

## **DIVISION 2. DEPARTMENT OF FISH AND WILDLIFE [700 - 1940]**

*( Heading of Division 2 amended by Stats. 2015, Ch. 154, Sec. 21. )*

### **CHAPTER 7.8. Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993 [1775 - 1796]**

*( Chapter 7.8 added by Stats. 1993, Ch. 1254, Sec. 1. )*

#### **ARTICLE 1. General Provisions [1775 - 1779.5]**

*( Article 1 added by Stats. 1993, Ch. 1254, Sec. 1. )*

##### 1775.

This chapter shall be known and may be cited as the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

##### 1776.

The Legislature finds and declares the following:

- (a) Wetlands are an important natural resource of the Sacramento-San Joaquin Valley because they provide significant habitat for migratory waterfowl of the Pacific flyway, for endangered species, and for many other resident wildlife and fish populations. Wetlands provide additional public benefits, including water quality improvement, flood protection, stream bank stabilization, recreation, and scientific research.
- (b) Active and voluntary involvement by private landowners is necessary for the long-term availability and productivity of wetlands in the Sacramento-San Joaquin Valley.
- (c) Large wetland preserves in the Sacramento-San Joaquin Valley, under certain circumstances, can provide an environmentally preferable alternative to a number of small, isolated wetland preserves of the same type surrounded by urban development.
- (d) It is the policy of the state with respect to the Sacramento-San Joaquin Valley:
  - (1) To provide for the protection, preservation, restoration, enhancement, and expansion of the wetland habitat in the Sacramento-San Joaquin Valley.
  - (2) To promote the protection, preservation, restoration, enhancement, and expansion of the Sacramento-San Joaquin Valley wetlands in concert with other federal, state, and local programs, and interested parties.
  - (3) To improve cooperative efforts among private, nonprofit, and public entities for the management and protection of wetlands.
  - (4) To assure that no net loss of either wetland acreage or habitat values results from activities pursuant to this chapter in the Sacramento-San Joaquin Valley that otherwise comply with state and federal law.

(5) To encourage and maintain a predictable, efficient, and timely regulatory framework for environmentally acceptable development.

(6) To assure that the construction or maintenance of wetland mitigation banks in the Sacramento-San Joaquin Valley does not reduce any local tax base, does not create any uncompensated increased requirement for local services, and does not create conditions that have the potential to adversely affect the public health.

(7) To provide an alternative for accomplishing offsite mitigation in the Sacramento-San Joaquin Valley when offsite mitigation is required under a fill permit issued pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.).

(e) This chapter constitutes a nonexclusive alternative to other lawful methods of mitigating project impacts upon wetlands and maintaining and increasing wetlands acreage and habitat values generally. Specifically, this chapter is not intended to, and shall not be interpreted to:

(1) Condone or encourage the removal, loss, or degradation of wetlands.

(2) Condone or encourage the removal, loss, or degradation of habitat for any rare, threatened, or endangered species.

(3) Abrogate any other local, state, or federal law or policy relating to wetlands, nor prohibit any city or county from prohibiting the removal, filling, or other destruction of particular wetlands.

(4) Establish maximum or minimum standards or any other requirements for wetland fill or mitigation, except for mitigation banks established pursuant to this chapter.

(5) Have legal or necessary precedential application to any other area of the state, or to other lands, resources, situations, or circumstances.

(6) Preclude other forms of mitigation banking, including private or for-profit programs, within the Sacramento-San Joaquin Valley.

(7) Be the exclusive method of providing compensation by permittees for the loss of wetlands within the Sacramento-San Joaquin Valley.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1776.5.

It is the intent of the Legislature that the funds necessary to cover the costs of administering this chapter be provided by the purchase of credits in mitigation bank sites.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1777.

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1777.2.

“Bank site” or “mitigation bank site” means a publicly or privately owned and operated site on which wetlands have been or will be created in accordance with this chapter to compensate for adverse impacts caused by removal or fill permit activities authorized pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.). “Bank site” or “mitigation bank site” may include land on which rice is grown as long as those lands are managed as ricelands and those lands meet the other requirements of Section 1784.

*(Amended by Stats. 1995, Ch. 928, Sec. 1. Effective January 1, 1996.)*

#### 1777.5.

“Credit” means a numerical value that represents the wetland acreage and habitat values of a mitigation bank site.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1778.

“Operator” means the department, or a public or private person or entity approved by the department, to administer a wetlands mitigation bank site.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1778.5.

“Permittee” means a public or private person or entity that meets all of the following conditions:

(a) Has received a permit pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.) for the removal or filling of wetlands, subject to a condition that allows the permittee to compensate for the wetland loss through participation in a wetland mitigation bank pursuant to this chapter.

(b) Proposes to compensate for the loss of the wetlands through participation in a wetlands mitigation bank pursuant to this chapter.

(c) Proposes the discharge at a site within a qualifying urban area and not more than 40 miles from a bank site with sufficient acreage of the same types of wetlands that will provide suitable replacement habitat for the values that may be lost from the conversion of the existing wetlands.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1779.

