zone or zones affected; to conserve and re-  
claim water for present and future use within the district; to  
appropriate and acquire water and water rights, and import  
water into the district and to conserve within or outside of the  
district, water for any purpose useful to the district; and to  
do any and every lawful act necessary to be done that suffi-  
cient water may be available for any present or future bene-  
ficial use or uses of the lands or inhabitants within the dis-  
trict, including but not limited to, the acquisition, storage and  
distribution of water for irrigation, domestic, fire protection,  
municipal, commercial, industrial, and all other beneficial  
uses; to distribute, sell, or otherwise dispose of, outside the

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district, any waters not needed for beneficial uses within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district in behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district.

7. To co-operate and to act in conjunction with the State of California; or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Napa, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or

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Napa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1449) as amended Stats. 1963, Ch. 2029, § 12

property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, ~~and in all cases where land may be required for public use by said district,~~ the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district and ~~may survey and locate the same, but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use may enter upon such lands and make examinations, surveys, and maps thereof.~~

For such purposes,

through its authorized representatives

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation,~~ gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the State, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Napa County Flood Control and Water Conservation District; to

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acquire the right to store water in any reservoirs, or to carry water through any canal, ditch, or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Napa County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for controlling flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.



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Comment. Subdivision 8 of Section 5 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvements).

The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under Section 6 is limited to the types of property enumerated in subdivisions 4 and 9. Under Section 6, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

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Napa County Flood Control and Water Conservation District Act, § 6 (Stats. 1951, Ch. 1449)

Napa County Flood Control and Water Conservation District Act, § 6 (Stats. 1951, Ch. 1449)(amended)

Sec. . Section 6 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449 of the Statutes of 1951) is amended to read:

SEC. 6. ~~The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the~~

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Napa County Flood Control and Water Conservation District Act, § 6 (Stats. 1951, Ch. 1449)

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~~State in the manner prescribed by law, provided, however, that nothing~~ in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.

~~The power of eminent domain vested in the district shall~~ include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

Whenever real property which is devoted to or held for some other public or quasipublic use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.

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Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

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Napa County Flood Control and  
Water Conservation District Act,  
§ 29 (Stats. 1951, Ch. 1449)

Napa County Flood Control and Water Conservation District Act, § 29  
(Stats. 1951, Ch. 1449)(repealed)

Sec. . Section 29 of the Napa County Flood Control and  
Water Conservation District Act (Chapter 1449 of the Statutes of  
1951) is repealed.

~~Sec. 20. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment. It shall be provided in all agreements for exchange of property and judgments requiring relocation of other public uses as specified in this section and in Section 6 of this act, that in making such exchanges it shall be specifically provided that such property so condemned and exchanged be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 48 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1923.~~

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Comment. Section 29 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

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Orange County Flood  
Control Act, § 2 (Stats. 1927,  
Ch. 723) as amended Stats. 1969,  
Ch. 316, § 1

Orange County Flood Control District Act, § 2 (Stats. 1927, Ch. 723)  
(amended)

Sec. . Section 2 of the Orange County Flood Control  
District Act (Chapter 723 of the Statutes of 1927) is amended  
to read:

Sec. 2. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district, and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining and causing to percolate into the soil within said district, or without such district, such waters, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district.

Said Orange County Flood Control District is hereby declared to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, and to hold, use, enjoy, and to sell, lease, exchange, or dispose of real or personal property of every kind, within or without the district, necessary to the full exercise of its powers.
5. To acquire or contract to acquire lands, rights-of-way, easements, privileges and property of every kind, and to construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements acquired by it as herein authorized.
6. To have and exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and may condemn any~~

Orange County Flood  
Control Act, § 2 (Stats. 1927,  
Ch. 723) as amended Stats. 1969,  
Ch. 316, § 1

~~existing works or improvements in said district now used to control flood or storm waters, or to conserve such flood or storm waters, or to protect any property in said district from damage from such flood or storm waters.~~

7. To incur indebtedness, and to issue bonds in the manner herein provided.

8. To cause taxes to be levied and collected for the purpose of paying any obligation of the district in the manner herein-after provided.

9. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

10. To grant or otherwise convey to counties, cities and counties, cities or towns, easements for street and highway purposes, over, along, upon, in, through, across or under any real property owned by said Orange County Flood Control District.

11. To remove, carry away and dispose of any rubbish, trash, debris or other inconvenient matter that may be dislodged, transported, conveyed or carried by means of, through, in, or along the works and structures operated or maintained hereunder and deposited upon the property of said district or elsewhere.

12. To lease, sell or dispose of any property (or any interest therein) whenever in the judgment of said board of supervisors said property, or any interest therein or part thereof, is no longer required for the purposes of said district, or may be leased, or included in community leases embracing adjoining lands, for any purpose (including leases for mining or extracting oil, gas, hydrocarbon substances or other minerals) without interfering with the use of the same for the purposes of said district, and whenever it appears that wells drilled upon private lands are draining or may drain oil, gas or other hydrocarbon substances from lands owned by the district and operations for the production of oil, gas or other hydrocarbons on such land owned by the district might interfere with the use of such land for the purposes of said district, to enter into agreements with the owners or operators of such wells for the payment of compensation to the district for such drainage in lieu of drilling offset wells upon such land owned by the district, and to pay any compensation received therefor into the general fund of said district and use the same for the purposes of this act; provided, however, that nothing herein shall authorize the board of supervisors, or other governing body of the district, or any officer thereof, to sell, lease or otherwise dispose of any water, water right, reservoir space or storage capacity, or any interest or space therein, except as herein-after provided by Section 17 of this act; provided, however, that the district may grant to the United States of America,

Orange County Flood  
Control Act, § 2 (Stats. 1927,  
Ch. 723) as amended Stats. 1969,  
Ch. 316, § 1

or any agency thereof authorized to accept and pay for such land, such parcels of land as lie within any channel, dam, or reservoir site, improved or constructed, in whole or in part, with federal funds, upon the payment to the district of the actual cost thereof as determined by the board of supervisors of the district. The district, by and through its board of supervisors, is hereby authorized to warrant and guarantee the title of all lands so transferred to the United States under the provisions of this section.

13. To monitor, test, or inspect drainage, flood, storm, or other waters within the district for the purpose of recording, determining, and reporting the quality of such waters to appropriate regional water quality control boards.

14. To assist the County of Orange and any city within the county in emergency operations to control or mitigate the effect of tides, waves, and ocean currents on the Orange County shoreline.

Comment. The deleted portions of subdivision 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use).

Orange County Flood Control Act, § 16 (Stats. 1927, Ch. 723) as amended Stats. 1961, Ch. 305, § 2

Orange County Flood Control District Act, § 16 (Stats. 1927, Ch. 723)  
(amended)

Sec. . Section 16 of the Orange County Flood Control District Act (Chapter 723 of the Statutes of 1927) is amended to read:

Sec. 16. The said board of supervisors of said district shall have power to make and enforce all needful rules and regulations for the administration and government of said district.

Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, ~~condemnation~~, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swampland districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights-of-way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers conferred by this act, or arising out of the use, taking or damage of any property, rights-of-way or easements, for any such purposes; to compensate any reclamation district, protection district, drainage district, irrigation district or other district, public corporation or agency or district, for any right-of-way, easement or property taken over or acquired by said Orange County Flood Control District as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power



Orange County Flood Control  
Act, § 16 (Stats. 1927, Ch. 723) as  
amended Stats. 1961, Ch. 305, § 2

and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; to maintain actions to restrain the doing of any act or thing that may be injurious to carrying out any of the purposes of this act by said district, or that may interfere with the successful execution of said work, or for damages for injury thereto; to do any and all things necessary or incident to the powers hereby granted, or to carry out any of the objects and purposes of this act; to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal, so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose.

~~In case of condemnation proceedings, the said board of supervisors shall proceed in the name of said district, under the provisions of Title 7, Part 3, of the Code of Civil Procedure of the State of California, which such provisions are hereby made applicable for that purpose, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, and said board of supervisors of said district is hereby~~ vested with full power to do all other acts or things necessary or useful for the promotion of the work of the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes, and to protect from damage from such storm or floodwaters the harbors, waterways, public highways and property in said district; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons, to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person or

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Orange County Flood Control  
Act, § 16 (Stats. 1927, Ch. 723) as  
amended Stats. 1961, Ch. 305, § 2

persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless, previous compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses; but provided, further, no right to take by condemnation any property shall exist on behalf of said district at a greater distance than 15 miles outside the exterior boundaries thereof; and provided, further, that nothing in this act contained shall be construed as in any way affecting the plenary power of any incorporated city, city and county, or town, or municipal or county water district, to provide for a water supply of such public corporation, or as affecting the absolute control of any properties of such public corporations necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in said Orange County Flood Control District, or in any officer thereof, or in any person referred to in this act; and provided, further, that nothing in this act contained shall be deemed to authorize said board of supervisors to raise money for said district by any method or system other than that by the issuing of bonds, or the levying of a tax upon the assessed value of all the taxable property in said district in the manner in this act provided.

Comment. The deleted portion of Section 16 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary), 1240.610 et seq. (more necessary public use). The word "condemnation" is deleted from the second paragraph of Section 16 to avoid any implication that the broad grant of condemnation authority under Section 2 is limited to the types of property enumerated in Section 16. Under Section 16, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in Section 16 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Orange County Flood Control Act (Stats. 1927, Ch. 723), § 16.1 (added Stats. 1957, Ch. 1036, § 1)

Orange County Flood Control District Act (Stats. 1927, Ch. 723), § 16.1 (added Stats. 1957, Ch. 1036, § 1)(repealed)

Sec. . Section 16.1 of the Orange County Flood Control District Act (Chapter 723 of the Statutes of 1927) is repealed.

~~Sec. 16.1. Whenever a part only of a parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

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Comment. Section 16.1 is superseded by Code of Civil Procedure Section 1240.410 et seq.

8.18

Plumas County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1959, Ch. 2114)

Staff recommendation November 1971

Plumas County Flood Control and Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2114)(amended)

Sec. . Section 3 of the Plumas County Flood Control and  
Water Conservation District Act (Chapter 2114 of the Statutes of  
1959) is amended to read:

SEC. 3. The objects and purposes of this act are to provide,  
to the extent that the board may deem expedient or economi-  
cal, for the control and disposition of the storm, flood, and  
other waters of said district and to that end the district is  
hereby created to be a body corporate and politic and as such  
shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to  
hold, use, enjoy, sell, and contract to sell, lease, or dispose  
of real, personal and mixed property of every kind within or  
without the district necessary, expedient or advantageous to  
the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, dona-  
tion or other lawful means in the name of the district from  
private persons, public and private corporations, associations,  
agencies or districts, lands, rights-of-way, easements, privi-  
leges, material, and property of every kind within or without  
the district, to do all work and to acquire, construct, maintain  
and operate any and all works and improvements within or  
without the district, and to make, execute, carry out and en-  
force all contracts of every character, necessary, convenient,  
incidental, useful or proper to carry out any of the provisions,  
objects or purposes of this act, and to complete, extend, add  
to, repair, or otherwise improve any works or improvements  
acquired by it as herein authorized.

Plumas County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1959, Ch. 2114)

Staff recommendation November 1971

~~(f) To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof. No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Plumas shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.~~

~~In condemnation proceedings, the district shall proceed under the provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district; provided, however, that no property shall be taken unless it is taken upon a finding of a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or altering or otherwise changing existing works or structures shall be paid by the district; provided, however, that all costs of relocating or otherwise changing any portion of a state highway shall be paid for from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes.

either within or  
without the district,  
to take any property  
necessary to carry  
out any of the objects  
or purposes of this  
act .

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(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, drains, tunnels, poles, posts, wires, lamps, power plants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and tax collector, and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish the same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

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(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface water and water rights, useful or necessary to make use of water for any of the purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, recreational and all other beneficial uses.

(r) To control flood and storm waters within the district and the flood and storm waters or streams outside the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of water in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, on behalf of the landowners therein, or otherwise to assume the cost and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of the common benefit of any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions or proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare the rights in natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands

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within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use, the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

(s) To co-operate and act in conjunction with the United States or with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Plumas, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the



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obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Plumas County Flood Control and Water Conservation District; to acquire by negotiation only the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water owned or controlled by the district or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit owned and controlled by the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual or any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Plumas County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

(u) To co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 (commencing at Section 28175) of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

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(v) To construct, operate, and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of works for other beneficial uses and purposes, and to enter into contracts for the sale of such energy for a term not to exceed 50 years. Such energy may be marketed only at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy.

(w) Nothing herein contained shall be deemed to permit the district or its board of directors to acquire or interfere in existing water rights and water uses and facilities for distribution of the same on an involuntary basis, but nothing herein shall be deemed to prohibit negotiating and acquisition of existing rights, uses, and privileges in water by negotiation.

Comment. The deleted portions of Section 3 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary).

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Riverside County Flood Control and  
Water Conservation District Act, § 9  
(Stats. 1945, Ch. 1122) as amended  
Stats. 1969, Ch. 586, § 1

Riverside County Flood Control and Water Conservation District Act, § 9  
(Stats. 1945, Ch. 1122) (amended)

Sec. . Section 9 of the Riverside County Flood Control  
and Water Conservation District Act (Chapter 1122 of the Statutes  
of 1945) is amended to read:

Sec. 9. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the said waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by retarding, spreading, storing, retaining and causing to percolate into the soil within said district, or without said district, such waters, or to save or conserve in any manner all or any of such waters and protect from such flood or storm waters, the watercourses, watersheds, public highways, life and property in said district, and to prevent waste of water or diminution of the water supply in, or unlawful exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district.

Riverside County Flood Control and Water Conservation District is hereby declared to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To adopt a seal and alter it at pleasure.
3. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
4. To acquire, by purchase, lease, construction or otherwise, or contract to acquire, lands, rights-of-way, easements, privileges and property of any kind, whether real, personal or mixed, and to construct, maintain and operate any and all works or improvements within or without the district necessary, convenient or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act; to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this act.
5. To take by grant, purchase, gift, devise or lease, or otherwise, to hold, use, enjoy and to lease or dispose of real, per-

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Riverside County Flood Control and  
Water Conservation District Act, § 9  
(Stats. 1945, Ch. 1122) as amended  
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sonal or mixed property of every kind within or without the district necessary or convenient to the full exercise of its powers, and to lease its property to public agencies, or to grant any interest therein to public agencies, which lease or grant does not interfere with the use of the property for the purposes of the district.

6. To incur indebtedness, and to issue bonds in the manner herein provided.

7. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or a zone or zones thereof; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside the district, same for any useful purpose to the district; to commence, maintain, intervene in and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of water or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings hereafter begun; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that the said district shall not have the power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside or away from the district.

8. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by retarding, spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district; provided, that water rights now existing be not thereby infringed upon.

9. To have and exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use,~~

Riverside County Flood Control and Water Conservation District Act, § 9 (Stats. 1945, Ch. 1122) as amended Stats. 1969, Ch. 586, § 1

to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn, any existing works or improvements in said district now or hereafter used to control flood or storm waters or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act, is a public use subject to the regulation and control of the state in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the injury or detriment of any person, or persons, having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation be first ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public use; and provided further, that no right shall exist in behalf of said district to take by condemnation any property, including water rights, that is now devoted to beneficial use in Orange County; nor to take by condemnation any water rights or property necessary for exercising said water rights that are now devoted to beneficial use, or are now in the process of being devoted to beneficial use in Orange County, within an area along and adjacent to the trunk channel of the Santa Ana River extending from the easterly boundary of Orange County to the Jurupa Narrows and lying between the bluffs on either side of said river, but excluding therefrom any part of the Corona underground water basin as said basin is defined in that certain action in the Superior Court of the State of California, in and for the County of Riverside, numbered 22046, and entitled the Corona-Foothill Lemon Company, a corporation, et al. vs. Charles E. Lillibridge, et al.~~

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~~The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district with the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or any lesser estate or interest in such property, as the case may be, is necessary; provided, however, that when the board of supervisors shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion by said district of any public improvement for flood control purposes and that the property described in such resolution~~

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Riverside County Flood Control and  
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(Stats. 1945, Ch. 1122) as amended  
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~~or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence (a) of the public necessity of such proposed public improvement, (b) that such property is necessary therefor, and (c) that such proposed public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury. Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

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10. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines of channels, conduits, canals, pipelines, roadways and other rights of way; to acquire by purchase, lease, contract, ~~condemnation~~, gift or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, whether in this or in another state, including works constructed and being constructed by private owners, lands for reservoirs, for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, powerplants, franchises, concessions or rights; to enter into and to do any and all acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Riverside County Flood Control and Water Conservation District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant any owner or lessee the right to the use of any water or the right to store such water in any reservoir of the district or to carry such water through any tunnels, canal, ditch or conduit of the district; to enter into and to do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired, or secured for the use of the Riverside County Flood Control and Water Conservation District, or for

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Riverside County Flood Control and  
Water Conservation District Act, § 9  
(Stats. 1945, Ch. 1122) as amended  
Stats. 1969, Ch. 586, § 1

the purpose of exchanging the same for other water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any such works, acts, or purpose provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

11. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district.

13. To carry on a program of artificial nucleation for the purpose of increasing and controlling rainfall within, or in the immediate vicinity of, any watershed located wholly or partially within the district.

The total amount of taxes levied for the purpose of carrying on any program under this subdivision shall not be in excess of five cents (\$.05) for each one hundred dollars (\$100) of assessed valuation of the taxable property within the district, nor in any event shall the district spend more than a total of five thousand dollars (\$5,000) annually for the purpose of carrying on any program under this subdivision.

The authority of the district to carry on any program under this subdivision shall terminate on October 1, 1957.

14. To make contracts and to employ labor and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof by this act.

Riverside County Flood Control and  
Water Conservation District Act, § 9  
(Stats. 1945, Ch. 1122) as amended  
Stats. 1969, Ch. 586, § 1

Comment. The deleted portions of subdivision 9 of Section 9 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange), 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity).

The word "condemnation" is deleted from subdivision 10 to avoid any implication that the broad general grant of the power of eminent domain in subdivision 9 is limited to the types of property enumerated in subdivision 10. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.



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Riverside County Flood Control and  
Water Conservation District Act  
(Stats. 1945, Ch. 1122), § 9.2  
(added Stats. 1967, Ch. 1112, § 5)

Riverside County Flood Control and Water Conservation District Act.  
(Stats. 1945, Ch. 1122), § 9.2 (added Stats. 1967, Ch. 1112, § 5)  
(repealed)

Sec. . Section 9.2 of the Riverside County Flood Control  
and Water Conservation District Act (Chapter 1122 of the Statutes  
of 1945) is repealed.

~~Sec. 9.2. Whenever a part only of a parcel of land is re-  
quired by the district for any purpose authorized by this act  
and the taking thereof, and the construction of the proposed  
public improvement thereon, will interfere with reasonable  
access to the remainder, or will otherwise cause substantial  
damage to the remainder, the district may purchase, condemn,  
or otherwise acquire the whole parcel of land and may sell the  
remainder or exchange the same for other property required  
for district purposes. In lieu of such acquisition of the re-  
mainder, the district may purchase, condemn or otherwise  
acquire a right-of-way or real property for ingress to and  
egress from the remainder for use by the public, including the  
owner of the land.~~

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Comment. Section 9.2 is superseded by Code of Civil Procedure  
Section 1240.410 et seq.

Riverside County Flood Control and Water Conservation District Act, § 35 (Stats. 1945, Ch. 1122)

Riverside County Flood Control and Water Conservation District Act, § 35 (Stats. 1945, Ch. 1122) (repealed)

Sec. . Section 35 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945) is repealed.

~~Sec. 35. If by any judgment in condemnation or by agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

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Comment. Section 35 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.20

San Benito County Water Conservation  
and Flood Control District Act, § 6  
(Stats. 1953, Ch. 1598) as amended  
Stats. 1963, Ch. 2029, § 13

San Benito County Water Conservation and Flood Control District Act, § 6  
(Stats. 1953, Ch. 1598)(amended)

Sec. . Section 6 of the San Benito County Water Conserva-  
tion and Flood Control District Act (Chapter 1598 of the Statutes  
of 1953) is amended to read:

Sec. 6. The district is hereby declared to be a body corpo-  
rate and politic and as such shall have, in addition to the other  
powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, con-  
tract, ~~condemnation~~, construction, or otherwise, and to hold,  
use, enjoy, sell, let, and dispose of real and personal property  
of every kind, including lands, structures, buildings, rights-  
of-way, easements, and privileges, and to construct, maintain,  
alter and operate any and all works or improvements, within  
or without the district, necessary or proper to carry out any  
of the objects or purposes of this act and necessary to the full  
exercise of its powers, and to complete, extend, add to, alter,  
remove, repair or otherwise improve any works, or improve-  
ments, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs,  
within or outside of the district for the benefit of any zone or  
zones of the district affected; to conserve and reclaim water  
for present and future use within the district; to appropriate  
and acquire water and water rights, and import water into the  
district and to conserve within or outside of the district, water  
for any purpose useful to the district; and to do any and  
every lawful act necessary to be done that sufficient water may  
be available for any present or future beneficial use or uses of  
the lands or inhabitants within the district, including but not  
limited to, the acquisition, storage and distribution of water  
for irrigation, domestic, fire protection, municipal, commer-  
cial, industrial, and all other beneficial uses; to distribute,  
sell, or otherwise dispose of, any waters not needed for bene-  
ficial uses within the district; to prevent unlawful exportation

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San Benito County Water Conservation  
and Flood Control District Act, § 6  
(Stats. 1953, Ch. 1598) as amended  
Stats. 1963, Ch. 2029, § 13

of water from said district; to commence, maintain, intervene in, defend or compromise, in the name of the district, in behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public district, or with any public or private corporation, or with any city, city and county, or county, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of importing waters for beneficial use into said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, ~~and in all cases where land may~~

8.20

San Benito County Water Conservation and Flood Control District Act, § 6 (Stats. 1953, Ch. 1598) as amended Stats. 1963, Ch. 2029, § 13

For such purposes, the district

~~be required for public use by said district, the district, or its agents in charge of such use, shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, and may survey and locate the same, but such must be located in a manner which will be most compatible with the greatest public good and the least private injury. The district, or its agents in charge of such public use, may enter upon such lands and make examinations, surveys, and maps thereof.~~

through it authorized representatives

through its authorized representatives.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the State, capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said San Benito County Water Conservation and Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch or conduit of the district; to enter into and do any acts necessary or proper for the performance of

San Benito County Water Conservation  
and Flood Control District Act, § 6  
(Stats. 1953, Ch. 1598) as amended  
Stats. 1963, Ch. 2029, § 13

any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the San Benito County Water Conservation and Flood Control District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to co-operate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for controlling flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes to be levied and collected for the purpose of paying any obligation of the zones established hereunder, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

San Benito County Water Conservation  
and Flood Control District Act, § 6  
(Stats. 1953, Ch. 1598) as amended  
Stats. 1963, Ch. 2029, § 13

Comment. Subdivision 8 of Section 6 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvement). The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under Section 8 is limited to the types of property enumerated in those subdivisions. Under Section 8, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.20

San Benito County Water Conservation and Flood Control District Act, § 8 (Stats. 1953, Ch. 1598)

San Benito County Water Conservation and Flood Control District Act, § 8 (Stats. 1953, Ch. 1598)(amended)

Sec. . . Section 8 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598 of the Statutes of 1953) is amended to read:

Sec. 8. ~~The district shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any prop-~~

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San Benito County Water Conservation and Flood Control District Act, § 8 (Stats. 1953, Ch. 1598)

~~erty in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.~~

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~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of directors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.~~

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~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

Nothing in this act shall authorize the district to condemn any of the properties, structures or works now owned or hereafter to be constructed or acquired by the Pacheco Pass Water District.

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.040 (right to take any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

8.21

San Bernardino County Flood Control,  
District Act, § 2 (Stats. 1939,  
Ch. 73)

San Bernardino County Flood Control District Act, § 2 (Stats. 1939, Ch. 73)  
(amended)

Sec. . . Section 2 of the San Bernardino County Flood Control  
District Act (Chapter 73 of the Statutes of 1939) is amended to read:

Sec. 2. The objects and purposes of this act are to provide for the control of the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof flow into said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining and causing to percolate into the soil within said district, or without such district, such waters, or to save or conserve in any manner all or any of such waters and protect from such flood or storm waters, the watercourses, watersheds, public highways, life and property in said district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district.

San Bernardino County Flood Control District is hereby declared to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, or otherwise, and to hold, use, enjoy and to lease or dispose of real or personal property of every kind within or without the district necessary or convenient to the full exercise of its powers.
5. To acquire, by purchase, lease, construction or otherwise, or contract to acquire, lands, rights of way, easements, privileges and property of every kind, whether real or personal, and to construct, maintain and operate any and all works or improvements within or without the district necessary or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act.
6. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, same for any useful

San Bernardino County Flood Control District Act, § 2 (Stats. 1939, Ch. 73)

purpose to the district; to commence, maintain, intervene in and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside of or away from the district; and provided further, that said district shall have no power to transport the waters of the Mojave River to any other zone of said district.

7. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district.

8. To ~~have and~~ exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn any existing works or improvements in said district now or hereafter used~~



8.21

San Bernardino County Flood Control  
District Act, § 2 (Stats. 1939,  
Ch. 73)

~~to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch; from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless previous compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses.~~

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9. To enter upon any-land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights of way; to acquire by purchase, lease, contract, ~~condemnation~~ or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, whether in this or in other States, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, power plants, franchises, concessions or rights; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any State, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said San Bernardino County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or the right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured for the use of

San Bernardino County Flood Control  
District Act, § 2 (Stats. 1939,  
Ch. 73)

the San Bernardino Flood Control District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments, or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

11. To incur indebtedness, and to issue bonds in the manner herein provided.

12. To cause taxes to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

13. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.

Comment. The deleted portion of subdivision 8 of Section 2 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary). The word "condemnation" is deleted from subdivision 9 to avoid any implication that the broad grant of condemnation authority under subdivision 8 is limited to the types of property enumerated in subdivision 9. Under subdivision 8, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivision 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

San Bernardino County Flood Control District Act, § 25 (Stats. 1939, Ch. 73)

San Bernardino County Flood Control District Act, § 25 (Stats. 1939, Ch. 73)  
(repealed)

Sec. . . . Section 25 of the San Bernardino County Flood Control District Act (Chapter 73 of the Statutes of 1939) is repealed.

~~Sec. 25. In case any street, road, highway, railroad, canal, or other property subject or devoted to public use shall become subject to flooding or other interference by reason of the construction or proposed construction of any works of the district or project, the board of supervisors of the district may acquire by agreement or condemnation the right so to flood or otherwise interfere with such property, within or without the district whether it be publicly or privately owned, and if such right be acquired by condemnation, the judgment may, if the court shall find that public necessity or convenience so requires, direct the district to relocate such street, road, highway, railroad, canal or other property in accordance with plans prescribed by the court and if by such judgment or by agreement the district shall be required to relocate any such street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

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Comment. Section 25 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

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San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

San Diego County Flood Control District Act, § 6 (Stats. 1966, 1st Ex.  
Sess., Ch. 55)(amended)

Sec. . Section 6 of the San Diego County Flood Control  
District Act (Chapter 55 of the Statutes of 1966, First Extra-  
ordinary Session) is amended to read:

Sec. 6. The district is hereby declared to be a body corpo-  
rate and politic and as such shall have, in addition to the other  
powers vested in it by this act, the following powers:

1. To have perpetual existence.
2. To sue and be sued in the name of the district.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, con-  
tract, ~~condemnation~~ or otherwise, and to hold, use, enjoy,  
sell, let, and dispose of real and personal property of every  
kind, including lands, structures, buildings, rights-of-way,  
easements, and privileges, excepting water rights owned by a  
public corporation or agency without the consent of such public  
corporation or agency, and to construct, maintain, alter and  
operate any and all projects or works of improvement, within  
or without the district, necessary or proper to carry out any  
of the objects or purposes of this act, or convenient to the full  
exercise of its powers, and to construct, complete, extend, add  
to, alter, remove, reconstruct, repair or otherwise improve any  
projects or works of improvement, or property acquired by it  
as authorized by this act.
5. To control the flood and storm waters of the district, and  
the flood and storm waters of streams that have their source  
outside of the district, but which streams and the flood waters  
thereof flow into the district, and to conserve such waters for  
beneficial and useful purposes within the district by retarding,  
spreading, storing, retaining and causing the same to percolate  
into the soil within or without the district, or to save and con-  
serve in any manner all or any of such waters and protect from  
damage from such flood or storm waters the watercourses,  
watersheds, public highways, life and property in said district;

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San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
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Stats., 1971, Ch. 820, § 1

provided, that water rights now existing, public or private, be not thereby taken or damaged without compensation; provided further, that none of the provisions of this act shall in any manner limit or preclude the full exercise by any county, city, district, public or municipal authority, agency or corporation, or any political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising any of its powers, although such be of the same nature as the powers of the district. Any such other public entity may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other public entity has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.

6. To cooperate and to act in conjunction with or contribute funds to, the United States or the State of California, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of San Diego, or with any public agency or district, in the construction of any projects or works of improvement for the controlling of flood or storm waters of or flowing into the district, or for the protection of life or property therein, or for the purposes of conserving said waters for beneficial use within said district, or for the protection of beaches and shorelines from erosion, or for the restoration of beaches and shorelines, or in any other works, acts or purposes provided for herein, and to adopt and carry out any definite plan or system of projects or works of improvement for any such purpose; and to enter into, and to do any and all acts necessary or proper for the performance of, any agreement with, or necessary to comply with any act of authorization of, the United States, or any state, county or district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint financing, acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, projects or works of improvement, or other property of any kind which might be lawfully acquired or owned by the district.



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San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

7. To acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned by the district, and to grant to any person the right to carry any water owned by such person through any tunnel, canal, ditch or conduit of the district; provided, that the district shall not acquire any such rights from a municipality or public water agency or district other than with the consent of such municipality or public water agency or district.

