

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

**Condemnation Law and Procedure
Conforming Changes in Special District Statutes**

January 1974

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

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This pamphlet begins on page 1101. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 12 of the Commission's *Reports, Recommendations, and Studies*.

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

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SCHOOL OF LAW—STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305
(415) 321-2300, EXT. 2479

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Ex Officio

October 23, 1973

To: THE HONORABLE RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to make a study of condemnation law and procedure. The Commission herewith submits a report containing its tentative recommendation relating to one aspect of this study—conforming changes in the special district statutes.

This report is submitted at this time so that interested persons will have an opportunity to study it in connection with the general legislation tentatively recommended by the Commission. See *Tentative Recommendation Relating to Condemnation Law and Procedure—The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974). Comments on this report will be considered along with the comments the Commission receives on the general legislation and will be taken into account by the Commission in formulating its final recommendation to the 1975 Legislature. Communications concerning this report should be addressed to the California Law Revision Commission, School of Law, Stanford, California 94305.

Respectfully submitted,
JOHN D. MILLER
Chairman



CONTENTS

| | <i>Page</i> |
|--|-------------|
| TENTATIVE RECOMMENDATION | 1117 |
| PROPOSED LEGISLATION | 1119 |
| Bill No. 1 | 1119 |
| Community Services District | 1119 |
| Government Code § 61610 (amended) | 1119 |
| San Francisco Bay Conservation and Development Commission | 1120 |
| Government Code § 66657 (amended) | 1120 |
| Harbor Improvement District | 1120 |
| Harbors & Navigation Code § 5900.4 (amended) .. | 1120 |
| Harbor District | 1121 |
| Harbors & Navigation Code § 6076 (amended) | 1121 |
| Port District | 1121 |
| Harbors & Navigation Code § 6296 (amended) | 1121 |
| River Port District | 1121 |
| Harbors & Navigation Code § 6896 (amended) | 1121 |
| Small Craft Harbor District | 1122 |
| Harbors & Navigation Code § 7147 (amended) | 1122 |
| Public Cemetery District | 1122 |
| Health & Safety Code § 8961 (amended) | 1122 |
| Regional Park District | 1123 |
| Public Resources Code § 5542 (amended) | 1123 |
| Public Resources Code § 5542.5 (repealed) | 1124 |
| Public Resources Code § 5566 (repealed) | 1125 |
| Resort Improvement District | 1125 |
| Public Resources Code § 13070.1 (added) | 1125 |
| Municipal Utility District | 1125 |
| Public Utilities Code § 12703 (amended) | 1125 |
| Public Utility District | 1126 |
| Public Utilities Code § 16404 (amended) | 1126 |
| Public Utilities Code § 16405 (repealed) | 1126 |
| Joint Highway District | 1127 |
| Streets & Highways Code § 25052 (repealed) | 1127 |
| Streets & Highways Code § 25280 (amended) | 1127 |
| Bridge and Highway District | 1128 |
| Streets & Highways Code § 27166 (amended) | 1128 |
| Gold Rush Parkway Authority | 1128 |
| Streets & Highways Code § 31001 (amended) | 1128 |
| Streets & Highways Code § 31002 (repealed) | 1129 |

| | <i>Page</i> |
|---|-------------|
| Streets & Highways Code § 31003 (repealed) | 1130 |
| Streets & Highways Code § 31004 (repealed) | 1130 |
| El Dorado County Toll Tunnel Authority | 1131 |
| Streets & Highways Code § 31201 (amended) | 1131 |
| Streets & Highways Code § 31202 (repealed) | 1131 |
| Streets & Highways Code § 31203 (repealed) | 1132 |
| Streets & Highways Code § 31204 (repealed) | 1132 |
| Irrigation District | 1133 |
| Water Code § 22229 (repealed) | 1133 |
| Water Code § 22425 (amended) | 1133 |
| Water Code § 22455 (repealed) | 1134 |
| Water Code § 22456 (amended) | 1134 |
| County Water District | 1134 |
| Water Code § 31040 (amended) | 1134 |
| Water Code § 31043 (repealed) | 1135 |
| Water Code § 31044 (repealed) | 1135 |
| California Water District..... | 1135 |
| Water Code § 35625 (repealed) | 1135 |
| Water Code § 35626 (repealed) | 1135 |
| California Water Storage District..... | 1136 |
| Water Code § 39061 (repealed) | 1136 |
| Water Code § 43531 (repealed) | 1136 |
| Water Code § 43532 (repealed) | 1136 |
| Water Code § 43532.5 (amended) | 1137 |
| Water Code § 43533 (repealed) | 1138 |
| Water Replenishment District..... | 1138 |
| Water Code § 60230 (amended) | 1138 |
| Municipal Water District | 1141 |
| Water Code § 71693 (amended) | 1141 |
| Water Code § 71694 (amended) | 1142 |
| Water Conservation District | 1143 |
| Water Code § 74553 (amended) | 1143 |
| Water Code § 74555 (repealed) | 1143 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1144 |
| Bill No. 2 | 1145 |
| Transit District—Alameda or Contra Costa County .. | 1145 |
| Public Utilities Code § 25703 (amended) | 1145 |
| San Francisco Bay Area Rapid Transit District | 1145 |
| Public Utilities Code § 28953 (amended) | 1145 |
| Public Utilities Code § 28954 (repealed) | 1146 |
| Southern California Rapid Transit District | 1147 |
| Public Utilities Code § 30503 (amended) | 1147 |
| Public Utilities Code § 30504 (repealed) | 1148 |

| | <i>Page</i> |
|--|-------------|
| Orange County Transit District | 1148 |
| Public Utilities Code § 40162 (amended) | 1148 |
| Stockton Metropolitan Transit District | 1149 |
| Public Utilities Code § 50162 (amended) | 1149 |
| Transit District—Marin County | 1150 |
| Public Utilities Code § 70162 (amended) | 1150 |
| San Diego County Transit District..... | 1151 |
| Public Utilities Code § 90402 (amended) | 1151 |
| Santa Barbara Metropolitan Transit District | 1152 |
| Public Utilities Code § 96002 (amended) | 1152 |
| Santa Cruz Metropolitan Transit District..... | 1153 |
| Public Utilities Code § 98212 (amended) | 1153 |
| Santa Clara County Transit District..... | 1153 |
| Public Utilities Code § 100130.5 (repealed) | 1153 |
| Public Utilities Code § 100131 (amended) | 1154 |
| Greater Bakersfield Metropolitan Transit District..... | 1155 |
| Public Utilities Code § 101177 (amended) | 1155 |
| Sacramento Regional Transit District | 1156 |
| Public Utilities Code § 102241 (repealed) | 1156 |
| Sacramento Regional Transit District | 1156 |
| Public Utilities Code § 102242 (amended) | 1156 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1157 |
| Bill No. 3 | 1158 |
| Alameda County Flood Control and Water Conservation District Act | |
| § 5 (Stats. 1949, Ch. 1275) (amended)..... | 1159 |
| § 28.1 (added Stats. 1957, Ch. 987, § 1) (repealed) | 1166 |
| Contra Costa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1617) (amended) | 1167 |
| Del Norte County Flood Control District Act | |
| § 6 (Stats. 1955, Ch. 166) (amended)..... | 1174 |
| § 7 (Stats. 1955, Ch. 166) (amended)..... | 1179 |
| Fresno Metropolitan Flood Control Act | |
| § 8 (Stats. 1955, Ch. 503) (amended)..... | 1181 |
| § 26 (Stats. 1955, Ch. 503) (amended)..... | 1183 |
| Humboldt County Flood Control District Act | |
| § 6 (Stats. 1945, Ch. 939) (amended)..... | 1184 |
| § 7 (Stats. 1945, Ch. 939) (amended)..... | 1189 |

| | <i>Page</i> |
|--|-------------|
| Lake County Flood Control and Water Conservation District Act, (Stats. 1951, Ch. 1544), § 5 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 8) (amended) | 1190 |
| Marin County Flood Control and Water Conservation District Act, § 5 (Stats. 1953, Ch. 666) (amended) | 1195 |
| Monterey County Flood Control and Water Conservation District Act § 5 (Stats. 1947, Ch. 699) (amended) | 1202 |
| § 6 (Stats. 1947, Ch. 699) (amended) | 1208 |
| Napa County Flood Control and Water Conservation District Act § 5 (Stats. 1951, Ch. 1449) (amended) | 1210 |
| § 6 (Stats. 1951, Ch. 1449) (amended) | 1215 |
| San Benito County Water Conservation and Flood Control District Act § 6 (Stats. 1953, Ch. 1598) (amended) | 1217 |
| § 8 (Stats. 1953, Ch. 1598) (amended) | 1222 |
| San Diego County Flood Control District Act, § 6 (Stats. 1966, 1st Ex. Sess., Ch. 55) (amended) | 1224 |
| San Joaquin County Flood Control and Water Conservation District Act, § 5 (Stats. 1956, 1st Ex. Sess., Ch. 46) (amended) | 1233 |
| San Luis Obispo County Flood Control and Water Conservation District Act § 5 (Stats. 1945, Ch. 1294) (amended) | 1240 |
| § 6 (Stats. 1945, Ch. 1294) (amended) | 1245 |
| § 6.1 (added Stats. 1967, Ch. 646, § 2) (amended) .. | 1247 |
| San Mateo County Flood Control District Act, § 3 (Stats. 1959, Ch. 2108) (amended) | 1248 |
| Santa Barbara County Flood Control and Water Conservation District Act, § 5 (Stats. 1955, Ch. 1057) (amended) | 1255 |
| Santa Clara Valley Water District Act § 5 (Stats. 1951, Ch. 1405) (amended) | 1261 |
| § 6 (Stats. 1951, Ch. 1405) (amended) | 1266 |
| § 6.1 (added Stats. 1959, Ch. 578, § 1) (repealed) .. | 1268 |
| Tulare County Flood Control District Act, § 5 (Stats. 1969, Ch. 1149) (amended) | 1269 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1273 |
| Bill No. 4 | 1274 |

| | <i>Page</i> |
|---|-------------|
| American River Flood Control District Act | |
| § 2 (Stats. 1927, Ch. 808) (amended)..... | 1275 |
| § 23 (Stats. 1927, Ch. 808) (repealed) | 1277 |
| Flood Control and Water Conservation District Act (Stats. 1931, Ch. 641), § 7.5 (added Stats. 1949, Ch. 144, § 1) (amended) | 1278 |
| Lassen-Modoc County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2127) (amended) | 1278 |
| Los Angeles County Flood Control Act | |
| § 2 (Stats. 1915, Ch. 755) (amended)..... | 1286 |
| § 16 (Stats. 1915, Ch. 755) (amended)..... | 1292 |
| § 16½ (added Stats. 1941, Ch. 373, § 1) (repealed) | 1295 |
| § 16⅝ (added Stats. 1953, Ch. 856, § 3) (repealed) | 1295 |
| § 16¾ (added Stats. 1949, Ch. 449, § 7) (repealed) | 1296 |
| Madera County Flood Control and Water Conservation Agency Act | |
| § 260 (Stats. 1969, Ch. 916) (amended)..... | 1297 |
| § 650 (Stats. 1969, Ch. 916) (amended)..... | 1297 |
| Mendocino County Flood Control and Water Conservation District Act, § 3 (Stats. 1949, Ch. 995) (amended) | 1299 |
| Orange County Flood Control Act | |
| § 2 (Stats. 1927, Ch. 723) (amended)..... | 1303 |
| § 16 (Stats. 1927, Ch. 723) (amended)..... | 1306 |
| § 16.1 (added Stats. 1957, Ch. 1036, § 1) (repealed) | 1309 |
| Plumas County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2114) (amended) | 1310 |
| Riverside County Flood Control and Water Conservation District Act | |
| § 9 (Stats. 1945, Ch. 1122) (amended)..... | 1317 |
| § 9.2 (added Stats. 1967, Ch. 1112, § 5) (repealed) | 1324 |
| San Bernardino County Flood Control Act, § 2 (Stats. 1939, Ch. 73) (amended) | 1324 |
| Santa Cruz County Flood Control and Water Conservation District Act | |
| § 23 (Stats. 1955, Ch. 1489) (amended)..... | 1329 |
| § 24 (Stats. 1955, Ch. 1489) (repealed) | 1330 |
| § 41 (Stats. 1955, Ch. 1489) (amended)..... | 1331 |

| | <i>Page</i> |
|--|-------------|
| Sierra County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2123) (amended) | 1331 |
| Siskiyou County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2121) (amended) | 1339 |
| Solano County Flood Control and Water Conservation District Act, § 3.4 (Stats. 1951, Ch. 1656) (amended) | 1346 |
| Sonoma County Flood Control and Water Conservation District Act, § 3 (Stats. 1949, Ch. 994) (amended) | 1347 |
| Tehama County Flood Control and Water Conservation District Act, § 3 (Stats. 1957, Ch. 1280) (amended) | 1353 |
| Ventura County Flood Control Act, § 7 (Stats. 1944, 2nd Ex. Sess., Ch. 44) (amended) | 1360 |
| Yolo County Flood Control and Water Conservation District Act, § 3 (Stats. 1951, Ch. 1657) (amended) | 1365 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1373 |
| Bill No. 5 | 1374 |
| Alameda County Flood Control and Water Conservation District Act, § 28 (Stats. 1949, Ch. 1275) (repealed) | 1376 |
| Alpine County Water Agency Act, § 19 (Stats. 1961, Ch. 1896) (repealed) | 1377 |
| Amador County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2137) (repealed) | 1378 |
| Contra Costa County Flood Control and Water Conservation District Act, § 29 (Stats. 1951, Ch. 1617) (repealed) | 1379 |
| Del Norte County Flood Control District Act, § 30 (Stats. 1955, Ch. 166) (repealed) | 1379 |
| El Dorado County Water Agency Act, § 20 (Stats. 1959, Ch. 2139) (repealed) | 1380 |
| Humboldt County Flood Control District Act, § 30 (Stats. 1945, Ch. 939) (repealed) | 1381 |
| Kern County Water Agency Act, § 4.9 (Stats. 1961, Ch. 1003) (repealed) | 1382 |

