

WATER CODE - WAT

DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES [10000 - 12999]

(Heading of Division 6 amended by Stats. 1957, Ch. 1932.)

PART 4.8. DELTA FLOOD PROTECTION [12300 - 12318]

(Part 4.8 added by Stats. 1988, Ch. 28, Sec. 3.)

CHAPTER 1. Delta Flood Protection Fund [12300 - 12303]

(Chapter 1 added by Stats. 1988, Ch. 28, Sec. 3.)

12300.

(a) The Delta Flood Protection Fund is hereby created in the State Treasury. There shall be deposited in the fund all moneys appropriated to the fund, including authorized proceeds from the sale of bonds, and all income derived from the investment of moneys that are in the fund.

(b) It is the intent of the Legislature to appropriate, in accordance with Section 12938, twelve million dollars (\$12,000,000) each year through fiscal year 1998–99 to the Delta Flood Protection Fund from moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. It is further the intent of the Legislature to appropriate annually moneys in the Delta Flood Protection Fund to the department for expenditure and allocation, without regard to fiscal years, in the following amounts and for the following purposes:

(1) Six million dollars (\$6,000,000) annually for local assistance under the delta levee maintenance subventions program pursuant to Part 9 (commencing with Section 12980), and for the administration thereof.

(2) Six million dollars (\$6,000,000) annually for special delta flood protection projects under Chapter 2 (commencing with Section 12310) and subsidence studies and monitoring, and the administration thereof. These funds shall only be allocated for projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and at other locations in the delta and for the Towns of Thornton and Walnut Grove and for approximately 12 miles of levees on islands bordering the Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough.

(3) Additional moneys as they may become available from proceeds from the sale of bonds issued by the state.

(c) Any moneys unexpended at the end of a fiscal year shall revert to the Delta Flood Protection Fund and shall be available for appropriation by the Legislature for the purposes specified in subdivision (b).

(d) It is the intent of the Legislature that, to the extent consistent with Sections 12314, 12987, and 78543, projects funded under subdivision (b) shall be consistent with the delta ecosystem restoration strategy of the CALFED Bay-Delta Program.

(Amended by Stats. 2006, Ch. 548, Sec. 2. Effective September 28, 2006.)

12301.

The Delta Flood Protection Fund is hereby abolished on July 1, 2010, and all unencumbered moneys in the fund are transferred to the General Fund.

(Amended by Stats. 2006, Ch. 548, Sec. 3. Effective September 28, 2006.)

12303.

(a) It is the intent of the Legislature that, subject to subdivision (b) of Section 12929.12, if twelve million dollars (\$12,000,000) or any lesser amount is transferred pursuant to paragraph (3) of subdivision (b) of Section 12937 to the California Water Fund from the California Water Resources Development Bond Fund in each of the fiscal years 1990–91 to 1997–98, inclusive, and if six million dollars (\$6,000,000) or any lesser amount is so transferred in the 1998–99 fiscal year, that amount shall be appropriated to the Delta Flood Protection Fund for the purposes specified in subdivision (b) of Section 12300, in lieu of the funds deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. However, that the director, in consultation with the Department of Finance, may accelerate payments to the California Water Fund for reappropriation to the Delta Flood Protection Fund if the director deems it appropriate to do so.

(b) The obligation of the State Water Resources Development System to reimburse the California Water Fund, pursuant to paragraph (3) of subdivision (b) of Section 12937, shall decrease by amounts equal to the amounts which are transferred from the California Water Resources Development Bond Fund to the California Water Fund and appropriated to the Delta Flood Protection Fund pursuant to subdivision (a).

(c) For any fiscal year, the Director of Finance, in consultation with the Director of Water Resources, may recommend in the Budget Act a source of funding for the Delta Flood Protection Fund which is different from that set forth in subdivision (a). If the Legislature approves the alternative source of funding, the portion of the State Water Resources Development System obligation specified in subdivision (b) which remains outstanding because of the selection of the

alternative funding source shall be discharged pursuant to subdivision (b) of Section 11913.

(d) It is the intent of the Legislature, upon the creation of the Delta Levee Rehabilitation Subaccount pursuant to Section 78540, as proposed to be added by S.B. 900 of the 1995–96 Regular Session, that subdivisions (a), (b), and (c) shall not apply to the Delta Levee Rehabilitation Subaccount and that the funds of the subaccount shall be available to fund equally both of the following:

(1) The delta levee maintenance subventions program pursuant to Part 9 (commencing with Section 12980), associated mitigation and habitat improvement programs, and the administration thereof.