8. To carry on technical and other investigations of all kinds, make measurements, collect data, and to make analyses, studies, and inspections pertaining to water supply, water rights, ocean currents, tides, erosion, control of floods, and use of water, and to make surveys, studies, and maps and plans relative to the location of necessary projects and works of improvement including but not limited to dams, levees, channels, conduits, canals, pipelines, roadways and other rights-of-way, and relative to the acquisition of lands, or interests therein, and other property; provided, that the foregoing powers may be exercised by the district to the extent necessary to accomplish the purposes of this act; and further provided, that the district has the right of access, and may enter upon any lands within or without the district, ~~irrespective of the ownership of such lands, with or without the permission of the owner of such lands,~~ in order to accomplish the acts authorized by this section, or any of them, ~~and such entry by the district or by its authorized representative shall not constitute nor give rise to, any cause of action in favor of the owner or owners of such land except for injuries resulting from negligence, wantonness, or malice.~~ (S)

Whenever a project or work of improvement is contemplated due consideration shall be given to the location of existing sewage lines and to the possible locations of future sewage lines, and the district shall solicit the recommendations of public sewage disposal agencies in order that district facilities may be located equitably in light of such sewage lines.

9. To incur indebtedness and to issue bonds in the manner hereinafter provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

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San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

11. To make contracts, to employ labor, to employ expert appraisers, consultants and technical advisors and assistants, and to do all acts necessary for the full exercise of all powers vested by this act in said district or in any of the officers thereof.

12. The district ~~has and~~ may exercise the right of eminent domain within the County of San Diego, either within or without the district, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to any public use by any district or public corporation or agency, or otherwise, provided, however, that the~~ district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles or other property of any public utility or public corporation or district which is required to be moved to a new location, ~~and provided further, that notwithstanding any provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in the district to take by proceedings in eminent domain any water rights appropriated to public use by any existing municipal corporation, water district, or other public agency. The district shall also have the right to and may condemn, within the County of San Diego, any existing works or improvements in the district or along streams flowing into the district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in the district or along streams flowing into the district from damage from such flood or storm waters, or to protect beaches or shorelines from erosion or to restore such beaches or shorelines, and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State of California in the manner~~

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District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

~~prescribed by law, provided, however, that nothing in this act  
contained shall be deemed to authorize the district or any  
person to divert the waters of any river, creek, stream, irri-  
gation system, canal or ditch or the waters thereof or therein  
unless compensation therefor be first provided in the manner  
prescribed by law.~~

Nothing

~~The power of eminent domain vested in the district shall  
include the power to condemn in the name of the district  
either the fee simple or any lesser estate, easement or interest  
in any real property which the board by resolution shall deter-  
mine is necessary for carrying out the purposes of this act.~~

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use author-  
ized by this act; and

2. That the taking is necessary to such use; provided, when  
the board, by resolution adopted by vote of two-thirds of all its  
members, has found and determined that the public interest  
and necessity require the acquisition, construction or comple-  
tion by the district of some project or work of improvement,  
and that the property described in such resolution is necessary  
therefor, such resolution shall be conclusive evidence:

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(a) Of the public necessity for such proposed project or  
work of improvement;

(b) That such property is necessary therefor, and

(c) That such proposed project or work of improvement is  
planned or located in the manner which will be most com-  
patible with the greatest public good, and the least private  
injury; provided, however, that said resolution shall not be  
such conclusive evidence in the case of the taking by the  
district of property located outside of the territorial limits  
thereof.

Whenever land is to be condemned by the district for any  
of the uses and purposes permitted by law, and the taking of  
a part of a parcel of land would leave the remainder thereof  
in such size or shape or condition as to require the district to  
pay in compensation for the taking of such part an amount  
equal to the fair and reasonable value of the whole parcel, the  
resolution of the board may provide for the taking of the  
whole of such parcel and upon the adoption of any such reso-  
lution it shall be deemed necessary for the public use, benefit,  
~~safety, economy, and general welfare that the district acquire  
the whole of such parcel.~~

8.22

San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

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Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing municipal corporation, water district or other public agency providing water to the public or as affecting the absolute control of any properties of such municipal corporation, water district or public agency necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in the district or any officer thereof, or in any person referred to in this act, except to the extent consented thereto by such municipal corporation, water district or public agency.

13. To plan, improve, operate, maintain, and keep in a sanitary condition a system of public parks, playgrounds, beaches, swimming areas, and other facilities for public recreation, for the use and enjoyment of all the inhabitants of the district, as an incident to the carrying out of the projects and works of improvement of the district and on land acquired or used for the flood control, drainage, beach or shoreline erosion control, or water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic grounds and equipment incidental thereto, bathhouses, golf courses, tennis courts, and other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the district shall not, for the purposes specified in this subsection, interfere with the control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district, county or

8.22

San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

municipal corporation, except with the consent of the governing body of such district, county or municipal corporation, and upon such terms as may be mutually agreed upon between the board and such governing body; and further provided, that no such recreational facility shall be established in any city or in the unincorporated territory of a county without the consent of the governing body of such city or county, and further provided, that if any such recreational facility is located within the unincorporated territory of a county then that county, or if any such recreational facility is located within the corporate limits of any city then that city, by resolution duly passed by the governing body of such county or city, may assume the management and control of such recreational facility, in which event such county or city shall establish and collect nondiscriminatory fees and charges for the use of such recreational facility and may establish rules and regulations pertaining to such recreational facility, and the county or city annually shall deduct from such fees and charges an amount sufficient to reimburse the county or city for the costs and expenses incurred in such management and control of such recreational facility, and shall pay over to the district, for use for general district purposes, all money collected in excess of the amount necessary for such reimbursement.

14. The powers herein granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other projects or works of improvement pertaining thereto for the protection of shoreline or beaches.

15. To lease, sell or dispose of any property or interest therein whenever, in the judgment of the board, said property or said interests therein or part thereof is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of such property for the purposes of the district, and to pay any compensation received therefor into the general fund of the district and use the same for the purposes of this act; provided, however, that nothing herein contained shall authorize the board or any officer of said district to sell, lease or otherwise dispose of any water, water right, reservoir space or storage capacity or any interest or space therein, except to public agencies for recreational purposes or except as heretofore provided in subsection 6 of this

San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

section, or except, in the discretion of the board, as is necessarily incidental to the accomplishment of the purposes of this act or to the public welfare; provided, however, that the district may grant and convey to the United States, or to any federal agency authorized to accept and pay for such land or interests in land, all lands and interests in land, now owned or hereafter acquired, lying within any channel, dam, or reservoir site, or shoreline or beach, improved and constructed, in whole or in part, with federal funds, upon payment to the district of sums equivalent to actual expenditures made by it in acquiring the lands and interests in land so conveyed, and in improving such lands and interests in land, deemed reasonable in the discretion of the board.

16. To grant or otherwise convey to counties, cities and counties, cities, the State of California or the United States easements for street and highway purposes over, along, upon, in, through, across or under any real property owned by the district.

17. To remove, carry away and dispose of any rubbish, trash, debris, or other inconvenient matter that may be lodged, transported, conveyed, or carried by means of, through, in or along the works and structures operated or maintained hereunder and deposited upon the property of the district or elsewhere.

18. Notwithstanding any provision of this act, the district shall not have the power to compete with water selling or distribution agencies, either public or private, by selling or distributing water to consumers for domestic, agricultural or industrial use; provided, however, that the district shall have the power to sell to water agencies, either public or private, such surplus water as it may accumulate.

19. To establish by ordinance and maintain building setback lines along the banks of any river, creek, stream, or other

San Diego County Flood Control  
District Act, § 6 (Stats. 1966,  
1st Ex. Sess., Ch. 55) as amended  
Stats. 1971, Ch. 820, § 1

waterway, in any case where the board determines that such setback line is necessary to prevent impediment of the natural flow of water or to prevent damage from flooding, bank caving, or erosion related to the property on which the setback is established.

The landowner may submit an engineered alternative to the setback for approval by the board.

20. To do all acts necessary to participate in all programs authorized by the federal government whereby federal funds are granted to the district or any of its residents for purposes of health, education, welfare, public works, or community improvement, including, without limitation thereto, contracting and cooperating with the federal government, the state or its agencies, other local public agencies, and private persons and corporations, and to make any expenditure of district funds required for such participation.

Comment. The deleted portions of subdivision 12 of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity), 1240.410 et seq. (excess takings), 1240.310 et seq. (takings for exchange). The word "condemnation" is deleted from subdivision 4 to avoid any implication that the broad power of eminent domain under subdivision 12 is limited to the types of property enumerated in subdivision 4. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in Section 6 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020. The deleted portion of subdivision 8 is superseded by Section 1240.810 et seq. of the Code of Civil Procedure.

8.22

San Diego County Flood Control District Act, § 39 (Stats. 1966, 1st Ex. Sess., Ch. 55)

San Diego County Flood Control District Act, § 39 (Stats. 1966, 1st Ex. Sess., Ch. 55)(repealed)

Sec. . . . Section 39 of the San Diego County Flood Control District Act (Chapter 55 of the Statutes of 1966, First Extraordinary Session) is repealed.

~~Sec. 39. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

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Comment. Section 39 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



San Joaquin County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)  
as amended Stats. 1963, Ch. 2029, § 14

San Joaquin County Flood Control and Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)(amended)

Sec. . Section 5 of the San Joaquin County Flood Control and  
Water Conservation District Act (Chapter 46 of the Statutes of 1956,  
First Extraordinary Session) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for present and future use within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, or otherwise, and to assume the costs and expenses of, any action or proceeding involving

San Joaquin County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)  
as amended Stats. 1963, Ch. 2029, § 14

or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interest of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that

San Joaquin County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)  
as amended Stats. 1963, Ch. 2029, § 14

nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision which owns property or facilities of a type that may be owned by the district may, by written agreement with the district, provide for the use, or joint use, of such property or facilities, or for the use or joint use, of property or facilities in which said district has an interest.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public district, or with any public or private corporation, or with any city, city and county, or county, in the construction of any works for the controlling of flood or storm waters of or flowing into said district or for the protection of life or property therein, or for the purpose of conserving any waters whatsoever for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

San Joaquin County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)  
as amended Stats. 1963, Ch. 2029, § 14

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery

San Joaquin County Flood Control and Water Conservation District Act, § 5 (Stats. 1956, 1st Ex. Sess., Ch. 46) as amended Stats. 1963, Ch. 2029, § 14

to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

13. To exercise the right of eminent domain within said district, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that, notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may~~

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San Joaquin County Flood Control and Water Conservation District Act, § 5 (Stats. 1956, 1st Ex. Sess., Ch. 46) as amended Stats. 1963, Ch. 2029, § 14

~~exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that~~  
~~nothing~~ in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

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~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest, as the case may be, is necessary.~~

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Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such

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(Stats. 1956, 1st Ex. Sess., Ch. 46)  
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water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such San Joaquin County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

14. To make contracts with the County of San Joaquin, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of San Joaquin.

15. To purchase, or to contract for the purpose of purchasing, water, from the United States, or any of its agencies, from the State, or any of its agencies, from any other public district, agency or organization, from any private firm, corporation, entity, or organization, or from any person.

16. To have power to co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of contracting works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made.

17. To sell or distribute, and to contract for such sale or distribution water to any person, firm, corporation, entity, or organization within the district, whether sold or distributed for consumption or for resale or redistribution; provided that the district shall have no power to sell or distribute or to contract for such sale or distribution of, water for use on any lands within any county water district, reclamation district, irrigation district, water conservation district, protection district, municipality, flood control district, or other district or political subdivision of the State now or hereafter established,

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Water Conservation District Act, § 5  
(Stats. 1956, 1st Ex. Sess., Ch. 46)  
as amended Stats. 1963, Ch. 2029, § 14

in or partially within, the limits of the district, which is empowered to deliver water to water users, without either contracting with such entity or without the express written permission of the governing body of such entity.

18. To establish tolls or charges for any water sold or distributed by it.

19. To levy assessments to pay the costs of acquiring and distributing any water in any water conservation zones which are benefited.

Comment. The deleted portions of subdivision 13 of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined). The word condemnation is deleted from subdivisions 4 and 9 to avoid any implication that the broad power of eminent domain under subdivision 13 is limited to the types of property enumerated in subdivisions 4 and 9. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.



San Joaquin County Flood Control and Water Conservation District Act, § 33 (Stats. 1956, 1st Ex. Sess., Ch. 46)

San Joaquin County Flood Control and Water Conservation District Act, § 33  
(Stats. 1956, 1st Ex. Sess., Ch. 46) (repealed)

Sec. . Section 33 of the San Joaquin County Flood Control and Water Conservation District Act (Chapter 46 of the Statutes of 1956, First Extraordinary Session) is repealed.

~~Sec. 33. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 48 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1960.~~

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Comment. Section 33 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

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San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 5 (Stats. 1945, Ch. 1294) as  
amended Stats. 1963, Ch. 2029, § 15

San Luis Obispo County Flood Control and Water Conservation District Act,  
§ 5 (Stats. 1945, Ch. 1294) (amended)

Sec. . Section 5 of the San Luis Obispo County Flood  
Control and Water Conservation District Act (Chapter 1294 of  
the Statutes of 1945) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair, or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; to commence, maintain, intervene in, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without

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San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 5 (Stats. 1945, Ch. 1294) as  
amended Stats. 1963, Ch. 2029, § 15

the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district.

7. To co-operate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of San Luis Obispo, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

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San Luis Obispo County Flood Control and Water Conservation District Act, § 5 (Stats. 1945, Ch. 1294) as amended Stats. 1963, Ch. 2029, § 15

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses of streams flowing in or into said district, ~~and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use,~~ shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, ~~and may survey and locate the same, but such must be located in the manner which will be most compatible with the greatest public good and the least private injury.~~ The district, ~~or its agents in charge of such public use,~~ may enter upon such lands and make examinations, surveys, and maps thereof.

For such purposes, the district

through its authorized representatives

through its authorized representatives.

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation,~~ gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the State, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said San Luis Obispo County Flood Control and Water Conservation District; to acquire the right

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San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 5 (Stats. 1945, Ch. 1294) as  
amended Stats. 1963, Ch. 2029, § 15

to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the San Luis Obispo County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To incur indebtedness and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 5 (Stats. 1945, Ch. 1294) as amended  
Stats. 1963, Ch. 2029, § 15

Comment. Subdivision 8 of Section 5 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvement). The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under Section 6 is limited to the types of property enumerated in subdivisions 4 and 9. Under Section 6, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

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San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 6 (Stats. 1945, Ch. 1294) as amended  
✓ Stats. 1967, Ch. 646, § 1

San Luis Obispo County Flood Control and Water Conservation District Act,  
§ 6 (Stats. 1945, Ch. 1294) (amended)

Sec. . . Section 6 of the San Luis Obispo County Flood Control  
and Water Conservation District Act (Chapter 1294 of the Statutes of  
1945) is amended to read:

Sec. 6. The district ~~shall have and~~ may exercise the right  
of eminent domain, either within or without said district, ~~and~~  
~~in the manner provided by law for the condemnation of private~~  
~~property for public use,~~ to take any property necessary to  
carry out any of the objects or purposes of this act, ~~whether~~ ( - )  
~~such property be already devoted to any public use by any dis-~~  
~~trict or other public corporation, or agency, or otherwise pro-~~  
( The ) ~~vided, however, that the~~ district in exercising such power shall  
in addition to the damage for the taking, injury, or destruction  
of property, also pay the cost of removal or relocation of any  
structure, railways, mains, pipes, conduits, wires, cable, poles,  
of any public utility which is required to be moved to a new  
( - ) ~~location, and provided further that notwithstanding any other~~  
~~provision of this act or any other law, no property shall be~~  
taken unless it is taken upon a finding by a court of competent  
jurisdiction that the taking is for a more necessary public use  
than that to which it has already been appropriated. The dis-  
trict shall also have and may exercise the right to condemn any  
existing works or improvements in said district or along  
streams flowing into said district now or hereafter used to con-  
trol flood or storm waters, or to conserve such flood or storm  
waters or to protect any property in said district or along  
streams flowing into said district from damage from such flood  
or storm waters, and it is hereby declared that the use of the  
property, lands, rights of way, easements, or materials which  
~~may be condemned, taken or appropriated under the provision~~

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San Luis Obispo County Flood Control  
and Water Conservation District Act,  
§ 6 (Stats. 1945, Ch. 1294) as amended  
Stats. 1967, Ch. 646, § 1

Nothing

~~of this act is a public use subject to the regulation and control  
of the state in the manner prescribed by law; provided, how-  
ever, that nothing~~ in this act contained shall be deemed to  
authorize said district, or any person or persons to divert the  
waters of any river, creek, stream, irrigation system, canal or  
ditch, from its channel, to the detriment of any person, or per-  
sons having any interest in such river, creek, stream, irrigation  
system, canal or ditch, or the waters thereof or therein, unless  
compensation therefor be first provided in the manner pro-  
vided by law.

~~The power of eminent domain vested in the district shall~~  
include the power to condemn in the name of the district either  
the fee simple or any lesser estate, easement, or interest in any  
real property which the board of supervisors of the district by  
resolution shall determine is necessary for carrying out the  
purposes of this act. Such resolution shall be conclusive evi-  
dence of all of the following:

- (a) The public necessity for the proposed public improve-  
ment.
- (b) The property or property interest being acquired is  
necessary for the proposed public use.
- (c) Such proposed public improvement is planned or lo-  
cated in the manner which will be compatible to the greatest  
public good and the least private injury.

Whenever real property which is devoted to or held for some  
other public or quasi public use is required by the district for  
flood or storm water control or water conservation purposes,  
the district may condemn real property adjacent thereto or  
in the immediate vicinity thereof to be exchanged for the real  
~~property required by the district as aforesaid for flood con-  
trol or water conservation purposes.~~

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Comment. The deleted portions of Section 6 are superseded by provisions  
of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure),  
1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is  
a public use is unnecessary), 1240.040 (right to take any interest or right in  
property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc.  
§§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).



San Luis Obispo County Flood Control and Water Conservation District Act (Stats. 1945, Ch. 1294), § 6.1 (added Stats. 1967, Ch. 646, § 2) as amended Stats. 1968, Ch. 488, § 1

San Luis Obispo County Flood Control and Water Conservation District Act (Stats. 1945, Ch. 1294), § 6.1 (added Stats. 1967, Ch. 646, § 2) (amended)

Sec. . . . Section 6.1 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294 of the Statutes of 1945) is amended to read:

~~Sec. 6.1. Whenever a part only of a parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

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No authority is hereby granted to the district to acquire riding and hiking trails by condemnation.

Comment. The first paragraph of Section 6.1 is superseded by Section 1240.410 et seq. of the Code of Civil Procedure.

San Luis Obispo County Flood Control and Water Conservation District Act, § 29 (Stats. 1945, Ch. 1294) (repealed)

Sec. . . Section 29 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294 of the Statutes of 1945) is repealed.

~~Sec. 29. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment. It shall be provided in all agreements for exchange of property and judgments requiring relocation of other public uses as specified in this section and in Section 6 of this act, that in making such exchanges it shall be specifically provided that such property so condemned and exchanged be limited to public use by the party with whom such exchange is made.~~  
~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Railroad Commission of the State; and jurisdiction of such controversies is hereby vested in said Railroad Commission.~~  
~~(c) Proceedings under this section relating to the jurisdiction of said Railroad Commission may be instituted, maintained and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1932.~~

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Comment. Section 29 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

San Mateo County Flood Control District Act, § 3 (Stats. 1959, Ch. 2108)  
(amended)

Sec. . . Section 3 of the San Mateo County Flood Control  
District Act (Chapter 2108 of the Statutes of 1959) is amended  
to read:

Sec. 3. The San Mateo County Flood Control District is hereby declared to be a body corporate and politic and as such shall have in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To adopt a seal and alter it at pleasure.
3. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
4. To acquire, by grant, purchase, gift, devise, lease, contract, ~~condemnation~~, construction or otherwise, lands, rights-of-way, easements, privileges and property of any kind, whether real, personal or mixed, and to construct, maintain and operate any and all works or improvements within or without the district necessary, convenient or proper to carry out any of the objects or purposes of this act, and to complete, extend, add to, repair or otherwise improve any works or improvements or property acquired by it as authorized by this act; to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this act.
5. To hold, use, enjoy and to lease, sell, or otherwise dispose of real, personal or mixed property of every kind within or without the district necessary or convenient to the full exercise of its powers.
6. To incur indebtedness, and to issue bonds in the manner herein provided.

San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

6.5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including but not limited to, the acquisition, storage and distribution of water for irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses; to distribute, sell, or otherwise dispose of, outside the district, any waters not needed for beneficial uses within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district in behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

7. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by retarding, spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters and watercourses, watersheds, harbors, public highways, life and property in said district.

8. To ~~have and~~ exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn, any existing works or improvements in said district now or hereafter used to control flood or storm waters or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act, is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that~~ nothing, in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the injury or detriment of any person, or persons, having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation ~~be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public use, except as provision is made in the Constitution of the State for the taking of immediate possession of certain properties, provided further, however,~~

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therefor be first provided in the manner prescribed by law.

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San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

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that the district in exercising such powers shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railroads, mains, pipes, conduits, wires, cable, poles of any public utility which is required to be reconstructed or relocated.

~~The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district with the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of the fee simple or any lesser estate or interest in such property, as the case may be, is necessary; provided, however, that when the board of supervisors shall, by resolution or ordinance, adopted by vote of two-thirds of all its members, have found and determined that the public interest and necessity require the acquisition, construction or completion by said district of any public improvement for flood control purposes and that the property described in such resolution or ordinance is necessary therefor, such resolution or ordinance shall be conclusive evidence (a) of the public necessity of such proposed public improvement, (b) that such property is necessary therefor, and (c) that such proposed public improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury. Whenever real property or easements therein which is devoted to or held for some other public or quasi-public use is required by the district for flood control or water conservation purposes, the district may condemn real property or easements therein adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property or easements therein required by the district as aforesaid for flood control purposes.~~

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9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines of channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift or other legal means all lands and water and water rights and other property necessary or convenient for the construction, operation, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs, for storage of necessary water, and all necessary appurtenances, and

San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, waterworks, powerplants, easements, franchises, concessions or rights; to enter into and to do any and all acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said San Mateo County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant any owner or lessee the right to the use of any water or the right to store such water in any reservoir of the district or to carry such water through any tunnels, canal, ditch or conduit of the district; to enter into and to do any acts necessary or proper for the performance of any agreement with any district or other political entity of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired, or secured for the use of the San Mateo County Flood Control District; to co-operate with, and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any such works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725, § 2

10. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water sources, water rights, control of floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district.

12. To make contracts and to employ labor and professional services and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof by this act.

Provided, that in the exercise of the powers vested in it by this act, with respect to lands lying without the exterior boundaries of the County of San Mateo, said San Mateo County Flood Control District shall obtain, prior to the taking of any action to carry out the purposes of this act without said boundaries, written approval of the action from the governing body of each affected county, city and county, and city.

13. To plan, improve, operate, maintain, and keep in a sanitary condition, a system of public parks, playgrounds, beaches, swimming areas and other facilities for public recreation, for the use and enjoyment of all inhabitants of the district, as an incident to the carrying out of the projects of the district and on land acquired or used for the flood control drainage and water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic benches and tables, bathhouses, golf courses, tennis courts, or other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation



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San Mateo County Flood Control  
District Act, § 3 (Stats. 1959,  
Ch. 2108) as amended Stats. 1963,  
Ch. 725; § 2

and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the board shall not, for the purposes specified in this subdivision, interfere with control or operation of any existing public park, playground, beach, swimming area, parkway, recreation ground, or other public property, owned or controlled by any other district or municipality, except with the consent of the governing body of such district or municipality, and upon terms as may be mutually agreed upon between the board and the governing body.

Comment. The deleted portions of subdivision 8 of Section 3 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1255.010 et seq. (possession prior to judgment), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined). The word "condemnation" is deleted from subdivisions 4 and 9 to avoid any implication that the broad grant of condemnation authority under subdivision 8 is limited to the types of property enumerated in subdivisions 4 and 9. Under subdivision 8, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 9 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

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San Mateo County Flood Control  
District Act, § 31 (Stats. 1959,  
Ch. 2108)

San Mateo County Flood Control District Act, § 31 (Stats. 1959, Ch. 2108)  
(repealed)

Sec. . Section 31 of the San Mateo County Flood Control  
District Act (Chapter 2108 of the Statutes of 1959) is repealed.

~~Sec. 31. If by any judgment in condemnation or by agree-  
ment the district shall be required to relocate any street, road,  
highway, railroad, canal or other property subject or devoted  
to public use, the board shall have power to acquire in the  
name of the district, by agreement or condemnation, all rights  
of way and other property necessary or proper for compliance  
with said agreement or said judgment of condemnation and  
thereafter to make such conveyance of such relocated street,  
road, highway, railroad, canal, or other property as may be  
proper to comply with said agreement or judgment.~~

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Comment. Section 31 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

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Santa Barbara County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1955, Ch. 1057) as amended  
Stats. 1967, Ch. 1181, § 1

Santa Barbara County Flood Control and Water Conservation District Act, § 5  
(Stats. 1955, Ch. 1057)(amended)

Sec. . Section 5 of the Santa Barbara County Flood Control  
and Water Conservation District Act (Chapter 1057 of the Statutes  
of 1955) is amended to read:

Sec. 5. The district is hereby declared to be a body corpo-  
rate and politic and as such shall have, in addition to the other  
powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, con-  
tract, ~~condemnation~~, construction, or otherwise, and to hold,  
use, enjoy, sell, let, and dispose of real and personal property  
of every kind, including lands, structures, buildings, rights-  
of-way, easements, and privileges, and to construct, maintain,  
alter and operate any and all works or improvements, within  
or without the district, necessary or proper to carry out any  
of the objects or purposes of this act and convenient to the full  
exercise of its powers, and to complete, extend, add to, alter,  
remove, repair or otherwise improve any works, or improve-  
ments, or property acquired by it as authorized by this act.

Santa Barbara County Flood Control and  
Water Conservation District Act, § 5  
(Stats. 1955, Ch. 1057) as amended  
Stats. 1967, Ch. 1181, § 1

5. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.

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6. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Santa Barbara, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of storm waters and floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances; to enter into contracts and agreements with, and do any acts necessary or proper for the performance of any such contracts and agreements with the United States, or any state, county, district of any kind, public or private or municipal corporation, associa-

Santa Barbara County Flood Control and Water Conservation District Act, § 5 (Stats. 1955, Ch. 1057) as amended Stats. 1967, Ch. 1181, § 1

tion, firm, or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water or water supply to be delivered to said district by the other party to said agreement.

9. To incur indebtedness and to issue bonds in the manner herein provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

12. To exercise the right of eminent domain, either within or without said district, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects

Santa Barbara County Flood Control and Water Conservation District Act, § 5 (Stats. 1955, Ch. 1057) as amended Stats. 1967, Ch. 1181, § 1

The ~~or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the state in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.~~

No ~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of directors of the district by~~

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Santa Barbara County Flood Control and  
Water Conservation District Act; § 5  
(Stats. 1955, Ch. 1057) as amended  
Stats. 1967, Ch. 1181, § 1

~~resolution shall determine is necessary for carrying out the~~  
purposes of this act. Such resolution, adopted by a two-thirds  
vote of all its members, shall be conclusive evidence of all of  
the following:

- (a) The public necessity for the proposed public improve-  
ment.
- (b) The property or property interest being acquired is nec-  
essary for the proposed public use.
- (c) Such proposed public improvement is planned or located  
in the manner which will be compatible with the greatest pub-  
lic good and the least private injury.

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Whenever real property which is devoted to or held for  
some other public or quasi-public use is required by the district  
for any purpose authorized by this act, the district may con-  
demn real property adjacent thereto or in the immediate  
~~vicinity thereof to be exchanged for the real property as re-  
quired by the district.~~

Nothing in this act contained shall be construed as in any  
way affecting the plenary power of any existing city and  
county or municipal utility district or other district or public  
agency to provide for a water supply for such city and county  
or municipal utility district, or as affecting the absolute con-  
trol of any properties of such city and county or municipal  
utility district necessary for such water supply and nothing  
herein contained shall be construed as vesting any power of  
control over such properties in such Santa Barbara County  
Flood Control and Water Conservation District or in any  
officer thereof, or in any person referred to in this act.

~~12.1. Whenever a part only of a parcel is required by the~~  
district for any purpose authorized by this act, and the taking  
thereof, and the construction of the proposed public improve-  
ment thereon, will interfere with reasonable access to the re-  
mainder, or will otherwise cause substantial damage to the  
remainder, the district may condemn, purchase, or otherwise  
~~acquire the whole parcel of land and may sell the remainder~~

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Santa Barbara County Flood Control and Water Conservation District Act, § 5 (Stats. 1955, Ch. 1057) as amended Stats. 1967, Ch. 1181, § 1

~~or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

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13. To make contracts with the County of Santa Barbara and with municipalities and public agencies, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of Santa Barbara.

Comment. The deleted portions of subdivision 12 of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined). Subdivision 12.1 is superseded by Code of Civil Procedure Section 1240.410 et seq. The word "condemnation" is deleted from subdivisions 4 and 8 to avoid any implication that the broad grant of condemnation authority under subdivision 12 is limited to the types of property enumerated in those subdivisions. Under subdivision 12, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 8 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.26

Santa Barbara County Flood Control  
and Water Conservation District Act,  
§ 30 (Stats. 1955, Ch. 1057)

Santa Barbara County Flood Control and Water Conservation District Act,  
§ 30 (Stats. 1955, Ch. 1057) (repealed)

Sec. . . . Section 30 of the Santa Barbara County Flood  
Control and Water Conservation District Act (Chapter 1057 of  
the Statutes of 1955) is repealed.