Page

| | |
|---|------|
| Lake County Flood Control and Water Conservation District Act (Stats. 1951, Ch. 1544), § 33 (added Stats. 1954, 1st Ex. Sess., Ch. 62, § 48) (repealed) | 1383 |
| Madera County Flood Control and Water Conservation Agency Act, § 651 (Stats. 1969, Ch. 916) (repealed) | 1384 |
| Marin County Flood Control and Water Conservation District Act, § 28 (Stats. 1953, Ch. 666) (repealed) | 1384 |
| Mariposa County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2036) (repealed) | 1385 |
| Monterey County Flood Control and Water Conservation District Act, § 29 (Stats. 1947, Ch. 699) (repealed) | 1386 |
| Napa County Flood Control and Water Conservation District Act, § 29 (Stats. 1951, Ch. 1449) (repealed) | 1387 |
| Nevada County Water Agency Act, § 19 (Stats. 1959, Ch. 2122) (repealed) | 1388 |
| Orange County Water District Act, § 39 (Stats. 1933, Ch. 924) (amended) | 1389 |
| Placer County Water Agency Act, § 4.9 (Stats. 1957, Ch. 1234) (repealed) | 1390 |
| Riverside County Flood Control and Water Conservation District Act, § 35 (Stats. 1945, Ch. 1122) (repealed) | 1391 |
| Sacramento County Water Agency Act, § 4.9 (Stats. 1952, 1st Ex. Sess., Ch. 10) (repealed) | 1392 |
| San Benito County Water Conservation and Flood Control District Act, § 33 (Stats. 1953, Ch. 1598) (repealed) | 1392 |
| San Bernardino County Flood Control Act, § 25 (Stats. 1939, Ch. 73) (amended) | 1393 |
| San Diego County Flood Control District Act, § 39 (Stats. 1966, 1st Ex. Sess., Ch. 55) (repealed) | 1394 |
| San Joaquin County Flood Control and Water Conservation District Act, § 33 (Stats. 1956, 1st Ex. Sess., Ch. 46) (repealed) | 1395 |
| San Luis Obispo County Flood Control and Water Conservation District Act, § 29 (Stats. 1945, Ch. 1294) (repealed) | 1396 |

| | <i>Page</i> |
|---|-------------|
| San Mateo County Flood Control District Act, § 31 (Stats. 1959, Ch. 2108) (repealed) | 1397 |
| Santa Barbara County Flood Control and Water Conservation District Act, § 30 (Stats. 1955, Ch. 1057) (repealed) | 1397 |
| Santa Barbara County Water Agency Act, § 4.9 (Stats. 1945, Ch. 1501) (repealed) | 1398 |
| Santa Clara Valley Water District Act, § 29 (Stats. 1951, Ch. 1405) (repealed) | 1399 |
| Shasta County Water Agency Act, § 58 (Stats. 1957, Ch. 1512) (repealed) | 1400 |
| Solano County Flood Control and Water Conservation District Act, § 4.8 (Stats. 1951, Ch. 1656) (repealed) | 1400 |
| Sutter County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2088) (repealed) | 1401 |
| Tulare County Flood Control District Act, § 32 (Stats. 1969, Ch. 1149) (repealed) | 1402 |
| Tuolumne County Water Agency Act, § 20 (Stats. 1969, Ch. 1236) (repealed) | 1402 |
| Ventura County Flood Control Act, § 29 (Stats. 1944, 2nd Ex. Sess., Ch. 44) (amended) | 1403 |
| Yuba-Bear River Basin Authority Act, § 19 (Stats. 1959, Ch. 2131) (repealed) | 1404 |
| Yuba County Water Agency Act, § 4.9 (Stats. 1959, Ch. 788) (repealed) | 1405 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1406 |
| Bill No. 6 | 1407 |
| Alpine County Water Agency Act, § 7 (Stats. 1961, Ch. 1896) (amended) | 1407 |
| Amador County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2137) (amended) | 1409 |
| Contra Costa County Water Agency Act, § 10 (Stats. 1957, Ch. 518) (amended) | 1410 |
| El Dorado County Water Agency Act, § 8 (Stats. 1959, Ch. 2139) (amended) | 1412 |
| Kern County Water Agency Act, § 3.4 (Stats. 1961, Ch. 1003) (amended) | 1413 |
| Mariposa County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2036) (amended) | 1414 |
| Mojave Water Agency Law, § 14 (Stats. 1959, Ch. 2146) (amended) | 1416 |

| | <i>Page</i> |
|--|-------------|
| Nevada County Water Agency Act, § 7 (Stats. 1959, Ch. 2122) (amended) | 1417 |
| Placer County Water Agency Act, § 3.4 (Stats. 1957, Ch. 1234) (amended) | 1419 |
| Sacramento County Water Agency Act, § 3.4 (Stats. 1952, 1st Ex. Sess., Ch. 10) (amended) | 1420 |
| Santa Barbara County Water Agency Act, § 3.4 (Stats. 1945, Ch. 1501) (amended) | 1421 |
| Shasta County Water Agency Act | |
| § 65 (Stats. 1957, Ch. 1512) (amended) | 1423 |
| § 66 (Stats. 1957, Ch. 1512) (amended) | 1424 |
| § 67 (Stats. 1957, Ch. 1512) (repealed) | 1425 |
| Sutter County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2088) (amended) | 1425 |
| Tuolumne County Water Agency Act, § 8 (Stats. 1969, Ch. 1236) (amended) | 1426 |
| Yuba-Bear River Basin Authority Act, § 8 (Stats. 1959, Ch. 2131) (amended) | 1428 |
| Yuba County Water Agency Act, § 3.4 (Stats. 1959, Ch. 788) (amended) | 1429 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1431 |
| Bill No. 7 | 1432 |
| Antelope Valley-East Kern Water Agency Law, § 61 (Stats. 1959, Ch. 2146) (amended) | 1432 |
| Bighorn Mountains Water Agency Law, § 15 (Stats. 1969, Ch. 1175) (amended) | 1439 |
| Castaic Lake Water Agency Law, § 15 (Stats. 1962, 1st Ex. Sess., Ch. 28) (amended) | 1446 |
| County Water Authority Act, § 5 (Stats. 1943, Ch. 545) (amended) | 1452 |
| Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) (amended) | 1457 |
| Desert Water Agency Law, § 15 (Stats. 1961, Ch. 1069) (amended) | 1464 |
| Kings River Conservation District Act, § 26 (Stats. 1951, Ch. 931) (amended) | 1472 |
| Orange County Water District Act, § 2 (Stats. 1933, Ch. 924) (amended) | 1478 |
| San Geronio Pass Water Agency Law, § 15 (Stats. 1961, Ch. 1435) (amended) | 1482 |
| Water Conservation Act of 1927 | |
| § 2 (Stats. 1927, Ch. 91) (amended) | 1490 |

| | <i>Page</i> |
|--|-------------|
| § 26 (Stats. 1927, Ch. 91) (repealed) | 1494 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1494 |
| Bill No. 8 | 1495 |
| Bethel Island Municipal Improvement District Act, § 80 (Stats. 1960, 1st Ex. Sess., Ch. 22) (amended) | 1496 |
| Contra Costa County Storm Drainage District Act § 5 (Stats. 1953, Ch. 1532) (amended) | 1497 |
| § 7 (Stats. 1953, Ch. 1532) (amended) | 1499 |
| Drainage District Act of 1885, § 19 (Stats. 1885, Ch. 158) (repealed) | 1501 |
| Drainage District Act of 1903 § 14 (Stats. 1903, Ch. 238) (amended) | 1501 |
| § 16 (Stats. 1903, Ch. 238) (repealed) | 1502 |
| Drainage District Act of 1919, § 22 (Stats. 1919, Ch. 354) (amended) | 1503 |
| Embarcadero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 81) (amended) | 1503 |
| Estero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 82) (amended) | 1504 |
| Fairfield-Suisun Sewer District Act, § 44 (Stats. 1951, Ch. 303) (amended) | 1504 |
| Fresno Metropolitan Transit District Act of 1961, § 6.3 (Stats. 1961, Ch. 1932) (amended) | 1505 |
| Guadalupe Valley Municipal Improvement District Act, § 80 (Stats. 1959, Ch. 2037) (amended) | 1506 |
| Humboldt Bay Harbor, Recreation, and Conservation District Act, § 30 (Stats. 1970, Ch. 1283) (amended) | 1506 |
| Knight's Landing Ridge Drainage District Act, § 5 (Stats. 1913, Ch. 99) (amended) | 1506 |
| Lake Cuyamaca Recreation and Park District Act, § 35 (Stats. 1961, Ch. 1654) (amended) | 1508 |
| Metropolitan Water District Act, § 141 (Stats. 1969, Ch. 209) (amended) | 1509 |
| Montalvo Municipal Improvement District Act, § 45 (Stats. 1955, Ch. 549) (amended) | 1510 |
| Monterey Peninsula Airport District Act, § 3 (Stats. 1941, Ch. 52) (amended) | 1510 |
| Mount San Jacinto Winter Park Authority Act § 4.8 (Stats. 1945, Ch. 1040) (amended) | 1514 |

| | <i>Page</i> |
|--|-------------|
| § 4.9 (Stats. 1945, Ch. 1040) (repealed)..... | 1515 |
| Mountain View Shoreline Regional Park Community Act, § 51 (Stats. 1969, Ch. 1109) (amended) | 1516 |
| Protection District Act of 1895, § 6 (Stats. 1895, Ch. 201) (amended) | 1517 |
| Protection District Act of 1907, § 15 (Stats. 1907, Ch. 25) (repealed) | 1518 |
| Sacramento River West Side Levee District Act, § 5 (Stats. 1915, Ch. 361) (amended) | 1519 |
| San Diego Unified Port District Act, § 27 (Stats. 1962, 1st Ex. Sess., Ch. 67) (amended) | 1520 |
| Solvang Municipal Improvement District Act, § 45 (Stats. 1951, Ch. 1635) (amended) | 1521 |
| Tahoe-Truckee Sanitation Agency Act, § 141 (Stats. 1971, Ch. 1560) (amended) | 1521 |
| Vallejo Sanitation and Flood Control District Act § 2 (Stats. 1952, 1st Ex. Sess., Ch. 17) (amended) .. | 1522 |
| § 23 (Stats. 1952, 1st Ex. Sess., Ch. 17) (repealed) .. | 1526 |
| West Bay Rapid Transit Authority Act, § 6.6 (Stats. 1964, 1st Ex. Sess., Ch. 104) (amended) | 1527 |
| Levee districts—Stats. 1905, Ch. 310, § 15 (amended) | 1528 |
| Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute | 1528 |



TENTATIVE RECOMMENDATION

This is one of the series of reports containing tentative recommendations of the Law Revision Commission relating to condemnation law and procedure. The Commission has separately published a report containing its tentatively recommended comprehensive legislation relating to this subject. See *Tentative Recommendation Relating to Condemnation Law and Procedure—The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974). The comprehensive legislation provides for the repeal or amendment of inconsistent statutes of a general nature. There are, however, a large number of codified and uncodified statutes relating to special districts that are inconsistent with or duplicate the general eminent domain provisions recommended by the Commission.

The general eminent domain provisions have been carefully drafted to cover in a comprehensive manner all aspects of condemnation law and procedure. The objective of providing one comprehensive eminent domain law will be defeated, however, unless inconsistent and duplicating provisions are deleted from the statutes governing special districts.¹ If these

¹ Examples of the types of conforming revisions recommended include the following:

- (1) Language that the right of eminent domain is to be exercised by the district in the manner provided by law for the condemnation of private property for public use, with the same rights, powers, and privileges as a city, county, or municipal corporation, may be deleted with the enactment of the comprehensive eminent domain legislation providing generally that the power of eminent domain may be exercised only in accordance with its provisions.
- (2) Statements that a particular use by a district is a public use may be repealed with the enactment of the comprehensive eminent domain legislation providing that statutory authorization to condemn for a particular purpose constitutes a legislative declaration that that purpose is a public use.
- (3) Detailed listings of particular types of property that may be acquired by a district for public use may be eliminated with the enactment of the comprehensive eminent domain legislation providing that a person authorized to condemn for a particular use may exercise the power of eminent domain to condemn property of any character necessary for that use.
- (4) The requirement that the district proceed in the name of the district may be repealed with the enactment of the comprehensive eminent domain legislation providing for prosecution of the proceeding by the person seeking to acquire the property.
- (5) The comprehensive eminent domain legislation provides for all of the following matters, thereby enabling repeal of provisions covering the same matters for each district:
 - (a) Requirement of adoption of a resolution of necessity and specification of the effect to be given the resolution.
 - (b) Acquisition of property for the purposes of remnant elimination (excess condemnation).

conforming adjustments are not made, there will be continuing confusion over the extent to which the inconsistent provisions remain in effect or are impliedly repealed.

Therefore, the Commission recommends that the special district statutes be adjusted to conform to the proposed general legislation relating to eminent domain.² Eight bills designed to accomplish these conforming adjustments are set out below.³ The enactment of these bills will result in the repeal of approximately 75 unnecessary sections and in the deletion of more than 28,000 unnecessary words from the codified and uncodified statutes. The provisions of the general legislation that supersede repealed sections or deleted portions of sections are indicated in the Comments that follow the sections.

(c) Acquisition of property already devoted to public use for more necessary and compatible public uses.

(d) Acquisition of property for exchange purposes.

(e) Entry upon property to locate public improvements.

