

INITIAL ACTIONS
SPECIAL FLOOD CONTROL PROJECTS
FOR EIGHT WESTERN DELTA ISLANDS

*Bethel, Bradford, Holland, Hotchkiss, Jersey
Sherman, Twitchell, and Webb*



Division of Planning
California Department of Water Resources

ON THE COVER: This photo of Jersey Island was taken on December 3, 1983, during a period of strong winds and high water, and at a time the levees on Bradford Island were failing.

Kjeldsen-Sinnock and Associates, Inc., photo

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES
Division of Planning

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June 1989

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Secretary for Resources
The Resources Agency

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Governor
State of California

DAVID N. KENNEDY
Director
Department of Water Resources

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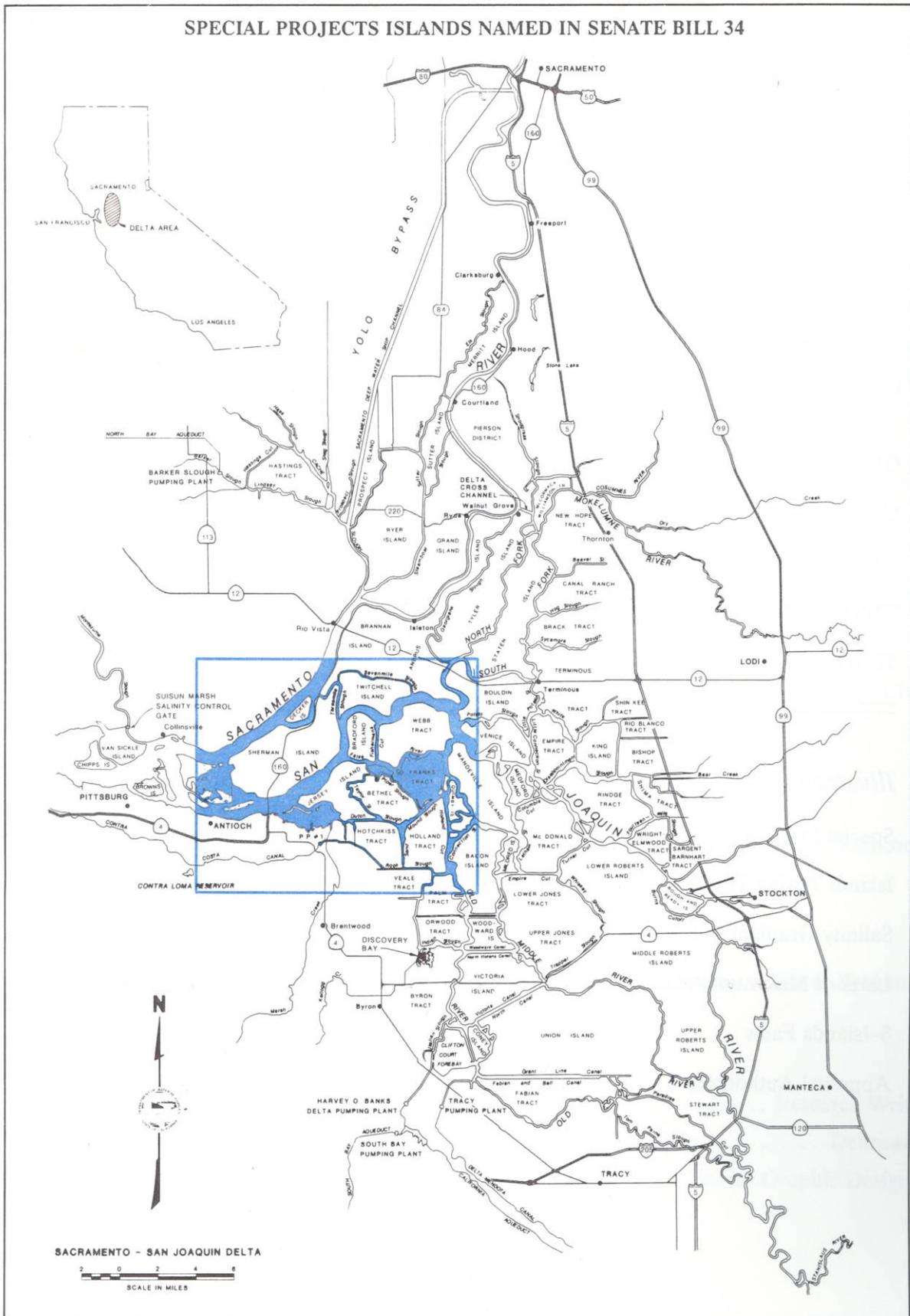
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SPECIAL PROJECTS ISLANDS NAMED IN SENATE BILL 34