~~Sec. 30. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal or other property as may be proper to comply with said agreement or judgment.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvement or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained, and determined in the mode prescribed in Division 1, Part 1, Chapter 6 (Sections 1201-1220, 1402) of the Public Utilities Code of the State of California.~~

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Comment. Section 30 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Santa Clara County Flood Control  
and Water District Act, § 5  
(Stats. 1951, Ch. 1405) as  
amended Stats. 1967, Ch. 205, § 4

Santa Clara County Flood Control and Water District Act, § 5 (Stats. 1951,  
Ch. 1405) (amended)

Sec. . Section 5 of the Santa Clara County Flood Control  
and Water District Act (Chapter 1405 of the Statutes of 1951) is  
amended to read:

SEC. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To store water in surface or underground reservoirs within or outside of the district for the common benefit of the district or of any zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, water for any purpose useful to the district; and to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including but not limited to, the acquisition, storage and distribution of water for irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses;

Santa Clara County Flood Control and  
Water District Act, § 5 (Stats. 1951,  
Ch. 1405) as amended Stats. 1967,  
Ch. 205, § 4

to distribute, sell, or otherwise dispose of, outside the district, any waters not needed for beneficial uses within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district in behalf of the landowners therein, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions and proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of water used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or sub-surface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

6. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district, and the water-courses outside of the district of streams flowing into the district.

7. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement

8.27

Santa Clara County Flood Control and  
Water District Act, § 5 (Stats. 1951,  
Ch. 1405) as amended Stats. 1957,  
Ch. 205, § 4

of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold in the name of the state, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to cooperate with, act in conjunction with, enter into and to do any acts necessary for the proper performance of any agreement with the State of California, or any of its engineers, officers, boards, commissions, departments, or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments, or agencies, or with any state, city and county, city, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the ownership, joint acquisition, leasing, disposition, use, management, construction, installation, extension, maintenance, repair, or operation of any rights, works, or other property of a kind which might lawfully be acquired or owned by the district or for the lawful performance of any power or purpose of said district provided for in this act including, but not limited to, the granting of the right to the use of any water or the right to store such water in any reservoir of the district or to carrying such water through any tunnel, canal, ditch or conduit of the district or for the delivery, sale, or exchange of any water right, water supply or water pumped, stored, appropriated or otherwise acquired or secured for the use of said district, or for controlling drainage waters, or flood or storm waters of streams in or running into said district, or for the protection of life or property therein, or for the purpose of conserving any waters for the beneficial use within said district, or in any other works, uses, or purposes provided for in this act; and to adopt and carry out any definite plan or system for accomplishing, facilitating and/or financing all work which may lawfully be accomplished by the district and to enforce said plan or system by resolution or ordinance.

8. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and

Santa Clara County Flood Control and  
Water District Act, § 5 (Stats. 1951,  
Ch. 1405) as amended Stats. 1967,  
Ch. 205, § 4

For such pur-  
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inspections pertaining to water supply, water rights, control of flood and storm waters, and use of water both within and without said district relating to watercourses or streams flowing in or into said district, ~~and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use,~~ shall have the right of access to all properties within the district and elsewhere relating to watercourses and streams flowing in or into said district, ~~and may survey and locate the same, but such must be located in a manner which will be most compatible with the greatest public good and the least private injury.~~ The district, ~~or its agents in charge of such public use,~~ may enter upon such lands and make examinations, surveys, and maps thereof.

through its author-  
ized representatives

through its author-  
ized representatives,

9. To prescribe, revise and collect fees and charges for facilities furnished or to be furnished to any new building, improvement or structure by the use of any flood control or storm drainage system constructed or to be constructed in a zone of the district, and whenever a drainage or flood control problem is referred to the district by the County of Santa Clara, or any incorporated city therein, to require the installation of drainage or flood control improvements necessary and/or convenient for needs of the zone, including but not limited to, residential, subdivision, commercial and industrial drainage and flood control needs, said county and cities being hereby authorized to refer all drainage and flood control problems, arising under the Subdivision Map Act or otherwise, to the district for solution. Revenues derived under this section shall be used for the acquisition, construction, reconstruction, maintenance and operation of the flood control or storm drainage facilities of the said zone, to reduce the principal or interest of any bonded indebtedness thereof, or to replace funds expended on behalf of said zone derived from the fund created under authority of Section 13, subdivision F.

10. To incur indebtedness, and to issue bonds in the manner herein provided.

11. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

12. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

13. To have the power and right to disseminate information concerning the rights, properties, activities, plans and proposals of the district; provided, however, that expenditures during any fiscal year for such purposes shall not exceed one-half cent (\$.005) for each one hundred dollars (\$100) of assessed valuation of such district.

Santa Clara County Flood Control and  
Water District Act, § 5 (Stats. 1951,  
Ch. 1405) as amended Stats. 1967,  
Ch. 205, § 4

14. To pay to any city, public agency or district a portion of the cost of water imported by such city, public agency or district into, for use within, and of benefit to the Santa Clara County Flood Control and Water District.

15. To establish designated floodways in accordance with the provisions of the Cobey-Alquist Flood Plain Management Act (Chapter 4 (commencing with Section 8400), Part 2, Division 5 of the Water Code).

16. To acquire, construct, maintain, operate and install landscaping or recreational facilities in connection with any dam, reservoir, or other works owned or controlled by the district.

Comment. Subdivision 8 of Section 5 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvements).

The word "condemnation" is deleted from subdivisions 4 and 7 to avoid any implication that the broad grant of condemnation authority under Section 6 is limited to the types of property enumerated in those subdivisions. Under Section 6, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 7 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Santa Clara County Flood Control and Water District Act, § 6 (Stats. 1951, Ch. 1405) as amended Stats. 1952, 1st Ex. Sess., Ch. 20, § 3

Santa Clara County Flood Control and Water District Act, § 6 (Stats. 1951, Ch. 1405)(amended)

Sec. . Section 6 of the Santa Clara County Flood Control and Water District Act (Chapter 1405 of the Statutes of 1951) is amended to read:

Sec. 6. The district ~~shall have and may exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be first provided in the manner provided by law.~~

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Santa Clara County Flood Control and Water District Act, § 6 (Stats. 1951, Ch. 1405) as amended Stats. 1952, 1st Ex. Sess., Ch. 20, § 3

Nothing in this act shall authorize the district to condemn any of the properties, structures or works, now owned or hereafter to be constructed or acquired, by any water conservation district within the County of Santa Clara.

~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.~~

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for flood or storm water control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real ~~property required by the district as aforesaid for flood control or water conservation purposes.~~

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Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

8.27

Santa Clara County Flood Control and Water District Act (Stats. 1951, Ch. 1405), § 6.1 (added Stats. 1959, Ch. 578, § 1) as amended Stats. 1967, Ch. 205, § 5

Santa Clara County Flood Control and Water District Act (Stats. 1951, Ch. 1405), § 6.1 (added Stats. 1959, Ch. 578, § 1)(repealed)

Sec. . Section 6.1 of the Santa Clara County Flood Control and Water District Act (Chapter 1405 of the Statutes of 1951) is repealed.

~~Sec. 6.1. Whenever a part only of a parcel of land is required by the district, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder or a portion thereof, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land or such portion of the remainder to which access is impaired and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

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Comment. Section 6.1 is superseded by the more general provision of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 et seq.

Santa Clara County Flood Control and Water District Act, § 29 (Stats. 1951, Ch. 1405)

Santa Clara County Flood Control and Water District Act, § 29 (Stats. 1951, Ch. 1405) (repealed)

Sec. . Section 29 of the Santa Clara County Flood Control and Water District Act (Chapter 1405 of the Statutes of 1951) is repealed.

~~Sec. 29. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment. It shall be provided in all agreements for exchange of property and judgments requiring relocation of other public uses as specified in this section and in Section 6 of this act, that in making such exchanges it shall be specifically provided that such property so condemned and exchanged be limited to public use by the party with whom such exchange is made.~~

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(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission; and jurisdiction of such controversies is hereby vested in said commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the mode prescribed in paragraphs 1, 2, 3, 4, 5, 6, and 7 of subsection (c) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

Comment. Section 29 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.28

Santa Cruz County Flood Control  
and Water Conservation District  
Act, § 23 (Stats. 1955, Ch. 1489)

Santa Cruz County Flood Control and Water Conservation District Act, § 23  
(Stats. 1955, Ch. 1489) (amended)

Sec. . Section 23 of the Santa Cruz County Flood  
Control and Water Conservation District Act (Chapter 1489  
of the Statutes of 1955) is amended to read:

SEC. 23. It may ~~have and~~ exercise the right of eminent  
domain, ~~and in the manner provided by law for the condemna-~~  
~~tion of private property for public use by the State, any politi-~~  
~~cal subdivision or district thereof.~~ either within or without  
the district, to take any property necessary to  
carry out any of the objects or purposes of this  
act.

Comment. The deleted portion of Section 23 is superseded by  
Section 1235.010 (uniform procedure) of the Code of Civil Procedure.  
The right to take property by eminent domain within or without the  
district is continued from Section 41.

Santa Cruz County Flood Control and  
Water Conservation District Act, § 24  
(Stats. 1955, Ch. 1489)

Santa Cruz County Flood Control and Water Conservation District Act, § 24  
(Stats. 1955, Ch. 1489)(repealed)

Sec. . Section 24 of the Santa Cruz County Flood Control and  
Water Conservation District Act (Chapter 1489 of the Statutes of  
1955) is repealed.

~~Sec. 24. In condemnation proceedings, the district shall proceed under the provisions of Title 7, Part 3, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights of way, easements or materials, which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for the public uses herein authorized as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, water district or irrigation or reclamation district, or drainage or water conservation or flood control district.~~

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Comment. Section 24 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary).

Santa Cruz County Flood Control  
and Water Conservation District  
Act, § 41 (Stats. 1955, Ch. 1489)

Santa Cruz County Flood Control and Water Conservation District Act, § 41  
(Stats. 1955, Ch. 1489)(amended)

Sec. . Section 41 of the Santa Cruz County Flood  
Control and Water Conservation District Act (Chapter 1489  
of the Statutes of 1955) is amended to read:

Sec. 41. It may acquire and contract to acquire by purchase, ~~condemnation~~, donation or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights of way, easements, privileges, material and property of every kind within or without the district or county.

by eminent domain

Comment. The right to take property/~~within or without~~  
the district, formerly contained in this section, is continued  
in Section 23. The word "condemnation" is deleted from Section  
41 to avoid any implication that the broad grant of condemnation  
authority under Section 23 is limited to the types of property  
enumerated in Section 41. Under Section 23, any type of property  
or right or interest therein may be taken by eminent domain. See  
Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of  
specific types of property in Section 41 does not limit the right to  
acquire types of property not enumerated by purchase or other means.  
Code Civ. Proc. § 1235.020.

Sierra County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1959, Ch. 2123)

Sierra County Flood Control and Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2123)(amended)

Sec. . Section 3 of the Sierra County Flood Control and  
Water Conservation District Act (Chapter 2123 of the Statutes of  
1959) is amended to read:

Sec. 3. The objects and purposes of this act are to provide,  
to the extent that the board may deem expedient or economi-  
cal, for the control and disposition of the storm, flood, and  
other waters of said district and to that end the district is  
hereby created to be a body corporate and politic and as such  
shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to  
hold, use, enjoy, sell, and contract to sell, lease, or dispose  
of real, personal and mixed property of every kind within or  
without the district necessary, expedient or advantageous to  
the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, dona-  
tion or other lawful means in the name of the district from  
private persons, public and private corporations, associations,  
agencies or districts, lands, rights-of-way, easements, privi-  
leges, material, and property of every kind within or without  
the district, to do all work and to acquire, construct, maintain  
and operate any and all works and improvements within or  
without the district, and to make, execute, carry out and en-  
force all contracts of every character, necessary, convenient,  
incidental, useful or proper to carry out any of the provisions,  
objects or purposes of this act, and to complete, extend, add  
to, repair, or otherwise improve any works or improvements  
acquired by it as herein authorized.

Sierra County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2123)

(f) To ~~have and~~ exercise the right of eminent domain, ~~and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof.~~ No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Sierra shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

either within or without the district, to take any property necessary to carry out any of the objects or purposes of this act.

~~In condemnation proceedings, the district shall proceed under the provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district; provided, however, that no property shall be taken unless it is taken upon a finding of a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or altering or otherwise changing existing works or structures shall be paid by the district; provided, however, that all costs of relocating or otherwise changing any portion of a state highway shall be paid for from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes.



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Sierra County Flood Control and  
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§ 3 (Stats. 1959, Ch. 2123)

(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, drains, tunnels, poles, posts, wires, lamps, powerplants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and tax collector, and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish the same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California

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or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface water and water rights, useful or necessary to make use of water for any of the purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, recreational and all other beneficial uses.

(r) To control flood and storm waters within the district and the flood and storm waters or streams outside the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of water in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, on behalf of the landowners therein, or otherwise to assume the cost and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or

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of the common benefit of any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions or proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare the rights in natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use, the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

(s) To co-operate and act in conjunction with the United States or with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Siskiyou, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where

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§.3 (Stats. 1959, Ch. 2123)

necessary or convenient to said end, and for said purposes and uses, to acquire and to hold the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Sierra County Flood Control and Water Conservation District; to acquire by negotiation only the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water owned or controlled by the district or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit owned and controlled by the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual or any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Sierra County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

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(u) To co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 (commencing at Section 23175) of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

(v) To construct, operate, and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of works for other beneficial uses and purposes, and to enter into contracts for the sale of such energy for a term not to exceed 50 years. Such energy may be marketed only at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy.

(w) Nothing herein contained shall be deemed to permit the district or its board of directors to acquire or interfere in existing water rights and water uses and facilities for distribution of the same on an involuntary basis, but nothing herein shall be deemed to prohibit negotiating and acquisition of existing rights, uses, and privileges in water by negotiation.

Comment. The deleted portion of Section 3 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary). Consistent with subdivision (e), subdivision (f) authorizes extraterritorial condemnation.

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Water Conservation District Act,  
§ 3 (Stats. 1959, Ch. 2121)

Siskiyou County Flood Control and Water Conservation District Act, § 3  
(Stats. 1959, Ch. 2121)(amended)

Sec. . Section 3 of the Siskiyou County Flood Control and  
Water Conservation District Act (Chapter 2121 of the Statutes of  
1959) is amended to read:

Sec. 3. The objects and purposes of this act are to provide, to the extent that the board may deem expedient or economical, for the control and disposition of the storm, flood, and other waters of said district and to that end the district is hereby created to be a body corporate and politic and as such shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and contract to sell, lease, or dispose of real, personal and mixed property of every kind within or without the district necessary, expedient or advantageous to the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, donation or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights-of-way, easements, privileges, material, and property of every kind within or without the district, to do all work and to acquire, construct, maintain and operate any and all works and improvements within or without the district, and to make, execute, carry out and enforce all contracts of every character, necessary, convenient, incidental, useful or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

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to take any

(f) ~~To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof, except that such right shall be exercised only as against property located within the county, in condemnation proceedings, the district shall proceed under the provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county; city and county, incorporated city or town, municipal water district or irrigation or reclamation district; provided, however, that no property shall be taken unless it is taken upon a finding of a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

necessary to carry out any of the objects or purposes of this act .

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or altering or otherwise changing existing works or structures shall be paid by the district; provided, however, that all costs of relocating or otherwise changing any portion of a state highway shall be paid for from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes.

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(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, drains, tunnels, poles, posts, wires, lamps, powerplants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees, as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and tax collector, and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish the same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.



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(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface water and water rights, useful or necessary to make use of water for any of the purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, recreational and all other beneficial uses.

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(r) To control flood and storm waters within the district and the flood and storm waters or streams outside the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of water in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, on behalf of the landowners therein, or otherwise to assume the cost and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of the common benefit of any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions or proceedings now or hereafter begun; to prevent interference with or diminution of, or to declare the rights in natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use, the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

(s) To co-operate and act in conjunction with the United States or with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with

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any public or private corporation, or with the County of Siskiyou, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Siskiyou

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County Flood Control and Water Conservation District; to acquire by negotiation only the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water owned or controlled by the district or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit owned and controlled by the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual or any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Siskiyou County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

(u) To co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 (commencing at Section 23175) of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

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(v) To construct, operate, and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of works for other beneficial uses and purposes, and to enter into contracts for the sale of such energy for a term not to exceed 50 years. Such energy may be marketed only at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy.

(w) Nothing herein contained shall be deemed to permit the district or its board of directors to acquire or interfere in existing water rights and water uses and facilities for distribution of the same on an involuntary basis, but nothing herein shall be deemed to prohibit negotiating and acquisition of existing rights, uses, and privileges in water by negotiation.

Comment. The deleted portions of Section 3 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary).

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Solano County Flood Control and Water Conservation District Act, § 3.4 (Stats. 1951, Ch. 1656) as amended Stats. 1957, Ch. 1502, § 1

Solano County Flood Control and Water Conservation District Act, § 3.4 (Stats. 1951, Ch. 1656)(amended)

Sec. . Section 3.4 of the Solano County Flood Control and Water Conservation District Act (Chapter 1656 of the Statutes of 1951) is amended to read:

Sec. 3.4. The district ~~shall have~~ the power of eminent domain to acquire within the district by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution and Title 7, Part 3 of the Code of Civil Procedure, ~~as now existing or hereafter amended, all, property or interests therein necessary or convenient for carrying out the powers and purposes of the district except that the district shall not have power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State in the manner prescribed by law.~~ The district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles, of any public utility which is required to be moved to a new location, ~~and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

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The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any property which the board of directors by resolution shall determine is necessary for carrying out the purposes of the district. Such resolution shall be prima facie evidence that the taking of such ~~private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the district.~~

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.040 (right to take any interest or right in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

8.31

Solano County Flood Control and  
Water Conservation District Act,  
§ 4.8 (Stats. 1951, Ch. 1656)

Solano County Flood Control and Water Conservation District Act, § 4.8  
(Stats. 1951, Ch. 1656) (repealed)

Sec. . Section 4.8 of the Solano County Flood Control  
and Water Conservation District Act (Chapter 1656 of the  
Statutes of 1951) is repealed.

~~Sec. 4.8. If by any judgment in condemnation or by  
agreement the district shall be required to relocate any street,  
road, highway or railroad, subject or devoted to public use, the  
board shall have power to acquire in the name of the district by  
agreement or condemnation, all rights of way and other property  
necessary or proper for the compliance with said agreement or  
judgment and thereafter, and without further authorization,  
to make such conveyance of such relocated street, road, highway  
or railroad, as may be proper to comply with said agreement or  
judgment.~~

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Comment. Section 4.8 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.32  
(45.26 on hand)

Sonoma County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1949, Ch. 994) as  
amended Stats. 1965, Ch. 536, § 1

Sonoma County Flood Control and Water Conservation District Act, § 3  
(Stats. 1949, Ch. 994)(amended)

Sec. . Section 3 of the Sonoma County Flood Control and  
Water Conservation District Act (Chapter 994 of the Statutes of  
1949) is amended to read:

Sec. 3. The objects and purposes of this act are to provide,  
to the extent that the board may deem expedient or economical  
for water conservation, the control and disposition of flood,  
storm and other waters of the district, and the generating  
electric energy, and to that end the district is hereby created to  
be a body corporate and politic and as such shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To obtain by grant, purchase, gift, devise or lease; to  
hold, use, enjoy, sell, and contract to sell, lease, or dispose  
of real, personal and mixed property of every kind within  
or without the district necessary, expedient or advantageous  
to the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, dedi-  
cation, ~~condemnation~~, donation or other lawful means in the  
name of the district from private persons, public and private  
corporations, associations, agencies or districts, lands, rights-  
of-way, easements, privileges, material, and property of every  
kind within or without the district, to do all work and to  
acquire, construct, maintain and operate any and all works



Sonoma County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1949, Ch. 994) as  
amended Stats. 1965, Ch. 536, § 1

and improvements within or without the district, and to make, execute, carry out and enforce all contracts of every character, necessary, convenient, incidental, useful or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

~~(f) To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the state, any political subdivision or district thereof, either within or without the~~  
district, to take any property necessary to  
carry out any of the objects or purposes of  
this act.

~~In condemnation proceedings, the district shall proceed under the provisions of Title 7, Part 3, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for the public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district.~~

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or otherwise changing any portion of a state highway shall be paid from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes. All costs of relocating or otherwise changing any portion of a county highway shall be paid from funds available for rights-of-way for flood control purposes, unless the county road commissioner recommends to the board

Sonoma County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1949, Ch. 994) as  
amended Stats. 1965, Ch. 536, § 1

of supervisors that the cost of relocating a particular county highway should be paid from funds appropriated for county highway purposes, and the board of supervisors, upon said recommendation, finds that the relocating of said highway is of general benefit to the county.

(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains, poles, posts, wires, lamps, power plants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and collector and define their powers and duties, and fix and determine the amount of bond required of each appointee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

Sonoma County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1949, Ch. 994) as  
amended Stats. 1965, Ch. 536, § 1

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property or rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface waters and water rights, useful or necessary to make use of water for any purposes authorized by this act.

(q) To control flood and storm waters within the district and the flood and storm waters of streams outside of the district, which flow into the district; to construct any and all necessary drains or any other works and do any and every lawful act necessary to be done that the lands and other property within the district may be drained and protected from the effects of water, to maintain, repair, improve or protect any drains or other works which are deemed necessary, to do any and all works necessary for the drainage of the lands of the district, to locate and acquire land needed for rights-of-way, including drains, canals, sloughs, water gates, embankments and watercourses,

Sonoma County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1949, Ch. 994) as  
amended Stats. 1965, Ch. 536, § 1

and to construct works necessary to provide drains, canals, sloughs, water gates, embankments and watercourses and to provide the materials for said construction; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to do any act necessary to furnish sufficient water in the district for any present or future beneficial use, to sell water for the benefit of the district, conserve water for future use, and appropriate, acquire, and conserve water and water rights for any useful purpose, to operate works and exercise water rights, property rights and privileges useful or necessary to convey, supply, sell, or make use of water for any purpose authorized herein, to supply, provide, and transport water for recreational purposes within or without the district; to release such waters from surface reservoirs to replenish and augment the supply of waters in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses; and to fix rates and charges for such purposes, all revenues received from the collection of the rates and charges as fixed to be used as follows: (a) to pay interest on a bonded debt; (b) so far as possible, provide a fund for the payment of the principal of the bonded debt as it becomes due; (c) pay the operating expenses of the district; (d) pay repairs and depreciation of works owned or operated by the district.

(r) To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract

Sonoma County Flood Control and  
Water Conservation District Act,  
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so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

(s) To prescribe, revise and collect rates or other charges for the services and facilities furnished by it, and may pledge, place a charge upon, contribute or otherwise make available, as security or additional security for the payment of any revenue bonds issued by the district any and all revenues received or receivable from any services or facilities furnished by it.

The district may provide that charges for any services or facilities shall be collected together with and not separately from the charges for other revenues or facilities rendered by it, and that all charges shall be billed upon the same bill and collected as one item. If all or part of a bill is not paid, the district may discontinue any or all services or facilities for which the bill is rendered.

The district may provide for the collection of charges. Remedies for their collection and enforcement are cumulative and may be pursued alternatively or consecutively as the district determines.

The district may provide for a basic penalty of not more than 10 percent for nonpayment of the charges within the time and in the manner prescribed by it, and in addition may provide for a penalty of not exceeding one-half of 1 percent per month for nonpayment of the charges and basic penalty. It may provide for collection of the penalties herein provided for.

Comment. The deleted portion of subdivision (f) of Section 3 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary). Consistent with subdivision (e), subdivision (f) authorizes extraterritorial condemnation. The word "condemnation" is deleted from subdivision (e) to avoid any implication that the broad grant of condemnation authority under subdivision (f) is limited to the types of property enumerated in subdivision (e). Under subdivision (f), any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivision (e) does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) as amended Stats. 1961, Ch. 631, § 1

Tehama County Flood Control and Water Conservation District Act, § 3  
(Stats. 1957, Ch. 1280)(amended)

Sec. . Section 3 of the Tehama County Flood Control and Water Conservation District Act (Chapter 1280 of the Statutes of 1957) is amended to read:

Sec. 3. The objects and purposes of this act are to provide, to the extent that the board may deem expedient or economical, for the control and disposition of the storm and flood waters of said district and to that end the district is hereby created to be a body corporate and politic and as such shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) To adopt a seal and alter it at pleasure.
- (d) To take by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and contract to sell, lease, or dispose of real, personal and mixed property of every kind within or without the district necessary, expedient or advantageous to the full exercise and economic enjoyment of its purposes.
- (e) To acquire and contract to acquire by purchase, donation or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights-of-way, easements, privileges, material, and property of every kind within or without the district, to do all work and to acquire, construct, maintain and operate any and all works and improvements within or without the district, and to make, execute, carry out and enforce all contracts of every character, necessary, convenient, incidental, useful or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

8.33

Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) as amended Stats. 1961, Ch. 631, § 1

to take any

(f) ~~To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof, except that such right shall be exercised only as against property located within the county. In condemnation proceedings, the district shall proceed under the provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district; provided, however, that no property shall be taken unless it is taken upon a finding of a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

necessary to carry out any of the objects or purposes of this act .

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or altering or otherwise changing existing works or structures shall be paid by the district; provided, however, that all costs of relocating or otherwise changing any portion of a state highway shall be paid for from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes.

(h) To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, drains, tunnels, poles, posts, wires, lamps, powerplants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and complete the same.

Tehama County Flood Control and Water  
Conservation District Act, § 3 (Stats.  
1957, Ch. 1280) as amended Stats. 1961,  
Ch. 631, § 1

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest such warrants shall bear after registration and until such payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer and tax collector, and define their powers and duties, and fix and determine the amount of bond required of each employee and pay the premium on each such bond; which said officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To establish and fix the boundaries of zones, or abolish the same, in the district as provided in this act; to make transfers of money from the general fund of the district to any special fund and to create and administer such special funds as in their discretion may seem advisable, and to abolish the same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property rights or the construction, maintenance and operation in whole or in part of any or all works and improvements provided in this act.



Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) as amended Stats. 1961, Ch. 631, § 1

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface water and water rights, useful or necessary to make use of water for any of the purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, recreational and all other beneficial uses.

(r) To control flood and storm waters within the district and the flood and storm waters or streams outside the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of water in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to commence, maintain, intervene in, defend or compromise, in the name of the district, on behalf of the landowners therein, or otherwise to assume the cost and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of the common benefit of any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the cost and expenses of any and all actions or proceedings now or

Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) as amended Stats. 1961, Ch. 631, § 1

hereafter begun; to prevent interference with or diminution of, or to declare the rights in natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use, the surface or subsurface water used or useful in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in, or flowing into, the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of actions or controversies between the owners of lands or water rights which do not affect the interests of the district.

(s) To co-operate and act in conjunction with the United States or with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Tehama, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, gift, devise or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights.

Tehama County Flood Control and Water  
Conservation District Act, § 3 (Stats.  
1957, Ch. 1280) as amended Stats. 1961,  
Ch. 631, § 1

canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Tehama County Flood Control and Water Conservation District; to acquire by negotiation only the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water owned or controlled by the district or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit owned and controlled by the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual or any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Tehama County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) as amended Stats. 1961, Ch. 631, § 1

(u) To co-operate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting co-operation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made; and for said purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights and privileges possessed by irrigation districts as set out in Chapter 2 (commencing at Section 23175) of Part 6 of Division 11 of the Water Code, not inconsistent with the provisions of this act.

(v) Nothing herein contained shall be deemed to permit the district or its board of directors to acquire or interfere in existing water rights and water uses and facilities for distribution of the same on an involuntary basis, but nothing herein shall be deemed to prohibit negotiating and acquisition of existing rights, uses, and privileges in water by negotiation.

Comment. The deleted portions of Section 3 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 240.610 et seq. (more necessary public use), 1240.010 (declaration that use is public use is unnecessary).

8.34

Ventura County Flood Control  
District Act, § 7 (Stats. 1944,  
4th Ex. Sess., Ch. 44) as amended  
Stats. 1953, Ch. 1058, § 1

Ventura County Flood Control District Act, § 7 (Stats. 1944, 4th Ex. Sess.,  
Ch. 44)(amended)

Sec. . Section 7 of the Ventura County Flood Control  
District Act (Chapter 44 of the Statutes of 1944, Fourth Extra-  
ordinary Session) is amended to read:

Sec. 7. The objects and purposes of this act are to provide  
for the control of the flood and storm waters of said district  
and the flood and storm waters of streams that have their  
source outside of said district, but which streams and the flood  
waters thereof flow into said district, and to conserve such  
waters for beneficial and useful purposes by spreading, stor-  
ing, retaining and causing to percolate into the soil within  
said district, or without such district, such waters, or to save  
or conserve in any manner all or any of such waters and protect  
from such flood or storm waters the watercourses, waterbeds,  
public highways, life and property in said district, and to  
prevent waste of water or diminution of the water supply in,  
or exportation of water from said district, and to obtain, retain  
and reclaim drainage, storm, flood and other waters for bene-  
ficial use in said district.

Ventura County Flood Control District is hereby declared  
to be a body corporate and politic and as such shall have power:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all  
actions and proceedings in all courts and tribunals of competent  
jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise or lease, or other-  
wise, and to hold, use, enjoy and to lease or dispose of real or  
personal property of every kind within or without the district  
necessary or convenient to the full exercise of its powers.
5. To acquire, by purchase, lease, construction, or otherwise,  
or contract to acquire, lands, right of way, easements, privileges  
and property of every kind, whether real or personal, and to  
construct, maintain and operate any and all works or improve-  
ments within or without the district necessary or proper to  
carry out any of the objects or purposes of this act, and to com-  
plete, extend, add to, repair or otherwise improve any works  
or improvements or property acquired by it as authorized by  
this act.

Ventura County Flood Control District  
 Act, § 7 (Stats. 1944, 4th Ex. Sess.,  
 Ch. 44) as amended Stats. 1953,  
 Ch. 1058, § 1

6. To store water in surface or underground reservoirs within or outside of the district for the common benefit of a zone or zones affected; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, and import water into the district and to conserve within or outside of the district, same for any useful purpose to the district; to commence, maintain, intervene in and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within the district used or useful for any purpose of the district or of common benefit to any land situated therein, or involving the wasteful use of water therein; to commence, maintain, intervene in, defend and compromise and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside of or away from the district or wasteful use of water.

7. To control the flood and storm waters of said district and the flood and storm waters of streams that have their source outside of said district, but which streams and the flood waters thereof, flow into said district, and to conserve such waters for beneficial and useful purposes within said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, watersheds, public highways, life and property in said district.