“Qualifying urban area” means any of the following when they occur within the Sacramento-San Joaquin Valley:

(a) A geographical area having a population of 50,000 or more inhabitants within the jurisdiction of a city, or a town, as defined by Sections 20 and 21 of the Government Code.

(b) A portion of any geographical area within a town, as defined in Section 21 of the Government Code, which has a population density equal to, or exceeding, 1,500 persons per square mile and which has a population of 50,000 or more inhabitants.

(c) A geographical area having a population density equal to, or exceeding, 1,500 persons per square mile, and an adjacent city, as defined in Section 20 of the Government Code, where the combined population of the geographical area and the city equals 50,000 or more inhabitants.

(d) A geographical area within the sphere of influence of a city or community services district for which the projected population of the adopted general plan equals 10,000 or more inhabitants.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1779.5.

“Sacramento-San Joaquin Valley” means the central valley region, as defined in subdivision (g) of Section 13200 of the Water Code.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

### **ARTICLE 2. Legislative Goals [1780 - 1781]**

*( Article 2 added by Stats. 1993, Ch. 1254, Sec. 1. )*

#### 1780.

The purpose of this chapter is to ensure that no net loss of wetland acreage or habitat values within the Sacramento-San Joaquin Valley occurs as a result of fill permit activities pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.).

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1781.

It is the state’s goal to increase the total wetlands acreage and values within the Sacramento-San Joaquin Valley.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

### **ARTICLE 3. Wetlands Mitigation Banks [1784 - 1787]**

*( Article 3 added by Stats. 1993, Ch. 1254, Sec. 1. )*

#### 1784.

(a) The department, in cooperation with those agencies specified in Section 1786, shall adopt regulations that establish standards and criteria for the bank site qualification process, for the evaluation of wetland habitat acreage and

values created at the bank sites, and for the operation and evaluation of bank sites, and any other regulations that are necessary to implement this chapter. These criteria shall require, at a minimum, that the newly created wetland provide the hydrologic, vegetative, and wildlife characteristics, including the food web components, of a naturally occurring wetland system that is equal to the site being mitigated.

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

- (1) A requirement that the bank site have a reliable, adequate, and available water supply necessary to provide wetland values. For wetlands dependent only on rainfall, rainfall satisfies this requirement.
- (2) The relative ease or difficulty of converting uplands into wetlands at the bank site.
- (3) The anticipated maintenance necessary to sustain the recreated and created wetlands at the bank site.
- (4) The proximity of the bank site to other established preserves or natural features historically associated with abundant wildlife values.
- (5) The proximity of the bank site to urban or populated areas that could reduce the bank site's long-term biological values.
- (6) The demonstrated ability of the bank site operator to create, administer, maintain, and protect the bank site in perpetuity in its enhanced state, including financial, technical, and management ability.
- (7) The relative abundance or scarcity of the wetland type to be created at the bank site.

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

- (1) The lands are lands on which rice was grown after January 1, 1996. For purposes of this paragraph, to qualify as new wetland values, rice shall not have been grown on the lands for 10 years before the application is submitted pursuant to Section 1785.
- (2) The lands are lands on which rice was grown before January 1, 1996. These lands shall qualify only if there is an increase in wetland habitat value that is equal to the site being mitigated. For purposes of this paragraph, a wetland value shall only be provided for lands on which rice was grown that are proposed for wetlands mitigation for the period when that land is flooded between the harvesting of rice and the planting of the next crop. This paragraph shall apply only to lands that were not flooded after harvest between January 1, 1982, and January 1, 1992.

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

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

*(Amended by Stats. 1996, Ch. 37, Sec. 1. Effective January 1, 1997.)*

#### 1785.

If any person desires to establish a wetlands mitigation bank site under this chapter, the person shall apply to the department for a determination that the bank site and the operator qualify under the criteria established by the department pursuant to this chapter. The determination that a bank site qualifies under this chapter is a project for purposes of Section 21065 of the Public Resources Code.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1786.

(a) Before any wetlands are created on the bank site qualified pursuant to Section 1785, the department shall coordinate and shall be a signatory to a memorandum of understanding with the operator. The United States Environmental Protection Agency, the United States Army Corps of Engineers, the Fish and Wildlife Service of the United States Department of the Interior, the Central Valley Regional Water Quality Control Board, and the State Department of Health Services or its designee, or any of them, may be signatories by indicating to the department their interest in participating within 90 days of being notified by the department of the department's intent to initiate the procedures described in this section. Any county located in whole or in part in the Sacramento-San Joaquin Valley may, by ordinance, require that it be a signatory to any memorandum of understanding for a bank site to be established within its boundary.

(b) The memorandum of understanding shall include, but is not limited to, all of the following items:

(1) Identification of the mitigation bank site, including the legal property description, acreage, types, and location of existing wetlands within the boundaries of the bank site.

(2) An agreement, by each of the governmental agencies in subdivision (a), that all new, successfully created wetland acreage shall qualify to be credited against the approved removal or fill of wetlands located in the qualifying urban area and within 40 miles of the bank site and is consistent with the procedures set out in this chapter.

(3) An agreement by the operator to do both of the following:

(A) Maintain all wetland habitat within the bank in optimum condition in perpetuity, barring an unforeseen natural catastrophe that precludes the viability of wetlands.