² Some special district statutes contain a provision that authorizes entry on property to carry on technical and other investigations, make measurements, collect data, and make analyses, studies, and inspections. Some of these provisions require revision to eliminate portions that deal with matters covered in the proposed Eminent Domain Law. See, e.g., "Proposed Legislation—Bill No. 3," *infra*: Del Norte County Flood Control District Act § 6(8), Humboldt County Flood Control District Act § 6(8), Monterey County Flood Control and Water Conservation District Act § 5(8), Napa County Flood Control and Water Conservation District Act § 5(8), San Benito County Water Conservation and Flood Control District Act § 6(8), San Diego County Flood Control District Act § 6(8), San Luis Obispo County Flood Control and Water Conservation District Act § 5(8), Santa Clara Valley Water District Act § 5(8). These provisions have been revised to conform to the language of similar special district statute provisions that do not require revision. See, e.g., "Proposed Legislation—Bill No. 3," *infra*: Alameda County Flood Control and Water Conservation District Act § 5(8), Contra Costa County Flood Control and Water Conservation District Act § 5(8), Lake County Flood Control and Water Conservation District Act § 5(7), Marin County Flood Control and Water Conservation District Act § 5(8), San Joaquin County Flood Control and Water Conservation District Act § 5(8), San Mateo County Flood Control District Act § 3(11), Santa Barbara County Flood Control and Water Conservation District Act § 5(7), Tulare County Flood Control District Act § 5(7).

³ An effort has been made to collect all statutes of a similar type in each separate bill.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measures:

BILL NO. 1

An act to amend Sections 61610 and 66657 of the Government Code, to amend Sections 5900.4, 6076, 6296, 6896, and 7147 of the Harbors and Navigation Code, to amend Section 8961 of the Health and Safety Code, to amend Section 5542 of, to add Section 13070.1 to, and to repeal Sections 5542.5 and 5566 of, the Public Resources Code, to amend Sections 12703 and 16404 of, and to repeal Section 16405 of, the Public Utilities Code, to amend Sections 25280, 27166, 31001, and 31201 of, and to repeal Sections 25052, 31002, 31003, 31004, 31202, 31203, and 31204 of, the Streets and Highways Code, and to amend Sections 22425, 22456, 31040, 43532.5, 60230, 71693, 71694, and 74553 of, and to repeal Sections 22229, 22455, 31043, 31044, 35625, 35626, 39061, 43531, 43532, 43533, and 74555 of, the Water Code, relating to eminent domain.

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

Community Services District

Government Code § 61610 (amended)

SECTION 1. 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~~. 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 unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure).

**San Francisco Bay Conservation and
Development Commission**

Government Code § 66657 (amended)

SEC. 2. Section 66657 of the Government Code is amended to read:

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 the compensation provided in Chapter 9 (commencing with Section 1263.010) and Chapter 10 (commencing with Section 1265.010) of Title 7 of Part 3 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. Section 66657 is amended to substitute a correct reference for the former reference to repealed Code of Civil Procedure Section 1248.

Harbor Improvement District

Harbors & Navigation Code § 5900.4 (amended)

SEC. 3. 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.~~

Comment. Section 5900.4 is amended to delete unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure).

Harbor District

Harbors & Navigation Code § 6076 (amended)

SEC. 4. 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~~ to 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 6076 is amended to delete unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure).

Port District

Harbors & Navigation Code § 6296 (amended)

SEC. 5. 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~~ to 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 .~~

Comment. Section 6296 is amended to delete unnecessary language. See Code Civ. Proc. §§ 1230.020 (uniform 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. 6. 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~~ to 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.~~

Comment. Section 6896 is amended to delete unnecessary language. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). See also Code Civ. Proc. §§ 1240.510 *et seq.* (compatible use) and 1250.210 and Comment thereto (identification of plaintiff).

Small Craft Harbor District

Harbors & Navigation Code § 7147 (amended)

SEC. 7. Section 7147 of the Harbors and Navigation Code is amended to read:

7147. The district may acquire by eminent domain ~~proceedings in the manner provided by law lands and properties~~ *any property* necessary, convenient or useful to the exercise of its powers, but may exercise the power to acquire ~~lands and~~ property outside 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.~~

Comment. Section 7147 is amended to delete unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure). See also Code Civ. Proc. § 1235.170 (defining "property").

Public Cemetery District

Health & Safety Code § 8961 (amended)

SEC. 8. 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”).

Regional Park District

Public Resources Code § 5542 (amended)

SEC. 9. Section 5542 of the Public Resources Code is amended to read:

5542. 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~~ to take any property necessary or convenient to accomplish the purposes of this article ~~whether the property is already devoted to the same use or otherwise. In such proceedings the district has the same rights, powers, and privileges as a municipal corporation.~~

A district may not acquire by condemnation any of the lands, properties, or facilities of any municipal utility district which are appropriated to public use or are used in or are useful to the operations of the municipal utility district or which are within the watershed of any stream or reservoir which supplies water for domestic use or which the directors of the municipal utility district determine by resolution to be properties which are required for the purposes of the municipal utility district.

Comment. The deleted portions of Section 5542 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use).

Public Resources Code § 5542.5 (repealed)

SEC. 10. Section 5542.5 of the Public Resources Code is repealed.

~~5542.5. (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), when property, whether owned in fee or lesser title interest, leased, or operated under a license, management agreement, or otherwise, is appropriated or otherwise acquired for public use as a regional park operated by a regional park district, there is a rebuttable presumption of its having been appropriated or otherwise acquired for the best and most necessary public use. The presumption established by this subdivision is a presumption affecting the burden of proof.~~

~~(b) When such property is sought to be acquired for city or county road, street, or highway purposes, and such property was dedicated to or established for park or recreational purposes prior to the initiation of road, street, or highway route location studies, an action for declaratory relief may be brought by the district in the superior court to determine the question of which public use is the best and most necessary public use for such property. Such action for declaratory relief shall be filed and served within 120 days after publication by the city or county, as the case may be, in a newspaper of general circulation pursuant to Section 6061 of the Government Code, and delivery of a written notice to the district by the city or county that a proposed route or site or an adopted route includes such property. Such action for declaratory relief shall have preference over all other civil actions in the matter of setting the same for hearing or trial to the end that any such action shall be quickly heard and determined. If an action for declaratory relief is not filed and served within such 120-day period, the right to bring such action is waived and the provisions of subdivision (a) shall not apply. When a declaratory relief action with respect to such property being sought for city or county road, street, or highway purposes may not be brought pursuant to this section, the provisions of subdivision (a) shall not apply.~~

Comment. Section 5542.5 is continued without substantive change in the Eminent Domain Law. The substance of subdivision (a) is continued in Code of Civil Procedure Section 1240.680. See the Comment to that section. The substance of subdivision (b) is continued as Code of Civil Procedure Section 1240.700. See the Comment to that section.

Public Resources Code § 5566 (repealed)

SEC. 11. Section 5566 of the Public Resources Code is repealed.

~~**5566.** In 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, and the use of the property which may be condemned, taken, or appropriated under the provisions of this article, is a public use, subject to regulation and control of the State in the manner prescribed by law.~~

Comment. Section 5566 is unnecessary. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (statement that the use is a public use unnecessary). See also Code Civ. Proc. § 1250.210 and Comment thereto (identification of plaintiff).

Resort Improvement District

Public Resources Code § 13070.1 (added)

SEC. 12. 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.

Municipal Utility District

Public Utilities Code § 12703 (amended)

SEC. 13. Section 12703 of the Public Utilities Code is amended to read:

12703. A district ~~shall have or may~~ exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. A district may~~ to 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.~~

Comment. Section 12703 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Public Utility District

Public Utilities Code § 16404 (amended)

SEC. 14. 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~~ to 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.~~

Comment. Section 16404 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use).

Public Utilities Code § 16405 (repealed)

SEC. 15. 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. § 1250.210 and Comment thereto.

Joint Highway District

Streets & Highways Code § 25052 (repealed)

SEC. 16. 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.~~

Comment. Section 25052 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Streets & Highways Code § 25280 (amended)

SEC. 17. 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 *prior to judgment* of any property or rights-of-way necessary for district purposes.

Comment. Section 25280 is amended to conform to the language used in the Eminent Domain Law. See Article 3 (commencing with Section 1255.410) of Chapter 6 of Title 7 of Part 3 of the Code of Civil Procedure.

Bridge and Highway District

Streets & Highways Code § 27166 (amended)

SEC. 18. Section 27166 of the Streets and Highways Code is amended to read:

27166. The district may ~~have and~~ exercise; ~~in the name of the district,~~ the right of eminent domain ~~for the condemnation of to take~~ any property; ~~whether such property is already devoted to the same use or another public use, or otherwise,~~ necessary to the exercise of the powers granted in this part, or in any provision of law, to the district. ~~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 1254 of the Code of Civil Procedure.~~

Comment. Section 27166 is amended to delete portions superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1255.410 *et seq.* (possession prior to judgment), 1250.210 and Comment thereto (identification of plaintiff).

Gold Rush Parkway Authority

Streets & Highways Code § 31001 (amended)

SEC. 19. Section 31001 of the Streets and Highways Code is amended to read:

31001. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, private, public, or municipal corporation, county, city, district, or any political subdivision of the state, may be condemned and taken, and the acquisition and use thereof as provided in this chapter for the same public use or purpose to which such property has been appropriated or dedicated or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated.

It shall not be necessary in any eminent domain proceedings pursuant to this section to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution ~~provided for in this article describing the property sought to be taken and directing such proceedings required by Section 1245.220 of the Code of Civil Procedure.~~

Comment. Section 31001 is amended to reflect the repeal of Section 31003 and to make reference to Section 1245.220 (resolution of necessity).

Streets & Highways Code § 31002 (repealed)

SEC. 20. Section 31002 of the Streets and Highways Code is repealed.

~~31002. Pursuant to the Constitution and laws relating to eminent domain proceedings, the authority may condemn and take, in fee or otherwise, as the authority determines, in the name of the authority, any real estate, personal property, franchises, rights, privileges, or easements, whether publicly or privately owned and whether or not already devoted to a public use or purpose, deemed necessary for the toll bridge.~~

Comment. Section 31002 is unnecessary. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.110 (right to acquire any necessary right or interest in any type of property), 1250.210 and

Comment thereto (identification of plaintiff). See also Section 31001 (more necessary public use).

Streets & Highways Code § 31003 (repealed)

SEC. 21. 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.~~

Comment. Section 31003 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Streets & Highways Code § 31004 (repealed)

SEC. 22. 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.~~

Comment. Section 31004 is superseded by Code of Civil Procedure Section 1240.310 *et seq.* See also Code Civ. Proc. § 1250.210 and Comment thereto (identification of plaintiff).

El Dorado County Toll Tunnel Authority

Streets & Highways Code § 31201 (amended)

SEC. 23. Section 31201 of the Streets and Highways Code is amended to read:

31201. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, private, public, or municipal corporation, county, city, district, or any political subdivision of the state, may be condemned and taken, and the acquisition and use thereof as provided in this chapter for the same public use or purpose to which such property has been appropriated or dedicated or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated.

It shall not be necessary in any eminent domain proceedings pursuant to this section to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution ~~provided for in this article describing the property sought to be taken and directing such proceedings required by Section 1245.220 of the Code of Civil Procedure.~~

Comment. Section 31201 is amended to reflect the repeal of Section 31203 and to make reference to Section 1245.220 (resolution of necessity).

Streets & Highways Code § 31202 (repealed)

SEC. 24. Section 31202 of the Streets and Highways Code is repealed.

~~31202. Pursuant to the Constitution and laws relating to eminent domain proceedings, the authority may condemn and take, in fee or otherwise, as the authority determines, in the name of the authority, any real estate, personal property, franchises, rights, privileges, or easements, whether publicly or privately owned and whether or not already devoted to a public use or purpose, deemed necessary for the toll tunnel.~~

Comment. Section 31202 is unnecessary. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.110 (right to acquire any necessary right or interest in any type of property), 1250.210 and Comment thereto (identification of plaintiff). See also Section 31201 (more necessary public use).

Streets & Highways Code § 31203 (repealed)

SEC. 25. 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.~~

Comment. Section 31203 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Streets & Highways Code § 31204 (repealed)

SEC. 26. 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.

Comment. Section 31204 is superseded by Code of Civil Procedure Section 1240.310 *et seq.* See also Code Civ. Proc. § 1250.210 and Comment thereto (identification of plaintiff).

Irrigation District

Water Code § 22229 (repealed)

SEC. 27. 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 Code of Civil Procedure Section 1245.010 *et seq.*

Water Code § 22425 (amended)

SEC. 28. 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 (repealed)

SEC. 29. 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. § 1230.020 (uniform procedure).

Water Code § 22456 (amended)

SEC. 30. Section 22456 of the Water Code is amended to read:

~~**22456. The use of all water, together with all property which may be acquired, which is required to carry out fully the provisions of this division is a public use and may be acquired by the district in**~~ *may exercise the right of eminent domain proceedings to take any property necessary to carry out its purposes.*

Comment. Section 22456 is amended to preserve the substance of former Section 22455 and Section 22456 as it formerly read. The statement that the use is a public use is omitted as unnecessary. See Code Civ. Proc. § 1230.030. See also Code Civ. Proc. § 1235.170 (defining "property").

County Water District

Water Code § 31040 (amended)

SEC. 31. Section 31040 of the Water Code is amended to read:

31040. A district may take *any property necessary to carry out the business of the district* by grant, purchase, gift, devise, condemnation, or lease with or without the privilege of purchase.

Comment. Section 31040 is amended to make clear that any property “necessary to carry out the business of the district” may be acquired. The added language is taken from former Section 31043.

Water Code § 31043 (repealed)

SEC. 32. Section 31043 of the Water Code is repealed.