8. To have and exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to the same use by any district or other public corporation or agency or otherwise, and to condemn any existing works or improvements in said district now or hereafter used to control

Ventura County Flood Control District Act, § 7 (Stats. 1944, 4th Ex. Sess., Ch. 44) as amended Stats. 1953, Ch. 1058, § 1

Nothing

~~flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the State in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless previous compensation be first ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses.~~

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~~The power of eminent domain vested in the board of supervisors of said district shall include the power to condemn in the name of the district either the fee simple or any lesser estate or interest in any real property which said board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of any interest in land is necessary.~~

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~~Whenever real property which is devoted to or held for some other public or quasi public use is required by the district for flood control or water conservation purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district as aforesaid for flood control or water conservation purposes.~~

9. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipe lines, roadways and other rights of way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and hold the stock of corporations, domestic or foreign, owning water or water rights, canals, water works, franchises, concessions or rights; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be

Ventura County Flood Control District  
Act, § 7 (Stats. 1944, 4th Ex. Sess.,  
Ch. 44) as amended Stats. 1953,  
Ch. 1058, § 1

lawfully acquired or owned by said Ventura County Flood Control District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer, sale or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured for the use of the Ventura County Flood Control District or any zone thereof, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement; to cooperate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for the controlling of flood or storm waters of said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

10. To carry on technical and other investigations of all kinds, make measurements, collect data, and make analyses, studies, and inspections pertaining to water supply, water rights, control of floods and use of water, both within and without said district, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

11. To incur indebtedness and to issue bonds in the manner herein provided.

12. To cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

13. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district, or any of the officers thereof, by this act.



Ventura County Flood Control  
District Act, § 7 (Stats. 1944,  
4th Ex. Sess., Ch. 44) as amended  
Stats. 1953, Ch. 1058, § 1

Comment. The deleted portions of subdivision 8 of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined). The word "condemnation" is deleted from subdivision 9 to avoid any implication that the broad power of eminent domain under subdivision 8 is limited to the types of property enumerated in subdivision 9. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.34

Ventura County Flood Control District Act, § 29 (Stats. 1944, 4th Ex. Sess., Ch. 44)

Ventura County Flood Control District Act, § 29 (Stats. 1944, 4th Ex. Sess., Ch. 44) (repealed)

Sec. . Section 29 of the Ventura County Flood Control District Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session) is repealed.

~~Sec. 29. In case any street, road, highway, railroad, canal, or other property subject or devoted to public use shall become subject to flooding or other interference by reason of the construction or proposed construction of any works of the district or project, the board of supervisors of the district may acquire by agreement or condemnation the right so to flood or otherwise interfere with such property, within or without the district whether it be publicly or privately owned, and if such right be acquired by condemnation, the judgment may, if the court shall find that public necessity or convenience so requires, direct the district to relocate such street, road, highway, railroad, canal or other property in accordance with plans prescribed by the court and if by such judgment or by agreement the district shall be required to relocate any such street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

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Comment. Section 29 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.35

Yolo County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1951, Ch. 1657) as  
amended Stats. 1965, Ch. 660, § 1

Yolo County Flood Control and Water Conservation District Act, § 3  
(Stats. 1951, Ch. 1657)(amended)

Sec. . Section 3 of the Yolo County Flood Control and  
Water Conservation District Act (Chapter 1657 of the Statutes  
of 1951) is amended to read:

Sec. 3. The objects and purposes of this act are to provide,  
to the extent that the board may deem expedient or economical,  
for the control and disposition of the storm and flood waters  
of said district and to that end the district is hereby created to  
be a body corporate and politic and as such shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all  
actions and proceedings in all courts and tribunals of compe-  
tent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise or lease; to  
hold, use, enjoy, sell, and contract to sell, lease, or dispose of  
real, personal and mixed property of every kind within or  
without the district necessary, expedient or advantageous to  
the full exercise and economic enjoyment of its purposes.

(e) To acquire and contract to acquire by purchase, ~~con-~~  
~~demnation,~~ donation or other lawful means in the name of  
the district from private persons, public and private corpora-  
tions, associations, agencies or districts, lands, rights-of-way,  
easements, privileges, material, and property of every kind  
within or without the district, to do all work and to acquire,  
construct, maintain and operate any and all works and im-  
provements within or without the district, and to make, exe-  
cute, carry out and enforce all contracts of every character,  
necessary, convenient, incidental, useful or proper to carry  
out any of the provisions, objects or purposes of this act, and  
to complete, extend, add to, repair, or otherwise improve any  
works or improvements acquired by it as herein authorized.

(f) ~~To have and exercise the right of eminent domain, and~~  
~~in the manner provided by law for the condemnation of pri-~~  
~~vate property for public use by the State, any political sub-~~  
~~division or district thereof.~~ either within or without the

district, to take any property necessary to carry out  
any of the objects or purposes of this act .

8.35

Yolo County Flood Control and Water Conservation District Act, § 3 (Stats. 1951, Ch. 1657) as amended Stats. 1965, Ch. 660, § 1

~~In condemnation proceedings, the district shall proceed under the provisions of Title 7, Part 3, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and the board is granted the same powers and rights with respect to the taking of property for the public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county, incorporated city or town, municipal water district or irrigation or reclamation district. No action in eminent domain to acquire property or interests therein outside the boundaries of Yolo County shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution, provided, that with respect to the commencement of any action in eminent domain to acquire any parcel of property or interest therein within Lake County for the Cache Creek project as generally described in the report to the district entitled "Feasibility Report on Proposed Cache Creek Project" dated February 1963, and prepared by McCreary-Koretsky Engineers-Clair A. Hill & Associates, Joint Venture Engineers, the foregoing requirement of consent shall be satisfied by one resolution of the Board of Supervisors of Lake County (whether adopted before or after the enactment of this amendment to the Yolo County Flood Control and Water Conservation District Act in the 1963 session of the Legislature) providing generally for consent of said Board of Supervisors of Lake County to the acquisition of such property or interests therein as may be necessary in connection with the acquisition and construction of said Cache Creek project, notwithstanding the fact that such resolution may be later rescinded, repealed, or amended.~~

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(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch, bed of any stream, waterway, conduit or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. Cost of relocating or otherwise changing any portion of a state highway

Yolo County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1951, Ch. 1657) as  
amended Stats. 1965, Ch. 660, § 1

shall not be paid from funds appropriated for state high-  
way purposes, except that such funds may be used for better-  
ment thereof in connection with such relocation or change.

(h) To construct, maintain, repair and operate all levees  
bulkheads, walls of rock or other material, pumps, dams, chan-  
nels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains,  
poles, posts, wires, lamps, power plants, railroads, dredgers and  
all other auxiliary, incidental, necessary or convenient agen-  
cies, work or improvements that may be required to carry out,  
facilitate, repair, maintain and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner  
herein provided and to provide for the issuance of warrants  
of the district in payment of district obligations and the reg-  
istration of any warrants not paid for want of funds and the  
rate of interest such warrants shall bear after registration  
and until such payment.

(j) To cause assessments to be levied and collected for the  
purpose of paying any obligations of the district in the manner  
hereinafter provided.

(k) To appoint and employ such engineers, attorneys, as-  
sistants and other employees as may be necessary and fix their  
compensation, including, if it deem advisable, a clerk, super-  
intendent of work, assessor, treasurer and collector and define  
their powers and duties, and fix and determine the amount of  
bond required of each appointee and pay the premium on  
each such bond; which said officers and employees and each  
of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more  
offices in its discretion.

(l) To establish and fix the boundaries of zones in the dis-  
trict as provided in this act; to make transfers of money from  
the general funds of the district to any special fund and to  
create and administer such special funds as in their discretion  
may seem advisable, and to abolish same; to create and ad-  
minister revolving funds to facilitate and assist in the carry-  
ing on and completing of such acquisitions, works, and im-  
provements provided for herein, and to abolish same; and to  
do any and all things necessary or incidental to the accom-  
plishment of the things which are permitted to be done under  
this act.

(m) To make and enter into contracts with the United  
States, the State of California, any political subdivision,  
county, municipality, district, agency or mandatory of the  
State of California or of the United States and any depart-  
ment, board, bureau or commission of the State of California

Yolo County Flood Control and Water Conservation District Act, §.3 (Stats. 1951, Ch. 1657) as amended Stats. 1965, Ch. 660, § 1

or the United States, or any person, firm, association or corporation, jointly or severally, for the acquisition of property or rights or the construction, maintenance and operation, or the joint financing or use in whole or in part of any or all works and improvements provided in this act, including contracts with the State of California, the United States or any other public entity (1) for loans to finance planning, acquisition, construction, operation or maintenance of such works and improvements and lands, easements, and rights-of-way therefor, and (2) for grants for recreational or fish and wildlife enhancement benefits of such works and improvements, and to do any and all things required to carry out such contracts.

An action to determine the validity of any such contract may be commenced and prosecuted under the procedure set forth in Section 21 of this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) of this section any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under such terms and conditions as may be agreed upon between the parties.

(o) To receive and accept any and all contributions in labor, material or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease or otherwise acquire works and to purchase, lease, appropriate, or otherwise acquire surface waters and water rights, useful or necessary to make use of water for any purposes authorized by this act.

(q) To do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including but not limited to, the acquisition, storage, and distribution for irrigation, domestic, fire protection, municipal, commercial, industrial, and all other beneficial uses.

Water which is surplus to the needs of the lands and inhabitants within the district may be made available for beneficial use outside the district pursuant to rules and regulations prescribed under subsection (v) of this Section 3.

(r) To control flood and storm waters within the district and the flood and storm waters of streams outside of the district, which flow into the district; to conserve such waters by storage in surface reservoirs, to divert and transport such waters for beneficial uses within the district; to release such waters from surface reservoirs to replenish and augment the supply of waters in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district.

Yolo County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1951, Ch. 1657) as  
amended Stats. 1965, Ch. 660, § 1

(s) To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Yolo, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

(t) To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances, and also where necessary or convenient to said end, and for said purposes and uses, to acquire and to hold, the capital stock of any mutual water company or corporation, domestic or foreign, owning water or water rights, canals, waterworks, franchises, concessions, or rights, when the ownership of such stock is necessary to secure a water supply required by the district or any part thereof, upon the condition that when holding such stock, the district shall be entitled to all the rights, powers and privileges, and shall be subject to all the obligations and liabilities conferred or imposed by law upon other holders of such stock in the same company; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by said Yolo County Flood Control and Water Conservation District; to acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or lessee the right to the use of

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Yolo County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1951, Ch. 1657) as  
amended Stats. 1965, Ch. 660, § 1

any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the Yolo County Flood Control and Water Conservation District, or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water right or water supply to be delivered to said district by the other party to said agreement.

(u) To commence, maintain, intervene in, defend and compromise in the name of the district, or otherwise, and to assume the costs and expenses of any action or proceeding involving or affecting the ownership or use of waters or water rights within or without the district, used or useful for any purpose of the district or of common benefit to any lands situated therein, or involving the wasteful use of water therein, to commence, maintain, intervene in, defend and compromise and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with or diminution of the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the district or of common benefit to the lands within the district or to its inhabitants; or for the declaration or adjudication of rights in such waters; to prevent unlawful exportation of water from said district; to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used in said district, and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger or damage the inhabitants, lands, or use of water in or flowing into the district; provided, however, that said district shall not have power to intervene or take part in, or to pay the costs or expenses of, actions or controversies between the owners of lands or water rights which do not affect the interests of the district; provided further, that this subsection (u) shall not limit or impair in any manner whatsoever the right or rights of any landowner to commence, defend, or enter into any compromise agreement in regard to actions or proceedings respecting any water right or rights in which such landowner may have an interest.

(v) To prescribe reasonable rules and regulations and to fix and collect rates, tolls or charges for any water or service or facilities furnished, sold or leased by the district.



Yolo County Flood Control and  
Water Conservation District Act,  
§ 3 (Stats. 1951, Ch. 1657) as  
amended Stats. 1965, Ch. 660, § 1

Comment. The deleted portion of subdivision (f) of Section 3 is either obsolete or superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary). Consistent with subdivision (e), subdivision (f) authorizes extra-territorial condemnation. The provision relating to property described in the 1963 feasibility report is omitted as obsolete. The word "condemnation" is deleted from subdivisions (e) and (t) to avoid any implication that the broad grant of condemnation authority under subdivision (f) is limited to the types of property enumerated in those subdivisions. Under subdivision (f), any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions (e) and (t) does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.36

Tulare County Flood Control District  
Act, § 5 (Stats. 1969, Ch. 1149)

Tulare County Flood Control District Act, § 5 (Stats. 1969, Ch. 1149)(amended)

Sec. . Section 5 of the Tulare County Flood Control District Act  
(Chapter 1149 of the Statutes of 1969) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation~~, construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To control the flood and storm waters of said district and the flood and storm waters of streams that have their sources outside of said district, but which streams and the floodwaters thereof, flow into said district, and protect from damage from such flood or storm waters the watercourses, watersheds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district.
6. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public district, or with any public or private corporation, or with any city or county, in the construction of any works for the controlling of flood or storm waters of or flowing into said district or for the protection of life or property therein, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.
7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses,

Tulare County Flood Control District  
Act, § 5 (Stats. 1969, Ch. 1149)

studies, and inspections pertaining to control of floods both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of flood or storm water, and all necessary appurtenances; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to carry water through any canal, ditch or conduit not owned or controlled by the district.

9. To incur indebtedness and to issue bonds in the manner herein provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

Tulare County Flood Control District Act, § 5 (Stats. 1969, Ch. 1149)

12. To exercise the right of eminent domain within said district, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to carry out any of the objects or purposes of this act, ~~whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such~~ power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, ~~and provided further, that, notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that~~ ~~no~~ right shall exist in said district to take by proceedings in eminent domain any property appropriated to public use by any existing county or municipal utility district. ~~The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act is a public use subject to the regulation and control of the state in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.~~

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~~The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of supervisors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement or interest, as the case may be, is necessary.~~

~~Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

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13. To make contracts with the County of Tulare, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for such proposed new subdivision in the County of Tulare, except subdivisions within incorporated cities.

14. To have power to cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of contracting works, for drainage or flood control, or for the acquisition, purchase, extension, operation, or maintenance of such works, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract so made.

Tulare County Flood Control  
District Act, § 5 (Stats.  
1969, Ch. 1149)

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to acquire any interest or right in property), 1240.010 (declaration that use is public use unnecessary), 1240.310 et seq. (taking for exchange purposes), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1230.070 ("property" defined).

The word "condemnation" is deleted from subdivisions 4 and 8 to avoid any implication that the power of eminent domain is limited to the types of property enumerated in those subdivisions. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

8.36

Tulare County Flood Control  
District Act, § 32 (Stats. 1969,  
Ch. 1149)

Tulare County Flood Control District Act, § 32 (Stats. 1969, Ch. 1149)  
(repealed)

Sec. . Section 32 of the Tulare County Flood Control  
District Act (Chapter 1149 of the Statutes of 1969) is repealed.

~~Sec. 32. (a) If by any judgment in condemnation or agreement the district shall be required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyance of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment.~~

~~(b) In the event the district and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the district, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission, and jurisdiction of such controversies is hereby vested in said commission.~~

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Comment. Section 32 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Madera County Flood Control and Water Conservation Agency Act, § 650 (Stats. 1969, Ch. 916)

Madera County Flood Control and Water Conservation Agency Act, § 650 (Stats. 1969, Ch. 916) (amended)

Sec. . . . Section 650 of the Madera County Flood Control and Water Conservation Agency Act (Chapter 916 of the Statutes of 1969) is amended to read:

~~Sec. 650. The agency shall have and may exercise the right of eminent domain, either within or without said agency, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the agency in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location. The agency shall also have and may exercise the right to condemn any existing works or improvements in said agency, or along streams flowing into said agency now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters, or to protect any property in said agency or along streams flowing into said agency from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provision of this act, is a public use subject to the regulation and control of the state in the manner prescribed by law, provided, however, that nothing in this act contained shall be deemed to authorize said agency, or any person or persons, to divert the waters of any river, creek, stream, irrigation system, canal or ditch, from its channel, to the detriment of any person, or persons having any interest in such river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein, unless compensation therefor be paid as authorized by law.~~

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~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate, easement, or interest in any~~



Madera County Flood Control and  
Water Conservation Agency Act,  
§ 650 (Stats. 1969, Ch. 916)

~~real property which the board of directors of the agency by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be conclusive presumption that the taking of such fee simple or any lesser estate or easement, or interest, as the case may be, is necessary.~~

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the agency for flood or storm water control or water conservation purposes, the agency may condemn real property adjacent thereto, or in the immediate vicinity thereof, to be exchanged for the real ~~property required by the agency as aforesaid for flood control or water conservation purposes.~~

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Comment. The deleted portions of Section 650 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

8.37

Madera County Flood Control and  
Water Conservation Agency Act,  
§ 651 (Stats. 1969, Ch. 916)

Madera County Flood Control and Water Conservation Agency Act, § 651  
(Stats. 1969, Ch. 916)(repealed)

Sec. . Section 651 of the Madera County Flood Control  
and Water Conservation Agency Act (Chapter 916 of the Statutes  
of 1969) is repealed.

~~Sec. 651. If by any judgment in condemnation or by agree-  
ment the agency shall be required to relocate any street, road,  
highway or railroad, subject or devoted to public use, the  
board shall have power to acquire in the name of the agency  
by agreement or condemnation, all rights-of-way and other  
property necessary or proper for the compliance with said  
agreement or judgment and thereafter, and without further  
authorization, to make such conveyance of such relocated street,  
road, highway or railroad, as may be proper to comply with  
said agreement or judgment.~~

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Comment. Section 651 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

8.37

Madera County Flood Control and  
Water Conservation Agency Act,  
§ 260 (Stats. 1969, Ch. 916)

Madera County Flood Control and Water Conservation Agency Act, § 260  
(Stats. 1969, Ch. 916)(amended)

Sec. . Section 260 of the Madera County Flood Control and  
Water Conservation Agency Act. (Chapter 916 of the Statutes of 1969)  
is amended to read:

The agency may exercise  
the right of eminent  
domain to take any  
property necessary  
to carry out any of  
the objects or pur-  
poses of this act.

Sec. 260. ~~Eminent domain proceedings may be brought by~~  
~~the agency pursuant to the provisions of Title 7, Part 3, of~~  
the Code of Civil Procedure. The acquisition of property for  
drainage, flood control or conservation facilities, which is re-  
quired to carry out fully the provisions of this act, constitute  
the acquisition of property for a public use and said prop-  
erty may be acquired by the agency in eminent domain pro-  
ceedings.

If the owner (public or private) of any land, easement, or  
franchise to be crossed or occupied by works of the agency  
cannot agree with the agency as to payment, location of the  
crossing, or manner of occupation, or any other matters in  
~~connection therewith, they shall be determined as in a pro-~~  
~~ceeding in eminent domain.~~

If a right to flood or otherwise interfere with any road,  
railroad, canal, or other property is acquired by eminent do-  
main, the judgment may, if the court finds that the public  
convenience requires it, direct the agency to relocate the road,  
railroad, canal, or other property in accordance with plans  
prescribed by the court.

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Comment. The deleted portions of Section 260 are superseded  
by the Eminent Domain Law. See Code Civ. Proc. § 1235.010 (uniform  
procedure), 1240.010 (declaration that a use is a public use is  
unnecessary), 1240.510 (compatible use).

11.6

San Diego Unified Port District Act,  
§ 27 (Stats. 1962, 1st Ex. Sess.,  
Ch. 67) as amended Stats. 1963,  
Ch. 673, § 7

San Diego Unified Port District Act, § 27 (Stats. 1962, 1st Ex. Sess., Ch. 67)  
(amended)

Sec. . Section 27 of the San Diego Unified Port District  
Act (Chapter 67 of the Statutes of 1962, First Extraordinary  
Session) is amended to read:

Sec. 27. The district may exercise the right of eminent  
domain within the boundaries of the district ~~in the manner  
provided by law for the condemnation of private property for  
public use and~~ take any property necessary or convenient to  
the exercise of its powers. ~~In the proceedings relative to the  
exercise of such right the district has the same rights, powers  
and privileges as a municipal corporation.~~

Comment. Section 27 is amended to delete provisions superseded  
by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

Humboldt Bay Harbor, Recreation,  
and Conservation District Act,  
§ 30 (Stats. 1970, Ch. 1283)

Humboldt Bay Harbor, Recreation, and Conservation District Act, § 30  
(Stats. 1970, Ch. 1283)(amended)

Sec. . . Section 30 of the Humboldt Bay Harbor,  
Recreation, and Conservation District Act (Chapter 1283  
of the Statutes of 1970) is amended to read:

SEC. 30. The district may exercise the right of eminent  
domain within the boundaries of the district ~~in the manner  
provided by law for the condemnation of private property for  
public use and~~ take any property necessary or convenient to  
the exercise of its powers. ~~In the proceedings relative to the  
exercise of such right the district has the same rights, powers  
and privileges as a municipal corporation.~~

Comment. Section 30 is amended to delete provisions  
superseded by the Eminent Domain Law. See Code Civ. Proc.  
§ 1235.010.

Solvang Municipal Improvement District Act, § 45 (Stats. 1951, Ch. 1635)

Solvang Municipal Improvement District Act, § 45 (Stats. 1951, Ch. 1635)  
(amended)

Sec. . Section 45 of the Solvang Municipal Improvement District Act (Chapter 1635 of the Statutes of 1951) is amended to read:

SEC. 45. The district ~~has and~~ may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof.~~ The provisions of Title 7, Part 3 of the Code of Civil Procedure shall apply. The board has the same rights and powers with respect to the taking of property for the public uses of the district as are now or may ~~hereafter be conferred by general law on the legislative body of a city.~~ to take any property necessary to carry out any of the objects or purposes of the district.

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Comment. Section 45 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

Montalvo Municipal Improvement  
District Act, § 45 (Stats. 1955,  
Ch. 549)

Montalvo Municipal Improvement District Act, § 45 (Stats. 1955, Ch. 549)  
(amended)

Sec. . Section 45 of the Montalvo Municipal Improvement  
District Act (Chapter 549 of the Statutes of 1955) is amended to  
read:

Sec. 45. The district ~~has and~~ may exercise the right of  
eminent domain ~~in the manner provided by law for the con-  
demnation of private property for public use by the State, any  
political subdivision or district thereof.~~ The provisions of Title  
7, Part 3 of the Code of Civil Procedure shall apply. The board  
has the same rights and powers with respect to the taking of  
property for the public uses of the district as are now or may  
~~hereafter be conferred by general law on the legislative body  
of a city.~~ to take any property necessary to

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carry out any of the objects or purposes of  
the district.

Comment. Section 45 is amended to delete provisions superseded  
by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

15.3

Guadalupe Valley Municipal Improvement District Act, § 80 (Stats. 1959, Ch. 2037)

Guadalupe Valley Municipal Improvement District Act, § 80 (Stats. 1959, Ch. 2037)(amended)

Sec. . Section 80 of the Guadalupe Valley Municipal Improvement District Act (Chapter 2037 of the Statutes of 1959) is amended to read:

SEO. 80. The district may exercise the right of eminent domain ~~for the condemnation of private property for public use. The board has the same rights and powers with respect~~ to the taking of property for the public uses of the district as are now or may hereafter be conferred by general law on the legislative body of a city. The provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure ~~shall apply.~~ , either within or without the

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district, to take any property necessary to carry out any of the purposes or powers of the district.

Comment. Section 80 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.



15.4

Bethel Island Municipal Improvement,  
District Act, § 80 (Stats. 1960, 1st  
Ex. Sess., Ch. 22)

Bethel Island Municipal Improvement District Act, § 80 (Stats. 1960, 1st  
Ex. Sess., Ch. 22) (amended)

Sec. . . Section 80 of the Bethel Island Municipal  
Improvement District Act (Chapter 22 of the Statutes of 1960,  
First Extraordinary Session) is amended to read:

Sec. 80. The district may exercise the right of eminent do-  
main ~~for the condemnation of private property for public use,~~  
within but not without the county in which the district is lo-  
cated. ~~The board has the same rights and powers with respect~~  
~~to the taking of property for the public uses of the district as~~  
are now or may hereafter be conferred by general law on the  
legislative body of a city. The provisions of Title 7 (commenc-  
ing at Section 1237) of Part 3 of the Code of Civil Procedure  
~~shall apply.~~

to take any  
property nec-  
essary to carry  
out any of the  
objects or pur-  
poses of the  
district .

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Comment. Section 80 is amended to delete provisions  
superseded by the Eminent Domain Law. See Code Civ. Proc.  
§ 1235.010.

Embarcadero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 81)

Embarcadero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 81) (amended)

Sec. . . Section 81 of the Embarcadero Municipal Improvement District Act (Chapter 81 of the Statutes of 1960, First Extraordinary Session) is amended to read:

2 Sec. 81. The district may exercise the right of eminent domain ~~for the condemnation of private property for public use~~ within but not without the district. ~~The board has the same rights and powers with respect to the taking of property~~ for the public uses of the district as are now or may hereafter be conferred by general law on the legislative body of a city. ~~The provisions of Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure shall apply.~~

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to take any property necessary to carry out any of the objects or purposes of the district .

Comment. Section 81 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

Estero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 82)

Estero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 82)(amended)

Sec. . Section 81 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

<p>ALL IN STRIKEOUT</p>	<p>2</p>	<p><del>Sec. 81. The district may exercise the right of eminent domain for the condemnation of private property for public use within but not without the district. The board has the same rights and powers with respect to the taking of property for the public uses of the district as are now or may hereafter be conferred by general law on the legislative body of a city. The provisions of Title 7 (commencing at Section 1237) of Part 2 of the Code of Civil Procedure shall apply.</del></p>	<p>to take any property necessary to carry out any of the objects or purposes of the district .</p>
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Comment. Section 81 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

16.4  
Protection District Act of 1895,  
§ 6 (Stats. 1895, Ch. 201) as  
amended Stats. 1919, Ch. 282, § 1

Protection District Act of 1895, § 6 (Stats. 1895, Ch. 201)(amended)

Sec. . Section 6 of the Protection District Act of 1895  
(Chapter 201 of the Statutes of 1895) is amended to read:

Sec. 6. Each protection district shall be governed and controlled by the board of supervisors of the county in which it is situated. Said board shall have power, in the name of the county and in behalf of the district, to purchase, receive by donation, or acquire by condemnation any ~~rights of way or other~~ real or personal property necessary to carry out the purposes for which the district was formed, and for that purpose all the provisions of the Code of Civil Procedure relating to eminent domain are hereby made applicable to proceedings in behalf of such district to condemn property. The said board shall also have power to employ such engineers, surveyors and others as may be necessary to survey, plan or locate, or supervise the construction or repair of, the improvements necessary to carry out the purposes for which the district was formed; to construct, maintain and keep in repair any and all improvements, and do all other things requisite or necessary to carry out the purposes of the district; and to employ the services of any person, legal or otherwise, which in the judgment of said board, may be necessary to carry out said purposes. All work done in any district shall be ordered by the board of supervisors of the county in which said district is located and shall be under the direction of the county surveyor or county engineer. All work which shall exceed an estimated cost of one thousand dollars shall be advertised and

Protection District Act of 1895,  
§ 6 (Stats. 1895, Ch. 201) as  
amended Stats. 1919, Ch. 282, § 1

let to the lowest bidder; *provided, however,* that at the time flood waters shall threaten the levees of a district the board of supervisors may order emergency work done without advertising for bids therefor. As soon as said district is formed, the board shall cause a survey of the contemplated improvements to be made, or adopt a survey already made, and shall also cause a map of such survey, and plans and specifications showing such improvements in detail, to be prepared, and they shall adopt such surveys, maps, plans and specifications, and thereafter all such improvements shall be made in accordance with the survey, maps, plans and specifications so adopted; *provided,* that at any time after the adoption of said survey, map, plans and specifications, and before the commissioner's report of assessment of benefits and award of damages has been finally adopted and confirmed by the board, said board may rescind their action in adopting said survey, map, plans and specifications, and may modify the same or adopt others in place thereof, in which case a new assessment shall be made, or may, by a four-fifths vote of the members thereof, abandon the contemplated improvement and dissolve the said protection district, in which case the expenses already incurred in behalf of such district shall be a county charge.

Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. § 1235.010 (uniform procedure). See also Code Civ. Proc. §§ 1240.040 (right to acquire any property or any right or interest in property), 1230.070 (§property" defined).

(Levee districts)  
§ 15 (Stats. 1905, Ch. 310) as  
amended Stats. 1907, Ch. 270, § 15

16.5

§ 15 (Stats. 1905, Ch. 310)(amended)

Sec. . Section 15 (Chapter 310 of the Statutes of 1905)  
is amended to read:

Sec. 15. The board of trustees shall have power, ~~in the~~  
~~same of the district to condemn land, or other property, for~~  
the purpose of erecting levees, dikes and other improvements  
~~or obtaining material for the same for the purpose of protect-~~  
ing the lands embraced in said district from overflow, ~~and for~~  
~~that purpose, all of the provisions of part 3, title 7 of the~~  
~~Code of Civil Procedure are hereby made applicable to exercise~~  
~~of the right of eminent domain for such purpose to the needs~~  
~~of such district.~~

Comment. The deleted portions of Section 15 are superseded  
by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform  
procedure), 1230.070 ("property" defined).

16.6

Protection District Act of 1907,  
§ 15 (Stats. 1907, Ch. 25)

Protection District Act of 1907, § 15 (Stats. 1907, Ch. 25)(repealed)

Sec. . Section 15 of the Protection District Act of 1907  
(Chapter 25 of the Statutes of 1907) is repealed.

~~Sec. 15. In case of condemnation proceedings, the board shall proceed, in the name of the district, under the provisions of Title VII, Part III, of the Code of Civil Procedure, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property which may be condemned, taken, or appropriated under the provisions of this act, is a public use, subject to the regulation and control of the state, in the manner prescribed by law.~~

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Comment. Section 15 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary).