BACKGROUND

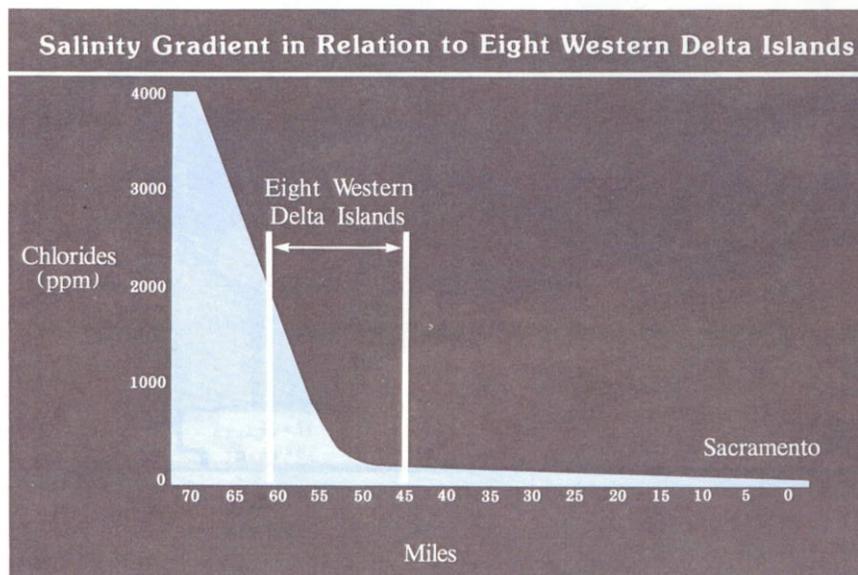
The eight islands in the western Delta region make up a rich agricultural area of about 35,000 acres. About 85 miles of levees, composed mainly of local dredged materials, protect the islands from flooding. Peat soils form most of the levee foundations. While peat is excellent for growing crops, it creates levee maintenance and stability problems. The levee instability problem exists throughout the entire Delta but is critical in the deep peat areas of the western Delta. The problem has existed since the construction of the original tidal levees, but has become more acute in recent years due to land subsidence, resulting in higher levees and increased hydrostatic pressures. Since 1980, levee failures have occurred three times in the western region, and emergency expenditures have exceeded \$39 million. As land subsidence occurs, water pressure on the levees continues to increase, thus increasing the probability of levee failures. On-going monitoring to track deep and surface subsidence indicates that the majority of all Delta island subsidence occurs due to surface causes. Causes of this soil loss include accelerated oxidation of peat soils from cultivation, shrinkage due to drying and dewatering, wind erosion, and compaction by farm equipment. These causes can be moderated or eliminated to reduce further subsidence.

Due to their location, the eight islands will degrade Delta water quality if they flood. These is-

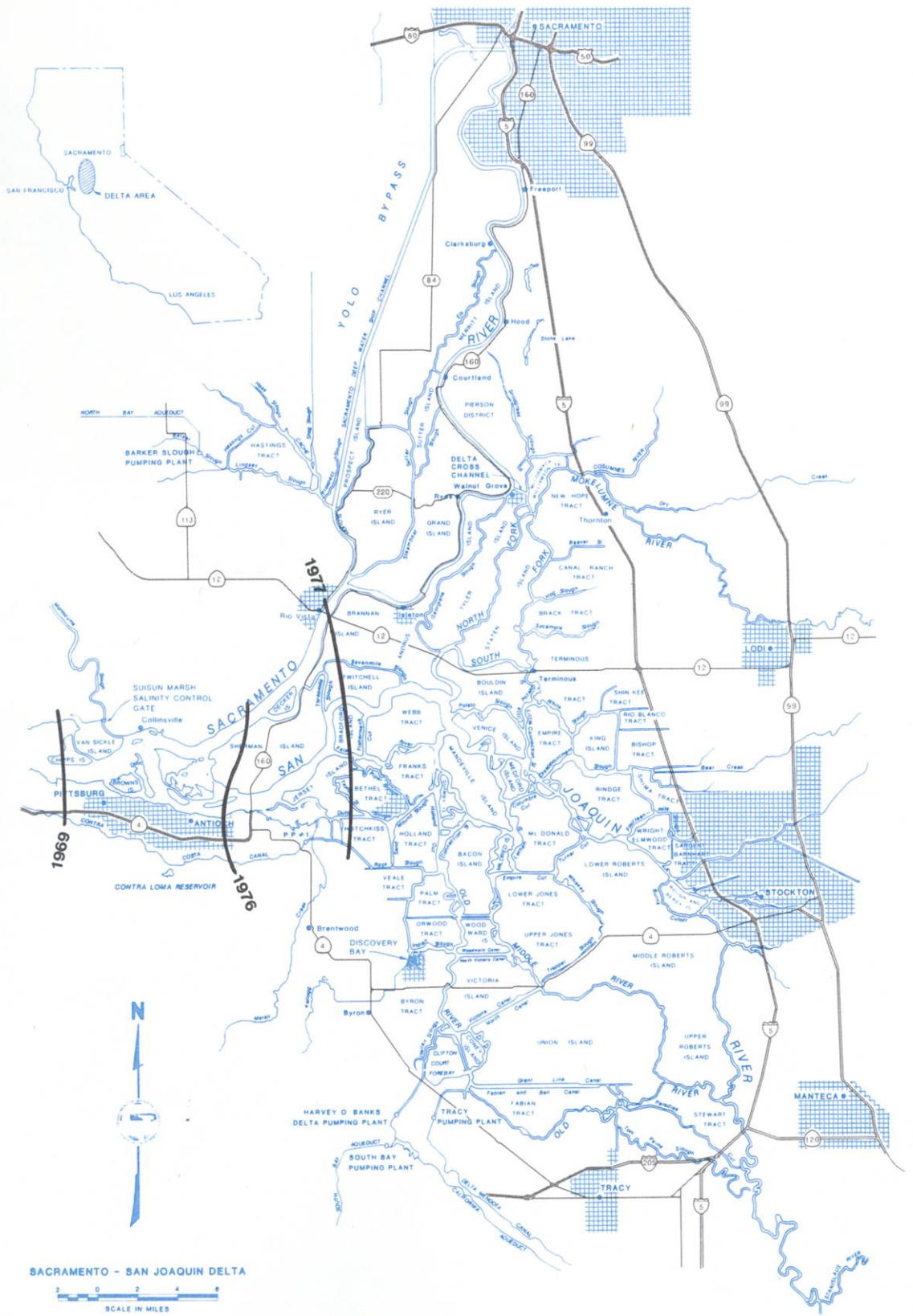
lands are adjacent to major Delta channels in the area where fresh and salt waters mix. If a levee fails and the island floods and is not reclaimed, the area and rate of the saltwater mixing zone will increase. Also, a flooded island will have increased evaporation losses. Both of these factors will cause ocean salt to move further into the Delta. Another long-term water quality detriment will occur as a result of the creation of new shorter paths for ocean salt to move inland across flooded islands.