~~31043. The use of all water required for the purposes of any district together with all property and right of ways for carrying out the business of the district is a public use and all districts are public agencies of the State to carry out this public use.~~

Comment. Section 31043 is unnecessary. See Code Civ. Proc. § 1230.030 (use as public use). See also Section 31040 (grant of authority to acquire property necessary to carry out the business of the district).

Water Code § 31044 (repealed)

SEC. 33. 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. § 1230.020 (uniform procedure).

California Water District

Water Code § 35625 (repealed)

SEC. 34. 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. § 1230.020 (uniform procedure).

Water Code § 35626 (repealed)

SEC. 35. Section 35626 of the Water Code is repealed.

~~35626. The use of all water required for beneficial uses authorized under the powers specified in Section~~

~~35401 of any district formed under the provisions of this division together with the use of all other property which may be required to carry out fully the provisions of this division is a public use and may be acquired by the district in eminent domain proceedings.~~

Comment. Section 35626 is unnecessary. See Section 35600 and Code Civ. Proc. § 1240.010.

California Water Storage District

Water Code § 39061 (repealed)

SEC. 36. Section 39061 of the Water Code is repealed.

~~39061. The use of all water required for the irrigation of land and for domestic and other incidental and beneficial uses within the district, together with the rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this division is a public use, subject to the regulation and control of the State in the manner prescribed by law.~~

Comment. Section 39061 is unnecessary. See Section 43530 and Code Civ. Proc. § 1240.010.

Water Code § 43531 (repealed)

SEC. 37. 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.~~

Comment. Section 43531 is unnecessary. See Code Civ. Proc. § 1230.020 (uniform procedure). See also Code Civ. Proc. § 1250.210 and Comment thereto (identification of plaintiff).

Water Code § 43532 (repealed)

SEC. 38. 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 ($\frac{2}{3}$) 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.

Comment. Section 43532 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Water Code § 43532.5 (amended)

SEC. 39. 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 Code of Civil Procedure Section 1245.250.

Water Code § 43533 (repealed)

SEC. 40. 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.~~

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

Water Replenishment District**Water Code § 60230 (amended)**

SEC. 41. 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~~ *division*, 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 replenishment 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~~ *to acquire* 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.

(9) To act jointly with or cooperate with the United States or any agency thereof, and, under the applicable laws of this state, cooperate 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 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 unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure).

Municipal Water District

Water Code § 71693 (amended)

SEC. 42. 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 to~~ 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~~ . *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 71693 is amended to delete provisions made unnecessary by the enactment of general provisions in the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 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)

SEC. 43. 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 to~~ 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.

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 unnecessary language. See Code Civ. Proc. § 1230.020 (uniform procedure).

Water Conservation District

Water Code § 74553 (amended)

SEC. 44. 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.

Comment. The deleted portion of Section 74553 is unnecessary. See Code Civ. Proc. § 1230.020 (uniform procedure).

Water Code § 74555 (repealed)

SEC. 45. 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.~~

Comment. Section 74555 is superseded by Code of Civil Procedure Section 1240.310 *et seq.*

**Bill Contingent Upon Enactment of Comprehensive
Eminent Domain Statute**

SEC. 46. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 2

An act to amend Sections 25703, 28953, 30503, 40162, 50162, 70162, 90402, 96002, 98212, 100131, 101177, and 102242 of, and to repeal Sections 28954, 30504, 100130.5, and 102241 of, the Public Utilities Code, relating to eminent domain.

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

**Transit District—Alameda or Contra Costa County
Public Utilities Code § 25703 (amended)**

SECTION 1. Section 25703 of the Public Utilities Code is amended to read:

25703. A district ~~shall have or~~ *may* exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. A district may~~ to 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.

Comment. The deleted portions of Section 25703 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

**San Francisco Bay Area Rapid Transit District
Public Utilities Code § 28953 (amended)**

SEC. 2. Section 28953 of the Public Utilities Code is amended to read:

~~28953. The district shall have or 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 to 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.~~

Comment. The deleted portions of Section 28953 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Public Utilities Code § 28954 (repealed)

SEC. 3. 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 declaring that the public interest and necessity require the acquisition 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, 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 cause the least private injury.~~

Comment. Section 28954 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Southern California Rapid Transit District Public Utilities Code § 30503 (amended)

SEC. 4. 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~~ *exercise the right of eminent domain within the boundaries of the district to take any property necessary or convenient to the exercise of the powers granted in this part.*

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 superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1230.060 (Public Utilities Commission jurisdiction preserved), 1240.510 *et seq.* (compatible

use), 1240.610 *et seq.* (more necessary public use). See also Code Civ. Proc. §§ 1235.170 (“property” defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

Public Utilities Code § 30504 (repealed)

SEC. 5. 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. 6. Section 40162 of the Public Utilities Code is amended to read:

40162. The district ~~shall have or may~~ 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.~~

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 superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff). See also Pub. Util. Code § 40175 (extraterritorial condemnation authority).

Stockton Metropolitan Transit District

Public Utilities Code § 50162 (amended)

SEC. 7. Section 50162 of the Public Utilities Code is amended to read:

50162. The district ~~shall have or~~ *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 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.

Comment. The deleted portions of Section 50162 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff). See also Code Civ. Proc. §§ 1235.070 ("property" defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

Transit District—Marin County

Public Utilities Code § 70162 (amended)

SEC. 8. Section 70162 of the Public Utilities Code is amended to read:

70162. The district ~~shall have or may 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 to 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.~~

Comment. The deleted portions of Section 70162 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

San Diego County Transit District
Public Utilities Code § 90402 (amended)

SEC. 9. Section 90402 of the Public Utilities Code is amended to read:

90402. The district ~~shall have or 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 to~~ 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.

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, 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 90402 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Santa Barbara Metropolitan Transit District
Public Utilities Code § 96002 (amended)

SEC. 10. Section 96002 of the Public Utilities Code is amended to read:

96002. The district ~~shall have or~~ *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~~ to 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.

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 superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use),

1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff). See also Code Civ. Proc. §§ 1235.070 (“property” defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

Santa Cruz Metropolitan Transit District
Public Utilities Code § 98212 (amended)

SEC. 11. Section 98212 of the Public Utilities Code is amended to read:

98212. The district ~~shall have or~~ *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 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.

Comment. The deleted portions of Section 98212 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Santa Clara County Transit District
Public Utilities Code § 100130.5 (repealed)

SEC. 12. 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 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.~~

Comment. Section 100130.5 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Public Utilities Code § 100131 (amended)

SEC. 13. Section 100131 of the Public Utilities Code is amended to read:

100131. The district ~~shall have or 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 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.~~

No 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, shall be permitted, unless the Public Utilities Commission, after a 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 100131 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Greater Bakersfield Metropolitan Transit District

Public Utilities Code § 101177 (amended)

SEC. 14. 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 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.~~

Comment. The deleted portions of Section 101177 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§

1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Sacramento Regional Transit District

Public Utilities Code § 102241 (repealed)

SEC. 15. 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 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.~~

Comment. Section 102241 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Sacramento Regional Transit District

Public Utilities Code § 102242 (amended)

SEC. 16. Section 102242 of the Public Utilities Code is amended to read:

102242. The district ~~shall have or~~ *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 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 102242, 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.~~

Comment. The deleted portions of Section 102242 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use), 1250.210 and Comment thereto (identification of plaintiff).

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 17. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 3

An act to amend Section 5 of, and to repeal Section 28.1 of, the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949), to amend Section 5 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617 of the Statutes of 1951), to amend Sections 6 and 7 of the Del Norte County Flood Control District Act (Chapter 166 of the Statutes of 1955), to amend Sections 8 and 26 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955), to amend Sections 6 and 7 of the Humboldt County Flood Control District Act (Chapter 939 of the Statutes of 1945), to amend Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), to amend Section 5 of the Marin County Flood Control and Water Conservation District Act (Chapter 666 of the Statutes of 1953), to amend Sections 5 and 6 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699 of the Statutes of 1947), to amend Sections 5 and 6 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449 of the Statutes of 1951), to amend Sections 6 and 8 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598 of the Statutes of 1953), to amend Section 6 of the San Diego County Flood Control District Act (Chapter 55 of the Statutes of 1966, First Extraordinary Session), to amend Section 5 of the San Joaquin County Flood Control and Water Conservation District Act (Chapter 46 of the Statutes of 1956, First Extraordinary Session), to amend Sections 5, 6, and 6.1 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294 of the Statutes of 1945), to amend Section 3 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), to amend Section 5 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), to amend Sections 5 and 6 of, and to repeal Section 6.1 of, the Santa Clara Valley Water District Act

(Chapter 1405 of the Statutes of 1951), and to amend Section 5 of the Tulare County Flood Control District Act (Chapter 1149 of the Statutes of 1969), relating to flood control and water conservation.

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

Alameda County Flood Control and Water Conservation District Act, § 5 (Stats. 1949, Ch. 1275) (amended)

SECTION 1. 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 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 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 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.

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 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 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 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.

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~~ . 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 . 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 *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.

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.

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, 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 cooperation 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Alameda County Flood Control and Water Conservation District Act (Stats. 1949, Ch. 1275), § 28.1 (added Stats. 1957, Ch. 987, § 1) (repealed)

SEC. 2. 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.

Comment. Section 28.1 is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 *et seq.*

Contra Costa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1617) (amended)

SEC. 3. 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 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 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 cooperate and to act in conjunction with the State of California or any of ~~is~~ *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.

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 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 employ for temporary services only, expert appraisers, consultants, attorneys, 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.

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, including property required for recreational facilities; ~~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 .~~ *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 notwithstanding any other provision of this act or any other law, no property shall be taken by eminent domain 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 .~~ *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~~ *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.

~~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.

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 cities and districts within the county, 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.

16. The district may provide, operate, maintain, and charge for public use of recreation facilities in connection with flood control works and improvements within the jurisdiction of the district.

17. In connection with flood control works and related improvements, the district may install and maintain appropriate landscaping and take other actions as necessary for the purpose of mitigation of environmental damage resulting from such works and improvements.

18. The district may cause to be designed and inserted in the specifications and contract for any flood control channel or storm drain planned to be constructed under this act as an open channel, provision for the construction in conjunction therewith of facilities for the covering or crossing over of any such portion, or a part of such portion, if, in the judgment of such governing body, such crossing or covering will not impair the usefulness of such flood control channel or storm drain and will not be otherwise adverse to the best interests of the district.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Del Norte County Flood Control District Act, § 6 (Stats. 1955, Ch. 166) (amended)

SEC. 4. 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 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 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 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 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, . For such purposes, the district ; or its agents in charge of such use, shall have the right of access 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 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. 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 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 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 individual 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 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 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 revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Del Norte County Flood Control District Act, § 7 (Stats. 1955, Ch. 166) (amended)

SEC. 5. 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~~. *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. *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 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 provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Fresno Metropolitan Flood Control Act, § 8 (Stats. 1955, Ch. 503) (amended)

SEC. 6. 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.

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 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) (amended)

SEC. 7. 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~~ *the power of eminent domain*, 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.

Comment. The deleted portion of Section 26 is superseded by the provisions of the Eminent Domain Law. See Code Civ. Proc. §§

1240.110 (right to acquire any interest or right in property), 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff).

Humboldt County Flood Control District Act, § 6
(Stats. 1945, Ch. 939) (amended)

SEC. 8. 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 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 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 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 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,~~ *For such purposes, the district shall have the right of access 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 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. 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 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 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 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 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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Subdivision 8 of Section 6 is revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *et seq.* (procedure for entry to locate improvement).

Humboldt County Flood Control District Act, § 7
(Stats. 1945, Ch. 939) (amended)

SEC. 9. 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~~. 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 on 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

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 ease 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.~~

Comment. The deleted portions of Section 7 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("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)
(amended)**

SEC. 10. 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 watercourses 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 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 cooperate 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.

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~~ . 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.~~ 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.

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.

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.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.110 (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), 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff). See also Code Civ. Proc. § 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Marin County Flood Control and Water Conservation District Act, § 5 (Stats. 1953, Ch. 666) (amended)

SEC. 11. 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 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, 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 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 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 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 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~~ . 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~~ . 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 *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.

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.

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 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff). See also Code Civ. Proc. § 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Monterey County Flood Control and Water Conservation District Act, § 5 (Stats. 1947, Ch. 699) (amended)

SEC. 12. 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, 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 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,~~ *For such purposes,* the district; ~~or its agents in charge of such use,~~ shall have the right of access *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. 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 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 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 Monterey 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.

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 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 revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Monterey County Flood Control and Water Conservation District Act, § 6 (Stats. 1947, Ch. 699) (amended)

SEC. 13. 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 .~~ *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 .~~ *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 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

Napa County Flood Control and Water Conservation District Act, § 5 (Stats. 1951, Ch. 1449) (amended)

SEC. 14. 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 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; 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.

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 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 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 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.~~ *For such purposes,* the district ; ~~or its agents in charge of such use,~~ shall have the right of access *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. 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 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 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.

Comment. Subdivision 8 of Section 5 is revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1240.110, 1235.170. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Napa County Flood Control and Water Conservation District Act, § 6 (Stats. 1951, Ch. 1449) (amended)

SEC. 15. 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 . *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 . *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 ease 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.

Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

San Benito County Water Conservation and Flood Control District Act, § 6 (Stats. 1953, Ch. 1598) (amended)

SEC. 16. Section 6 of the San Benito County Water Conservation 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 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 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, commercial, industrial, and all other beneficial uses; to distribute, sell, or otherwise dispose of, any waters not needed for beneficial uses within the district; to prevent unlawful exportation 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 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, 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 be required for public use by said district, the district, or its agents in charge of such use, .~~ *For such purposes, the district shall have the right of access 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~~ *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 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 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 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 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.