16.7

Sacramento River West Side Levee  
District Act, § 5 (Stats. 1915,  
Ch. 361)

Sacramento River West Side Levee District Act, § 5 (Stats. 1915, Ch. 361)  
(amended)

Sec. . Section 5 of the Sacramento River West Side Levee  
District Act (Chapter 361 of the Statutes of 1915) is amended to  
read:

Sec. 5. The board of levee commissioners shall have power to adopt by-laws not in conflict with general laws; to appoint an executive committee with such powers as shall not be in conflict with general laws; to employ engineers and others to survey, plan, locate and estimate the cost of the works necessary for the protection of the lands of the district from the flood waters of the Sacramento river overflowing or coming therefrom on the west side of said river; to thereafter, at any time, in its discretion, modify or change such original plan or plans, or adopt new, supplemental or additional plan or plans, when in its judgment the same shall have become necessary; *provided*, that said board of levee commissioners must report to the said reclamation board such original plan or plans of the work and every new, supplemental or additional plan, if any, together with the estimates of the cost of the works necessary for the protection of the lands of the district, in pursuance of any such plan or plans, together with an estimate of incidental expenses; such plans and estimates shall include the cost of construction and maintenance; ~~to acquire from private persons, reclamation, swamp land, levee or other public agencies or protection districts, or corporations, all rights of way, easements, existing levees, property and material, whether outside or within the limits of the district, necessary or requisite for levees, by donation, contract, purchase or by proceedings under the provisions of title VII, part three of the Code of Civil Procedure of the State of California for condemnation thereof in the name of the district, or any other provision of law in relation to the right of eminent domain; to sue and be sued in the name of said levee district and to do all other acts or things necessary or requisite for the full exercise of its powers or necessary for the promotion of the protection of lands within said levee~~

any



16.7.

Sacramento River West Side Levee  
District Act, § 5 (Stats. 1915,  
Ch. 361)

district from the flood waters of the Sacramento river. It shall be the duty of said board of levee commissioners to take such steps as may be necessary to acquire dominion and control of all levees along or adjacent to the west bank of the Sacramento river and within the said levee district, and to repair the breaks or openings now therein; also to reconstruct all existing levees; also to construct and maintain levees where there may be none, and generally to do all other things that it may deem necessary or requisite to prevent the flood or overflow waters from the Sacramento river flowing over or through the west bank or west levee thereof, either inside or outside of said levee district, entering the lands within said district, or any part thereof, and, for this purpose, to control the levee or levees within said district along the west bank of the said Sacramento river, or any levee or levees outside of said district, as may be necessary for such purpose; also to construct, reconstruct and repair and maintain and protect such levees, and, for this purpose, to construct and maintain any protection or works of any kind which may be deemed necessary for the purpose of assuring the safety of such levees hereinbefore referred to, with a view of keeping the waters from the Sacramento river flowing on to the lands within said district, or any part thereof.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to acquire any property or any interest or right in property). See also Code Civ. Proc. §§ 1230.070 ("property" defined), 1235.020 (acquisition by means other than condemnation).

Lake Cuyamaca Recreation and Park District Act, § 35 (Stats. 1961, Ch. 1654)

Lake Cuyamaca Recreation and Park District Act; § 35 (Stats. 1961, Ch. 1654)  
(amended)

Sec. . . Section 35 of the Lake Cuyamaca Recreation and Park District Act (Chapter 1654 of the Statutes of 1961) is amended to read:

Sec. 35. The district board shall have and exercise all rights and powers, expressed or implied, necessary to carry out the purposes and intent of this act, including but not limited to the power:

- (a) To sue and be sued.
- (b) To take or acquire real or personal property of every kind or any interest therein, within and without the district, by grant, purchase, gift, devise or lease, and to hold, manage, occupy, dispose of, convey and encumber the same and create a leasehold interest in same for the benefit of the district.
- (c) To exercise the right of eminent domain, ~~except that~~ such right shall be exercised only within the territory of the district after approval for such exercise has been granted by resolution of the supervising authority.
- (d) To appoint and employ and pay persons who are necessary and adequately trained, to maintain and operate the property, improvements and facilities under its control and to operate programs of public recreation. The district board may employ personnel at the pleasure of the board or by contract, and may establish a merit system, retirement privileges, and provide for other employment practices either directly or through contractual arrangement with the State or other public agency or private organization.
- (e) To employ counsel.
- (f) To enter into and perform all necessary contracts.
- (g) To borrow money, give security therefor, purchase on contract, and do and perform any and all acts and things necessary or proper to carry out the provisions of this act.

to take any property necessary to carry out any of the objects or purposes of this act

Comment. Section 35 is revised to make clear the scope of the grant of eminent domain authority. The language added is the same as that used in other special district acts.

27.4

Mount San Jacinto Winter Park Authority Act, § 4.8 (Stats. 1945, Ch. 1040)

Mount San Jacinto Winter Park Authority Act, § 4.8 (Stats. 1945, Ch. 1040)  
(amended)

Sec. . . Section 4.8 of the Mount San Jacinto Winter Park Authority Act (Chapter 1040 of the Statutes of 1945)

is amended to read:

2 ~~Sec. 4.8. The authority may exercise the right of eminent domain for the condemnation of private property or any right or interest therein for its use within the territorial limits defined in Section 3.3. It may take any property necessary for the purposes set forth in this act, but lands belonging to the State of California, and private property already appropriated to public use, which use is available to the authority from an established private utility under the rules and regulations of the California Railroad Commission, shall not be subject to condemnation hereunder. The use of any property, or rights or interests therein, necessary or useful for the purposes of the authority, within the territorial limits of the authority as defined in Section 3.3 is hereby declared to be a superior and permanent right and necessity, and a more necessary use and purpose than the use or purpose to which such property has already been appropriated or dedicated, except a public use or purpose already served by an established private utility or utilities operating under the jurisdiction of the California Railroad Commission, but lands which belong to the State of California, Secs. 3, 5, T. 4 S., R. 3 E., and Secs. 29, 33, T. 3 S., R. 3 E. and lands within the territorial limits of Mount San Jacinto State Park shall not be subject to condemnation hereunder.~~

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Public Utilities

Public Utilities

Comment. The revisions of Section 4.8 are nonsubstantive technical corrections. See Code Civ. Proc. §§ 1240.040 (right to acquire any property or right or interest in property), 1230.070 ("property" defined). The California Railroad Commission has been superseded by the Public Utilities Commission. Cal. Const. Art. 12, § 22.

27.4

Mount San Jacinto Winter Park Authority Act, § 4.9 (Stats. 1945, Ch. 1040)

Mount San Jacinto Winter Park Authority Act, § 4.9 (Stats. 1945, Ch. 1040)  
(repealed)

Sec. . Section 4.9 of the Mount San Jacinto Winter Park Authority Act (Chapter 1040 of the Statutes of 1945) is repealed.

~~Sec. 4.9. Whenever the authority shall determine to exercise the right of eminent domain, it shall first adopt a resolution declaring that the public interest and necessity require the acquisition, construction or completion of any property, real, personal or mixed, rights, franchises or easements. Such resolution shall be conclusive evidence:~~

- ~~(a) Of the public necessity of such acquisition, construction or completion;~~
- ~~(b) That such property, franchises, rights, privileges or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor; and~~
- ~~(c) That such proposed acquisition, construction or completion is planned or located in a manner which will be most compatible for the greatest public good and the least private injury.~~

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~~It shall not be necessary in any eminent domain proceeding under this act to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution of public interest and necessity describing the property sought to be taken and directing such eminent domain proceeding.~~

Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.110 (et seq. (resolution of necessity).

27.6

Mountain View Shoreline Regional Park Community Act, § 51 (Stats. 1969, Ch. 1109)

Mountain View Shoreline Regional Park Community Act, § 51 (Stats. 1969, Ch. 1109) (amended)

Sec. . . Section 51 of the Mountain View Shoreline Regional Park Community Act (Chapter 1109 of the Statutes of 1969) is amended to read:

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Sec. 51. The community ~~has and~~ may exercise within its boundaries the right of eminent domain ~~in the manner provided by law for the condemnation of private property for~~ public use by the state or any political subdivision or district thereof. The provisions of Title 7 (commencing with Section 1237) of Part 3 of the Code of Civil Procedure shall apply. The board has the same rights and powers with respect to the taking of property for the public uses of the community within its boundaries as are now or may hereafter be conferred by general law on the legislative body of a city, including the right of eminent domain for the purposes and uses set forth ~~in Section 48, which are hereby declared to be public uses.~~ None of the powers enumerated in this section shall be exercised in the unincorporated portions of the community without the prior consent of the board of supervisors, expressed by resolution.

to take any property necessary to carry out any of the objects or purposes of the community, but the right of eminent domain may not

Comment. The deleted portions of Section 51 are superseded by the provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.610 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary).

Vallejo Sanitation and Flood Control District Act, § 2 (Stats. 1952, 1st Ex. Sess., Ch. 17) as amended Stats. 1953, Ch. 1439, § 1

Vallejo Sanitation and Flood Control District Act, § 2 (Stats. 1952, 1st Ex. Sess., Ch. 17) (amended)

Sec. . Section 2 of the Vallejo Sanitation and Flood Control District Act, (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 2. Objects and Purposes of Act and Powers of District. The objects and purposes of this act are to provide for the collection and disposal of sewage and industrial waste and for the control and disposition of the storm and flood waters of said district, and to protect the public health and also to protect from damage from such storm and flood waters the waterways, property, public highways and public places in said district. The Legislature hereby declares that special facts and circumstances peculiar to the area within the district having the boundaries hereinabove defined makes the accomplishment of the objects and purposes of this act impossible under existing general law and special legislation is necessary. The State and the people thereof have a primary and supreme interest in the securing to the inhabitants and property owners within the district hereinabove described adequate facilities for the collection and disposal of sewage and the protection from waters naturally flowing into the district from the surrounding mountainous watershed. Special investigation has shown that the conditions within the district hereinabove described are peculiar to that area and that this act is essential to carry out the objects and purposes herein expressed and for the elimination of duplication of governmental authority and securing greater economy of administration. It is further found and determined that the area within the district herein defined has no facilities for the sanitary treatment and disposal of sewage and is consequently contaminating and polluting the waters of San Francisco Bay. The area within the district is of strategic importance due to the proximity of Mare Island Navy Yard. The influx of Navy personnel and their families and civilian workers at the Mare Island Navy Yard has greatly aggravated the problem of sewage disposal in

Vallejo Sanitation and Flood Control District Act, § 2  
(Stats. 1952, 1st Ex. Sess., Ch. 17) as amended Stats. 1953, Ch. 1439, § 1

that area; said problem of sewage disposal is further aggravated by lack of adequate drainage and floodwater control and the infiltration of storm and flood waters into existing sanitary sewers; both the problem of sanitary sewage and drainage and the problem of storm water flood control are so correlated and interrelated that the special problems relating to each can only be solved by uniform administration and a uniform control plan of sewage disposal and flood control works.

The Vallejo Sanitation and Flood Control District is hereby declared to be a body corporate and politic and as such shall have power:

- (a) Succession. To have perpetual succession.
- (b) Suits. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (c) Seal. To adopt a seal and alter it at pleasure.
- (d) Ownership of Property. To take by grant, purchase, gift, devise or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
- (e) Acquisition of Property. To acquire or contract to acquire lands, rights of way, easements, privileges or property of every kind within or without the district, and construct, maintain and operate any and all works and improvements within or without the district necessary, convenient or proper to carry out any of the provisions, objects or purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.
- (f) Eminent Domain. ~~To have and exercise the right of eminent domain, and in the manner provided by law for the condemnation of private property for public use by the State, any political subdivision or district thereof~~ either within or without the district, to acquire any property necessary to carry out any of the objects or purposes of the district.
- (g) Sanitary Sewage Disposal Works. To acquire, construct, reconstruct, alter, own, operate, maintain and repair sewage treatment plants, including digesters, sludge heaters, sludge drying beds, effluent pumping plants, screens, clarifiers, storage ponds, control buildings, oxidizing ponds, sewage digestive systems, intercepting, collecting and outfall sewers, laterals, pipes, manholes, machinery, equipment, and all other facilities for the collection, transmission and disposition of sewage and industrial wastes, together with all works, properties or structures necessary or convenient for sewage disposal purposes.

Vallejo Sanitation and Flood  
Control District Act, § 2  
(Stats. 1952, 1st Ex. Sess.,  
Ch. 17) as amended Stats. 1953,  
Ch. 1439, § 1

The terms "sanitary sewage disposal works," "sewage disposal works," "sanitary sewage disposal purposes" or "sewage disposal purposes" or similar terms whenever used herein shall include and comprehend all of the works, properties or structures necessary or convenient for sewage disposal purposes.

(h) Drainage and Flood Control Works. To construct, maintain, repair and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, spreading basins, tunnels, drains, machinery and equipment necessary therefor, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain and/or complete the same, and, in connection with any such reservoirs or spreading basins, to acquire or construct such improvements, including landscaping, apparatus and equipment, that said reservoirs or spreading basins may incidentally be used for park, playground or other recreation purposes. The terms "storm water flood control works," "drainage works," "storm water flood control purposes" and "drainage purposes" and similar terms whenever used in this act shall mean and include all works, properties, or structures necessary or convenient for drainage and flood control purposes, and said purposes incidental thereto.

(i) Indebtedness. To incur indebtedness, and to issue bonds or other evidence of indebtedness in the manner herein provided, and to provide for the issuance of warrants of the district and the registration of any warrants not paid for want of funds and interest thereon after registration and until payment, and also to issue bonds or other securities payable from revenues.

(j) Revenues From Revenue Producing Utilities. To prescribe, revise and collect tolls, rents or other charges for any services or facilities furnished by the district; to contract with the City of Vallejo or any other public or private agency for the collection of tolls, rents or other charges for any facility or service furnished by the district and to provide for the collection of such tolls, rents and charges along with the collection of water charges by the City of Vallejo or any other public or private agency.

(k) Assessments. To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(l) Employees. To appoint and employ such engineers, attorneys, assistants and other employees as may be necessary and fix their compensation, including a secretary or clerk, superintendent of work or manager, and define their powers and



Vallejo Sanitation and Flood Control District Act, § 2 (Stats. 1952, 1st Ex. Sess., Ch. 17) as amended Stats. 1953, Ch. 1439, § 1

duties as in this act provided, and fix and determine the amount of bond required of each appointee and pay the premium on such bond; which said officers and employees and each of them shall serve at the pleasure of the board of trustees of said district; provided, however, that the compensation, or at least the rate thereof or some basis for computing the same, shall be fixed and stated in the order of appointment of each such person. Said board shall have the power to combine any two or more offices in its discretion.

(m) Zones. To establish and fix the boundaries of zones in said district as in this act hereinafter provided; to make transfers of money from the operation fund of said district to any special fund and to create and administer such special funds as in their discretion may seem advisable; to create and administer revolving funds to facilitate and assist in the carrying on and completing of such acquisitions, works and improvements provided for herein, and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(n) Contracts. To make and enter into contracts with the United States of America, the State of California, any political subdivision, county, municipality, district, agency or mandatory of the State of California or of the United States and any department, board, bureau or commission of the State of California or the United States of America, and/or any person, firm, association or corporation, jointly and/or severally, for the acquisition of property or rights and/or the construction, maintenance and/or operation in whole or in part of any and/or all works and/or improvements provided in this act.

(o) Lease of Property. To lease and/or rent to or from the City of Vallejo, the County of Solano, or any public or private agency, or person, firm or corporation, any property or rights necessary, in the opinion of the board of trustees of said district, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under such terms and conditions as may be agreed upon between the parties.

(p) Contributions. To receive and accept any and all contributions in labor, materials or money to be applied to the works or improvements herein provided for.

Comment. The deleted portion of subdivision (f) of Section

2 is superseded by Section 1235.010 of the Code of Civil Procedure. Consistent with subdivision(d) and (e), subdivision (f) authorizes extraterritorial condemnation.

Vallejo Sanitation and Flood Control District Act, § 23 (Stats. 1952, 1st Ex. Sess., Ch. 17)

Vallejo Sanitation and Flood Control District Act, § 23 (Stats. 1952, 1st Ex. Sess., Ch. 17)(repealed)

Sec. . Section 23 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is repealed.

~~Sec. 23. Condemnation Proceedings. In case of condemnation proceedings, the board of trustees shall proceed in the name of the district under the provisions of Title 7, Part 3, of the Code of Civil Procedure of the State of California, which said provisions are hereby made applicable for that purpose; and it is hereby declared that the use of the property, lands, rights of way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use, and said board of trustees of said district is hereby granted the same powers and rights with respect to the taking of property for the public uses of said district as are now or may hereafter be conferred by general law on the legislative body of a county, city and county or incorporated city or town.~~

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Comment. Section 23 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary).

Tahoe-Truckee Sanitation Agency Act,  
§ 141 (Stats. 1971, Ch. 1560)

Tahoe-Truckee Sanitation Agency Act, § 141 (Stats. 1971, Ch. 1560)(amended)

Sec. . Section 141 of the Tahoe-Truckee Sanitation Agency Act (Chapter 1560 of the Statutes of 1971) is amended to read:

SEC. 141. The agency may exercise the right of eminent domain ~~and, in the manner provided by law for the condemnation of private property for public use, may take~~ any property, located either inside or outside its boundaries, necessary to carry out any powers of the agency; provided, however, that the agency shall not exercise such right to take any property located outside its boundaries unless it first obtains the consent thereto of the board of supervisors of the county in which such property is located. In proceedings ~~relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a general law city;~~ provided, the agency, in exercising such right, shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railway, mains, pipes, conduits, wires, cables, or poles of any public utility which are required to be removed to a new location.

to

the agency

Comment. The deleted portions of Section 141 are superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010 (uniform procedure).

35.4

Fairfield-Suisun Sewer District Act,  
§ 44. (Stats. 1951, Ch. 303)

Fairfield-Suisun Sewer District Act, § 44 (Stats. 1951, Ch. 303)(amended)

Sec. . Section 44 of the Fairfield-Suisun Sewer District

Act (Chapter 303 of the Statutes of 1951) is amended to read:

to acquire any  
property neces-  
sary to carry  
out any of the  
objects or pur-  
poses of the  
district.

Sec. 44. The district ~~has and~~ may exercise the right of eminent domain pursuant to the provisions of Title 7, Part 2 of the Code of Civil Procedure. The board has the same rights and powers with respect to such taking of property for the public uses of the district as are now or may hereafter be conferred by general law on the legislative body of a city.

Comment. The deleted portion of Section 44 is superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

37.4

Contra Costa County Storm Drainage District Act, § 5 (Stats. 1953, Ch. 1532) as amended Stats. 1963, Ch. 2029, § 6

Contra Costa County Storm Drainage District Act, § 5 (Stats. 1953, Ch. 1532)  
(amended)

Sec. . . Section 5 of the Contra Costa County Storm Drainage District Act (Chapter 1532 of the Statutes of 1953) is amended to read:

Sec. 5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, ~~condemnation,~~ construction, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and necessary to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To install and maintain any or all works of or useful to carrying out the purposes of this act. Such installation or maintenance may include any or all of the following work: the placing, replacing, installation, cleaning, repairing, renewal, widening, straightening, deepening or otherwise improving storm drain structures, watercourses or drainage channels, whether in existence or not, and the installation of appurtenant structures when necessary for the adequate functioning of such drainage facilities.
6. To carry on technical and other necessary investigations, make measurements, collect data, make analyses, studies, and inspections pertaining to the installation or maintenance of storm drains, ~~and in all cases where land may be required for public use by said district, the district, or its agents in charge of such use,~~ shall have the right of access to all properties within the district and elsewhere relating to the installation or maintenance of storm drains within the district ~~and may survey and locate the same, but such must be located in a~~

For such purposes, the district

through its authorized representatives

37.4

Contra Costa County Storm Drainage  
District Act, § 5 (Stats. 1953,  
Ch. 1532) as amended Stats. 1963,  
Ch. 2029, § 6

~~manner which will be most compatible with the greatest public  
good and the least private injury. The district, or its agents  
in charge of such public use, may enter upon such lands and  
make examinations, surveys, and maps thereof.~~

through its author-  
ized representatives,

7. To enter upon any land, to make surveys and locate the necessary works of improvements and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, ~~condemnation~~, gift, devise, or other legal means all lands and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, and all necessary appurtenances; to enter into and do any acts necessary or proper for the performance of any agreement with the United States, or any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by Contra Costa County Storm Drainage District; to co-operate with, and to act in conjunction with, the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, in the construction of any work for use within said district, or in any other work, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.

8. To incur indebtedness and to issue bonds in the manner herein provided.

9. To cause assessments to be levied and collected for the purpose of paying any obligation of the zones established hereunder, and to carry out any of the purposes of this act, in the manner hereinafter provided.

10. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof, by this act.

Contra Costa County Storm Drainage  
District Act, § 5 (Stats. 1953,  
Ch. 1532) as amended Stats. 1963,  
Ch. 2029, § 6

Comment. Subdivision 6 of Section 5 is conformed to the language used in other special district acts, the portion relating to proper location of improvements being eliminated because it is superseded by more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.030 (public necessity must be established), 1240.110 et seq. (resolution of necessity). See also Code Civ. Proc. § 1240.810 et seq. (procedure for entry to locate improvements).

The word "condemnation" is deleted from subdivisions 4 and 7 to avoid any implication that the broad grant of condemnation authority under Section 7 is limited to the types of property enumerated in those subdivisions. Under Section 7, any type of property or right or interest therein may be taken by eminent domain. See Code Civ. Proc. §§ 1230.070, 1240.040. Also, the enumeration of specific types of property in subdivisions 4 and 7 does not limit the right to acquire other types of property by purchase or other means. Code Civ. Proc. § 1235.020.

Contra Costa County Storm Drainage District Act, § 7 (Stats. 1953, Ch. 1532)  
(amended)

Sec. . Section 7 of the Contra Costa County Storm Drainage District Act (Chapter 1532 of the Statutes of 1953) is amended to read:

~~SEC. 7. The district shall have and may exercise the right of eminent domain within the district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise, provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, which is required to be moved to a new location, and provided further, that, notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated, and provided further, that no right shall exist in the district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing county, city or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in the district, and it is hereby declared that the use of the property, lands, rights of way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State in the manner prescribed by law.~~

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The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution shall be prima facie evidence that the taking of such fee simple or any lesser estate or easement, or interest as the case may be, is necessary.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for its purposes, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the district for its purposes.



37.4

Contra Costa County Storm Drainage  
District Act, § 7 (Stats. 1953,  
Ch. 1532)

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing county, city or municipal utility district to provide for a water supply for such county, city or municipal utility district or as affecting the absolute control of any properties of such county, city or municipal utility district necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in said Contra Costa County Storm Drain District or in any officer thereof or in any person referred to in this act.

Comment. The deleted portions of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

38.6

West Bay Rapid Transit Authority Act,  
§ 6.6 (Stats. 1964, 1st Ex. Sess.,  
Ch. 104) as amended Stats. 1967,  
Ch. 754, § 4

West Bay Rapid Transit Authority Act, § 6.6 (Stats. 1964, 1st Ex. Sess.,  
Ch. 104) (amended)

Sec. . . . Section 6.6 of the West Bay Rapid Transit  
Authority Act (Chapter 104 of the Statutes of 1964, First  
Extraordinary Session) is amended to read:

Sec. 6.6. The authority ~~shall have or~~ exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use, including the right to immediate possession of property for rights of way.~~ <sup>may</sup> The authority ~~may~~ take any property necessary or convenient <sup>to</sup> to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise.~~ <sup>ALL IN STRIKEOUT</sup> In the proceedings, venue, and trial relative to the exercise of the right, the authority has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. ~~The authority shall proceed in the name of the authority in condemnation proceedings.~~ <sup>ALL IN STRIKEOUT</sup> The authority, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any substitute facilities, including structures, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location. ~~Notwithstanding any other provision of this act or any other law, no property in public use shall be taken by the authority except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

Comment. The deleted portions of Section 6.6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. 1235.010 (uniform procedure), 1255.010 et seq. (possession prior to judgment), 1240.610 et seq. (more necessary public use).

38.10

Fresno Metropolitan Transit District Act of 1961, § 6.3 (Stats. 1961, Ch. 1932)

Fresno Metropolitan Transit District Act of 1961, § 6.3 (Stats. 1961, Ch. 1932) (amended)

Sec. . Section 6.3 of the Fresno Metropolitan Transit District Act of 1961 (Chapter 1932 of the Statutes of 1961) is amended to read:

to
may  
 SEC. 6.3. The district ~~shall have or exercise~~ the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this act whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this act. The district shall proceed in the name of the district in condemnation proceedings.~~ -  
 The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility which is required to be moved to a new location; provided such facilities are being maintained pursuant to a franchise from a city or county. ALL IN STRIKEOUT

No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Fresno shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

Greater Bakersfield Metropolitan  
Transit District Act, § 101177  
(Stats. 1971, Ch. 1161)

Greater Bakersfield Metropolitan Transit District Act, § 101177 (Stats. 1971,  
Ch. 1161) (amended)

Sec. ~~Sec.~~ Section 101177 of the Greater Bakersfield  
Metropolitan Transit District Act (Chapter 1161 of the Statutes  
of 1971) is amended to read:

101177. The district ~~shall have and~~ may exercise the right  
of eminent domain ~~in the manner provided by law for the  
condemnation of private property for public use. The district  
may~~ take any property necessary or convenient to the  
to exercise of the powers granted in this part, ~~whether the  
property is already devoted to the same use or otherwise. In~~  
the proceedings, venue, and trial relative to the exercise of  
the right, the district shall have all the rights, powers, and  
privileges of an incorporated city and all of the rights, powers,  
and privileges conferred by this part. The district shall  
~~proceed in the name of the district in any such condemnation  
proceeding. In the exercise of such power, in addition to the  
damage for the taking, injury, or destruction of property, the  
district shall also pay the cost of removal, reconstruction, or  
relocation of any railways, mains, pipes, conduits, cables,  
poles, or other structures or facilities of any public utility or  
public agency which is required to be moved to a new  
location. Notwithstanding any other provision of this part or  
any other law, no property in public use shall be taken by the  
district except upon a finding by a court of competent  
jurisdiction that the taking is for a more necessary public use  
than that to which it has already been appropriated.~~

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38.12

Sacramento Regional Transit District Act, § 102241 (Stats. 1971, Ch. 1374)

Sacramento Regional Transit District Act, § 102241 (Stats. 1971, Ch. 1374)  
(repealed)

Sec. . . . Section 102241 of the Sacramento Regional Transit District Act (Chapter 1374 of the Statutes of 1971) is repealed.

~~102241. Whenever a portion of a parcel of real property is to be taken for district purposes and the remainder is to be left in such state or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the district may acquire the whole parcel and may sell the excess portion or exchange it for other property suitable for district purposes.~~

ALL IN STRIKEOUT

38.12

Sacramento Regional Transit District Act, § 102242 (Stats. 1971, Ch. 1374)

Sacramento Regional Transit District Act, § 102242 (Stats. 1971, Ch. 1374)  
(amended)

Sec. . Section 102242 of the Sacramento Regional Transit District Act (Chapter 1374 of the Statutes of 1971) is amended to read:

102242. The district shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district, in exercising such power, shall in addition to the damages for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, except as provided in Section 102243, no property in public use shall be taken by the district, except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

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Metropolitan Water District Act, § 141 (Stats. 1969, Ch. 209)(amended)

Sec. . Section 141 of the Metropolitan Water District  
Act (Chapter 209 of the Statutes of 1969) is amended to read:

Sec. 141. A district may exercise the power of eminent domain and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any powers of the district, except water and water rights already devoted to beneficial use and powerplants devoted to public use; however, a district may not exercise the power of eminent domain for the purpose of ~~condemning or~~ taking any water or right to water conserved or stored behind any flood control dam constructed by any flood control district created by act of the Legislature. ~~Subject to the express limitations contained in this section, in any proceeding relative to the exercise of the power of eminent domain, the district shall have the same rights, powers and privileges as a municipal corporation.~~ (to)

Alpine County Water Agency Act, § 7 (Stats. 1961, Ch. 1896)(amended)

Sec. . Section 7 of the Alpine County Water Agency Act  
(Chapter 1896 of the Statutes of 1961) is amended to read:

Sec. 7. The agency shall have the power of eminent domain to acquire within or without the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing with Section 1237, of Part 3 of the Code of Civil Procedure~~ any ~~all~~ property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use; ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulations and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~ In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

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45.1.

Alpine County Water Agency Act, § 7  
(Stats. 1961, Ch. 1896)

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Alpine shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

Comment. The deleted portions of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.610 et seq. (more necessary public use), 1240.040 (right to take any property or any interest or right in property). See also Code Civ. Proc. §§ 1230.070 ("property" defined), 1240.110 et seq. (resolution of necessity).

45.1

Alpine County Water Agency Act,  
§ 19 (Stats. 1961, Ch. 1896)

Alpine County Water Agency Act, § 19 (Stats. 1961, Ch. 1896) (repealed)

Sec. . Section 19 of the Alpine County Water Agency  
Act (Chapter 1896 of the Statutes of 1961) is repealed.