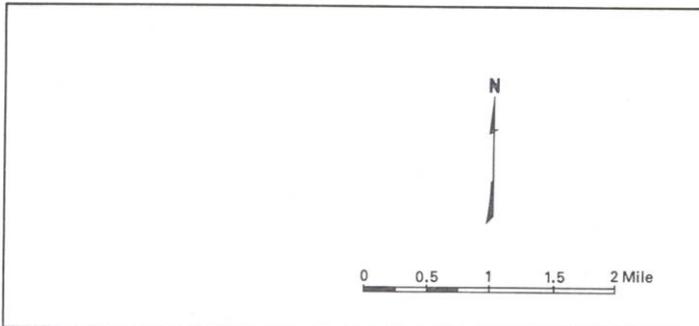
The eight islands can also have a short-term impact on water quality in the Delta even if the island is reclaimed. As demonstrated in past flood events, water quality impacts can be significant. California's acceptable salt level for drinking water is 250 parts per million of chloride. However, during one previous island flooding, chloride levels reached 440 ppm at the Contra Costa Canal Intake. Exports by the State Water Project were also interrupted, and several tons of additional salts were exported to water users.

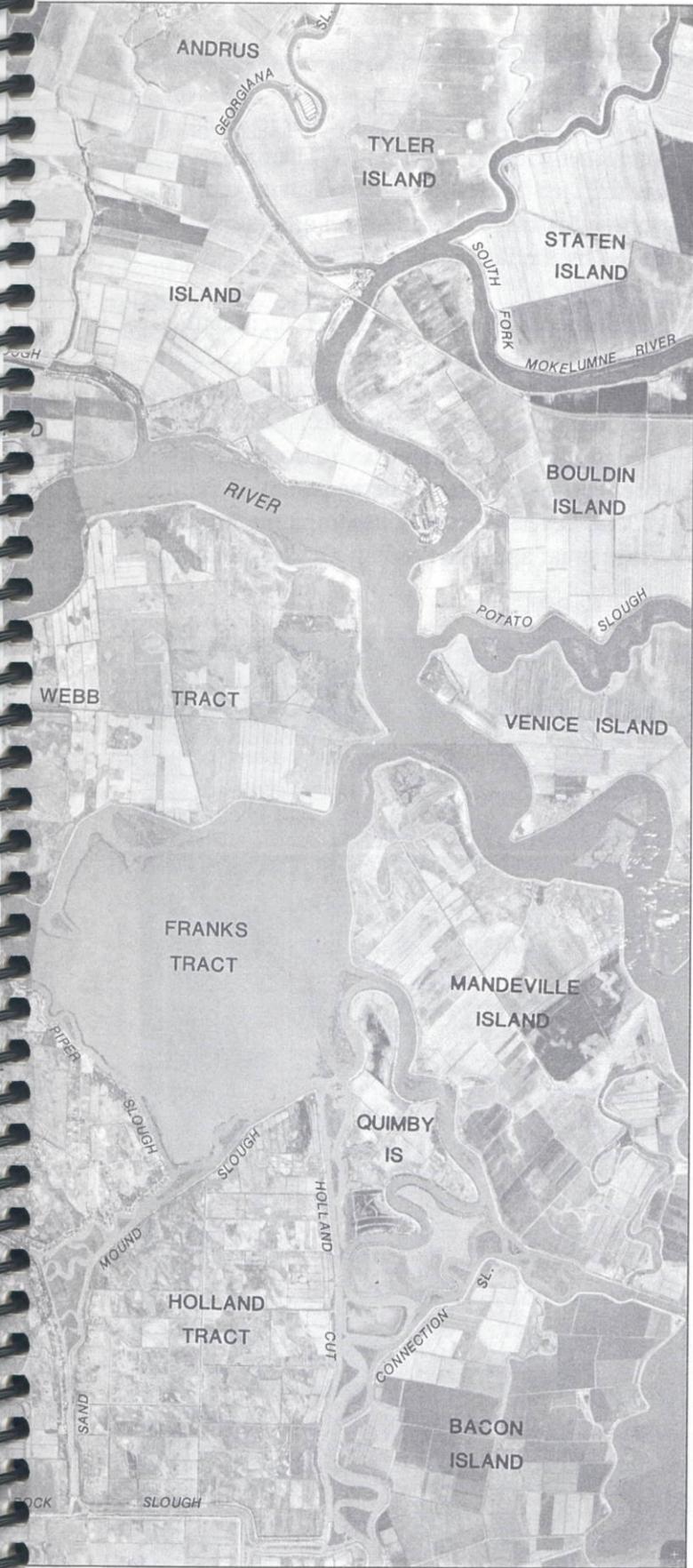
Protecting the Delta's water quality is essential, not only because the Delta is the source of drinking water for more than 16 million people, but also because the estuary is a unique and valuable resource. Water exported from the Delta irrigates 4.5 million acres, and many species of fish and wildlife depend on the existing Delta configuration for habitat.