Comment. Subdivision 8 of Section 6 is revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

San Benito County Water Conservation and Flood Control District Act, § 8 (Stats. 1953, Ch. 1598) (amended)

SEC. 17. 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 .~~ *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 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. *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 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.

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (right to take any interest or right in any type of property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and

1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

San Diego County Flood Control District Act, § 6
(Stats. 1966, 1st Ex. Sess., Ch. 55) (amended)

SEC. 18. Section 6 of the San Diego County Flood Control District Act (Chapter 55 of the Statutes of 1966, First Extraordinary Session) 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 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, contract, ~~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 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, 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.

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 plats 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 through its authorized representatives to all properties 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.~~ *The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.*

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.

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~~ . *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~~ . *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 prescribed by law; provided, however, that nothing *Nothing* in this act contained shall be deemed to authorize the district or any person 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.

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.

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized 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 completion 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:

(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 compatible 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 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.

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 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 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 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 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 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 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.030 (public necessity must be established), 1240.040 and 1245.210 *et seq.* (resolution of necessity),

1240.410 *et seq.* (remnants), 1240.310 *et seq.* (takings for exchange), 1250.210 (identification of plaintiff). 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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030. The deleted portion of subdivision 8 is superseded by Section 1245.010 *et seq.* of the Code of Civil Procedure.

San Joaquin County Flood Control and Water Conservation District Act, § 5 (Stats. 1956, 1st Ex. Sess., Ch. 46) (amended)

SEC. 19. 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 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 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 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, 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.

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 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~~ . 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 . 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 *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.

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.~~

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 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 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, 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, 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

San Luis Obispo County Flood Control and Water Conservation District Act, § 5 (Stats. 1945, Ch. 1294) (amended)

SEC. 20. 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 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 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 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.

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;~~ *For such purposes, the district shall have the right of access 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 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~~ *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 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 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.

Comment. Subdivision 8 of Section 5 is revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

**San Luis Obispo County Flood Control and Water
Conservation District Act, § 6 (Stats. 1945,
Ch. 1294) (amended)**

SEC. 21. 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 district or other public~~

corporation, or agency, or otherwise provided, however, that the . *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 . *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 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 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 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (right to take any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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) (amended)

SEC. 22. 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.~~

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 Mateo County Flood Control District Act, § 3
(Stats. 1959, Ch. 2108) (amended)

SEC. 23. 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.

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.

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 . 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, that the *therefor be first provided in the manner prescribed by law*. 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.

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 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 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 purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose as authorized herein.

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 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1255.410 *et seq.* (possession prior to judgment), 1240.110 (right to take any property or any interest or right in any type of property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170 and 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Santa Barbara County Flood Control and Water Conservation District Act, § 5 (Stats. 1955, Ch. 1057) (amended)

SEC. 24. 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 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 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.

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, 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 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.

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 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~~ . *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~~ . *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 *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.

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, 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 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 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 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

27 such Santa Barbara County Flood Control and Water
 28 Conservation District or in any officer thereof, or in any
 29 person referred to in this act.

30 ~~12.1. Whenever a part only of a parcel is required by~~
 31 ~~the district for any purpose authorized by this act, and the~~
 32 ~~taking thereof, and the construction of the proposed~~
 33 ~~public improvement thereon, will interfere with~~
 34 ~~reasonable access to the remainder, or will otherwise~~
 35 ~~cause substantial damage to the remainder, the district~~
 36 ~~may condemn, purchase, or otherwise acquire the whole~~
 37 ~~parcel of land and may sell the remainder or exchange~~
 38 ~~the same for other property required for district~~
 39 ~~purposes. Or, in lieu of such acquisition of the remainder,~~
 40 ~~the district may condemn, purchase, or otherwise acquire~~
 1 ~~an easement for ingress to and egress from the remainder~~
 2 ~~for use by the public, including the owner of the land.~~

3 13. To make contracts with the County of Santa
 4 Barbara and with municipalities and public agencies, and
 5 to employ labor for the purpose of doing flood control
 6 work and for inspecting and passing upon the adequacy
 7 of drainage plans provided for each proposed new
 8 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Santa Clara Valley Water District Act, § 5 (Stats. 1951, Ch. 1405) (amended)

SEC. 25. Section 5 of the Santa Clara Valley 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; 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 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 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 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 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 .~~ *For such purposes, the district shall have the right of access 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 through its authorized representatives,~~ may enter upon such lands and make examinations, surveys, and maps thereof.

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 1.

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.

14. To pay to any city, public agency, district, or educational institution recognized under Division 21 (commencing with Section 29001) of the Education Code, a portion of the cost of water imported by such city, public agency, district, or educational institution into, for use within, and of benefit to the Santa Clara Valley 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 revised to conform 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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Santa Clara Valley Water District Act, § 6 (Stats. 1951, Ch. 1405) (amended)

SEC. 26. Section 6 of the Santa Clara Valley 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 .~~ *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 . *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.

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 ease 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.

Comment. The deleted portions of Section 6 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

Santa Clara Valley Water District Act (Stats.

1951, Ch. 1405), § 6.1 (added Stats. 1959, Ch. 578, § 1) (repealed)

SEC. 27. Section 6.1 of the Santa Clara Valley 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.~~

Comment. Section 6.1 is superseded by the more general provision of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 *et seq.*

Tulare County Flood Control District Act, § 5 (Stats. 1969, Ch. 1149) (amended)

SEC. 28. 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, 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.

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 .~~ *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 .~~ *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~~

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.

~~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.~~

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 each 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.

Comment. The deleted portions of Section 5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§

1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.110 (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), 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff). See also Code Civ. Proc. § 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 29. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 4

An act to amend Section 2 of, and to repeal Section 23 of, the American River Flood Control District Act (Chapter 808 of the Statutes of 1927), to amend Section 7.5 of Chapter 641 of the Statutes of 1931, to amend Section 3 of the Lassen-Modoc County Flood Control and Water Conservation District Act (Chapter 2127 of the Statutes of 1959), to amend Sections 2 and 16 of, and to repeal Sections 16½, 16⅝, and 16¾ of, the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915), to amend Sections 260 and 650 of the Madera County Flood Control and Water Conservation Agency Act (Chapter 916 of the Statutes of 1969), to amend Section 3 of the Mendocino County Flood Control and Water Conservation District Act (Chapter 995 of the Statutes of 1949), to amend Sections 2 and 16 of, and to repeal Section 16.1 of, the Orange County Flood Control Act (Chapter 723 of the Statutes of 1927), to amend Section 3 of the Plumas County Flood Control and Water Conservation District Act (Chapter 2114 of the Statutes of 1959), to amend Section 9 of, and to repeal Section 9.2 of, the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to amend Section 2 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to amend Sections 23 and 41 of, and to repeal Section 24 of, the Santa Cruz County Flood Control and Water Conservation District Act (Chapter 1489 of the Statutes of 1955), to amend Section 3 of the Sierra County Flood Control and Water Conservation District Act (Chapter 2123 of the Statutes of 1959), to amend Section 3 of the Siskiyou County Flood Control and Water Conservation District Act (Chapter 2121 of the Statutes of 1959), to amend Section 3.4 of the Solano County Flood Control and Water Conservation District Act (Chapter 1656 of the Statutes of 1951), to amend Section 3 of the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949), to amend Section 3 of the Tehama County Flood Control and Water Conservation District Act (Chapter 1280 of the Statutes of

1957), to amend Section 7 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of 1944, Second Extraordinary Session), and to amend Section 3 of the Yolo County Flood Control and Water Conservation District Act (Chapter 1657 of the Statutes of 1951), relating to flood control and water conservation.

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

American River Flood Control District Act, § 2
(Stats. 1927, Ch. 808) (amended)

SECTION 1. 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 either within or without the district, to take any property 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.

(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 1230.020 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) (repealed)

SEC. 2. 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.

Comment. Section 23 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is public use unnecessary), 1250.210 (identification of plaintiff).

**Flood Control and Water Conservation District Act
(Stats. 1931, Ch. 641), § 7.5 (added Stats. 1949,
Ch. 144, § 1) (amended)**

SEC. 3. Section 7.5 of 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 purpose 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 manner provided by law for the condemnation of private property for public uses~~ .

Comment. The deleted portions of Section 7.5 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.110 (right to acquire any interest or right in property). See also Code Civ. Proc. § 1235.170 ("property" defined).

**Lassen-Modoc County Flood Control and Water
Conservation District Act, § 3 (Stats.
1959, Ch. 2127) (amended)**

SEC. 4. 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.

(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 to take any~~ property located within the district *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.

(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, 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.

(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 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 cooperate 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.

(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 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 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 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~~ *with* 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is public use unnecessary), 1240.610 *et seq.* (more necessary public use), 1240.110 (right to acquire any interest or right in property). See also Code Civ. Proc. § 1235.170 (“property” defined).

Los Angeles County Flood Control Act, § 2 (Stats. 1915, Ch. 755) (amended)

SEC. 5. 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 ,~~ *either within or*

without the district, 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.~~

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 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 ($4\frac{1}{4}\%$) 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).

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 wherein 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 of 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.

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). Consistent with subdivisions 4 and 5, subdivision 6 authorizes extraterritorial condemnation.

Los Angeles County Flood Control Act, § 16 (Stats. 1915, Ch. 755) (amended)

SEC. 6. 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, swampland 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 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~~ of 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~~ *The* 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 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is public use unnecessary), 1240.610 *et seq.* (more necessary public use), 1250.210 (identification of plaintiff). 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. §§ 1235.170, 1240.110. 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. § 1240.150; *cf.* Code Civ. Proc. § 1230.030.

Los Angeles County Flood Control Act (Stats. 1915, Ch. 755), § 16½ (added Stats. 1941, Ch. 373, § 1) (repealed)

SEC. 7. Section 16½ of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

~~Sec. 16½. 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.~~

Comment. Section 16½ is superseded by the more general provisions of the Eminent Domain Law. The first paragraph is superseded by Code of Civil Procedure Sections 1240.110 (right to acquire any interest or right in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1235.170 (“property” defined) and 1240.040 and 1245.210 *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), § 16⅝ (added Stats. 1953, Ch. 856, § 3) (repealed)

SEC. 8. Section 16⅝ of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

Sec. 16⁵/₈. 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.

Comment. Section 16⁵/₈ 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) (repealed)

SEC. 9. Section 16³/₄ of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is repealed.

Sec. 16³/₄. 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.

Comment. Section 16³/₄ is superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.410 *et seq.* See also Code Civ. Proc. §§ 1240.150 and 1263.610 and Comments thereto.

Madera County Flood Control and Water Conservation Agency Act, § 260 (Stats. 1969, Ch. 916) (amended)

SEC. 10. Section 260 of the Madera County Flood Control and Water Conservation Agency Act (Chapter 916 of the Statutes of 1969) is amended to read:

~~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 required to carry out fully the provisions of this act, constitute the acquisition of property for a public use and said property may be acquired by the agency in eminent domain proceedings.~~

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 proceeding in eminent domain.

If a right to flood or otherwise interfere with any road, railroad, canal, or other property is acquired by eminent domain, 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.

Comment. The deleted portions of Section 260 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.510 (compatible use). For the grant of eminent domain authority, see Section 650.

Madera County Flood Control and Water Conservation Agency Act, § 650 (Stats. 1969, Ch. 916) (amended)

SEC. 11. 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 . 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/off/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 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.

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 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.~~

Comment. The deleted portions of Section 650 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

Mendocino County Flood Control and Water Conservation District Act, § 3 (Stats. 1949, Ch. 995) (amended)

SEC. 12. 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 .~~

~~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.~~

(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, 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 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.

(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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is public use unnecessary). Consistent with subdivisions (d) and (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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

**Orange County Flood Control Act, § 2 (Stats. 1927,
Ch. 723) (amended)**

SEC. 13. Section 2 of the Orange County Flood Control 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 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 hereinafter 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 hereinafter provided by Section 17 of this act; provided, however, that the district may grant to the United States of America, 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 Section 2 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use).

Orange County Flood Control Act, § 16 (Stats. 1927, Ch. 723) (amended)

SEC. 14. Section 16 of the Orange County Flood Control 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 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~~ *The 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 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary), 1240.610 *et seq.* (more necessary public use), 1250.210 (identification of plaintiff). 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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

**Orange County Flood Control Act (Stats. 1927, Ch. 723),
§ 16.1 (added Stats. 1957, Ch. 1036, § 1) (repealed)**

SEC. 15. Section 16.1 of the Orange County Flood Control 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.

Comment. Section 16.1 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Plumas County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2114) (amended)

SEC. 16. 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 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.

(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 .~~ 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.

(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 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 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 cooperate 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 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 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 (commencing ~~at~~ *with* 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary). Consistent with subdivisions (d) and (e), subdivision (f) authorizes extraterritorial condemnation.

Riverside County Flood Control and Water Conservation District Act, § 9 (Stats. 1945, Ch. 1122) (amended)

SEC. 17. 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, personal 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,~~ 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. *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.

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 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.

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 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. ~~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 portions of subdivision 9 of Section 9 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (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), 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff).

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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030. Subdivision 13 is deleted as obsolete.

Riverside County Flood Control and Water Conservation District Act (Stats. 1945, Ch. 1122), § 9.2 (added Stats. 1967, Ch. 1112, § 5) (repealed)

SEC. 18. 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 required 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 remainder, 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.~~

Comment. Section 9.2 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

San Bernardino County Flood Control Act, § 2 (Stats. 1939, Ch. 73) (amended)

SEC. 19. Section 2 of the San Bernardino County Flood Control 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 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 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~~. *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.

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, powerplants, 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 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. §§ 1230.020 (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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

**Santa Cruz County Flood Control and Water
Conservation District Act, § 23 (Stats.
1955, Ch. 1489) (amended)**

SEC. 20. 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 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.~~

Comment. The deleted portion of Section 23 is superseded by Section 1230.020 (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) (repealed)

SEC. 21. 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.~~

Comment. Section 24 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (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) (amended)

SEC. 22. 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.