~~Sec. 19. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 7 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier railroad or other public utility fails to agree as to the character or location or new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code.~~

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Comment. Section 19 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Amador County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 2137)

Amador County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2137)(amended)

Sec. . Section 3.4 of the Amador County Water Agency Act

(Chapter 2137 of the Statutes of 1959) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or without the agency by condemnation ~~in the manner and to the extent proscribed in Article I, Section 14 of the Constitution of the State of California and Title 7 (commencing at Section 1207) of Part 3 of the Code of Civil Procedure, all~~ property or any interest therein, necessary or convenient for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use without the consent of the public agency owning such property, unless provision is made to furnish substitute facilities for the use of such public agency, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control by the State of California in the manner proscribed by law.~~

In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

45.2

Amador County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 2137)

~~Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~

The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such property, to ~~the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Amador shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.2

Amador County Water Agency Act,  
§ 4.9 (Stats. 1959, Ch. 2137)

Amador County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2137)(repealed)

Sec. . Section 4.9 of the Amador County Water Agency  
Act (Chapter 2137 of the Statutes of 1959) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.~~

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Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

45.3

Antelope Valley-East Kern Water  
Agency Law, § 61 (Stats. 1959,  
Ch. 2146) as amended Stats. 1967,  
Ch. 136, § 4

Antelope Valley-East Kern Water Agency Law, § 61 (Stats. 1959, Ch. 2146)  
(amended)

Sec. . . . Section 61 of the Antelope Valley-East Kern Water  
Agency Law (Chapter 2146 of the Statutes of 1959) is amended to  
read:

Sec. 61. The Antelope Valley-East Kern Water Agency  
incorporated as herein provided, shall have power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein  
or by law, in all actions and proceedings in all courts and  
tribunals of competent jurisdiction;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, lease, or lease  
with option to purchase, hold, use, enjoy, and to lease or dis-  
pose of real and personal property of every kind, within or  
without the Antelope Valley-East Kern Water Agency;
5. To acquire, or contract to acquire, waterworks or a  
waterworks system, waters, water rights, lands, rights and  
privileges and construct, maintain and operate conduits, pipe-  
lines, reservoirs, works, machinery and other property useful  
or necessary to store, convey, supply or otherwise make use  
of water for a waterworks plant or system for the benefit of  
the agency, and to complete, extend, add to, repair, or other-  
wise improve any waterworks or waterworks system acquired  
by it as herein authorized;
- 5a. To construct, maintain, improve and operate public  
recreational facilities appurtenant to any water reservoir  
operated or contracted to be operated by the Antelope Valley-  
East Kern Water Agency, and to provide by ordinance regu-  
lations binding upon all persons to govern the use of such  
facilities including regulations imposing reasonable charges  
for the use thereof. Violation of any such regulation shall be  
a misdemeanor;
6. To lease of and from any person, firm or public or private  
corporation, or public agency, with the privilege of purchasing  
or otherwise, all or any part of water storage, transportation  
or distribution facilities, existing waterworks or a water-  
works system, and to carry on and conduct waterworks or a  
waterworks system; also to sell water under the control of  
the agency to cities, and to other public corporations and  
public agencies within the agency, and to the inhabitants of  
such cities and of other territory within the agency, and to  
persons, corporations, and other private agencies within the  
agency for use within said agency without any preference, and

45.3

Antelope Valley-East Kern Water Agency Law, § 61 (Stats. 1959, Ch. 2146) as amended Stats. 1967, Ch. 136, § 4

it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers;

6a. To supply and deliver agency water to publicly owned and operated golf courses and other publicly owned and operated recreational facilities and to public schools, school districts and public school properties, and to fix and establish special rates, terms and conditions for the use and sale of water for each of these purposes; provided, however, that this provision shall not be construed to indicate legislative intent either for or against the existence of any power of the agency to furnish water to other persons, firms or corporations at just and reasonable rates;

7. To ~~have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the agency or any portion thereof with water, and to carry out any other powers of the agency, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation. In proceedings relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a city, provided, the agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. The agency may exercise the power of eminent domain with respect to property situated outside the boundaries of the agency if it first obtains the consent thereto of the board of supervisors of the county in which such property is located;~~

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8. To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 6 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

8a. To issue negotiable promissory notes bearing interest at a rate not exceeding 6 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further, that the maturity shall not be later than three years from the date thereof and that the

45.3

Antelope Valley-East Kern Water  
Agency Law, § 61 (Stats. 1959,  
Ch. 2146) as amended Stats. 1967,  
Ch. 136, § 4

total aggregate amount of such notes outstanding at any one time may be at least equal to seventy-five thousand dollars (\$75,000) in the Antelope Valley-East Kern Water Agency but shall not otherwise exceed the lesser of either five hundred thousand dollars (\$500,000) or 2 percent of the assessed valuation of the taxable property in the Antelope Valley-East Kern Water Agency or, if said assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his certificate;

9. To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor;

9a. To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit use of such water during such periods for specific uses which the agency may from time to time find to be nonessential;

9b. To prescribe and define by ordinance the restrictions, prohibitions and exclusions referred to in subdivision 9a hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency;

10. To make contracts, to employ labor, and do all acts necessary for the full exercise of the agency's powers;

11. In case of condemnation proceedings the board shall proceed in the name of the agency;

12. To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them;



45.3

Antelope Valley-East Kern Water  
Agency Law, § 61 (Stats. 1959,  
Ch. 2146) as amended Stats. 1967,  
Ch. 136, § 4

13. To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein.

14. To join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the Antelope Valley-East Kern Water Agency incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency.

15. To commence, maintain, intervene in, and compromise, in the name of the agency, any action or proceeding involving or affecting the ownership or use of water or water rights within the agency, used or useful for any purpose of the agency, or a common benefit to lands within the agency or its inhabitants.

Antelope Valley-East Kern Water Agency Law, § 61 (Stats. 1959, Ch. 2146) as amended Stats. 1967, Ch. 136, § 4

16. Distribute water to persons in exchange for ceasing or reducing ground water extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use water from a nontributary source in lieu of ground water, and to such end the agency may become a party to such contract and pay from agency funds such portion of the cost of such waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the agency are directly or indirectly benefited.

17. To issue bonds under Section 68 of this act for the purpose of providing money required to be paid to the agency organized under the Metropolitan Water District Act by the board of directors of the agency as all or part of the terms and conditions upon which the corporate area of the Antelope Valley-East Kern Water Agency may be annexed to and become a part of said metropolitan water district. The amount of said bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

18. To issue revenue bonds for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to the agency formed under this act.

19. To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the Antelope Valley-East Kern Water Agency. In the application of said Improvement Act of 1911 to proceedings instituted by the Antelope Valley-East Kern Water Agency, the terms used in said Improvement Act of 1911 shall have the following meanings:

(a) "City council" and "council" shall mean the board of directors of the Antelope Valley-East Kern Water Agency.

(b) "Municipality" and "city" shall mean the Antelope Valley-East Kern Water Agency.

(c) "Clerk" and "city clerk" shall mean the secretary.

(d) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.

(e) "Tax collector" shall mean the county tax collector.

(f) "Treasurer" and "city treasurer" shall mean the treasurer of the Antelope Valley-East Kern Water Agency.

(g) "Mayor" shall mean the president of the board of directors of the Antelope Valley-East Kern Water Agency.

(h) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the Antelope Valley-East Kern Water Agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent shall be filed or recorded in the office of the secretary of the Antelope Valley-East Kern Water Agency.

20. To disseminate information concerning the rights, properties, and activities of the agency.

Comment. The deleted portions of subdivision 7 of Section 61 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use).

45.4

Contra Costa County Water Agency Act, § 10 (Stats. 1957, Ch. 518)

Contra Costa County Water Agency Act, § 10 (Stats. 1957, Ch. 518)(amended)

Sec. . Section 10 of the Contra Costa County Water Agency Act (Chapter 518 of the Statutes of 1957) is amended to read:

Sec. 10. The agency has the power of eminent domain to acquire within the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14, of the Constitution and Title 7 (commencing with Section 1237) of Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein~~ necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation publicly owned water rights or property held or used for the development, storage or distribution of water for public use; provided, however, that the agency in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State in the manner prescribed by law. The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in the resolution, is necessary for carrying out the purposes of the agency.~~

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Comment. The deleted portions of Section 10 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

Desert Water Agency Law, § 15  
(Stats. 1961, Ch. 1069) as amended  
Stats. 1971, Ch. 304, § 2

Desert Water Agency Law, § 15 (Stats. 1961, Ch. 1069)(amended)

Sec. . Section 15 of the Desert Water Agency  
Law (Chapter 1069 of the Statutes of 1961) is amended  
to read:

Sec. 15. The Desert Water Agency incorporated as herein  
provided, shall have the power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein  
or by law, in all actions and proceedings in all courts and  
tribunals of competent jurisdiction;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, or lease, hold,  
use, enjoy, and to lease or dispose of real and personal prop-  
erty of every kind, within or without the Desert Water  
Agency;
5. To acquire, or contract to acquire, waterworks or a water-  
work system, waters, water rights, lands, rights and privileges  
and construct, maintain and operate conduits, pipelines, reser-  
voirs, works, machinery and other property useful or necessary  
to store, convey, supply or otherwise make use of water for a  
waterworks plant or system for the benefit of the agency, and  
to complete, extend, add to, repair or otherwise improve any  
waterworks or waterworks system acquired by it as herein  
authorized.
6. To construct, maintain, improve and operate public rec-  
reational facilities appurtenant to any water reservoir oper-  
ated or contracted to be operated by the Desert Water Agency,  
and to provide by ordinance regulations binding upon all  
persons to govern the use of such facilities including regula-  
tions imposing reasonable charges for the use thereof. Vio-  
lation of any such regulation shall be a misdemeanor.
7. To lease of and from any person, firm or public or private  
corporation, or public agency, with the privilege of purchas-  
ing or otherwise, all or any part of water storage, transporta-  
tion or distribution facilities, existing waterworks or a water-  
works system, and to carry on and conduct waterworks or a  
waterworks system; also to sell water under the control of  
the agency to cities, and to other public corporations and

public agencies within the agency, and to the inhabitants of such cities and of other territory within the agency, and to persons, corporations, and other private agencies within the agency for use within said agency without any preference; also to sell water outside the boundaries of the agency to the extent that the lands and inhabitants so served are southerly and westerly of the White Water River and northerly of the township line between Township 4 South and Township 5 South, S.B.B. & M., and exclusive of that certain subdivision known as Palma Springs Outposts Estates situated in Section 21, Township 4 South, Range 5 East, S.B.B. & M. and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers;

8. The agency may supply and deliver water to property not subject to agency taxes at special rates, terms, and conditions as are determined by the board for such service.

~~9. To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the agency or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation. In proceedings relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a city, provided, the agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. The agency shall have or exercise no power of eminent domain with respect to property situated outside the boundaries of the agency other than the power to acquire by eminent domain any integrated water production, transmission and distribution facilities located partially within and without the boundaries of the agency, provided such integrated facilities are located southerly and westerly of the White Water River and northerly of the township line between Township 4 South and Township 5 South, S.B.B. & M., and exclusive of that certain subdivision known as Palma Springs Outposts Estates situated in Section 21, Township 4 South, Range 5 East, S.B.B. & M. The agency shall not have or exercise power of eminent domain as to any property belonging to a county water district which has more than 50,000 acres of land within its boundaries.~~

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Desert Water Agency Law, § 15  
(Stats. 1961, Ch. 1069) as amended  
Stats. 1971, Ch. 304, § 2

10. To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 6 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

11. To issue negotiable promissory notes bearing interest at a rate not exceeding 7 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further that the maturity shall not be later than five years from the date thereof and that the total aggregate amount of such notes outstanding at any one time may be at least equal to seventy-five thousand dollars (\$75,000) in the Desert Water Agency but shall not otherwise exceed the lesser of either one million five hundred thousand dollars (\$1,500,000) or 3 percent of the assessed valuation of the taxable property in the Desert Water Agency, or, if said assessed valuation is not obtainable, 3 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his certificate. Promissory notes issued pursuant to Section 51 may be disregarded in computing the aggregate amount of notes that may be issued pursuant to this subdivision;

12. To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor;

13. To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of such water during such periods for specific uses which the agency may from time to time find to be nonessential;

14. To prescribe and define by ordinance, the restrictions, prohibitions and exclusions referred to in subdivision 13 hereof. Every ordinance relating to the matters referred to

45.5

Desert Water Agency Law, § 15  
(Stats. 1961, Ch. 1069) as amended  
Stats. 1971, Ch. 304, § 2

In this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency;

15. To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers;

16. In case of condemnation proceedings the board shall proceed in the name of the agency;

17. To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them;

18. To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein; provided, however, that all waters of the Whitewater River System are excluded from the provisions hereof, except such waters of said system as may be lawfully acquired by the Desert Water Agency; provided further that rights to any water made available by the Desert Water Agency are owned and controlled exclusively by the agency, and no person within or outside of the boundaries of the Desert Water Agency shall acquire any property or other right in such water, except as provided by contract with the agency, or pursuant to such rules and regulations as the agency may from time to time establish and enforce.

19. Subject to the limitations in subdivision 9 of this section, to join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations

45.5

Desert Water Agency Law, § 15  
(Stats. 1961, Ch. 1069) as amended,  
Stats. 1971, Ch. 304, § 2

or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the Desert Water Agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of such contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on such indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at such special election.



20. To commence, maintain, intervene in, defend and compromise, in the name of the agency, or as a class representative of the inhabitants, property owners, taxpayers, or water producers or water users within the agency, or otherwise, and to assume the costs and expenses of any and all actions and proceedings, now or hereafter begun, involving or affecting the ownership or use of water or water rights, used or useful for any purpose of the agency, or a common benefit to the lands within the agency or its inhabitants.

20.1. To commence, maintain, intervene in, defend and compromise, in the name of the agency, or as a class representative of the inhabitants, property owners, taxpayers, water producers or water users within the agency or otherwise, and to assume the costs and expenses of any and all actions or proceedings, now or hereafter begun, to prevent, control, or abate the pollution of water used or useful for any purpose of the agency, or a common benefit to lands within the agency, or to the inhabitants of the agency, or any watershed or basin overlain in whole or in part by the agency or which contributes to the water supply of the agency.

21. Distribute water to persons in exchange for ceasing or reducing ground water extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end an agency may become a party to such contract and pay from the agency funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the agency are directly or indirectly benefited by the resulting replenishment.

22. To issue bonds under Section 28 of this act for the purpose of providing money required to be paid by this agency as all or part of the terms and conditions under which the corporate area of the Desert Water Agency may be annexed to and become a part of any metropolitan water district organized under the Metropolitan Water District Act. The amount of said bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

23. To issue revenue bonds for any purpose for which general obligation bonds may be issued, and for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to this agency.

45.5

Desert Water Agency Law, § 15  
(Stats. 1961, Ch. 1069) as amended  
Stats. 1971, Ch. 304, § 2

24. To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the Desert Water Agency. In the application of said Improvement Act of 1911 to proceedings instituted by the Desert Water Agency, the terms used in said Improvement Act of 1911 shall have the following meanings:

- (a) "City council" and "council" shall mean the board of directors of the Desert Water Agency.
- (b) "Municipality" and "city" shall mean the Desert Water Agency.
- (c) "Clerk" and "city clerk" shall mean the secretary.
- (d) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.
- (e) "Tax collector" shall mean the county tax collector.
- (f) "Treasurer" and "city treasurer" shall mean the treasurer of the Desert Water Agency.
- (g) "Mayor" shall mean the president of the board of directors of the Desert Water Agency.
- (h) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the Desert Water Agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent shall be filed and recorded in the office of the secretary of the Desert Water Agency.

Comment. The deleted portions of subdivision 9 of Section 15 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use).

El Dorado County Water Agency Act, § 8 (Stats. 1959, Ch. 2139)(amended)

Sec. . Section 8 of the El Dorado County Water Agency Act  
(Chapter 2139 of the Statutes of 1959) is amended to read:

Sec. 8. The agency shall have the power of eminent domain to acquire within the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing at Section 1927, of Part 3 of the Code of Civil Procedure~~ any ~~all~~ property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law.~~ any The agency in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal and relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which require removal only, or removal and any ~~reinstallation in a new location, and provided further, that notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~ any ~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~ any

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Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.6

El Dorado County Water Agency Act,  
§ 20 (Stats. 1959, Ch. 2139)

El Dorado County Water Agency Act, § 20 (Stats. 1959, Ch. 2139)(repealed)

Sec. . Section 20 of the El Dorado County Water Agency  
Act (Chapter 2139 of the Statutes of 1959) is repealed.

~~Sec. 20. (a) If by any judgment in condemnation or agree-  
ment the agency is required to relocate any street, road, high-  
way, railroad, canal or other property subject or devoted to  
public use, the board may acquire in the name of the agency,  
by agreement or condemnation, all rights of way and other  
property necessary or proper for compliance with such agree-  
ment or judgment of condemnation and thereafter to make  
such conveyance of the relocated street, road, highway, rail-  
road, canal, or other property as may be proper to comply with  
the agreement or judgment. All agreements for the exchange  
of property and all judgments requiring relocation of other  
public uses, as specified in this section and in Section 8 of this  
act, shall provide that in making the exchange the property  
condemned and exchanged shall be limited to public use by the  
party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier rail-  
road or other public utility fail to agree as to the character or  
location of new improvements or works sought to be performed  
by the agency, the character and location of such new improve-  
ments or works and any other controversy relating thereto  
shall be submitted to and determined by the Public Utilities  
Commission.~~

~~(c) Proceedings under this section relating to the jurisdic-  
tion of said commission may be instituted, maintained and  
determined in the manner prescribed in Chapter 6, commenc-  
ing at Section 12014 of Part 1 of Division 1 of the Public  
Utilities Code.~~

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Comment. Section 20 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Kern County Water Agency Act,  
§ 3.4 (Stats. 1961, Ch. 1003)

Kern County Water Agency Act, § 3.4 (Stats. 1961, Ch. 1003)(amended)

Sec. . Section 3.4 of the Kern County Water Agency Act

(Chapter 1003 of the Statutes of 1961) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or without the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7 (commencing at Section 1237) of Part 3 of the Code of Civil Procedure, all~~ property or any interest therein, necessary or convenient for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation water or property held or used for the development, storage or distribution of water for public use without the consent of the owner of such property, unless provision is made to furnish an equivalent water supply and substitute facilities of equal usefulness for the use of the owner of such property, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control by the State of California in the manner prescribed by law.~~

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In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

~~Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~

The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such property, ~~to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Kern shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.7

Kern County Water Agency Act,  
§ 4.9 (Stats. 1961, Ch. 1003)

Kern County Water Agency Act, § 4.9 (Stats. 1961, Ch. 1003)(repealed)

Sec. . Section 4.9 of the Kern County Water Agency Act  
(Chapter 1003 of the Statutes of 1961) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be dedicated to public use by the party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.~~

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Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

45.8

Mariposa County Water Agency Act,  
§ 3.4 (Stats. 1959, Ch. 2036)

Mariposa County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2036)(amended)

Sec. . Section 3.4 of the Mariposa County Water Agency  
Act (Chapter 2036 of the Statutes of 1959) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or without the agency by ~~condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing at Section 1237, of Part 3 of the Code of Civil Procedure~~ any ~~all~~ property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~

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In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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45.8.

Mariposa County Water Agency Act,  
§ 3.4 (Stats. 1959, Ch. 2036)

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).



45.8

Mariposa County Water Agency Act,  
§ 4.9 (Stats. 1959, Ch. 2036)

Mariposa County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2036)(repealed)

Sec. . Section 4.9 of the Mariposa County Water Agency  
Act (Chapter 2036 of the Statutes of 1959) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

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(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6, commencing at Section 1201, of Part 1 of Division 1 of the Public Utilities Code.

Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

Mojave Water Agency Act, § 14  
(Stats. 1959, Ch. 2146)

Mojave Water Agency Act, § 14 (Stats. 1959, Ch. 2146)(amended)

Sec. . . Section 14 of the Mojave Water Agency Act (Chapter 2146 of the Statutes of 1959) is amended to read:

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~~Sec. 14. The agency has the power of eminent domain to acquire within the agency by condemnation in the manner and to the extent prescribed in Article I, Section 14, of the Constitution and Title 7 (commencing with Section 1227) of Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation publicly owned water rights or property held or used for the development, storage or distribution of water for public use; provided, however, that the agency in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal and, where necessary, relocation of any structures, railways, mains, pipes, conduits, wires, cables and poles, of any public utility which require removal only, or removal and reinstallation in a new location. It is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State in the manner prescribed by law. The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in the resolution, is necessary for carrying out the purposes of the agency. In no event shall the agency have or exercise the power of eminent domain with respect to property situated outside the boundaries of the agency. Notwithstanding any other provision of this act or any other law, no property devoted to a public use shall be taken by the agency unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which the property has already been appropriated.~~

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Mojave Water Agency Act, § 14  
(Stats. 1959, Ch. 2146)

Comment. The deleted portions of Section 14 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

Nevada County Water Agency Act, § 7 (Stats. 1959, Ch. 2122) (amended)

Sec. . Section 7 of the Nevada County Water Agency Act  
(Chapter 2122 of the Statutes of 1959) is amended to read:

Sec. 7. The agency shall have the power of eminent domain to acquire within or without the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing at Section 1027, of Part 3 of the Code of Civil Procedure~~ any ~~all property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulations and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~ In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

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~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Nevada shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

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Nevada County Water Agency Act,  
§ 7 (Stats. 1959, Ch. 2122)

Comment. The deleted portions of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.10

Nevada County Water Agency Act,  
§ 19 (Stats. 1959, Ch. 2122)

Nevada County Water Agency Act, § 19 (Stats. 1959, Ch. 2122) (repealed)

Sec. . Section 19 of the Nevada County Water Agency  
Act (Chapter 2122 of the Statutes of 1959) is repealed.

~~Sec. 19. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 7 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

(b) In the event the agency and any common carrier railroad or other public utility fails to agree as to the character or location or new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

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Comment. Section 19 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

45.11

Orange County Water District Act,  
§ 2 (Stats. 1933, Ch. 924) as  
amended Stats. 1970, Ch. 141, § 1

Orange County Water District Act, § 2 (Stats. 1933, Ch. 924) (amended)

Sec. . Section 2 of the Orange County Water District.

Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 2. The "Orange County Water District" shall have power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the district, necessary or convenient to the full exercise of its powers;
5. Within or outside of the district to construct, purchase, lease, or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery, facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin within said district, or to augment and protect the quality of the common water supplies of said district, and purposes incidental thereto;
6. For the common benefit of said district and for the purpose of replenishing, regulating and protecting the ground water supplies within the district to:
  - (a) Store water in underground water basins or reservoirs within or outside of said district;
  - (b) Appropriate and acquire water and water rights within or outside of said district;
  - (c) Purchase and import water into said district;
  - (d) Conserve water within or outside of said district;
  - (e) Buy and to sell water at such rates as shall be determined by the board of directors;
  - (f) Exchange water;
  - (g) Distribute water to persons in exchange for ceasing or reducing ground water extractions;
  - (h) Transport, reclaim, purify, treat, inject, extract, or otherwise manage and control water for the beneficial use of persons or property within the district and to improve and protect the quality of the ground water supplies within the district; and
  - (i) Fix the terms and conditions of any contract under which owners or operators of water-producing facilities

45.11

Orange County Water District Act,  
§ 2 (Stats. 1933, Ch. 924) as  
amended Stats. 1970, Ch. 141, § 1

within the district may agree to use water from an alternative nontributary source in lieu of ground water, and to such end the district may become a party to such a contract and may pay from district funds such portion of the cost of water from an alternate source as will encourage the purchase and use of the same in lieu of producing ground water, as long as persons or property within the district are directly or indirectly benefited by the resulting replenishment;

(j) Determine in the manner herein provided the amount and percentage of water produced from the ground water supplies within the district to the total amount of water produced within district by all persons and operators, including the total amount of water from supplemental sources; require that persons and operators produce more or less of their total water needs from the ground water within district than the basin production percentage determined by district as provided herein; levy a basin equity assessment on those persons and operators who are required by district to produce, or have in fact produced, more water from the ground water within district; and to compensate other such persons and operators who are directed by district to produce less than the basin production percentage from ground water within district;

7. To provide for the protection and enhancement of the environment within and outside such district in connection with the water activities of such district;

8. To provide, by agreement with other public agencies or private persons or entities or otherwise, for the recreational use of the lands, facilities, and works of such district which shall not interfere, or be inconsistent, with the primary use and purpose of such lands, facilities, and works by such district;

9. To carry out the purposes of this act, to commence, maintain, intervene in, defend and compromise, in the name of said district, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with water or water rights used or useful to lands within said district, or diminution of the quantity or pollution or contamination of the water supply of said district, or to prevent unlawful exportation of water from said district, or to prevent any interference with the water or water rights used or useful in said district which may endanger or damage the inhabitants, lands or use of water in said district; provided, however, that said district shall not have power to intervene or take part in, or to pay costs or expenses of actions or controversies between the owners of lands or water rights all of which are entirely within the boundaries of said district and which do not involve pollution or contamination of water within said district or exporting water outside of said district's boundaries or any threat thereof;



Orange County Water District Act,  
 § 2 (Stats. 1933, Ch. 924) as  
 amended Stats. 1970, Ch. 141; § 1

10. To have and exercise the right of eminent domain, ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to the exercise of any of the powers granted by this act, except that said district shall not have the right of eminent domain as to water, water rights, reservoirs, pipelines, water distributing systems, waterworks, or powerplants, all or any of which are already devoted to beneficial or public use and located within the watershed of the Santa Ana River, and excepting further from the exercise of the right of eminent domain by said district any property maintained and actually used for the scientific propagation and study of plantlife. No language or provision of this act, or of this subdivision, shall be interpreted or construed so as to limit or abridge the right of said district, or its board of directors, to exercise its right of eminent domain to condemn property at any place within the Santa Ana River watershed for rights-of-ways upon and across and under which to construct pipelines, conduits, tunnels and/or aqueducts necessary or convenient for any of the purposes of said district provided the property sought to be condemned for said purposes is not already being used by other corporations, municipalities, districts or individuals for similar purposes; providing, however, that neither said district nor its board of directors shall have power to enter in or upon the Mojave River or any of its tributaries or appropriate, take or condemn any of the water or the right to the use of any of the water of said Mojave River or any of its tributaries; nor shall anything in this act be deemed as authorizing or empowering said district or its board of directors to do <sup>2</sup> ~~Subject to the express limitations hereinbefore set out, in any proceedings relative to the exercise of such right of eminent domain, said district shall have the same rights, powers and privileges as a municipal corporation;~~

11. The district shall, in addition to the other powers herein granted by this act, have the following rights and powers: to act jointly with or cooperate with the United States or any agency thereof, the State of California or any agency thereof, any county of the State of California, districts of any kind, public and private corporations, and any person or persons, to carry out the provisions and purposes of this act; in such joint or cooperative activities, said district may act within or outside of its boundaries;

12. To cause assessments and/or charges to be levied as hereinafter provided to accomplish the purposes of this act;

13. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers;

14. To carry on technical and other investigations of all kinds, necessary to carry out the provisions of this act, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

Comment. The deleted portions of subdivision 10 of Section 2 are superseded by Section 1235.010 of the Code of Civil Procedure.

45.11

Orange County Water District Act;  
§ 39 (Stats. 1933, Ch. 924)

Orange County Water District Act, § 39 (Stats. 1933, Ch. 924) (repealed)

Sec. . Section 39 of the Orange County Water District  
Act (Chapter 924 of the Statutes of 1933) is repealed.

Sec. 39. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, road, railway, canal, ditch, flume or other property subject to or devoted to public use, in such manner as to afford security to life and property; but said board shall restore said property when so crossed or intersected, to its former state as near as may be, and in such manner as not to have impaired unnecessarily its usefulness. If the owner or owners of any land, easement or franchise so to be crossed can not agree with the district as to the amount to be paid therefor or the location of such crossing or any other matters in connection therewith, the same shall be determined and ascertained in all respects as is in this act provided in respect to the taking of land. In case any street, road, highway, railroad, canal, or other property subject or devoted to public use shall become subject to flooding or other interference by reason of the construction or proposed construction of any works of the district or project the board of directors of the district may, acquire by agreement or condemnation the right so to flood or otherwise interfere with such property, within or without the district whether it be publicly or privately owned, and if such right be acquired by condemnation, the judgment may, if the court shall find that public necessity or convenience so requires, direct the district to relocate such street, road, highway, railroad, canal or other property in accordance with plans prescribed by the court and if by such judgment or by agreement the district shall be required to relocate any such street, road, highway, railroad, canal or other property subject or devoted to public use, the board shall have power to acquire in the name of the district, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with said agreement or said judgment of condemnation and thereafter to make such conveyances of such relocated street, road, highway, railroad, canal, or other property as may be proper to comply with said agreement or judgment. The right of way is hereby given, dedicated and set apart to locate, construct and maintain any of the works of the district over and through any of the lands which are now, or may become the property of this State and also there is given, dedicated and set apart, for the use and purposes aforesaid, all waters and water rights belonging to this State within the district.

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Comment. Section 39 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1240.310 et seq. (substitute condemnation), 1240.510 et seq. (compatible uses), 1240.610 et seq. (more necessary public use).

45.12

Placer County Water Agency Act, § 3.4  
(Stats. 1957, Ch. 1234) as amended  
Stats. 1959, Ch. 815, § 4

Placer County Water Agency Act, § 3.4 (Stats. 1957, Ch. 1234)(amended)

Sec. . Section 3.4 of the Placer County Water Agency Act

(Chapter 1234 of the Statutes of 1957) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or without the agency by ~~condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing at Section 1237, of Part 9 of the Code of Civil Procedure all property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~

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In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Placer shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

45.12

Placer County Water Agency Act, § 3.4  
(Stats. 1957, Ch. 1234) as amended  
Stats. 1959, Ch. 815, § 4

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.12

Placer County Water Agency Act,  
§ 4.9 (Stats. 1957, Ch. 1234)

Placer County Water Agency Act, § 4.9 (Stats. 1957, Ch. 1234) (repealed)

Sec. . Section 4.9 of the Placer County Water Agency  
Act (Chapter 1234 of the Statutes of 1957) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6, commencing at Section 1201, of Part 1 of Division 1 of the Public Utilities Code.~~

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Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

45.13

Sacramento County Water Agency Act,  
§ 3.4 (Stats. 1952, 1st Ex. Sess.,  
Ch. 10) as amended Stats. 1963,  
Ch. 2076, § 3

Sacramento County Water Agency Act, § 3.4 (Stats. 1952, 1st Ex. Sess.,  
Ch. 10)(amended)

Sec. . Section 3.4 of the Sacramento County Water Agency  
Act (Chapter 10 of the Statutes of 1952, First Extraordinary  
Session) is amended to read:

Sec. 3.4. The agency shall have the power of eminent  
domain to acquire within or outside the agency by condemna-  
tion in the manner and to the extent prescribed in Article I,  
Section 11 of the Constitution and Title 7, Part 3 of the Code  
of Civil Procedure, as now existing or hereafter amended, all  
property or interests therein necessary or convenient for carry-  
ing out the powers and purposes of the agency except that the  
agency shall not have power to acquire by condemnation pub-  
licly owned property held or used for development, storage  
or distribution of water for public use, or publicly owned  
property held or used by any flood or reclamation district,  
and it is hereby declared that the use of the property which  
may be condemned, taken or appropriated under the provi-  
sions of this act, is a public use, subject to regulation and con-  
trol of the State in the manner prescribed by law. The agency  
in exercising such power shall in addition to the damage for  
the taking, injury, or destruction of property, also pay the  
cost of removal or relocation of any structure, railways, mains,  
pipes, conduits, wires, cable, poles, of any public utility which  
is required to be moved to a new location, and provided  
further, that, notwithstanding any other provision of this act  
or any other law, no property shall be taken unless it is taken  
upon a finding by a court of competent jurisdiction that the  
taking is for a more necessary public use than that to which  
it has already been appropriated.