(2) The special delta flood protection projects pursuant to Chapter 2 (commencing with Section 12310), associated mitigation and habitat improvement programs, and the administration thereof.

(Amended by Stats. 1996, Ch. 601, Sec. 3. Effective January 1, 1997.)

HAPTER 1.5. Environmental Mitigation and Protection Requirements [12306 - 12307]

(Chapter 1.5 added by Stats. 1991, Ch. 1140, Sec. 1.)

12306.

This chapter applies to special flood control projects subject to Chapter 2 (commencing with Section 12310) and to the payment of delta levee subventions under Part 9 (commencing with Section 12980).

(Added by Stats. 1991, Ch. 1140, Sec. 1.)

12306.5.

The Resources Agency shall supervise the implementation of the programs subject to this chapter.

(Added by Stats. 1991, Ch. 1140, Sec. 1.)

12307.

(a) The Resources Agency, the department, the Reclamation Board, and the Department of Fish and Game shall enter into a memorandum of understanding to coordinate the implementation of the programs subject to this chapter.

(b) The memorandum of understanding shall provide that the Department of Fish and Game shall enforce any mitigation requirements involving programs subject to this chapter.

(Added by Stats. 1991, Ch. 1140, Sec. 1.)

CHAPTER 2. Special Flood Control Projects [12310 - 12318]

(Chapter 2 added by Stats. 1988, Ch. 28, Sec. 3.)

12310.

As used in this chapter, the following terms have the following meanings:

(a) "Local public agency" means a reclamation district or levee district or other public agency responsible for the maintenance of a nonproject levee as defined in subdivision (e) of Section 12980 or a project levee as defined in subdivision (f) of Section 12980.

(b) "Project" means the flood control improvement and any mitigation and habitat improvement constructed, or interests in land acquired, for those purposes pursuant to this part.

(c) "Department" means the Department of Water Resources.

(d) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.

(e) "Net long-term habitat improvement" means enhancement of riparian, fisheries, and wildlife habitat.

(f) "CALFED Bay Delta Program" or "CALFED program" means the program established in May 1995 as a joint effort among state and federal agencies with management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin River Delta to develop long-term solutions to resource management problems involving the bay-delta.

(Amended by Stats. 1999, Ch. 779, Sec. 4. Effective October 10, 1999.)

12311.

(a) The department shall develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and at other locations in the delta and for the Towns of Thornton and Walnut Grove, and for approximately 12 miles of levees on islands bordering Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough. This program shall have, as its primary purpose, the protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and fish and wildlife

habitats, and other public benefits. The program shall also include net long-term habitat improvement.

(b) Notwithstanding subdivision (a), the department shall develop and recommend a plan of action, including alternatives, for flood control for the Towns of Thornton and Walnut Grove and shall submit the plan to the Legislature by January 1, 1989. The department shall not allocate any funds for implementation of the plan of action for flood control for the Towns of Thornton and Walnut Grove until a plan is approved by the Legislature.

(Amended by Stats. 1996, Ch. 601, Sec. 5. Effective January 1, 1997.)

12312.

The department may expend any moneys available to it pursuant to paragraph (2) of subdivision (b) of Section 12300 or any moneys available from other sources of funding appropriated by the Legislature for the purposes of this part. In addition, the department shall seek a sharing of costs with the beneficiaries or owners or operators of the public facilities benefited by the flood protection projects. The department shall also seek cost sharing with, or financial assistance from, federal agencies which have programs applicable to, or which have an interest in, the flood protection projects.

(Amended by Stats. 1996, Ch. 601, Sec. 6. Effective January 1, 1997.)

12313.

(a) The department shall develop a list of areas where flood control work is needed to protect public facilities or provide public benefits. In developing the list, the department shall consult with all appropriate federal, state, and local agencies. The list shall establish a priority for the areas based upon both of the following:

(1) The importance or degree of public benefit needing protection.

(2) The need for flood protective work.

(b) The list shall be submitted to the California Water Commission for approval, and shall be updated by the department, with the approval of the California Water Commission, as the department may deem appropriate.

(Added by Stats. 1988, Ch. 28, Sec. 3. Effective March 14, 1988.)