Comment. The right to take property by eminent domain 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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Sierra County Flood Control and Water Conservation District Act, § 3 (Stats. 1959, Ch. 2123) (amended)

SEC. 23. 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 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.

(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.~~ 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.

~~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.

(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 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 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 cooperate 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 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.

(u) 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 (commencing ~~at~~ *with* 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary). Consistent with subdivisions (d) and (e), subdivision (f) authorizes extraterritorial condemnation.

**Siskiyou County Flood Control and Water Conservation
District Act, § 3 (Stats. 1959, Ch. 2121) (amended)**

SEC. 24. 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.

(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 to take any~~

property located within the county *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.

(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.

(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.

(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 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 cooperate 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 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 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 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 (commencing ~~at~~ *with* 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary).

**Solano County Flood Control and Water Conservation
District Act, § 3.4 (Stats. 1951, Ch. 1656)
(amended)**

SEC. 25. 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~~ *may exercise* 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 any 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.

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 less/r 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary), 1240.110 (right to take any interest or right in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Sonoma County Flood Control and Water Conservation District Act, § 3 (Stats. 1949, Ch. 994) (amended)

SEC. 26. 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 competent 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, dedication, ~~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.~~

~~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.~~

(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 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, 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 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.

(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, 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 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 with Section 23175*) 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that use is a public use is unnecessary). Consistent with subdivisions (d) and (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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

**Tehama County Flood Control and Water Conservation
District Act, § 3 (Stats. 1957, Ch. 1280) (amended)**

SEC. 27. 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.

(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 to take any property located within the county 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.~~

(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.

(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.

(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 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 cooperate 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, 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.

(u) 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 (commencing ~~at~~ *with* 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that use is a public use is unnecessary).

Ventura County Flood Control Act, § 7 (Stats. 1944, 2nd Ex. Sess., Ch. 44) (amended)

SEC. 28. Section 7 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of 1944, Second Extraordinary 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, 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.

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 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, 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 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 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 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 .~~ *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.

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.

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, 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, 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 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.

Comment. The deleted portions of subdivision 8 of Section 7 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Yolo County Flood Control and Water Conservation District Act, § 3 (Stats. 1951, Ch. 1657) (amended)

SEC. 29. 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 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.~~

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.~~

(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 shall not be paid from funds appropriated for state highway purposes, except that such funds may be used for betterment 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, channels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains, 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 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 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 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, 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.

(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 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.

Comment. The deleted portion of subdivision (f) of Section 3 is either obsolete or superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary). Consistent with subdivisions (d) and (e), subdivision (f) authorizes extraterritorial 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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 30. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 5

An act to repeal Section 28 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275 of the Statutes of 1949), to repeal Section 19 of the Alpine County Water Agency Act (Chapter 1896 of the Statutes of 1961), to repeal Section 4.9 of the Amador County Water Agency Act (Chapter 2137 of the Statutes of 1959), to repeal Section 29 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617 of the Statutes of 1951), to repeal Section 30 of the Del Norte County Flood Control District Act (Chapter 166 of the Statutes of 1955), to repeal Section 20 of the El Dorado County Water Agency Act (Chapter 2139 of the Statutes of 1959), to repeal Section 30 of the Humboldt County Flood Control District Act (Chapter 939 of the Statutes of 1945), to repeal Section 4.9 of the Kern County Water Agency Act (Chapter 1003 of the Statutes of 1961), to repeal Section 33 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951), to repeal Section 651 of the Madera County Flood Control and Water Conservation Agency Act (Chapter 916 of the Statutes of 1969), to repeal Section 28 of the Marin County Flood Control and Water Conservation District Act (Chapter 666 of the Statutes of 1953), to repeal Section 4.9 of the Mariposa County Water Agency Act (Chapter 2036 of the Statutes of 1959), to repeal Section 29 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699 of the Statutes of 1947), to repeal Section 29 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449 of the Statutes of 1951), to repeal Section 19 of the Nevada County Water Agency Act (Chapter 2122 of the Statutes of 1959), to amend Section 39 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), to repeal Section 4.9 of the Placer County Water Agency Act (Chapter 1234 of the Statutes of 1957), to repeal Section 35 of the Riverside County Flood Control and Water Conservation District Act (Chapter 1122 of the Statutes of 1945), to repeal Section 4.9 of the Sacramento

County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session), to repeal Section 33 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598 of the Statutes of 1953), to amend Section 25 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), to repeal Section 39 of the San Diego County Flood Control District Act (Chapter 55 of the Statutes of 1966, First Extraordinary Session), to repeal Section 33 of the San Joaquin County Flood Control and Water Conservation District Act (Chapter 46 of the Statutes of 1956, First Extraordinary Session), to repeal Section 29 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294 of the Statutes of 1945), to repeal Section 31 of the San Mateo County Flood Control District Act (Chapter 2108 of the Statutes of 1959), to repeal Section 30 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057 of the Statutes of 1955), to repeal Section 4.9 of the Santa Barbara County Water Agency Act (Chapter 1501 of the Statutes of 1945), to repeal Section 29 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), to repeal Section 58 of the Shasta County Water Agency Act (Chapter 1512 of the Statutes of 1957), to repeal Section 4.8 of the Solano County Flood Control and Water Conservation District Act (Chapter 1656 of the Statutes of 1951), to repeal Section 4.9 of the Sutter County Water Agency Act (Chapter 2088 of the Statutes of 1959), to repeal Section 32 of the Tulare County Flood Control District Act (Chapter 1149 of the Statutes of 1969), to repeal Section 20 of the Tuolumne County Water Agency Act (Chapter 1236 of the Statutes of 1969), to amend Section 29 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of 1944, Second Extraordinary Session), to repeal Section 19 of the Yuba-Bear River Basin Authority Act (Chapter 2131 of the Statutes of 1959), and to repeal Section 4.9 of the Yuba County Water Agency Act (Chapter 788 of the Statutes of 1959), relating to property subject to or devoted to public use.

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

**Alameda County Flood Control and Water Conservation District Act, § 28 (Stats. 1949, Ch. 1275)
(repealed)**

SECTION 1. 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.~~

Comment. Section 28 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**Alpine County Water Agency Act, § 19 (Stats. 1961,
Ch. 1896) (repealed)**

SEC. 2. 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.~~

Comment. Section 19 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Amador County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2137) (repealed)

SEC. 3. 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.

Comment. Section 4.9 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**Contra Costa County Flood Control and Water
Conservation District Act, § 29 (Stats.
1951, Ch. 1617) (repealed)**

SEC. 4. 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 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.~~

Comment. Section 29 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**Del Norte County Flood Control District Act, § 30
(Stats. 1955, Ch. 166) (repealed)**

SEC. 5. 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, 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 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.

Comment. Section 30 is superseded by Code of Civil Procedure Section 1240.330.

El Dorado County Water Agency Act, § 20 (Stats. 1959, Ch. 2139) (repealed)

SEC. 6. 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 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 at Section 1201, of Part 1 of Division 1 of the Public Utilities Code.

Comment. Section 20 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Humboldt County Flood Control District Act, § 30 (Stats. 1945, Ch. 939) (repealed)

SEC. 7. Section 30 of the Humboldt County Flood Control District Act (Chapter 939 of the Statutes of 1945) is repealed.

See: 30. If by any agreement or judgment in condemnation 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 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.

Comment. Section 30 is superseded by Code of Civil Procedure Section 1240.330.

Kern County Water Agency Act, § 4.9 (Stats. 1961, Ch. 1003) (repealed)

SEC. 8. Section 4.9 of the Kern County Water Agency Act (Chapter 1003 of the Statutes of 1961) is repealed.

See. 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.~~

Comment. Section 4.9 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**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. 9. Section 33 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544 of the Statutes of 1951) is repealed.

~~See. 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 (e) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.~~

Comment. Section 33 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Madera County Flood Control and Water Conservation Agency Act, § 651 (Stats. 1969, Ch. 916) (repealed)

SEC. 10. Section 651 of the Madera County Flood Control and Water Conservation Agency Act (Chapter 916 of the Statutes of 1969) is repealed.

~~See. 651. If by any judgment in condemnation or by agreement 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.~~

Comment. Section 651 is superseded by Code of Civil Procedure Section 1240.330.

Marin County Flood Control and Water Conservation District Act, § 28 (Stats. 1953, Ch. 666) (repealed)

SEC. 11. Section 28 of the Marin County Flood Control and Water Conservation District Act (Chapter 666 of the Statutes of 1953) is repealed.

~~See. 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 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 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. 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 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 Sections 1206 to 1217, inclusive, of the Public Utilities Code.

Comment. Section 28 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Mariposa County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2036) (repealed)

SEC. 12. Section 4.9 of the Mariposa County Water Agency Act (Chapter 2036 of the Statutes of 1959) is repealed.

See: 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.

(e) 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 Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Monterey County Flood Control and Water Conservation District Act, § 29 (Stats. 1947, Ch. 699) (repealed)

SEC. 13. 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.

(e) 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 (e) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

Comment. Section 29 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**Napa County Flood Control and Water Conservation
District Act, § 29 (Stats. 1951, Ch.
1449) (repealed)**

SEC. 14. Section 29 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449 of the Statutes of 1951) is repealed.

See. 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.

(e) 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 (e) of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

Comment. Section 29 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Nevada County Water Agency Act, § 19 (Stats. 1959, Ch. 2122) (repealed)

SEC. 15. 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 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 19 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Orange County Water District Act, § 39 (Stats. 1933, Ch. 924) (amended)

SEC. 16. Section 39 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

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 uses and purposes aforesaid, all waters and water rights belonging to this state within the district.

Comment. The first two sentences of Section 39 are superseded by the more general provisions of the Eminent Domain Law. See Code Civ. Proc. § 1240.510 *et seq.* (compatible uses). The portion of Section 39 that provided substitute condemnation authority is superseded by Code of Civil Procedure Section 1240.330.

**Placer County Water Agency Act, § 4.9 (Stats. 1957,
Ch. 1234) (repealed)**

SEC. 17. 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.

Comment. Section 4.9 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Riverside County Flood Control and Water Conservation District Act, § 35 (Stats. 1945, Ch. 1122) (repealed)

SEC. 18. 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.~~

Comment. Section 35 is superseded by Code of Civil Procedure Section 1240.330.

Sacramento County Water Agency Act, § 4.9 (Stats. 1952, 1st Ex. Sess., Ch. 10) (repealed)

SEC. 19. 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 agreement 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.~~

Comment. Section 4.9 is superseded by Code of Civil Procedure Section 1240.330.

San Benito County Water Conservation and Flood Control District Act, § 33 (Stats. 1953, Ch. 1598) (repealed)

SEC. 20. Section 33 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598 of the Statutes of 1953) 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. 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 8 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 1933.

Comment. Section 33 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

San Bernardino County Flood Control Act, § 25 (Stats. 1939, Ch. 73) (amended)

SEC. 21. Section 25 of the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939) is amended to read:

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.

Comment. The portion of Section 25 that provided substitute condemnation authority is superseded by Code of Civil Procedure Section 1240.330.

San Diego County Flood Control District Act, § 39
 (Stats. 1966, 1st Ex. Sess., Ch. 55) (repealed)

SEC. 22. Section 39 of the San Diego County Flood Control District Act (Chapter 55 of the Statutes of 1966, First Extraordinary Session) is repealed.

See. 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.

(e) 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 39 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

San Joaquin County Flood Control and Water Conservation District Act, § 33 (Stats. 1956, 1st Ex. Sess., Ch. 46) (repealed)

SEC. 23. 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.

~~(e) 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 33 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

San Luis Obispo County Flood Control and Water Conservation District Act, § 29 (Stats. 1945, Ch. 1294) (repealed)

SEC. 24. 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:

~~(e)~~ 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 ~~(e)~~ of Section 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

Comment. Section 29 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

**San Mateo County Flood Control District Act, § 31
(Stats. 1959, Ch. 2108) (repealed)**

SEC. 25. 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 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.~~

Comment. Section 31 is superseded by Code of Civil Procedure Section 1240.330.

**Santa Barbara County Flood Control and Water
Conservation District Act, § 30 (Stats.
1955, Ch. 1057) (repealed)**

SEC. 26. 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.

Comment. Section 30 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Santa Barbara County Water Agency Act, § 4.9 (Stats. 1945, Ch. 1501) (repealed)

SEC. 27. Section 4.9 of the Santa Barbara County Water Agency Act (Chapter 1501 of the Statutes of 1945) is repealed.

Sec. 4.9. If by any judgment in condemnation or by agreement 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.

Comment. Section 4.9 is superseded by Code of Civil Procedure Section 1240.330.

Santa Clara Valley Water District Act, § 29 (Stats. 1951, Ch. 1405) (repealed)

SEC. 28. Section 29 of the Santa Clara Valley Water District Act (Chapter 1405 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 43 of the Public Utilities Act as amended by Chapter 855 of the Statutes of 1933.

Comment. Section 29 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Shasta County Water Agency Act, § 58 (Stats. 1957, Ch. 1512) (repealed)

SEC. 29. 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 agreement 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.~~

Comment. Section 58 is superseded by Code of Civil Procedure Section 1240.330.

Solano County Flood Control and Water Conservation District Act, § 4.8 (Stats. 1951, Ch. 1656) (repealed)

SEC. 30. 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.~~

Comment. Section 4.8 is superseded by Code of Civil Procedure Section 1240.330.

Sutter County Water Agency Act, § 4.9 (Stats. 1959, Ch. 2088) (repealed)

SEC. 31. 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.~~

Comment. Section 4.9 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Tulare County Flood Control District Act, § 32 (Stats. 1969, Ch. 1149) (repealed)

SEC. 32. 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.~~

Comment. Section 32 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Tuolumne County Water Agency Act, § 20 (Stats. 1969, Ch. 1236) (repealed)

SEC. 33. 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.