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Sacramento County Water Agency Act,  
§ 3.4 (Stats. 1952, 1st Ex. Sess.,  
Ch. 10) as amended Stats. 1963,  
Ch. 2076, § 3

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board of directors by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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The agency shall not condemn property outside the boundaries of the agency unless the board of supervisors of each county in which such property is located has consented to such acquisition by resolution.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.13

Sacramento County Water Agency Act,  
§ 4.9 (Stats. 1952, 1st Ex. Sess.,  
Ch. 10)

Sacramento County Water Agency Act, § 4.9 (Stats. 1952, 1st Ex. Sess., Ch. 10)  
(repealed)

Sec. . Section 4.9 of the Sacramento County Water Agency  
Act (Chapter 10 of the Statutes of 1952, First Extraordinary  
Session) is repealed.

~~Sec. 4.9. If by any judgment in condemnation or by agree-  
ment the agency shall be required to relocate any street, road,  
highway or railroad, subject or devoted to public use, the board  
shall have power to acquire in the name of the agency by agree-  
ment or condemnation, all rights of way and other property  
necessary or proper for the compliance with said agreement or  
judgment and thereafter, and without further authorization, to  
make such conveyance of such relocated street, road, highway  
or railroad, as may be proper to comply with said agreement or  
judgment.~~

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Comment. Section 4.9 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



4514

San Gorgonio Pass Water Agency  
Law, § 15 (Stats. 1961, Ch. 1435)  
as amended Stats. 1969, Ch. 1027,  
✓ § 1

San Gorgonio Pass Water Agency Law, § 15 (Stats. 1961, Ch. 1435)(amended)

Sec. . Section 15 of the San Gorgonio Pass Water Agency Law  
(Chapter 1435 of the Statutes of 1961) is amended to read:

Sec. 15. The agency incorporated as herein provided, shall have the power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the agency;
5. To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the agency, and to complete, extend, add to, repair or otherwise improve any waterworks or waterworks system acquired by it as herein authorized.
6. To construct, maintain, improve and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the agency, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities including regulations imposing reasonable charges for the use thereof. Violation of any such regulation shall be a misdemeanor.
7. To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency, and to the inhabitants of such cities and of other territory within the agency, and to persons, corporations, and other private agencies within the agency for use within said agency without any preference; also to sell water under the control of the agency to any city, or any company or public agency serving a city, which city is located wholly or partially within the agency, for distribution

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San Geronio Pass Water Agency Law,  
§ 15 (Stats. 1961, Ch. 1435) as  
amended Stats. 1969, Ch. 1027, § 1

only within such city; and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers.

8. To supply and deliver agency water to publicly owned and operated golf courses and other publicly owned and operated recreational facilities and to public schools, school districts and public school properties, and to fix and establish special rates, terms and conditions for the use and sale of water for each of these purposes; provided, however, that this provision shall not be construed to indicate legislative intent either for or against the existence of any power of the agency to furnish water to other persons, firms or corporations at just and reasonable rates;

9. To ~~have and~~ exercise the right of eminent domain ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to supply the agency or any portion thereof with water, ~~whether such property be already devoted to the same use or otherwise,~~ and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation, provided that the use to which such property is to be devoted by the agency must be pleaded and proven by the agency to be a more necessary public use than that to which it is then appropriated, as a condition to the exercise of such right of eminent domain. In proceedings relative to the exercise of such right, the agency ~~shall have all of the rights, powers and privileges of a city,~~ ~~provided,~~ the agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. In no event shall the agency ~~have or~~ exercise the power of eminent domain with respect to property situated outside the boundaries of the agency, unless it first obtains the consent of the board of supervisors of the county in which such property is located to such exercise of said power.

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10. To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 6 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

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San Geronio Pass Water Agency Law;  
§ 15 (Stats. 1961, Ch. 1435) as  
amended Stats. 1969, Ch. 1027, § 1

11. To issue negotiable promissory notes bearing interest at a rate not exceeding 6 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further that the maturity shall not be later than five years from the date thereof and that the total aggregate amount of such notes outstanding at any one time shall not exceed the lesser of either one million five hundred thousand dollars (\$1,500,000) or 2 percent of the assessed valuation of the taxable property in the agency, or, if said assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his certificate;

12. To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor;

13. To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of such water during such periods for specific uses which the agency may from time to time find to be nonessential;

14. To prescribe and define by ordinance, the restrictions, prohibitions and exclusions referred to in subdivision 13 hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency;

15. To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers;

16. In case of condemnation proceedings the board shall proceed in the name of the agency;

17. To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance

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San Gorgonio Pass Water Agency Law,  
§ 15 (Stats. 1961, Ch. 1435) as  
amended Stats. 1969, Ch. 1027, § 1

for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them;

18. To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein; provided, however, that all waters of the Whitewater River system are excluded from the provisions hereof, except such waters of said system as may be lawfully acquired by the San Gorgonio Pass Water Agency.

19. Subject to the limitations in subdivision 9 of this section, to join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. Particularly, but not exclusively, the agency may contract with the State of California for delivery of water under the State Water Plan. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income

45.14

San Geronio Pass Water Agency, Law,  
§ 15 (Stats. 1961, Ch. 1435) as  
amended Stats. 1969, Ch. 1027, § 1

and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, such election to be called and held so far as practicable, in the same manner as bond elections for the agency. The exact form of such contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on such indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at such special election.

20. To commence, maintain, intervene in, defend and compromise, in the name of the agency, and to assume the costs and expenses of any and all actions and proceedings which involve or affect the ownership or use of water or water rights, used or useful for any purpose of the agency, or a common benefit to the lands within the agency or inhabitants of the agency, and in any such action or proceeding the agency may act as a representative of any class or classes of users of water within the agency, producers of water within the agency or owners of rights to water used or useful within the agency, or owners of property within the agency.

21. Distribute water to persons in exchange for ceasing or reducing ground water extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end an agency may become a party to such contract and pay from the agency funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the agency are directly or indirectly benefited by the resulting replenishment.

22. To issue bonds under Section 28 of this act for the purpose of providing money required to be paid by this agency to the State of California or any agency thereof under any contract which shall be made with it, or as all or part of the terms and conditions under which the corporate area of the agency may be annexed to and become a part of any metropolitan water district organized under the Metropolitan Water District Act. The amount of said bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

23. To issue revenue bonds for any purpose for which general obligation bonds may be issued, and for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to the agency.

24. To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by

45.14

San Geronio Pass Water Agency Law,  
§ 15 (Stats. 1961, Ch. 1435) as  
amended Stats. 1969, Ch. 1027, § 1

the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the agency. In the application of said Improvement Act of 1911 to proceedings instituted by the agency, the terms used in said Improvement Act of 1911 shall have the following meanings:

- (a) "City council" and "council" shall mean the board of directors of the agency.
- (b) "Municipality" and "city" shall mean the agency.
- (c) "Clerk" and "city clerk" shall mean the secretary.
- (d) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.
- (e) "Tax collector" shall mean the county tax collector.
- (f) "Treasurer" and "city treasurer" shall mean the treasurer of the agency.
- (g) "Mayor" shall mean the president of the board of directors of the agency.
- (h) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent shall be filed and recorded in the office of the Secretary of the San Geronio Pass Water Agency.

25. To disseminate information concerning the activities of the agency; and in instances in which it shall be found by two-thirds vote of the board of directors to be necessary for the protection of agency rights and properties to disseminate information concerning such rights and properties, also concerning matters which in the judgment of the board may adversely affect such rights and properties; provided, that expenditures during any fiscal year for such purposes shall not exceed one cent (\$0.01) for each one hundred dollars (\$100) of assessed valuation of such agency.

Comment. The deleted portions of subdivision 9 of Section 15 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to take any property or any right of interest in property). See also Code Civ. Proc. § 1230.070 ("property" defined).

45.15

Santa Barbara County Water Agency Act,  
§ 3.4 (Stats. 1945, Ch. 1501) as amended  
✓ Stats. 1967, Ch. 1181, § 2

Santa Barbara County Water Agency Act, § 3.4 (Stats. 1945, Ch. 1501)(amended)

Sec. . Section 3.4 of the Santa Barbara County Water Agency

Act (Chapter 1501 of the Statutes of 1945) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or outside the agency ~~by condemnation in the manner and to the extent prescribed in Article 1, Section 14 of the Constitution and Title 7, Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the state in the manner prescribed by law.~~ The district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, ~~and provided further that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

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STRIKEOUT

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the agency for any purpose authorized by this act, the agency may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the agency.

The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property ~~which the board of directors by resolution shall determine is~~

45.15

Santa Barbara County Water Agency Act,  
§ 3.4 (Stats. 1945, Ch. 1501) as amended  
Stats. 1967, Ch. 1181, § 2

~~necessary for carrying out the purposes of the agency. Such resolution, adopted by a two-thirds vote of all its members, shall be conclusive evidence of all of the following:~~

(a) The public necessity for the proposed public improvement.

(b) The property or property interest being acquired is necessary for the proposed public use.

(c) Such proposed public improvement is planned or located in the manner which will be compatible with the greatest public good and the least private injury.

Whenever a part only of a parcel is required by the agency for any purpose authorized by this act, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the agency may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for agency purposes. Or, in lieu of such acquisition of the remainder, the agency may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.

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STRIKEOUT

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any interest or right in property), 1240.310 et seq. (taking for exchange), 1240.410 et seq. (excess taking). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).



45.15

Santa Barbara County Water Agency  
Act, § 4.9 (Stats. 1945, Ch. 1501)

Santa Barbara County Water Agency Act, § 4.9 (Stats. 1945, Ch. 1501)(repealed)

Sec. . Section 4.9 of the Santa Barbara County Water  
Agency Act (Chapter 1501 of the Statutes of 1945) is repealed.

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STRIKEOUT

~~Sec. 4.9. If by any judgment in condemnation or by agree-  
ment the agency shall be required to relocate any street, road,  
highway or railroad, subject or devoted to public use, the board  
shall have power to acquire in the name of the agency by agree-  
ment or condemnation, all rights of way and other property  
necessary or proper for the compliance with said agreement or  
judgment and thereafter, and without further authorization, to  
make such conveyance of such relocated street, road, highway  
or railroad, as may be proper to comply with said agreement or  
judgment.~~

Comment. Section 4.9 is superseded by the more general  
provisions of the Eminent Domain Law. See Code Civ. Proc. §  
1240.310 et seq.

45.16

Shasta County Water Agency Act,  
§ 58 (Stats. 1957, Ch. 1512)

Shasta County Water Agency Act, § 58 (Stats. 1957, Ch. 1512) (repealed)

Sec. . Section 58 of the Shasta County Water Agency  
Act (Chapter 1512 of the Statutes of 1957) is repealed.

~~Sec. 58. If by any judgment in condemnation or by agree-  
ment the agency shall be required to relocate any street, road,  
highway or railroad, subject or devoted to public use, the  
board shall have power to acquire in the name of the agency  
by agreement or condemnation, all rights of way and other  
property necessary or proper for the compliance with the  
agreement or judgment and thereafter and without further  
authorization, to make such conveyance of such relocated  
street, road, highway or railroad, as may be proper to comply  
with the agreement or judgment.~~

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STRIKEOUT

Comment. Section 58 is superseded by the more general provisions of  
the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

45.16

Shasta County Water Agency Act, § 65  
(Stats. 1957, Ch. 1512)

Shasta County Water Agency Act, § 65 (Stats. 1957, Ch. 1512)(amended)

Sec. . Section 65 of the Shasta County Water Agency Act  
(Chapter 1512 of the Statutes of 1957) is amended to read:

SEC. 65. The agency shall have the power of eminent domain to acquire within or outside the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution and Title 7, Part 3 (commencing with Section 1237) of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein~~ necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation property held or used for the development, storage or distribution of water for public use or property held or used by a public agency for the development or distribution of electric power, ~~and it is hereby declared that the use by public agencies of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State in the manner prescribed by law.~~

any

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No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Shasta shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

Comment. The deleted portions of Section 65 are superseded by Sections 1235.010 (uniform procedure) and 1240.010 (declaration that a use is a public use is unnecessary) of the Code of Civil Procedure. See the Eminent Domain Law. See also Code Civ. Proc. §§ 1240.040 (right to acquire any property or any right or interest in property), 1230.070 ("property" defined).

45.16

Shasta County Water Agency Act,  
§ 66 (Stats. 1957, Ch. 1512)

Shasta County Water Agency Act, § 66 (Stats. 1957, Ch. 1512)(amended)

Sec. . Section 66 of the Shasta County Water Agency  
Act (Chapter 1512 of the Statutes of 1957) is amended to read:

Sec. 66. The agency in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles, of any public utility which is required to be moved to a new location, and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

Comment. The deleted portion of Section 66 is superseded by Section 1240.610 et seq. of the Code of Civil Procedure.

45.16

Shasta County Water Agency Act,  
§ 67 (Stats. 1957, Ch. 1512)

Shasta County Water Agency Act, § 67 (Stats. 1957, Ch. 1512)(repealed)

Sec. . Section 67 of the Shasta County Water Agency Act  
(Chapter 1512 of the Statutes of 1957) is repealed:

~~Sec. 67. The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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STRIKEOUT

Comment. Section 67 is superseded by Section 1240.040 of the Code of Civil Procedure. See also Code Civ. Proc. § 1240.110 et seq. (resolution of necessity).

45.17

Sutter County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 2088)

Sutter County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2088)(amended)

Sec. . Section 3.4 of the Sutter County Water Agency Act  
(Chapter 2088 of the Statutes of 1959) is amended to read:

SEC. 3.4. The agency shall have the power of eminent domain to acquire within the agency by condemnation in the manner and to the extent prescribed in Section 14 of Article I of the Constitution of the State of California and Title 7 commencing at Section 1237, of Part 2 of the Code of Civil Procedure any all property or interests therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property, nor property owned by private irrigation companies, held or used for the development, storage or distribution of water for public use, unless provision is made to furnish substitute facilities for the use of such public agency or private irrigation company, and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken, except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.

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STRIKEOUT

In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual

45.17

Sutter County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 2088)

cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

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STRIKEOUT

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.17

Sutter County Water Agency Act,  
§ 4.9 (Stats. 1959, Ch. 2088)

Sutter County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2088) (repealed)

Sec. . Section 4.9 of the Sutter County Water Agency Act (Chapter 2088 of the Statutes of 1959) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

~~(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.~~

~~(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.~~

ALL  
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STRIKEOUT

Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.



Yuba County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 788)

Yuba County Water Agency Act, § 3.4 (Stats. 1959, Ch. 788)(amended)

Sec. . Section 3.4 of the Yuba County Water Agency Act  
(Chapter 788 of the Statutes of 1959) is amended to read:

Sec. 3.4. The agency shall have the power of eminent domain to acquire within or without the agency ~~by condemnation in the manner and to the extent prescribed in Section 14 of Article I of the Constitution of the State of California and Title 7, commencing at Section 1937, of Part 2 of the Code of Civil Procedure~~ any ~~all~~ property or interests therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property, nor property owned by private irrigation companies, held or used for the development, storage or distribution of water for public use, unless provision is made to furnish substitute facilities for the use of such public agency or private irrigation company, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~

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STRIKEOUT

In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

45.18

Yuba County Water Agency Act, § 3.4  
(Stats. 1959, Ch. 788)

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency. No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Yuba shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.~~

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STRIKEOUT

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.18

Yuba County Water Agency Act, § 4.9  
(Stats. 1959, Ch. 788)

Yuba County Water Agency Act, § 4.9 (Stats. 1959, Ch. 788)(repealed)

Sec. . . . Section 4.9 of the Yuba County Water Agency  
Act (Chapter 788 of the Statutes of 1959) is repealed.

~~Sec. 4.9. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights of way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 3.4 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1901) of Part 1 of Division 1 of the Public Utilities Code.

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STRIKEOUT

Comment. Section 4.9 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

County Water Authority Act, § 5  
 (Stats. 1943, Ch. 545) as  
 amended Stats. 1968, Ch. 424, § 1

County Water Authority Act, § 5 (Stats. 1943, Ch. 545) (amended)

Sec. . Section 5 of the County Water Authority Act

(Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 5. Any authority incorporated as herein provided shall have power:

- (1) To have perpetual succession.
- (2) To sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.
- (3) To adopt a corporate seal and alter it at pleasure.
- (4) To take by grant, purchase, bequest, devise or lease, and to hold, enjoy, lease, sell or otherwise dispose of, any and all real and personal property of any kind within or without the authority and within and without the state necessary or convenient to the full exercise of its powers; also to acquire, construct or operate, control and use any and all works, facilities and means necessary or convenient to the exercise of its powers, both within and without the authority, and within and without the state, and to do and perform any and all things necessary or convenient to the full exercise of the powers herein granted.

(5) ~~To have and exercise the power of eminent domain and, in the manner provided by law for the condemnation of private property for public use, to take any property necessary to the exercise of the powers herein granted. In any proceeding relative to the exercise of such power of eminent domain, the authority shall have the same rights, powers and privileges as a municipal corporation.~~

(6) To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon or over any vacant public lands which are now, or may become the property of the State of California; provided, however, that the authority shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. The grant of the right to use such vacant state lands shall be effective upon the filing by such authority with the Division of State Lands of the Department of Finance, of an application showing the boundaries, extent and locations of

45.19

County Water Authority Act, § 5  
(Stats. 1943, Ch. 545) as  
amended Stats. 1968, Ch. 424, § 1

the lands, rights-of-way, or easements desired for such purposes. If the land, rights-of-way or easement for which application shall be made is for the construction of any aqueduct, ditch, pipeline, conduit, tunnel or other works for the conveyance of water, or for roads, or for poles, or towers and wires for the conveyance of electrical energy or for telephonic or telegraphic communication, no compensation shall be charged the authority therefor, unless, in the opinion of the Chief of such Division of State Lands the construction of such works will render the remainder of the legal subdivision through which such works are to be constructed valueless or unsalable, in which event the authority shall pay for the lands to be taken and for such portion of any legal subdivision which, in the opinion of said Chief of the Division of State Lands, are rendered valueless or unsalable. If the lands for which application is made are for purposes other than the construction of roads or for works for the conveyance of water, or electricity or telephonic or telegraphic communication, such authority shall pay to the state for such lands at the reasonable rate determined by the Division of State Lands. Upon filing such application, accompanied by map or plat showing the location or proposed location of such works and/or facilities, the fee title to so much of such state lands as shall be found by the Chief of the Division of State Lands of the Department of Finance to be necessary or convenient to enable such authority to construct or maintain its works and/or to establish or maintain its facilities, shall be conveyed to such authority by patent executed by the Governor of the State of California, attested by the Secretary of State with the Great Seal of said state affixed, and countersigned by the registrar of state lands; if an easement or right-of-way only over such lands be sought by such authority, such easement or right-of-way shall be evidenced by permit or grant executed by such Chief of the Division of State Lands. The Chief of the Division of State Lands may reserve in such patents, grants or permits, easements and rights-of-way across any lands therein described for the construction of streets, roads and highways. Before any such patent, grant or permit shall be executed any compensation due to the state under the provisions hereof, must be paid. In the event that the duties or titles of any of the officers herein mentioned shall be changed by lawful authority, the functions herein required to be performed shall be performed by the appropriate officer or officers of the State of California. No fee shall be exacted from such authority for any patent, permit or grant so issued or for any

45.19

County Water Authority Act, § 5  
(Stats. 1943, Ch. 545) as  
amended Stats. 1968, Ch. 424, § 1

service rendered hereunder. In the use of streets or highways the authority shall be subject to the reasonable rules and regulations of the governmental agency in charge thereof, concerning excavations and the refilling of excavations, the relaying of pavements and the protection of the public during periods of construction; provided, that the authority shall not be required to pay any license or permit fees, or file any bonds. The authority may be required to pay reasonable inspection fees.

(7) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; provided, however, that no authority incorporated hereunder shall incur indebtedness which, in the aggregate, shall exceed fifteen (15) percent of the taxable property of the authority as shown by the last equalized assessment roll of the county in which the authority is located.

(8) To levy and collect taxes for the purpose of carrying on the operations and paying the obligations of the authority; provided, however, that such taxes levied under this section exclusive of any tax levied to meet the bonded indebtedness of such authority and the interest thereon and exclusive of any tax levied to meet any obligation to the United States of America or to any board, department or agency thereof, shall not exceed five cents (\$.05) on each such one hundred dollars (\$100) of assessed valuation.

(9) To enter into contracts, employ and retain personal services and employ laborers; to create, establish and maintain such offices and positions as shall be necessary and convenient for the transaction of the business of the authority, and to elect, appoint and employ such officers, attorneys, agents and employees therefor as shall be found by the board of directors to be necessary and convenient for the transaction of the business of the authority.

(10) To join with one or more other public corporations for the purpose of carrying out any of its powers, and for that purpose to contract with such other public corporation or corporations for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom. Such contracts may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof. The term "public corporation" as used in this subdivision shall be deemed to mean and include the

45.19

County Water Authority Act, § 5  
(Stats. 1943, Ch. 545) as  
amended Stats. 1968, Ch. 424, § 1

United States or any public agency thereof or this or any other state or any political district, subdivision or public agency thereof.

(11) To acquire water and water rights within or without the state, but not within the county in which the authority is organized and/or located; to develop, store and transport such water; to provide, sell and deliver water at wholesale for municipal, domestic and other beneficial uses and purposes; provided, each public agency, the area of which shall be a part of any authority incorporated hereunder, shall have a preferential right to purchase from the authority for distribution by such public agency, or any public utility therein empowered by said public agency for the purpose, for domestic, municipal and other beneficial uses within such public agency, a portion of the water served by the authority which shall, from time to time, bear the same ratio to all of the water supply of the authority as the total accumulation of amounts paid by such public agency to the authority on tax assessments and otherwise, towards the capital cost of the authority's works as defined from time to time by order of the board of directors shall bear to the total payments received by the authority on account of tax assessments and otherwise, towards such capital cost as defined from time to time by order of the board of directors; also to provide, sell and deliver surplus water of the authority not needed or required for beneficial purposes by the public agencies, the corporate area of which is included in such authority, but giving preference to uses within the authority; provided, that the supplying of such surplus water shall, in every case, be subject to the paramount right of the authority to discontinue the same, in whole or in part, and to take and hold, or to provide, sell and deliver, such water for domestic, municipal or other beneficial uses within the authority upon one year's written notice to the purchaser or user of such surplus water, such notice to be given by the board of directors of the authority whenever it shall be determined and declared by resolution adopted by said board of directors by a two-thirds vote thereof that such water is needed or required by any public agency, the corporate area of which is included within said authority, for domestic, municipal or other beneficial uses therein; to fix the rates therefor, and to acquire, construct, operate and maintain any and all works, facilities, improvements and property necessary or convenient therefor.

45.19

County Water Authority Act, § 5  
(Stats. 1943, Ch. 545) as  
amended Stats. 1968, Ch. 424, § 1

(12) To cooperate and contract with United States under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto, or any other act of Congress heretofore or hereafter enacted authorizing or permitting such cooperation, for the purposes of construction of works, necessary or proper for carrying out the purposes of said authority, or for the acquisition, purchase, extension, operation or maintenance of constructed works, or for a water supply, or for the assumption as principal or guarantor of indebtedness to the United States; also to borrow or procure money from the United States, or any agency thereof for the purpose of financing any of the operations of the authority.

Comment. The deleted portions of subdivision (5) of Section 5 are superseded by Section 1235.010 of the Code of Civil Procedure.



Yuba-Bear River Basin Authority Act,  
§ 8 (Stats. 1959, Ch. 2131)

Yuba-Bear River Basin Authority Act, § 8 (Stats. 1959, Ch. 2131)(amended)

Sec. . Section 8 of the Yuba-Bear River Basin Authority Act

(Chapter 2131 of the Statutes of 1959) is amended to read:

SEC. 8. The authority shall have the power of eminent domain to acquire within or without the authority ~~by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution of the State of California and Title 7, commencing at Section 1237, of Part 2 of the Code of Civil Procedure~~ any property ~~or interest therein~~ necessary for carrying out the powers and purposes of the authority, except that the authority shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, and ~~it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulations and control of the State of California in the manner prescribed by law. Notwithstanding any other provisions of this act or any other law, no property shall be taken except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it already has been appropriated.~~ In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the authority shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

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45.21

Yuba-Bear River Basin Authority Act,  
§ 8 (Stats. 1959, Ch. 2131)

~~The power of eminent domain vested in the authority shall include the power to condemn in the name of the authority either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the authority. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the authority.~~  
No action in eminent domain to acquire property or interests therein outside the boundaries of the authority shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.

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STRIKEOUT

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.21

Yuba-Bear River Basin Authority Act,  
§ 19 (Stats. 1959, Ch. 2131)

Yuba-Bear River Basin Authority Act, § 19 (Stats. 1959, Ch. 2131)(repealed)

Sec. . Section 19 of the Yuba-Bear River Basin Authority  
Act (Chapter 2131 of the Statutes of 1959) is repealed.

~~Sec. 19. (a) If by any judgment in condemnation or agreement the authority is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the authority, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 17 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

(b) In the event the authority and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the authority, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (commencing at Section 1201) of Part 1 of Division 1 of the Public Utilities Code.

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Comment. Section 19 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

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Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) as amended Stats. 1971, Ch. 309, § 1

Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40)(amended)

Sec. . Section 11 of the Crestline-Lake Arrowhead Water Agency Act (Chapter 40 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 11. The Crestline-Lake Arrowhead Water Agency incorporated as herein provided, shall have all of the following powers:

- (1) To have perpetual succession.
- (2) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (3) To adopt a seal and alter it at pleasure.
- (4) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the Crestline-Lake Arrowhead Water Agency.
- (5) To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the agency, and to complete, extend, add to, repair, or otherwise improve any waterworks or waterworks system acquired by it as herein authorized.
- (6) To construct, maintain, improve and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the Crestline-Lake Arrowhead Water Agency, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities including regulations imposing reasonable charges for the use thereof. Violation of any such regulation shall be a misdemeanor.
- (7) To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency, and to the inhabitants of such cities and of other territory within the agency, and to persons, corporations, and other private agencies, within the agency for use within said agency without any preference and it may whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers.

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Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) as amended Stats. 1971, Ch. 309, § 1

(8) To supply and deliver agency water to property not subject to agency taxes at special rates, terms and conditions as are determined by the board for such service.

(9) ~~To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the agency or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation. In proceedings relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a city; provided, the agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. No action in eminent domain to acquire property or interests therein outside the boundaries of the agency shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.~~

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(10) To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 6 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

(11) To issue negotiable promissory notes bearing interest at a rate not exceeding 6 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further, that the maturity shall not be later than three years from the date thereof and that the total aggregate amount of such notes outstanding at any one time may be at least equal to seventy-five thousand dollars (\$75,000) but shall not otherwise exceed the lesser of either five hundred thousand dollars (\$500,000) or 2 percent of the assessed valuation of the taxable property in the Crestline-Lake Arrowhead Water Agency or, if said assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his certificate.

(12) To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor.

(13) To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit use of such water during such periods for specific uses which the agency may from time to time find to be nonessential.

(14) To prescribe and define by ordinance the restrictions, prohibitions and exclusions referred to in subdivision (13) hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon

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Crestline-Lake Arrowhead Water  
Agency Act, § 11 (Stats. 1962,  
1st Ex. Sess., Ch. 40) as  
amended Stats. 1971, Ch. 309,  
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adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency.

(15) To make contracts, to employ labor, and do all acts necessary for the full exercise of the agency's powers.

(16) In case of condemnation proceedings the board shall proceed in the name of the agency.

(17) To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them.

(18) To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein.

(19) To join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the

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Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) as amended Stats. 1971, Ch. 309, § 1

laws of the United States of America, by which the Crestline-Lake Arrowhead Water Agency or improvement district thereof incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency or improvement district voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency or improvement district.

(20) To commence, maintain, intervene in, and compromise, in the name of the agency, any action or proceeding involving or affecting the ownership or use of water or water rights within the agency, used or useful for any purpose of the district, or a common benefit to lands within the agency or its inhabitants.

(21) Distribute water to persons in exchange for ceasing or reducing ground water extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end a district may become a party to such contract and pay from district funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the district are directly or indirectly benefited by the resulting replenishment.

(22) To issue bonds under Section 18 of this act for the purpose of providing money required to be paid to the agency organized under the Metropolitan Water District Act by the board of directors of the agency as all or part of the terms and conditions upon which the corporate area of the Crestline-Lake Arrowhead Water Agency may be annexed to and become a part of said metropolitan water district. The amount of said bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

(23) To issue revenue bonds for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to districts formed under this act.

(24) To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the Crestline-Lake Arrowhead Water Agency. In the application of said Improvement Act of 1911 to proceedings instituted by the Crestline-Lake Arrowhead Water Agency, the terms used in said Improvement Act of 1911 shall have the following meanings:

- (a) "City Council" and "council" shall mean the board of directors of the Crestline-Lake Arrowhead Water Agency.
- (b) "Municipality" and "city" shall mean the Crestline-Lake Arrowhead Water Agency.
- (c) "Clerk" and "city clerk" shall mean the secretary.
- (d) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.
- (e) "Tax Collector" shall mean the county tax collector.
- (f) "Treasurer" and "city treasurer" shall mean the treasurer of the Crestline-Lake Arrowhead Water Agency.

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Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) as amended Stats. 1971, Ch. 309, § 1

(g) "Mayor" shall mean the president of the board of directors of the Crestline-Lake Arrowhead Water Agency.