LINES OF MAXIMUM ANNUAL SALINITY INTRUSION — 1969, 1976, and 1977







LONG-TERM OBJECTIVES

- Improving Levees for Flood Control
- Protecting Delta Water Quality for All Beneficial Uses
- Minimizing Oxidation and Subsidence
- Enhancing and Retaining Wildlife Habitat
- Providing Additional Recreational Opportunities

PROVISIONS OF SENATE BILL 34

Senate Bill 34 directs the Department of Water Resources to develop and implement flood protection projects on the eight western Delta islands. Its primary purpose is the protection of public highways and roads, utility lines and conduits, and other public facilities, and urban areas, water quality, recreation, and other public benefits. The bill lists several provisions to accomplish this goal. Project plans can be a combination of the improvement, rehabilitation, or modification of existing levees for increased flood protection. The Department is to investigate options to limit or modify land management practices that have a negative impact on flood control. To complete the work, the De-

partment may undertake the project itself or contract with a local agency. The Department is directed to seek cost-sharing with owners or operators of public facilities and others benefited by the flood control projects.

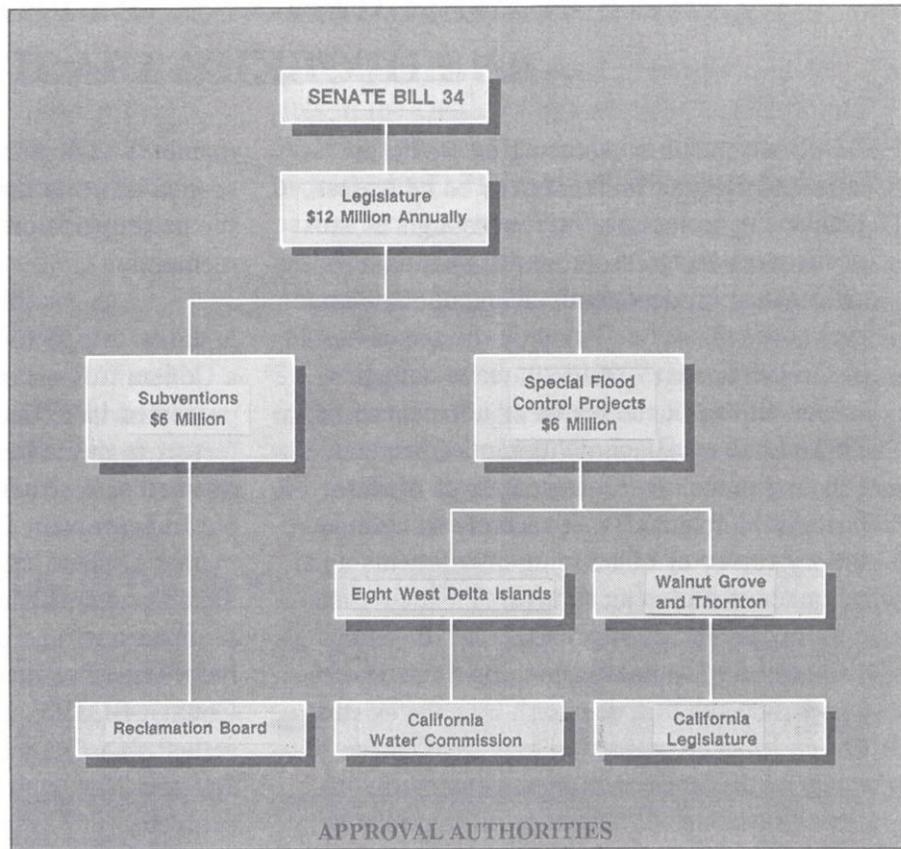
Three separate agencies have been identified under SB 34 as approval authorities. The California Water Commission has approval authority in connection with the Special Flood Control Projects. The Reclamation Board continues to be responsible for the implementation of the Delta Levees Subventions Program; the Legislature must approve the Walnut Grove-Thornton plan.