Comment. Section 20 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Ventura County Flood Control Act, § 29 (Stats. 1944, 2nd Ex. Sess., Ch. 44) (amended)

SEC. 34. Section 29 of the Ventura County Flood Control Act (Chapter 44 of the Statutes of 1944, Second Extraordinary Session) is amended to read:

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.~~

Comment. The portion of Section 29 that provided substitute condemnation authority is superseded by Code of Civil Procedure Section 1240.330.

Yuba-Bear River Basin Authority Act, § 19 (Stats. 1959, Ch. 2131) (repealed)

SEC. 35. 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.

Comment. Section 19 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Yuba County Water Agency Act, § 4.9 (Stats. 1959, Ch. 788) (repealed)

SEC. 36. 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 1201) of Part 1 of Division 1 of the Public Utilities Code.

Comment. Section 4.9 is superseded by Section 1240.330 of the Code of Civil Procedure and Section 861 of the Public Utilities Code.

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 37. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 6

An act to amend Section 7 of the Alpine County Water Agency Act (Chapter 1896 of the Statutes of 1961), to amend Section 3.4 of the Amador County Water Agency Act (Chapter 2137 of the Statutes of 1959), to amend Section 10 of the Contra Costa County Water Agency Act (Chapter 518 of the Statutes of 1957), to amend Section 8 of the El Dorado County Water Agency Act (Chapter 2139 of the Statutes of 1959), to amend Section 3.4 of the Kern County Water Agency Act (Chapter 1003 of the Statutes of 1961), to amend Section 3.4 of the Mariposa County Water Agency Act (Chapter 2036 of the Statutes of 1959), to amend Section 14 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to amend Section 7 of the Nevada County Water Agency Act (Chapter 2122 of the Statutes of 1959), to amend Section 3.4 of the Placer County Water Agency Act (Chapter 1234 of the Statutes of 1957), to amend Section 3.4 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session), to amend Section 3.4 of the Santa Barbara County Water Agency Act (Chapter 1501 of the Statutes of 1945), to amend Sections 65 and 66 of, and to repeal Section 67 of, the Shasta County Water Agency Act (Chapter 1512 of the Statutes of 1957), to amend Section 3.4 of the Sutter County Water Agency Act (Chapter 2088 of the Statutes of 1959), to amend Section 8 of the Tuolumne County Water Agency Act (Chapter 1236 of the Statutes of 1969), to amend Section 8 of the Yuba-Bear River Basin Authority Act (Chapter 2131 of the Statutes of 1959), and to amend Section 3.4 of the Yuba County Water Agency Act (Chapter 788 of the Statutes of 1959), relating to eminent domain.

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

Alpine County Water Agency Act, § 7 (Stats. 1961, Ch. 1896) (amended)

SECTION 1. 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 all any 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.

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 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. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.610 *et seq.* (more necessary public use), 1240.110 (right to take any property or any interest or right in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1235.170 (“property” defined), 1240.040 and 1245.210 *et seq.* (resolution of necessity).

Amador County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2137) (amended)

SEC. 2. 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 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 any 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 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.

~~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.~~

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

Contra Costa County Water Agency Act, § 10 (Stats. 1957, Ch. 518) (amended)

SEC. 3. 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 any 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.~~

Comment. The deleted portions of Section 10 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

El Dorado County Water Agency Act, § 8 (Stats. 1959,
Ch. 2139) (amended)

SEC. 4. 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 1237, of Part 3 of the Code of Civil Procedure~~ all *any* 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.~~ 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 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.~~

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.

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Kern County Water Agency Act, § 3.4 (Stats. 1961, Ch. 1003) (amended)

SEC. 5. 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 ~~any~~ 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 .~~

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.~~

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Mariposa County Water Agency Act, § 3.4 (Stats. 1959, Ch. 2036) (amended)

SEC. 6. 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 all any 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 .~~

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.~~

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§

1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Mojave Water Agency Law, § 14 (Stats. 1959, Ch. 2146) (amended)

SEC. 7. Section 14 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

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 1237) of Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all any 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.~~

Comment. The deleted portions of Section 14 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

**Nevada County Water Agency Act, § 7 (Stats. 1959,
Ch. 2122) (amended)**

SEC. 8. 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 1237, of Part 3 of the Code of Civil Procedure all any 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.~~

~~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 Nevada 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

Placer County Water Agency Act, § 3.4 (Stats. 1957,
Ch. 1234) (amended)

SEC. 9. 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 3 of the Code of Civil Procedure~~ all any 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.

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.~~

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.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Sacramento County Water Agency Act, § 3.4 (Stats. 1952, 1st Ex. Sess., Ch. 10) (amended)

SEC. 10. 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 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 any 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 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 provisions of this act, is a public use, subject to regulation and control 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.~~

~~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.~~

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Santa Barbara County Water Agency Act, § 3.4 (Stats. 1945, Ch. 1501) (amended)

SEC. 11. 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 *any* 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.

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 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.

(e) 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.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1240.410 *et seq.* (remnants), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

**Shasta County Water Agency Act, § 65 (Stats. 1957,
Ch. 1512) (amended)**

SEC. 12. 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 *any* 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 .~~

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 provisions of the Eminent Domain Law. See Sections 1230.020 (uniform procedure) and 1240.010 (declaration that a use is a public use is unnecessary) of the Code of Civil Procedure. See also Code Civ. Proc. §§ 1240.110 (right to acquire any property or any right or interest in property), 1235.170 ("property" defined).

Shasta County Water Agency Act, § 66 (Stats. 1957, Ch. 1512) (amended)

SEC. 13. 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.

**Shasta County Water Agency Act, § 67 (Stats. 1957,
Ch. 1512) (repealed)**

SEC. 14. 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.~~

Comment. Section 67 is superseded by Section 1240.110 of the Code of Civil Procedure. See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1250.210 (identification of plaintiff).

**Sutter County Water Agency Act, § 3.4 (Stats. 1959,
Ch. 2088) (amended)**

SEC. 15. 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 3 of the Code of Civil Procedure all any 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.

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.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 ("property" defined).

**Tuolumne County Water Agency Act, § 8 (Stats. 1969,
Ch. 1236) (amended)**

SEC. 16. Section 8 of the Tuolumne County Water Agency Act (Chapter 1236 of the Statutes of 1969) 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 with Section 1237) of Part 3 of the Code of Civil Procedure~~ all *any* 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.

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.

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of

plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Yuba-Bear River Basin Authority Act, § 8 (Stats. 1959, Ch. 2131) (amended)

SEC. 17. 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 3 of the Code of Civil Procedure~~ all 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.

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.

Comment. The deleted portions of Section 8 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Yuba County Water Agency Act, § 3.4 (Stats. 1959, Ch. 788) (amended)

SEC. 18. 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 1237, of Part 3 of the Code of Civil Procedure all any 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 .

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. 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.

Comment. The deleted portions of Section 3.4 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any right or

interest in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 19. This act shall become operative only if Assembly Bill No. ____ of the 1975–76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975–76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM’N REPORTS 1 (1974).

BILL NO. 7

An act to amend Section 61 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959), to amend Section 15 of the Bighorn Mountains Water Agency Law (Chapter 1175 of the Statutes of 1969), to amend Section 15 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to amend Section 5 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), to amend Section 11 of the Crestline-Lake Arrowhead Water Agency Act (Chapter 40 of the Statutes of 1962, First Extraordinary Session), to amend Section 15 of the Desert Water Agency Law (Chapter 1069 of the Statutes of 1961), to amend Section 26 of the Kings River Conservation District Act (Chapter 931 of the Statutes of 1951), to amend Section 2 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933), to amend Section 15 of the San Geronio Pass Water Agency Law (Chapter 1435 of the Statutes of 1961), and to amend Section 2 of, and to repeal Section 26 of, the Water Conservation Act of 1927 (Chapter 91 of the Statutes of 1927), relating to eminent domain.

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

Antelope Valley-East Kern Water Agency Law, § 61
(Stats. 1959, Ch. 2146) (amended)

SECTION 1. 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 dispose 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, 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;

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 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;

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 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;

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~~ . *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;

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 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.~~ 10. 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.~~ 11. 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;

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.

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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). Former subdivision 11 was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

Bighorn Mountains Water Agency Law, § 15 (Stats. 1969, Ch. 1175) (amended)

SEC. 2. 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;

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 .~~ *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.*

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 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.~~ 16. 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:~~ 17. 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:~~ 18. 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. 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.~~ 19. 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.~~ 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, 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.

(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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). Former subdivision 16 was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

Castaic Lake Water Agency Law, § 15 (Stats. 1962, 1st Ex. Sess., Ch. 28) (amended)

SEC. 3. 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 relative to the exercise of such right, the agency shall have all of the rights, powers and privileges of a city; provided, the~~ *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.

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.

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.~~

~~15.~~ 14. 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.~~ 15. 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 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.

~~17.~~ *16.* 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.~~ *17.* 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 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. § 1230.020. Former subdivision 14 was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

County Water Authority Act, § 5 (Stats. 1943, Ch. 545) (amended)

SEC. 4. 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 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 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 (\$0.05) 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 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.

(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 1230.020 of the Code of Civil Procedure.

Crestline-Lake Arrowhead Water Agency Act, § 11 (Stats. 1962, 1st Ex. Sess., Ch. 40) (amended)

SEC. 5. 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.

(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 .~~ 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.

(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 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)~~ (16) 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)~~ (17) 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)~~ (18) 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 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)~~ (19) 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)~~ (20) 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)~~ (21) 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)~~ (22) 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)~~ (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 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.

(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)~~ (24) 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)~~ (25) 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.110 (right to take any property or any right or interest in property). See also Code Civ. Proc. § 1235.170 (“property” defined). Former subdivision (16) was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

**Desert Water Agency Law, § 15 (Stats. 1961, Ch. 1069)
(amended)**

SEC. 6. 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 property of every kind, within or without the Desert Water Agency;
5. To acquire, or contract to acquire, waterworks or a waterwork 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 Desert 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; 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 Palm 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 .~~ *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 not 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; provided, however, that the agency may exercise the right of eminent domain for the condemnation of property outside the boundaries of the agency for the acquisition of rights-of-way in any county in which territory of the agency is located or in any county adjacent to such county without obtaining the consent thereto of the board of supervisors thereof. When the agency proposes to exercise the power of eminent domain, under this section, for the condemnation of property outside the boundaries of the agency for the acquisition of rights-of-way in any county in which territory of the agency 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. The agency shall have the power to acquire by 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 Palm 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.

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 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. 16. 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.~~ 17. 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.~~ 18. 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. 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.~~ 19. 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.~~ 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, 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.

24. To use the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 for the construction of any facilities authorized to be constructed under the provisions of this act. The powers and duties conferred by such improvement acts 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 such improvement acts to

proceedings instituted by the Desert Water Agency, the terms used in such improvement acts shall have the following meanings:

(a) "City council", "council," or legislative body 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 of the agency.

(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.

(i) "Auditor" means the county auditor.

Any certificates or documents required by such improvement acts 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.

25. To disseminate information concerning the rights, properties, and activities of the agency.

Comment. The deleted portions of subdivision 9 of Section 15 are superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). Former subdivision 16 was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

Kings River Conservation District Act, § 26 (Stats. 1951, Ch. 931) (amended)

SEC. 7. 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 waterworks and other works and machinery, canals, conduits, and reservoirs and to purchase, lease or otherwise acquire water rights, storage rights, storage sites, watersheds, 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.

(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 exercise the right of eminent domain to take any 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.*

(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.

(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 (*commencing with Section 7051*), 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, watersheds, watercourses, 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 (*commencing with Section 23175*) of Part 6 of Division 11 of the Water Code, as such provisions now exist; 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 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 floodwaters, 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.

(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. § 1230.020.

Orange County Water District Act, § 2 (Stats. 1933, Ch. 924) (amended)

SEC. 8. 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 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;

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 so do: ~~Subject to the express limitations herein before 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 1230.020 of the Code of Civil Procedure.

San Gorgonio Pass Water Agency Law, § 15 (Stats. 1961, Ch. 1435) (amended)

SEC. 9. 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 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 .~~ *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.

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 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. 16.~~ 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. 17.~~ 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 Geronio Pass Water Agency.

~~19. 18.~~ 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 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.~~ 19. 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.~~ 20. 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.~~ 21. 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.~~ 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 the agency.

~~24.~~ 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 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 Gorgonio Pass Water Agency.

~~25.~~ 24. 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.110 (right to take any property or any right or interest in property). See also Code Civ. Proc. § 1235.170 (“property” defined). Former subdivision 16 was unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

Water Conservation Act of 1927, § 2 (Stats. 1927, Ch. 91) (amended)

SEC. 10. 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 accomplish 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 1230.020 of the Code of Civil Procedure.

Water Conservation Act of 1927, § 26 (Stats. 1927, Ch. 91) (repealed)

SEC. 11. Section 26 of the Water Conservation Act of 1927 (Chapter 91 of the Statutes of 1927) is repealed.

~~See: 26. Condemnation Proceedings. 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 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.~~

Comment. Section 26 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1250.210 (identification of plaintiff).