12314.

(a) Guided by the approved priority list developed pursuant to Section 12313, the department shall develop project plans to accomplish the needed flood protection work in cooperation with the local public agency, the public beneficiary, and the Department of Fish and Game.

(b) The plans shall be subject to the approval of the appropriate local public agency or agencies and subject to any cost-sharing agreement the department may have entered into under Section 12312. Project plans may include, or be a combination of, the improvement, rehabilitation, or modification of existing levees, and the conveyance of interests in land to limit or to modify land management practices which have a negative impact on flood control facilities.

(c) Project plans shall include provision for the protection of fish and wildlife habitat determined to be necessary by the Department of Fish and Game and not injurious to the integrity of flood control works. The Department of Fish and Game shall consider the value of the riparian and fisheries habitat and the need to provide greater flood protection in preparing its requirements, and shall not approve any plan which calls for the use of channel islands or berms with significant riparian communities as borrow sites for levee repair materials, unless fully mitigated, or any plans that will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

(d) After the memorandum of understanding required pursuant to Section 12307 is amended as required by Section 78543, the Department of Fish and Game shall also make a written determination as part of its review and approval of a plan or project pursuant to this section and Section 12987 that the proposed expenditures are consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the delta. The memorandum of understanding in effect prior to the amendments required by Section 78543 shall remain in effect with regard to levee projects and plans until the memorandum of understanding is amended.

(Amended by Stats. 1996, Ch. 601, Sec. 7. Effective January 1, 1997.)

12315.

Projects shall be undertaken and completed in accordance with the approved project plans. Project works may be undertaken by the department or, at the department's option, by the local public agency pursuant to an agreement with the department.

(Added by Stats. 1988, Ch. 28, Sec. 3. Effective March 14, 1988.)

12316.

In addition to any obligations assumed under an agreement with the department and to the extent consistent with that agreement, the local public agency shall do all of the following:

- (a) Provide construction access to lands or rights-of-way which it owns or maintains for flood control purposes or for purposes with which the project's required uses are compatible and necessary to complete the project.
- (b) Maintain the completed project pursuant to maintenance criteria developed and adopted in accordance with Section 12984.
- (c) Apply for federal disaster assistance, whenever eligible, under Public Law 93-288.
- (d) Hold and save the department, any other agency or department of the state, and their employees free from any and all liability for damages, except that caused by gross negligence, that may arise out of the construction, operation, or maintenance of the project.
- (e) Acquire easements from the crown along levees for the control and reversal of subsidence in areas where the department determines that such an easement is desirable to maintain structural stability of the levee. The easement shall
 - (1) restrict the use of the land to open-space uses, nontillable crops, the propagation of wildlife habitat, and other compatible uses,
 - (2) provide full access to the local agency for levee maintenance and improvement purposes, and
 - (3) allow the owner to retain reasonable rights of ingress and egress as well as reasonable rights of access to the waterways for water supply and drainage. The local public agency costs of acquisition of the easements shall be reimbursable by the department from moneys appropriated pursuant to paragraph (2) of subdivision (b) of Section 12300 or any sources of funding appropriated by the Legislature for purposes of this part.
- (f) Comply with all habitat mitigation and improvement requirements pursuant to this part.
- (g) Use subsidence control alternatives, where appropriate, to reduce long-term maintenance and improvement costs.

(Amended by Stats. 1996, Ch. 601, Sec. 8. Effective January 1, 1997.)

12318.

(a) The Resources Agency may establish a team of federal, state, and local agencies, and other persons or entities with a stake in finding a solution to the problems of the delta levees, to develop recommendations for the beneficial reuse of dredged material, consistent with actions identified by the CALFED Bay-Delta Program as core actions, which are those actions included in all bay-delta solutions. The recommendations shall address all of the following needs:

- (1) Long-term availability of cost-effective, environmentally safe, and appropriate dredged material for delta levee maintenance and improvements.
- (2) Beneficial reuse of dredged or suitable alternative materials.
- (3) Coordination of dredging projects to augment on-island stockpiles.
- (4) Development of a comprehensive monitoring program of the effects of the reuse of dredged material.
- (5) A study of the applicability and appropriateness of constructing channel sediment traps and dredged material rehandling facilities adjacent to frequently dredged channel sections.

(Added by Stats. 1996, Ch. 601, Sec. 9. Effective January 1, 1997.)