8-ISLANDS FACTS

ISLAND	AREA In acres	POPULATION	YEARS FLOODED	EMERGENCY EXPENDITURES 1980-1986
BETHEL	3,500	1,774	1907, 1908 1909, 1911	\$43,300
BRADFORD	2,051	24	1950, 1983	\$6,517,800
HOLLAND	4,060	28	1980	\$8,668,400
HOTCHKISS	3,100	940		\$105,200
JERSEY	3,471	9	1900, 1904 1907, 1909	\$176,300
SHERMAN	9,937	200	1904, 1906 1909, 1937 1969	\$808,400
TWITCHELL	3,516	22	1906, 1907 1909	\$999,600
WEBB	5,490	94	1950, 1980	\$21,965,000

PROPOSED ACTIONS

The Department is currently consulting with federal, State, and local agencies, as well as landowners and others who have interest in the Delta. Coordinating with other programs for cost-sharing helps establish a broad base of financial support to protect and enhance a wide range of benefits. The Department is pursuing a two-step program of implementation. The first step consists of initial or "fast-track" actions that apply to all eight islands. The objective is to identify and rehabilitate threatening levee conditions. These actions will be funded this fiscal year and next. The second step of this program will focus on plans for each of the eight islands.



In December 1989, the Department will recommend to the Commission a priority list for longer term expenditures. The recommendations for fast-track actions are discussed in the following sections.

LOCAL PARTICIPATION AND ANALYSIS OF LEVEE STABILITY

Many recent flooding events have been attributed to levee instability. An important fast-track objective is to increase levee stability where there are threatening conditions. The Department will assist local districts in their analysis of levee conditions. A letter requesting the following detailed information has been sent to the districts: 1) maps showing exact locations and lengths of unstable levee sections; 2) settlement and/or seepage rates;

3) rotation, slippage or slumping information; 4) changes in levee geometry, that is, cross sections; 5) photos showing any of the above; and 6) maintenance records for the problem levee areas.

Using this information, Department staff will identify probable critical areas. On-site soils analysis and geologic investigations will be performed to assist in the determination of engineering designs for rehabilitation.

Rehabilitation of threatening levee conditions will be the largest cost component of the proposed fast-track actions, and the Department plans to share the cost of this work.

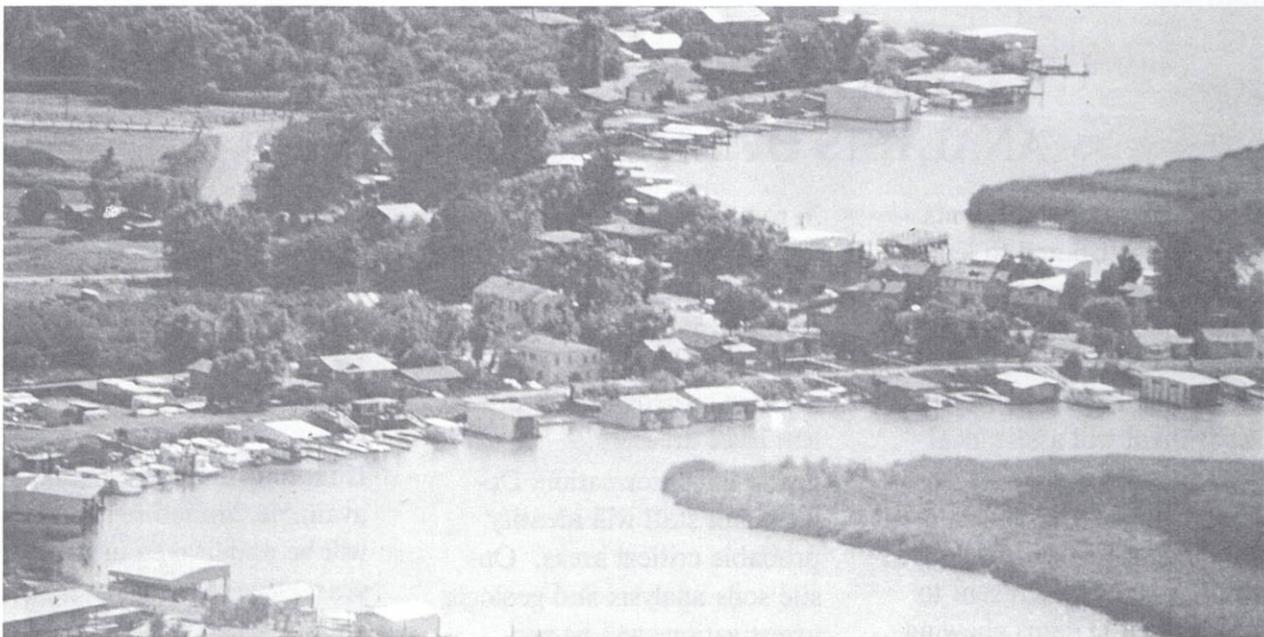
If funding and information are available, limited repair work will be undertaken in fiscal year 1988-89. Most of the repairs will occur in fiscal year 1989-90. The Department expects to spend about \$1 million for these improvements.