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 12. This act shall become operative only if Assembly Bill No. ____ of the 1975-76 Regular Session is chaptered and becomes operative on or before January 1, 1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

BILL NO. 8

An act to amend Section 80 of the Bethel Island Municipal Improvement District Act (Chapter 22 of the Statutes of 1960, First Extraordinary Session), to amend Sections 5 and 7 of the Contra Costa County Storm Drainage District Act (Chapter 1532 of the Statutes of 1953), to repeal Section 19 of Chapter 158 of the Statutes of 1885, to amend Section 14 of, and to repeal Section 16, of the Drainage District Act of 1903 (Chapter 238 of the Statutes of 1903), to amend Section 22 of the Drainage District Improvement Act of 1919 (Chapter 354 of the Statutes of 1919), to amend Section 81 of the Embarcadero Municipal Improvement District Act (Chapter 81 of the Statutes of 1960, First Extraordinary Session), to amend Section 81 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), to amend Section 44 of the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951), to amend Section 6.3 of the Fresno Metropolitan Transit District Act of 1961 (Chapter 1932 of the Statutes of 1961), to amend Section 80 of the Guadalupe Valley Municipal Improvement District Act (Chapter 2037 of the Statutes of 1959), to amend Section 30 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), to amend Section 5 of Chapter 99 of the Statutes of 1913, to amend Section 35 of the Lake Cuyamaca Recreation and Park District Act (Chapter 1654 of the Statutes of 1961), to amend Section 141 of the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), to amend Section 45 of the Montalvo Municipal Improvement District Act (Chapter 549 of the Statutes of 1955), to amend Section 3 of the Monterey Peninsula Airport District Act (Chapter 52 of the Statutes of 1941), to amend Section 4.8 of, and to repeal Section 4.9 of, the Mount San Jacinto Winter Park Authority Act (Chapter 1040 of the Statutes of 1945), to amend Section 51 of the Mountain View Shoreline Regional Park Community Act (Chapter 1109 of the Statutes of 1969), to amend Section 6 of Chapter 201 of the Statutes of 1895, to repeal Section 15 of Chapter 25 of the Statutes of

1907, to amend Section 5 of Chapter 361 of the Statutes of 1915, to amend Section 27 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), to amend Section 45 of the Solvang Municipal Improvement District Act (Chapter 1635 of the Statutes of 1951), to amend Section 141 of the Tahoe-Truckee Sanitation Agency Act (Chapter 1560 of the Statutes of 1971), to amend Section 2 of, and to repeal Section 23 of, the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session), to amend Section 6.6 of the West Bay Rapid Transit Authority Act (Chapter 104 of the Statutes of 1964, First Extraordinary Session), and to amend Section 15 of Chapter 310 of the Statutes of 1905, relating to eminent domain.

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

**Bethel Island Municipal Improvement District Act, § 80
(Stats. 1960, 1st Ex. Sess., Ch. 22) (amended)**

SECTION 1. 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 domain ~~for the condemnation of private property for public use~~, within but not without the county in which the district is located, *to take any property necessary to carry out any of the objects or purposes of 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.*

Comment. Section 80 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020. 1230.020.

**Contra Costa County Storm Drainage District Act, § 5
(Stats. 1953, Ch. 1532) (amended)**

SEC. 2. 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~~

~~eases where land may be required for public use by said district, the district, or its agents in charge of such use; . For such purposes, the district shall have the right of access through its authorized representatives 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 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, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.~~

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 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 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.

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), 1240.040 and 1245.210 *et seq.* (resolution of necessity). See also Code Civ. Proc. § 1245.010 *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. §§ 1235.170, 1240.110. 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. § 1240.130; *cf.* Code Civ. Proc. § 1230.030.

Contra Costa County Storm Drainage District Act, § 7 (Stats. 1953, Ch. 1532) (amended)

SEC. 3. 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~~ . 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 .~~ 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.~~

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.

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~~ *Drainage* 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.010 (declaration that a use is a public use is unnecessary), 1240.110 (right to take any property or any interest or right in property), 1240.310 *et seq.* (taking for exchange), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity), 1235.170 (“property” defined).

**Drainage District Act of 1885, § 19 (Stats. 1885,
Ch. 158) (repealed)**

SEC. 4. Section 19 of 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 herein provided for must be made thereinunder.~~

Comment. Section 19 is unnecessary. See Code Civ. Proc. § 1230.020.

**Drainage District Act of 1903, § 14 (Stats. 1903,
Ch. 238) (amended)**

SEC. 5. 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 documents; 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,

watergates, 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 bylaws, rules and regulations 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.

Comment. The deleted portions of Section 14 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1245.010 (preliminary location), 1240.030 (requirement of proper location), 1235.170 (“property” defined), 1240.110 (right to acquire any interest or right in property).

Drainage District Act of 1903, § 16 (Stats. 1903, Ch. 238) (repealed)

SEC. 6. 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.~~

Comment. Section 16 is unnecessary. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration of public use unnecessary), 1250.210 (identification of plaintiff).

**Drainage District Act of 1919, § 22 (Stats. 1919,
Ch. 354) (amended)**

SEC. 7. Section 22 of the Drainage District Improvement 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 cannot purchase at a reasonable price or procure ~~the right of way, or any lands~~ *any property* 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~~.

The costs of such ~~rights of way~~ *property* 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 18 of this act.

Comment. The deleted portions of Section 22 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.110 (right to acquire any interest or right in property). See also Code Civ. Proc. §§ 1235.170 ("property" defined), 1240.130 (acquisition by means other than condemnation); *cf.* Code Civ. Proc. § 1230.030.

**Embarcadero Municipal Improvement District Act, § 81
(Stats. 1960, 1st Ex. Sess., Ch. 81) (amended)**

SEC. 8. Section 81 of the Embarcadero Municipal Improvement District Act (Chapter 81 of the Statutes of 1960, First Extraordinary Session) is amended to read:

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, *to take any property necessary to carry out any*

of the objects or purposes of 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.

Comment. Section 81 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

Estero Municipal Improvement District Act, § 81 (Stats. 1960, 1st Ex. Sess., Ch. 82) (amended)

SEC. 9. Section 81 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

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 , *to take any property necessary to carry out any of the objects or purposes of 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.*

Comment. Section 81 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

Fairfield-Suisun Sewer District Act, § 44 (Stats. 1951, Ch. 303) (amended)

SEC. 10. Section 44 of the Fairfield-Suisun Sewer District Act (Chapter 303 of the Statutes of 1951) is amended to read:

Sec. 44. The district ~~has and~~ may exercise the right of eminent domain *to acquire any property necessary to carry out any of the objects or purposes of the district pursuant to the provisions of Title 7, Part 3 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. § 1230.020.

**Fresno Metropolitan Transit District Act of 1961,
§ 6.3 (Stats. 1961, Ch. 1932) (amended)**

SEC. 11. Section 6.3 of the Fresno Metropolitan Transit District Act of 1961 (Chapter 1932 of the Statutes of 1961) is amended to read:

Sec. 6.3. The district ~~shall have or 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 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.

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.

Comment. Section 6.3 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 *et seq.* (compatible use), 1240.610 (more necessary public use), 1250.210 (identification of plaintiff).

**Guadalupe Valley Municipal Improvement District Act,
§ 80 (Stats. 1959, Ch. 2037) (amended)**

SEC. 12. Section 80 of the Guadalupe Valley Municipal Improvement District Act (Chapter 2037 of the Statutes of 1959) is amended to read:

Sec. 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 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. § 1230.020.

**Humboldt Bay Harbor, Recreation, and Conservation
District Act, § 30 (Stats. 1970, Ch. 1283)
(amended)**

SEC. 13. 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 to 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 portions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

**Knight's Landing Ridge Drainage District Act, § 5
(Stats. 1913, Ch. 99) (amended)**

SEC. 14. Section 5 of Chapter 99 of the Statutes of 1913 is amended to read:

Sec. 5. The board of drainage commissioners shall have power to adopt bylaws 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, any property and material~~, whether outside or 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 VII part 3 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 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 Bypass in Section 8, 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 Bypass in said Section 8, 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use), 1240.110 (right to acquire any interest or right in property), 1250.210 (identification of plaintiff). See also Code Civ. Proc. §§ 1235.170 (“property” defined), 1240.130 (acquisition by means other than condemnation); *cf.* Code Civ. Proc. § 1230.030.

Lake Cuyamaca Recreation and Park District Act, § 35
(Stats. 1961, Ch. 1654) (amended)

SEC. 15. 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 *to take any property necessary to carry out any of the objects or purposes of this act*, 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.

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.

**Metropolitan Water District Act, § 141 (Stats. 1969,
Ch. 209) (amended)**

SEC. 16. 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 to 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.~~

Comment. Section 141 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

Montalvo Municipal Improvement District Act, § 45
(Stats. 1955, Ch. 549) (amended)

SEC. 17. 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 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.~~

Comment. Section 45 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

Monterey Peninsula Airport District Act, § 3 (Stats. 1941, Ch. 52) (amended)

SEC. 18. 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 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 percent (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 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.

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 equip and maintain a police department; 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. §§ 1230.020 (uniform procedure), 1240.610 *et seq.* (more necessary public use). See also Code Civ. Proc. § 1240.510 (compatible use).

Mount San Jacinto Winter Park Authority Act, § 4.8
(Stats. 1945, Ch. 1040) (amended)

SEC. 19. Section 4.8 of the Mount San Jacinto Winter Park Authority Act (Chapter 1040 of the Statutes of 1945) is amended to read:

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~~, to 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~~ *Public Utilities* 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~~ *Public Utilities* 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.

Comment. The revisions of Section 4.8 are nonsubstantive technical corrections. See Code Civ. Proc. §§ 1240.110 (right to acquire any property or right or interest in property), 1235.170 (“property” defined). The California Railroad Commission has been replaced by the Public Utilities Commission. Cal. Const., Art. XII, § 22.

Mount San Jacinto Winter Park Authority Act, § 4.9
(Stats. 1945, Ch. 1040) (repealed)

SEC. 20. 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.~~

~~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. §§ 1240.040 and 1245.210 *et seq.* (resolution of necessity).

**Mountain View Shoreline Regional Park Community Act,
§ 51 (Stats. 1969, Ch. 1109) (amended)**

SEC. 21. Section 51 of the Mountain View Shoreline Regional Park Community Act (Chapter 1109 of the Statutes of 1969) is amended to read:

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 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 be exercised in the unincorporated portions of the community without the prior consent of the board of supervisors, expressed by resolution.~~

Comment. The deleted portions of Section 51 are superseded by the provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary).

**Protection District Act of 1895, § 6 (Stats. 1895,
Ch. 201) (amended)**

SEC. 22. Section 6 of 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 let to the lowest bidder; provided, however, that at the time flood waters shall threaten the levee 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. § 1230.020 (uniform procedure). See also Code Civ. Proc. §§ 1240.110 (right to acquire any property or any right or interest in property), 1235.170 ("property" defined).

Protection District Act of 1907, § 15 (Stats. 1907, Ch. 25) (repealed)

SEC. 23. Section 15 of 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.~~

Comment. Section 15 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1250.210 (identification of plaintiff).

**Sacramento River West Side Levee District Act, § 5
(Stats. 1915, Ch. 361) (amended)**

SEC. 24. Section 5 of Chapter 361 of the Statutes of 1915 is amended to read:

Sec. 5. The board of levee commissioners shall have power to adopt bylaws 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,~~ any 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 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. §§ 1230.020 (uniform procedure), 1240.110 *et seq.* (more necessary public use), 1240.110 (right to acquire any property or any interest or right in property). See also Code Civ. Proc. §§ 1235.170 (“property” defined), 1240.130 (acquisition by means other than condemnation); *cf.* Code Civ. Proc. § 1230.030.

San Diego Unified Port District Act, § 27 (Stats. 1962, 1st Ex. Sess., Ch. 67) (amended)

SEC. 25. 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~~ to 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. § 1230.020.

Solvang Municipal Improvement District Act, § 45 (Stats. 1951, Ch. 1635) (amended)

SEC. 26. 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.

Comment. Section 45 is amended to delete provisions superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020.

Tahoe-Truckee Sanitation Agency Act, § 141 (Stats. 1971, Ch. 1560) (amended)

SEC. 27. 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 to 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, the agency~~ 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.

Comment. The deleted portions of Section 141 are superseded by the Eminent Domain Law. See Code Civ. Proc. § 1230.020 (uniform procedure).

Vallejo Sanitation and Flood Control District Act, § 2
(Stats. 1952, 1st Ex. Sess., Ch. 17) (amended)

SEC. 28. 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 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. 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 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 1230.020 of the Code of Civil Procedure. Consistent with subdivisions (d) and (e), subdivision (f) authorizes extraterritorial condemnation.

Vallejo Sanitation and Flood Control District Act, § 23
(Stats. 1952, 1st Ex. Sess., Ch. 17) (repealed)

SEC. 29. Section 23 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is repealed.

See. 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.

Comment. Section 23 is superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.010 (declaration that a use is a public use is unnecessary), 1250.210 (identification of plaintiff).

West Bay Rapid Transit Authority Act, § 6.6 (Stats. 1964, 1st Ex. Sess., Ch. 104) (amended)

SEC. 30. 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 may~~ 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.~~ The authority may to 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 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.~~ 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. §§ 1230.020 (uniform procedure), 1255.410 *et seq.* (possession prior to judgment), 1240.610 *et seq.* (more necessary public use), 1250.210 (identification of plaintiff).

Levee districts—Stats. 1905, Ch. 310, § 15 (amended)

SEC. 31. Section 15 of Chapter 310 of the Statutes of 1905, as amended by Chapter 270 of the Statutes of 1907, is amended to read:

Sec. 15. The board of trustees shall have power ; ~~in the name 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 protecting 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. §§ 1230.020 (uniform procedure), 1235.170 (“property” defined), 1250.210 (identification of plaintiff).

Bill Contingent Upon Enactment of Comprehensive Eminent Domain Statute

SEC. 32. This act shall become operative only if Assembly Bill No. ____ of the 1975–76 Regular Session is chaptered and becomes operative on or before January 1,

1977, and, in such case, shall become operative at the same time as Assembly Bill No. ____ of the 1975-76 Regular Session.

Note. The bill referred to is the separately published comprehensive eminent domain law. See *Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974).

(1530-1600 blank)