(h) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the Crestline-Lake Arrowhead Water Agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent shall be filed or recorded in the office of the secretary of the Crestline-Lake Arrowhead Water Agency.

(25) The agency shall have the power to construct, operate and maintain works to develop hydroelectric energy, for use by the agency in the operation of its works or as a means of assisting in financing the construction, operation and maintenance of its projects for the control, conservation, diversion and transmission of water and to enter into contracts for the sale of such energy for a term not to exceed 50 years. Such energy may be marketed only at the bus bar and at wholesale to any public agency or private entity, or both, or the federal or state government.

(26) In connection with the construction and operation of the works of the agency, the agency shall have the power to contract for the sale of the right to use falling water for electric energy purposes with any public agency or private entity engaged in the retail distribution of electric energy, for a term not to exceed 50 years.

Comment. The deleted portions of subdivision (9) of Section 11 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. § 1230.070 ("property" defined).



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Castaic Lake Water Agency Law,  
§ 15 (Stats. 1962, 1st Ex. Sess.,  
Ch. 28) as amended Stats. 1971,  
Ch. 927, § 1

Castaic Lake Water Agency Law, § 15 (Stats. 1962, 1st Ex. Sess., Ch. 28)  
(amended)

Sec. . Section 15 of the Castaic Lake Water Agency Law  
(Chapter 28 of the Statutes of 1962, First Extraordinary Session)

is amended to read:

Sec. 15. The agency incorporated as herein provided, shall have the power to acquire water from the State of California under the State Water Plan and to be a wholesale distributor of such water through a transmission system to be acquired or constructed by the agency, and to carry out these purposes shall have the following powers:

1. To have perpetual succession.
2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. To adopt a seal and alter it at pleasure.
4. To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the agency.
5. To acquire, or contract to acquire, waterworks or a waterworks system, waters, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system, and to complete, extend, add to, repair or otherwise improve any waterworks or waterworks system acquired by it as herein authorized.
6. To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell for use within the area of the agency at wholesale only water of the agency to cities, to other public corporations and public agencies, and to water corporations as defined in the Public Utilities Code of the State of California, and to any mutual water companies engaged in distributing water to its members for use, without any preference and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers.
7. To ~~have and~~ exercise the right of eminent domain ~~and in the manner provided by law for the condemnation of private property for public use~~ to take any property necessary or desirable for any facility reasonably required for the importation and transmission of water in the area of the agency. ~~In proceedings~~

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Castaic Lake Water Agency Law,  
§ 15 (Stats. 1962, 1st Ex. Sess.,  
Ch. 28) as amended Stats. 1971,  
Ch. 927, § 1

~~relative to the exercise of such right, the agency shall have all of the rights, powers, and privileges of a city; provided, the agency in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. No action in eminent domain to acquire property or interests therein outside the boundaries of the agency shall be commenced unless the board of supervisors of each affected county has consented to such acquisition by resolution.~~

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8. To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 8 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

9. To issue negotiable promissory notes bearing interest at a rate not exceeding 7 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further that the maturity shall not be later than three years from the date thereof and that the total aggregate amount of such notes outstanding at any one time may be at least equal to seventy-five thousand dollars (\$75,000) but shall not otherwise exceed the lesser of either one million dollars (\$1,000,000) or 2 percent of the assessed valuation of the taxable property in the agency, or, if said assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his certificate.

10. To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor.

11. To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of such water during such periods for specific uses which the agency may from time to time find to be nonessential.

12. To prescribe and define by ordinance, the restrictions, prohibitions and exclusions referred to in subdivision 11 hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency.

13. To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers.

14. In case of condemnation proceedings the board shall proceed in the name of the agency.

Castaic Lake Water Agency Law,  
§ 15 (Stats. 1962, 1st Ex. Sess.,  
Ch. 28) as amended Stats. 1971,  
Ch. 927, § 1

15. To provide by ordinance of its board of directors for the pensioning of employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of employees before such pensions shall be available to them.

16. To join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. Particularly, but not exclusively, the agency may contract with the State of California for delivery of water under the State Water Plan. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902,<sup>1</sup> and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of such contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on such indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at such special election.

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Castaic Lake Water Agency Law,  
§ 15 (Stats. 1962, 1st Ex. Sess.,  
Ch. 28) as amended Stats. 1971,  
Ch. 927, § 1

17. To issue bonds under Section 28 of this act for the purpose of providing money required to be paid by this agency to the State of California or any agency thereof under any contract which shall be made with it, or as all or part of the terms and conditions under which the corporate area of the agency may be annexed to and become a part of any metropolitan water district organized under the Metropolitan Water District Act. The amount of said bonds may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

18. To disseminate information concerning the activities of the agency; and in instances in which it shall be found by two-thirds vote of the board of directors to be necessary for the protection of agency rights and properties to disseminate information concerning such rights and properties, also concerning matters which in the judgment of the board may adversely affect such rights and properties; provided, that expenditures during any fiscal year for such purposes shall not exceed one cent (\$.01) for each one hundred dollars (\$100) of assessed valuation of the taxable property in such agency.

Comment. The deleted portions of subdivision 7 of Section 15 are superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

Bighorn Mountains Water Agency Law, § 15 (Stats. 1969, Ch. 1175)(amended)

Sec. . Section 15 of the Bighorn Mountains Water Agency Law

(Chapter 1175 of the Statutes of 1969) is amended to read:

Sec. 15. The Bighorn Mountains Water Agency incorporated as herein provided, shall have the power:

1. To have perpetual succession;
2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;
3. To adopt a seal and alter it at pleasure;
4. To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the Bighorn Mountains Water Agency;
5. To acquire, or contract to acquire, waterworks or a waterworks system, waters, water rights, lands, rights and privileges and construct, maintain and operate conduits, pipelines, reservoirs, works, machinery and other property useful or necessary to store, convey, supply or otherwise make use of water for a waterworks plant or system for the benefit of the agency, and to complete, extend, add to, repair or otherwise improve any waterworks or waterworks system acquired by it as herein authorized.
6. To construct, maintain, improve and operate public recreational facilities appurtenant to any water reservoir operated or contracted to be operated by the Bighorn Mountains Water Agency, and to provide by ordinance regulations binding upon all persons to govern the use of such facilities including regulations imposing reasonable charges for the use thereof. Violation of any such regulation shall be a misdemeanor.
7. To lease of and from any person, firm or public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell water under the control of the agency to cities, and to other public corporations and public agencies within the agency, and to the inhabitants of such cities and of other territory within the agency, and to persons, corporations, and other private agencies within the agency for use within said agency without any preference; and it may, whenever the board shall find that there is a surplus of water above that which may be required by such consumers within said agency, sell or otherwise dispose of such surplus water to any persons, firms, public or private corporations or public agencies or other consumers;

Bighorn Mountains Water Agency Law,  
§ 15 (Stats. 1969, Ch. 1175)

8. The agency may supply and deliver water to property not subject to agency taxes at special rates, terms, and conditions as are determined by the board for such service.

9. ~~To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the agency or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person, firm or private corporation. In proceedings relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a city; provided, that in lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.~~

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10. To issue bonds, borrow money and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof; also to issue warrants to pay the formation expenses of the agency, which warrants may bear interest at a rate not exceeding 6 percent per annum from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings.

11. To issue negotiable promissory notes bearing interest at a rate not exceeding 7 percent per annum; provided, however, that said notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of said agency; and provided further that the maturity shall not be later than five years from the date thereof and that the total aggregate amount of such notes outstanding at any one time may be at least equal to seventy-five thousand dollars (\$75,000) in the Bighorn Mountains Water Agency but shall not otherwise exceed the lesser of either one million five hundred thousand dollars (\$1,500,000) or 3 percent of the assessed valuation of the taxable property in the Bighorn Mountains Water Agency, or, if said assessed valuation is not obtainable, 3 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his

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Bighorn Mountains Water Agency Law,  
§ 15 (Stats. 1969, Ch. 1175)

certificate. Promissory notes issued pursuant to Section 51 may be disregarded in computing the aggregate amount of notes that may be issued pursuant to this subdivision;

12. To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor;

13. To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of such water during such periods for specific uses which the agency may from time to time find to be nonessential;

14. To prescribe and define by ordinance, the restrictions, prohibitions and exclusions referred to in subdivision 13 hereof. Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published pursuant to Section 6061 of the Government Code in full in a newspaper of general circulation, printed, published and circulated in the agency within 10 days after adoption, or if there be no such newspaper it shall be posted within said time in three public places within the agency;

15. To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers;

16. In case of condemnation proceedings the board shall proceed in the name of the agency;

17. To provide by ordinance of its board of directors for the pensioning of officers or employees and the creation of a special fund for the purpose of paying such pensions, and the accumulation of contributions to said fund from the revenues of the agency, the wages of officers or employees, voluntary contributions, gifts, donations or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of such officers or employees, and to provide in such ordinance for the terms and conditions under which such pensions shall be awarded, and for the time and extent of service of officers or employees before such pensions shall be available to them;

18. To acquire, control, distribute, store, spread, sink, treat, purify, reclaim, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses and protection of the agency or its inhabitants or the owners of rights to water therein.

19. Subject to the limitations in subdivision 9 of this section, to join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations

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Bighorn Mountains Water Agency Law,  
§ 15 (Stats. 1969, Ch. 1175)

or persons for the purpose of financing such acquisitions, constructions and operations. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for any agency to effect such acquisitions and to carry on such operations, and shall provide in the powers and methods of procedure for such agency the method by which such agency may contract. Such contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation. Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for such year shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, such election to be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of such contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on such indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at such special election.

20. To commence, maintain, intervene in, defend and compromise, in the name of the agency, or as a class representative of the inhabitants, property owners, taxpayers, or water producers or water users within the agency, or otherwise, and to assume the costs and expenses of any and all actions and proceedings, now or hereafter begun, involving or affecting the ownership or use of water or water rights, used or useful for any purpose of the agency, or a common benefit to the lands within the agency or its inhabitants.



Bighorn Mountains Water Agency Law,  
§ 15 (Stats. 1969, Ch.1175)

20.1. To commence, maintain, intervene in, defend and compromise, in the name of the agency, or as a class representative of the inhabitants, property owners, taxpayers, water producers or water users within the agency or otherwise, and to assume the costs and expenses of any and all actions or proceedings, now or hereafter begun, to prevent, control, or abate the pollution of water used or useful for any purpose of the agency, or a common benefit to lands within the agency, or to the inhabitants of the agency, or any watershed or basin overlain in whole or in part by the agency or which contributes to the water supply of the agency.

21. Distribute water to persons in exchange for ceasing or reducing ground water extractions and to fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end an agency may become a party to such contract and pay from the agency funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the agency are directly or indirectly benefited by the resulting replenishment.

22. To issue revenue bonds for any purpose for which general obligation bonds may be issued, and for any purpose for which such bonds could be issued under the provisions of the Revenue Bond Law of 1941 or any other law which by its terms is applicable to this agency.

23. To use the Improvement Act of 1911 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by the Improvement Act of 1911 on the various boards, officers and agents of cities shall be exercised by the respective boards, officers and agents of the Bighorn Mountains Water Agency. In the application of said Improvement Act of 1911 to proceedings instituted by the Bighorn Mountains Water Agency, the terms used in said Improvement Act of 1911 shall have the following meanings:

(a) "City council" and "council" shall mean the board of directors of the Bighorn Mountains Water Agency.

(b) "Municipality" and "city" shall mean the Bighorn Mountains Water Agency.

(c) "Clerk" and "city clerk" shall mean the secretary.

(d) "Superintendent of streets," "street superintendent" and "city engineer" shall mean the chief engineer of the agency.

(e) "Tax collector" shall mean the county tax collector.

(f) "Treasurer" and "city treasurer" shall mean the treasurer of the Bighorn Mountains Water Agency.

(g) "Mayor" shall mean the president of the board of directors of the Bighorn Mountains Water Agency.

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Bighorn Mountains Water Agency Law,  
§ 15 (Stats. 1969, Ch. 1175)

(h) "Right-of-way" shall mean any parcel of land in, on, under or through which a right-of-way or easement has been granted to the agency for the purpose of constructing and maintaining any works or improvements of the Bighorn Mountains Water Agency.

Any certificates or documents required to be filed or recorded in the office of the superintendent of streets or street superintendent shall be filed and recorded in the office of the secretary of the Bighorn Mountains Water Agency.

Comment. The deleted portions of subdivision 9 of Section 15 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.610 et seq. (more necessary public use).

45.27

Tuolumne County Water Agency Act,  
§ 8 (Stats. 1969, Ch. 1236)

Tuolumne County Water Agency Act, § 8 (Stats. 1969, Ch. 1236)(amended)

Sec. . Section 8 of the Tuolumne County Water Agency  
Act (Chapter 1236 of the Statutes of 1969) is amended to read:

any

Sec. 8. The agency shall have the power of eminent domain to acquire within the agency ~~by condemnation in the manner and to the extent prescribed in Article I, Section 11 of the Constitution of the State of California and Title 7 (commencing with Section 1237) of Part 3 of the Code of Civil Procedure all~~ property or interest therein necessary for carrying out the powers and purposes of the agency, except that the agency shall not have the power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use, ~~and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the State of California in the manner prescribed by law.~~ In lieu of compensation and damages for the taking or damaging of any public utility facility which must be replaced by the public utility to provide service to the public equivalent to that provided by the facility taken or damaged, the agency shall pay to the public utility owning such facility its actual cost incurred to replace in kind the facility so taken or damaged, less proper deductions for depreciation, together with its actual cost incurred to rearrange or rehabilitate the facilities of such public utility not taken or damaged but required to be rearranged or rehabilitated by reason of such taking or damaging.

ALL IN STRIKEOUT

~~The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution shall be prima facie evidence that the taking of such private property, to the extent stated in said resolution, is necessary for carrying out the purposes of the agency.~~

ALL IN STRIKEOUT

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.040 (right to take any property or any right or interest in property). See also Code Civ. Proc. §§ 1240.110 et seq. (resolution of necessity), 1230.070 ("property" defined).

45.27

Tuolumne County Water Agency Act,  
§ 20 (Stats. 1969, Ch. 1236)

Tuolumne County Water Agency Act, § 20 (Stats. 1969, Ch. 1236) (repealed)

Sec. . Section 20 of the Tuolumne County Water Agency  
Act (Chapter 1236 of the Statutes of 1969) is repealed.

~~Sec. 20. (a) If by any judgment in condemnation or agreement the agency is required to relocate any street, road, highway, railroad, canal or other property subject or devoted to public use, the board may acquire in the name of the agency, by agreement or condemnation, all rights-of-way and other property necessary or proper for compliance with such agreement or judgment of condemnation and thereafter to make such conveyance of the relocated street, road, highway, railroad, canal, or other property as may be proper to comply with the agreement or judgment. All agreements for the exchange of property and all judgments requiring relocation of other public uses, as specified in this section and in Section 8 of this act, shall provide that in making the exchange the property condemned and exchanged shall be limited to public use by the party with whom such exchange is made.~~

(b) In the event the agency and any common carrier railroad or other public utility fail to agree as to the character or location of new improvements or works sought to be performed by the agency, the character and location of such new improvements or works and any other controversy relating thereto shall be submitted to and determined by the Public Utilities Commission.

(c) Proceedings under this section relating to the jurisdiction of said commission may be instituted, maintained and determined in the manner prescribed in Chapter 6 (~~commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code.~~

ALL  
IN  
STRIKEOUT

Comment. Section 20 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.310 et seq.

46.2

Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

Kings River Conservation District Act, § 26 (Stats. 1951, Ch. 931)(amended)

Sec. . Section 26 of the Kings River Conservation District Act  
(Chapter 931 of the Statutes of 1951) is amended to read:

SEC. 26. The district shall have the following powers, including those necessarily implied therefrom:

- (1) To have perpetual succession.
- (2) To sue and be sued except as otherwise provided herein or by law in all actions and proceedings in all courts and tribunals of competent jurisdiction.
- (3) To adopt a seal and alter it at pleasure.
- (4) To do any and every lawful act necessary to be done to furnish water and electrical energy in the district for any present or future beneficial use or uses, including, without limiting the generality of the foregoing, irrigation, domestic, fire protection, municipal, power and other beneficial uses.
- (5) To take by grant, purchase, gift, devise, lease, either with or without the privilege of purchase, or otherwise, and to hold, use, enjoy, and to lease and dispose of real and personal property of every kind within or without the district necessary to the full exercise of its powers.
- (6) To construct, purchase, lease, or otherwise acquire water works and other works and machinery, canals, conduits, and reservoirs and to purchase, lease or otherwise acquire water rights, storage rights, storage sites, water sheds, lands, rights and privileges useful or necessary to convey, supply, store or otherwise make use of water for any purposes authorized by this act and to operate and maintain the same for the benefit of the district.
- (7) To construct, purchase, lease or otherwise acquire works for the generation, transmission, distribution, sale and lease of electric power, including the sale and disposition thereof to municipalities, districts, corporations or persons and to do all necessary and proper acts for the construction and operation of such electric power works.
- (8) To appropriate, acquire and conserve water and water rights for any useful purpose, and to store and conserve water for future use.

46.2

Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

(9) To commence, maintain, intervene in and compromise in the name of the district and to assume the costs of any action or proceeding involving or affecting the ownership or use of water or water rights within the district used or useful for any purpose of the district; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural underground supply of waters used or useful for any purpose of the district or a common benefit to lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any interference with such waters as may endanger the inhabitants or lands of the district or as may impair, damage or threaten the exercise of any right to waters belonging to the district or a common benefit to lands within the district or to its inhabitants.

(10) To sell water or the use thereof for any useful purposes and, when there is a surplus, to sell and otherwise dispose of the same to municipalities, public agencies or to consumers or users, including publicly and privately owned utilities, mutual water companies, corporations and persons without the boundaries of the district.

(11) To sell, dispose of and distribute electric power for any useful purpose, and, when there is a surplus, to sell or otherwise dispose of the same to consumers or users including public and private corporations without the boundaries of the district.

(12) To ~~acquire by condemnation and in the manner and to the extent now prescribed in Title 7, Part 3 of the Code of Civil Procedure, all property necessary or convenient for carrying out the purposes of this act except that the district shall not have power to acquire by condemnation any property held or used for the development, storage, or distribution of water for public use.~~

exercise the right  
of eminent domain  
to take any

(13) To borrow money and incur indebtedness and to issue bonds or other evidences of indebtedness; also to refund and retire any indebtedness or lien that may exist against the district or the property thereof.

(14) To make contracts, employ labor and do all acts necessary for the full exercise of the powers of the district. The board may cause construction or other work to be performed or carried out by contract or by the district under its own superintendence.

Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

(15) To sell or lease any lands belonging to the district for oil, gas, or other hydrocarbon substances or other minerals when deemed by the board to the best interest of the district, subject, however, to the provisions of Chapter 5, Part 2, Division 6, of the Public Resources Code.

(16) To cooperate, act in conjunction and contract with the United States, State of California, municipalities, public and private corporations of any kind and persons in the construction of any works for storing, conserving or distributing waters of the district or belonging to any inhabitant or owner of land or water rights therein or for the control of flood and storm waters, the draining or reclaiming of lands, the protection of property, water sheds, water courses, underground supplies, highways or life or for the purpose of conserving, storing, salvaging, recapturing, distributing, or transporting such waters for beneficial use or uses of the district or of the owners of rights to water therein, and for the use, operation, management and control of such works; to make and perform any agreement with the United States, the State of California, any public or private corporation of any kind and any person, or any of them, for the joint acquisition, disposition or operation of any property or works of a kind which might be acquired, disposed of or operated by the district.

(17) To cooperate and contract with the United States under the Federal Reclamation Act of June, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore enacted authorizing or permitting such cooperation or contract for the purpose of construction of works, whether for irrigation, drainage, flood control or for the development of electric or other power, or for the acquisition, purchase, extension, operation or maintenance of such works, or for a water supply, or for the assumption as principal or guarantor of indebtedness to the United States and to carry out and perform the terms of any contract so made, and for said purposes the district shall have all powers, rights and privileges possessed by irrigation districts and, except as herein otherwise provided, shall exercise such powers, rights and privileges in the same manner and subject to the same restrictions and limitations as irrigation districts, all as provided in Chapter 2 of Part 6 of Division 11 of the Water Code, as such provisions now exist;



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Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

provided, however, that in any such contract made by the district and the United States, the land which may be charged with any taxes or assessments under such contract shall be designated and described, and the contract shall not include any lands which will not be benefited by the works or system contemplated under such contract, nor shall it impair, restrict, or provide for the control of any right in or to water or the use thereof without the consent of the owner of such right. Such contract may exempt from tax or assessment any land benefited by the works or system contemplated by such contract if such land, or any agency on its behalf, has paid to the district or to the United States its proper share of the construction costs of such works or system. Such contract may provide for the release of the land described therein, or any portion thereof, from any tax or assessment upon payment to the district or the United States of its proper share of the construction cost of such works or system. Nothing herein contained shall prevent the district, whether pursuant to any such contract or otherwise, from levying taxes or assessments for the cost of the operation and maintenance of any such works or system, subject, however, to the limitations provided in Section 37 of this act. The proceedings for voting at an election upon a proposal to enter into such contract with the United States shall be had, insofar as applicable, in the manner provided in the case of the issuance of district bonds; provided, however, that in the event the board shall determine that all liabilities of the district incurred under the provisions of such contract can be repaid and liquidated as to both principal and interest from revenues from the works or system contemplated under such contract and payments made to the district by public or private corporations or persons pursuant to written contracts providing for the payment of whatever amounts may be necessary to amortize the portion of said cost which may under said contracts be underwritten by such corporation or persons, then upon the adoption of such resolution the board shall have power on behalf of the district, without the necessity of an election, to enter into such

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Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

repayment contracts with the United States, subject to all provisions of this act applicable to such contracts except provisions requiring an election to authorize such contracts; provided further, however, no such contract shall charge any land with any tax or assessment for the payment of the cost of constructing the works or system contemplated in such contract. In the event that the revenues of the district from the works contemplated by any contract approved at an election shall be, or in the judgment of the board are likely to be, inadequate to pay all charges payable to the United States under such contract and all charges for construction, acquisition, operation and maintenance of the works acquired or constructed under such contract, a tax shall be levied for the payment of such charges on the land in the portion of the district designated and described in such contract as the territory to be charged therewith.

(18) To conserve and store water, including storm and flood waters, by means of any works authorized in this act and by spreading and sinking the same in any underground basin or basins or the gravels and detritus thereof by any means appropriate therefor, which storage and conservation, whether surface or underground, may be made by the district on its own behalf or on behalf of any owner of the right to the water so stored or conserved on such terms and conditions as may be fixed by the board and the owner; and the district or the owner in whose behalf it acted, when waters are so stored and conserved, may recapture and use the same for any beneficial purpose or use or may permit the recapture and use thereof by others under such terms and conditions as may be fixed by the board or by such owner and the board if conserved and stored on behalf of the owner; and the district may contract with others for the use of any property, conduits, canals, ditches, reservoirs or reservoir sites or dams or other facilities for the purpose of conserving, storing, spreading, or sinking, transporting or distributing such waters.

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Kings River Conservation District Act,  
§ 26 (Stats. 1951, Ch. 931)

(19) To control flood and storm waters within the district and flood and storm waters of streams or watercourses outside of the district which flow into the district and conserve such waters by storage either surface or underground, to divert and transport such waters for beneficial uses within the district and otherwise to reduce the waste of water and protect life and property from floods within the district.

(20) To drain and reclaim lands within the district either by surface or underground works or both; and to divert, store, conserve, transport and dispose of water resulting from such operations for any beneficial use.

Comment. The deleted portion of subdivision (12) of Section 26 is superseded by the Eminent Domain Law. See Code Civ. Proc. § 1235.010.

Water Conservation Act of 1927,  
 § 2 (Stats. 1927, Ch. 91) as  
 amended Stats. 1955, Ch. 1641, § 1

Water Conservation Act of 1927, § 2 (Stats. 1927, Ch. 91)(amended)

Sec. . Section 2 of the Water Conservation Act of  
 1927 (Chapter 91 of the Statutes of 1927) is amended to read:

Sec. 2. Powers of District. Any water conservation district organized and established as herein provided shall have power:

A. To have perpetual succession.

B. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.

C. To adopt a seal and alter it at pleasure.

D. To take by grant, appropriation, purchase, gift, devise, condemnation or lease, and to hold, use, enjoy and to sell, lease, or otherwise dispose of, real and personal property of every kind, within or without the district necessary or convenient to the full exercise of its powers.

E. To make and perform any agreement with the United States, under the federal reclamation laws or otherwise, to the extent that it is not inconsistent with any state law applicable to the district, or with any state, county, district of any kind or zone or subdivision of such district, public corporation, any person or any number of them, as follows:

(1) For the joint acquisition, disposition, or operation of any property of a kind which might be acquired by the district;

(2) To cooperate to obtain rights, permits or licenses to appropriate water, and to purchase, acquire, sell, lease or otherwise transfer or dispose of such rights, permits or licenses in accordance with such agreement;

(3) For the transfer of assets, for the public purpose of water conservation, to the United States, the State of California, or any county, district of any kind, or zone or subdivision of such district, or a public corporation of the State of California, having power to use such assets for purposes of water conservation and to make such transfer without consideration;

(4) To acquire assets, for the public purpose of water conservation, by transfer without consideration from the United States, the State of California, or any county, district of any kind, or zone or subdivision of such district, or a public corporation of the State of California, having the power to use such assets for purposes of water conservation;

(5) To acquire, store and distribute a surface water supply for purposes of irrigation, seasonal storage, or underground replenishment, or for any or all such purposes;

(6) To provide for the construction, operation or maintenance of such works, facilities or operations within or without the district boundaries as the board deems necessary to protect the land in or property of the district, from damage by flood or overflow, to replenish underground water, or to store, supply or distribute surface waters to lands within the district, and to contribute to the cost or expense thereof out of its general fund or any special fund provided therefor. Nothing contained in this act shall be deemed to empower a district organized hereunder to acquire a supply of water or any right to a supply of water from an underground source; provided, that this limitation shall not be applicable to any district, all or any portion of the water supply of which is secured from an underground source on October 1, 1953; except that such acquisition is authorized if acquired incidental to acquisition of land for other purposes of the district; provided, that the district shall be prohibited from exercising such rights so acquired.

F. To make surveys and investigations of the water supply and resources of the district; to conserve and store water by acquiring dams, dam sites, reservoirs, reservoir sites, canals, ditches and conduits, and constructing dams and reservoirs for storage of water, and by spreading and sinking water; to build, construct or acquire the necessary dams, dam sites, reservoirs, reservoir sites, canals, ditches and conduits, spreading basins, sinking wells and sinking basins therefor; to maintain, operate and repair any of the constructions herein named; to appropriate, acquire and conserve water and water rights for any useful purpose; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of, any action or proceeding involving or affecting the ownership or use of water or water rights within the district, used or useful for any purpose of the district, or of common benefit to the lands situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or unnavigable river, including the natural subterranean supply of waters therefrom, which may be used, or useful, for any purpose of the district, or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district.

G. To ~~have and~~ exercise the right of eminent domain, ~~in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to be used for spreading basins, sinking wells or sinking basins, or to operate or to make use of same, or otherwise necessary to accomplish the purposes of this act.

H. To cause taxes to be levied, as herein provided, for the purpose of paying any obligations of the district and to ac-

Water Conservation Act of 1927, § 2  
(Stats. 1927, Ch. 91) as amended  
Stats. 1955, Ch. 1641, § 1

comply with the purposes of this act in the manner herein provided.

I. To make contracts, to employ labor and to do all acts necessary for the full exercise of the powers herein granted; provided, that said district shall not have power to commence, intervene in, compromise, maintain or defend actions, or pay costs of the same, in controversies between the owners of lands or water rights within the boundaries of the district and which do not involve taking water outside of or away from the district.

J. To fix and collect tolls or charges for water supplied for surface irrigation.

K. To submit any contract or proposed contract to the superior court of the county in which is situated the office of the board to determine the validity thereof and the authority of the district to make the contract. The validation proceedings shall be had as in the ordinary case of the judicial determination of the validity of irrigation district bonds, and with like effect.

L. To provide for, construct, maintain and operate such works and facilities, within or without its boundaries, as the board may deem necessary to protect the land in, or the property of, the district, from damage by flood or overflow, or to store, supply or distribute surface waters to lands within the district, and to pay the cost and expense thereof out of its general fund or any special fund provided therefor. Nothing contained in this act shall be deemed to empower a district organized hereunder to acquire a supply of water or any right to a supply of water from an underground source; provided, that this limitation shall not be applicable to any district, all or any portion of the water supply of which is secured from an underground source on October 1, 1953; except that such acquisition is authorized if acquired incidental to acquisition of land for other purposes of the district; provided, that the district shall be prohibited from exercising such rights so acquired.

M. To establish rules and regulations regarding the sale of water, its distribution, and the collection of tolls and charges therefor, and to therein provide for payment in advance of delivery and for refusal of water delivery to persons against whom there are delinquent water tolls or charges. Nothing herein shall be construed as requiring the district to deliver water to any person or lands within the district, ratably or otherwise.

Comment. The deleted portion of subdivision G of

Section 2 is superseded by Section 1295.010 of the Code of Civil

46.3

Water Conservation Act of 1927,  
§ 26 (Stats. 1927, Ch. 91)

Water Conservation Act of 1927, § 26 (Stats. 1927, Ch. 91) (repealed)

Sec. . Section 26 of the Water Conservation Act of  
1927 (Chapter 91 of the Statutes of 1927) is repealed.

~~Sec. 26. Condemnation Proceedings. In case of condem-  
nation proceedings, the board shall proceed in the name of the  
district, under the provisions of Title VII part III, of the  
Code of Civil Procedure of this state, which said provisions  
are hereby made applicable for that purpose, and it is hereby  
declared that the use of the property which may be condemned,  
taken or appropriated under the provisions of this act, is a  
public use, subject to regulation and control of the state in  
the manner prescribed by law.~~

ALL  
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Comment. Section 26 is superseded by provisions of the  
Eminent Domain Law. See Code Civ. Proc. §§ 1235.010 (uniform  
procedure), 1240.010 (declaration that a use is a public use is  
unnecessary).