LEVEE ENCROACHMENTS: BETHEL ISLAND AND HOTCHKISS TRACT

Levee encroachments occurring on Bethel Island and Hotchkiss Tract need to be addressed. Unlike the agricultural areas throughout most of the western Delta, these two islands have significant urban development. About 2,500 people are living there. To enjoy the scenic values of the Delta, many residents have built their homes on top of the levees or adjacent to them. These levee encroachments hinder inspection and maintenance. Representatives of Bethel Island and Hotchkiss Tract recently completed a cursory survey of building encroachments and other nonconforming structures. Their preliminary estimates list approximately 200 dwellings and retaining walls encroaching into the design levee. Structures that encroach into the existing or design levee cross section may weaken the integrity of the levee, thus increasing the probability of flooding. Whether or not a structure is encroaching is not apparent from visual inspection alone. Detailed topographic measurements are required to identify actual encroach-

ments. The Department is proposing to use special projects funds and personnel to assist in the preparation of these topographic measurements.

Local efforts to control encroachments include a Contra Costa County zoning ordinance, passed in 1952, that prohibits all structures 50 feet from the centerline of the levee on the landward side. Furthermore, Bethel Island Municipal Improvement District (BIMID) and Reclamation District 799 also have ordinances prohibiting construction within the design levee cross section. To correct encroachments built before these ordinances existed, Contra Costa County, BIMID, and RD 799 are working together on a Draft EIR and Bethel Island Area Specific Plan, which addresses solutions for this problem. The Department is proposing to provide \$25,000 to assist Contra Costa County with the \$400,000 local cost of preparing the plan, scheduled for completion shortly.



Bethel Island along Sand Mound Slough. Encroachment on levees is a common sight on Bethel Island and Hotchkiss Tract. *U.S. Army Corps of Engineers photo*

GLOBAL POSITIONING SYSTEM STUDY

Verified levee elevations are necessary to ensure that future levee improvement work provides the proper freeboard for high-water conditions. Previously, gaging stations and levee profiles were surveyed, using existing benchmarks that date back to 1929. Some of these benchmarks may have been affected by subsidence and other factors over the years. In 1987, the Department of Water Resources obtained Global Position System (GPS) equipment, which employs U.S. Navy navigational satellites to establish very precise horizontal and vertical posi-

tions. Using the GPS, engineers surveyed 40 sites in the Delta, as well as eight known points outside the subsidence area. To validate the process, the U.S. Geological Survey and the Department are proposing to independently survey five common benchmarks, using the same advanced methods. The Department plans to share the cost for this study by using \$30,000 of SB 34 funds, while the USGS will fund the cost of their own validation process. Both surveys will be checked by the National Geodetic Survey for final verification.

SUBSIDENCE STUDY

Subsidence studies and monitoring are also specified by Senate Bill 34. Under a cost-sharing program, Department staff has been working with USGS to study the mechanics of subsidence. To fund the studies, it is proposed that the Department share in the cost by providing \$60,000, with another \$40,000 allocated by Contra Costa County, and these combined funds will be matched by USGS. Several possible causes of subsidence have been investigated. Deep subsidence was found to be an insignificant portion of reduced land surface elevation. Shallow subsidence in the Delta was found to be much more significant and is accelerated by many current land use practices. Results of studies by USGS and the U.S. Soil Conservation Service suggest that it may be possible to reduce or prevent future shallow subsidence through managed land-use practices. Repeated tillage of the soil accelerates oxidation, and heavy farm equipment compacts the soils. In addition, subsidence is aggravated by lowering the water table for farming operations. Without a program to control subsidence, funds spent to rehabilitate the levees may not effectively reduce the long-term probability of flooding. For every foot an island drops, there is a corresponding increase in the water pushing on

the outside of the levee. To control subsidence in critical areas near levees, the Department may consider acquisition of easements to modify or restrict land uses and may allocate a percentage of available funds to acquire them.



Land subsidence since 1930 has suspended this Pacific Gas & Electric Co. power line tower anchor over four feet above ground.
U.S. Geological Survey photo.

DREDGED MATERIAL

Providing flood protection in the Delta is very expensive, and a program for use of materials from dredging projects for levee rehabilitation could greatly reduce future costs. The Department recognizes that proposals to use imported dredged materials must be thoroughly tested to ensure the protection of Delta water quality.

Currently, the U.S. Army Corps of Engineers and the Port of Oakland are proposing to deepen the Oakland harbor and other areas of San Francisco Bay to accommodate new, larger container ships. The Port is planning to dredge 440,000 cubic yards from the harbor in Phase I. During Phase II, the Corps proposes to dredge an additional 6 million cubic yards. An environmental report evaluating potential uses for the dredged material has been prepared by the Port of Oakland. The Department is assisting

the Central Valley Regional Water Quality Control Board in analyzing environmental tests performed by the Port of Oakland. The Department is also assisting the U.S. Army Corps of Engineers with an upland disposal study for San Francisco Bay sediments. Department staff costs are estimated to be about \$10,000-\$20,000. Several hundred thousand dollars have been spent already by the Port and the Regional Board in test evaluation. Annual maintenance dredging operations in the Bay region could provide approximately 4 million cubic yards of material per year for levee reconstruction. Additional projects could add a total of 10 million cubic yards more over the next five years. Coordinated environmental review will be conducted, and Department involvement will be identified on a case-by-case basis.