(B) Establish a trust or bond in favor of the department that provides sufficient funds to ensure administration, protection, operation, and maintenance in perpetuity of the wetland habitat acreage and values at the mitigation bank site if the operator defaults in performing the duties required pursuant to subparagraph (A).

(4) In the case of privately owned bank sites, identification of the circumstances that would constitute a major breach of the agreement and that would result in either the replacement of the operator, or the passing of title from the owner to the state, or both, including identification of procedures for adequate notice and opportunity for the operator to be heard and to correct any breach.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1787.

(a) If the bank site owner is a public entity, that entity shall pay annually to the county in which the property is located an amount equal to the county taxes levied on the property at the time title to the bank site is transferred to that entity. The public entity shall also pay the assessments levied upon the property by any irrigation, drainage, or reclamation district.

(b) Payments under this section shall be made on or before December 10 of each year, except for newly acquired bank sites, for which payments shall be made pursuant to subdivision (c).

(c) Payments for newly acquired bank sites shall be made within one year of the date title to the property was transferred to the state, prorated for the balance of the year from the date title was transferred to the 30th day of June following the date title was transferred, and, thereafter, payments shall be made on or before December 10 of each year.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### **ARTICLE 4. Wetlands [1790 - 1792.5]**

*( Article 4 added by Stats. 1993, Ch. 1254, Sec. 1. )*

#### 1790.

Upon the successful creation of any wetlands of at least 20 acres, or in the case of vernal pools, upon successful creation of vernal pools on a site at least 20 acres in size, the operator may request a determination by the department of the number of acres in the mitigation bank site, and the relative habitat value thereof, that qualify for credit against prospective wetland loss in the qualifying

urban area. In determining the amount of mitigation bank credit, no credit shall be provided for habitat values or acreage that was in existence prior to the establishment of the bank.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1791.

(a) Upon receipt of a request pursuant to Section 1790, the department shall determine the number of acres which are wetlands in the bank site based on the criteria established pursuant to Section 1784, and the department shall classify those wetlands according to established biological criteria.

(b) The classifications shall include, but are not limited to, the following wetland types:

- (1) Perennial freshwater marsh.
- (2) Perennial brackish marsh.
- (3) Seasonal freshwater marsh.
- (4) Wet meadow.
- (5) Vernal pool.
- (6) Riparian woodland.
- (7) Riparian scrub.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1792.

In the interest of assuring that the minimum price for wetland credit is sufficient to ensure the financial integrity of the bank, the department may establish a minimum price for each bank established pursuant to this chapter. The operator may set a higher price to the extent that price is consistent with the terms of the memorandum of understanding executed pursuant to Section 1785. After the department determines the number of wetland acres in the bank site that qualify for credit against wetland loss in a qualifying urban area, the operator shall provide to the department, and the department shall verify, an accounting of the average cost for each wetland acre created, by wetland type for the purpose of determining credits, using the following factors:

- (a) Land costs, including the reasonable interest cost of holding the land.
- (b) Wetland creation costs.
- (c) Wetland administration, maintenance, and protection costs.
- (d) Annual taxes, including all tax increases allowed under applicable state law, and in-lieu payments pursuant to Section 1787, if applicable.
- (e) Costs incurred by the department in establishing the bank site, and the direct cost of necessary ongoing monitoring and oversight.

(f) Any other information relevant to a determination of the cost of preserving the wetlands in perpetuity.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1792.5.

The department shall be reimbursed for those expenses of the department identified in Section 1792 according to a schedule contained in an agreement with the person establishing a wetland mitigation bank. The agreement shall be approved by all parties prior to the commencement of planning activities.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

### **ARTICLE 5. Discharge into Wetlands [1793 - 1796]**

*( Article 5 added by Stats. 1993, Ch. 1254, Sec. 1. )*

#### 1793.

A permittee shall provide compensation pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 et seq.). The department shall classify the wetlands that the permittee will remove according to wetland type, consistent with Article 4 (commencing with Section 1790).

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1794.

Compensation pursuant to Section 1793 is subject to the condition that the operator establish the trust or bond required by subparagraph (B) of paragraph (3) of subdivision (b) of Section 1786 and, in addition, is subject to the following conditions:

- (a) The full payment shall be used to purchase credits in the mitigation bank site.
- (b) The payment shall provide for purchase of bank site wetland acreage required by Section 1793 that has the same hydrologic, vegetative, and other characteristics as the system for which it will serve as mitigation.
- (c) A permittee shall not participate in a wetlands mitigation bank if a net loss of wetland habitat values or acreage occurs.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

#### 1795.

After payment to the operator pursuant to this article, the permittee has no further obligations with respect to the operation of the bank site to which payment was made, unless the permittee has an equity involvement in the bank.

*(Added by Stats. 1993, Ch. 1254, Sec. 1. Effective January 1, 1994.)*

**1796.**

No bank site shall be qualified under Section 1785 on or after January 1, 2015.

*(Amended by Stats. 2009, Ch. 294, Sec. 8. Effective January 1, 2010.)*