ENVIRONMENTAL CONCERNS

Department staff will review the potential environmental effects of levee rehabilitation. Project plans are to include provisions to protect fish and wildlife habitat and recreation that are determined to be necessary and not injurious to the integrity of flood control works. Coordina-

tion with the Department of Fish and Game, the Department of Parks and Recreation, and the U.S. Fish and Wildlife Service will help prevent or mitigate detrimental effects. Necessary environmental documentation will be provided.

CHAPTER 28

An act to amend Section 12987 of, to amend, repeal, and add Section 12986 of, to add Sections 12912.5, 12992, and 12993 to, to add Part 4.8 (commencing with Section 12300) to Division 6 of, and to add and repeal Section 12987.5 of, the Water Code, relating to flood control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 11, 1988. Filed with Secretary of State March 14, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 34, Boatwright. Flood control: delta levees. Existing law authorizes financial assistance to local agencies for maintenance and improvement of levees in the Sacramento-San Joaquin Delta which are not project facilities under the State Water Resources Law of 1945, subject to approval by the Reclamation Board of plans for the maintenance and improvement of the levees. No costs may be reimbursed if the entire cost incurred per mile of levee is \$1,000 or less, 50% of any costs incurred in excess of \$1,000 per mile may be reimbursed, and the maximum total reimbursement is limited to \$2,000,000 annually.

This bill would, until January 1, 1999, authorize reimbursement for 75% of any costs incurred in excess of \$1,000 per mile of levee and delete the \$2,000,000 per year limitation. The bill would, until January 1, 1999, authorize the board to provide for an advance to an applicant not to exceed 75% of the estimated state share. The bill would also require a local agency to first enter into an agreement to indemnify and hold the state harmless from any liability for damages, except that caused by gross negligence, that may arise out of the approvals, agreements, inspections, or work performed and would also make nonsubstantive changes and would require applicants to apply for federal disaster assistance, as specified. The bill would also require the plans approved by the board to include provision for the protection of fish and wildlife habitat determined to be necessary by the Department of Fish and Game, would specify criteria for determining those requirements, and would require the plans to include provisions to acquire easements, as prescribed, along levees, where desirable to maintain structural stability of the levee.

The bill would, until January 1, 1999, create the Delta Flood Protection Fund, would declare legislative intent to appropriate \$12,000,000 each year to the fund through fiscal year 1998-99 from specified tidelands oil and gas revenues, and would declare legislative intent to annually appropriate from the fund \$6,000,000 for local assistance for the maintenance and improvement of delta

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levees pursuant to the above provisions and \$6,000,000 for special delta flood protection projects and for subsidence studies and monitoring. The bill would require the Department of Water Resources to develop and implement, as prescribed, a program of flood control projects on specified islands in the delta and for the Towns of Thornton and Walnut Grove, which has as its primary purpose the protection of discrete and identifiable public benefits, as described. The bill would prescribe related requirements for the funding of projects.

The bill would require \$5,000,000 of the tidelands oil and gas revenues deposited in the California Water Fund to be deposited annually in a special account for appropriation and expenditure by the Department of Water Resources for mitigation of specified adverse effects in (1) the delta, Suisun Marsh, and San Francisco Bay caused by historic upstream depletions and diversions and for other nonreimbursable costs and (2) the Salton Sea and its tributaries.

The bill would make legislative findings and declarations.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. This act shall be known and may be cited as the Delta Flood Protection Act of 1988.

SEC. 2. The Legislature hereby finds and declares as follows:

(a) The value and public benefit of preserving the Sacramento-San Joaquin Delta, as declared in Section 12981 of the Water Code, is reaffirmed, as is the recognition that not all islands, because of the physical condition of their soils and foundations, can economically justify protection or increased development.

(b) In recent years, federal, state, and local expenditures for disaster assistance have been very high, and hazard mitigation efforts to avoid disasters are needed.

(c) Other lands have been benefited by flood control levees at the expense of the delta through loss of overbank storage which causes more flood water to reach the delta.

(d) Long-term solutions for the delta will be facilitated by short-term efforts to stabilize the existing situation.

SEC. 3. Part 4.8 (commencing with Section 12300) is added to Division 6 of the Water Code, to read:

PART 4.8. DELTA FLOOD PROTECTION

CHAPTER 1. DELTA FLOOD PROTECTION FUND

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 and all income derived from the

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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 for subsidence studies and monitoring. These funds shall only be allocated for projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands in the delta and for the Towns of Thornton and Walnut Grove.

(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).

12301. The Delta Flood Protection Fund is hereby abolished on January 1, 1999, and all unencumbered moneys in the fund are transferred to the General Fund.

CHAPTER 2. SPECIAL FLOOD CONTROL PROJECTS

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 (d) of Section 12980.

(b) "Project" means the flood control improvement constructed or interests in land acquired pursuant to this chapter.

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

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

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 in the delta and for the Towns of Thornton and Walnut Grove. 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,

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recreation, and other public benefits.

(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.

12312. The department may expend any moneys available to it pursuant to paragraph (2) of subdivision (b) of Section 12300 for the purposes of this chapter. 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.

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.

12314. 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.

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.

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

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materials, unless fully mitigated, or any plans which will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

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.

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.

(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 up to 400 feet in width from the crown along levees 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 with minimum tillage of the soil, including, without limitation, nontillable crops such as pasture, 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.

(f) Comply with all mitigation requirements required pursuant to this chapter.

SEC. 4. Section 12912.5 is added to the Water Code, to read: 12912.5. Of the amounts deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code, five million dollars (\$5,000,000) shall be deposited annually in a special account in the California Water Fund for appropriation by the Legislature to the Department of Water Resources for purposes of mitigation of adverse effects to water quality, fisheries, or wildlife in (1) the Sacramento-San Joaquin Delta, Suisun Marsh, and San Francisco Bay caused by historic upstream depletions and diversions, as nonreimbursable costs under Section 11912 and for other nonreimbursable costs, and (2) the Salton Sea and its tributaries.

SEC. 5. Section 12986 of the Water Code is amended to read: 12986. (a) It is the intention of the Legislature to reimburse an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of nonproject levees as follows:

(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of nonproject levee is one thousand dollars (\$1,000) or less.

(2) Seventy-five percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of nonproject levee shall be reimbursed.

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 6. Section 12986 is added to the Water Code, to read: 12986. (a) It is the intention of the Legislature to reimburse from the General Fund an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of nonproject levees as follows:

(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of levee is one thousand dollars (\$1,000) or less.

(2) Fifty percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of levee shall be reimbursed.

(3) The maximum total reimbursement from the General Fund shall not exceed two million dollars (\$2,000,000) annually.

(b) This section shall become operative on January 1, 1999.

SEC. 7. Section 12987 of the Water Code is amended to read: 12987. Local agencies maintaining nonproject levees shall be eligible for reimbursement pursuant to this part upon submission to and approval by the board of plans for the maintenance and improvement of the nonproject levees, including plans for the annual routine maintenance of the levees, in accordance with the criteria adopted by the board.

The plans shall also be compatible with the plan for improvement of the delta levees as set forth in Bulletin No. 192-82 of the department, dated December 1982, and as approved in Section 12225, and shall include provisions to acquire easements up to 400 feet in width from the crown along levees 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 with minimum tillage of the soil, including, without limitation, nontillable crops such as pasture, 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 agency cost of acquisition of the easements shall be

reimbursable by the department from moneys appropriated pursuant to paragraph (1) of subdivision (b) of Section 12300. The plans shall also include provision for protection of the fish and wildlife habitat determined to be necessary by the Department of Fish and Game and not injurious to the integrity of the levee. The Department of Fish and Game shall consider the value of the riparian and fisheries habitat and the need to provide safe levees in preparing its requirements. The Department of Fish and Game 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 material, unless fully mitigated, or any plans which will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

The plans shall also take into account the most recently updated Delta Master Recreation Plan prepared by the Resources Agency.

Upon approval of the plans by the board, the local agencies shall enter into an agreement with the board to perform the maintenance and improvement work, including the annual routine maintenance work, specified in the plans. If applications for state funding in any year exceed the state funds available, the board shall apportion the funds among those levees or levee segments that are identified by the department as most critical and beneficial, considering the needs of flood control, water quality, recreation, and wildlife.

SEC. 8. Section 12987.5 is added to the Water Code, to read: 12987.5. (a) In an agreement entered into under Section 12987,

(a) the board may provide for an advance to the applicant in an amount not to exceed 75 percent of the estimated state share. The agreement shall provide that no advance shall be made until the applicant has incurred costs averaging one thousand dollars (\$1,000) per mile of levee.

(b) Advances made under subdivision (a) shall be subtracted from amounts to be reimbursed after the work has been performed. If the department finds that work has not been satisfactorily performed or where advances made actually exceed reimbursable costs, the local agency shall promptly remit to the state all amounts advanced in excess of reimbursable costs. If advances are sought, the board may require a bond to be posted to ensure the faithful performance of the work set forth in the agreement.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 9. Section 12992 is added to the Water Code, to read:

12992. Before any plan is approved, agreement entered into, or moneys advanced or reimbursed under this part, the local agency shall first enter into an agreement with the board indemnifying and holding and saving the State of California, the board, 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 approvals,

agreements, inspections, or work performed under this part.

Any funds appropriated for any of the purposes of this part may be used to satisfy any judgment against the state covered by this section, pending indemnification by the local agency.

SEC. 10. Section 12993 is added to the Water Code, to read:

12993. Applicants shall apply for federal disaster assistance, whenever eligible, under Public Law 93-288. If, and to the extent that, it is determined that the work performed does not qualify for federal disaster assistance, the applicant may apply for reimbursement under Section 12986, and the costs shall be deemed incurred by the applicant in the year in which the latter application is filed.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide urgently needed flood protection at the earliest possible time, it is necessary that this act take effect immediately.

Single copies of this report may be obtained Free
from:

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