



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-25

April 27, 1993

*To:* Board of Directors (Executive Committee--Information)  
(Special Committee on Legislation--Information)  
(Water Problems Committee--Information)  
*From:* General Manager  
*Subject:* Senate Bill 936 (McCorquodale-Modesto)

Report

Senate Bill 936 (SB 936) introduced by Senator McCorquodale on March 4, 1993, would enact the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993. The legislation would authorize the Department of Fish and Game (DFG) to:

- Qualify wetland mitigation bank sites, and thereby provide incentives to create wetlands in areas where wetlands are impacted as provided for under federal permits; and
- Credit wetlands created in a bank site for wetlands lost in a qualifying urban area.

Although the concept of banking wetland mitigation credits may be valuable in development of water resource projects, this bill, as currently drafted, provides little opportunity to benefit either Metropolitan or the State Water Project (SWP). It is not likely that current or planned SWP or Metropolitan facilities would impact wetlands in the areas specified in the bill. This bill also specifies that prime farmland shall be avoided when establishing wetland mitigation banks.

Board Committee Assignments

This letter is referred for information to:

The Executive Committee because it involves legislation which may affect the District, pursuant to Administrative Code Section 2417(a);

The Special Committee on Legislation because it involves a legislative matter that may affect Metropolitan, pursuant to Administrative Code Section 2581(a); and

The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies, sources, and means of importing water required by Metropolitan, pursuant to Administrative Code Section 248(a).

Recommendation

For information only.

  
for General Manager

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**SENATE BILL****No. 936****Introduced by Senator McCorquodale****March 4, 1993**

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**An act to add Chapter 7.8 (commencing with Section 1775) to Division 2 of the Fish and Game Code, relating to wetlands, and making an appropriation therefor.**

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 936, as introduced, McCorquodale. State wetlands.**

(1) Existing provisions of the Keene-Nejedly California Wetlands Preservation Act require the Department of Parks and Recreation and the Department of Fish and Game to prepare a wetlands priority plan and authorize the departments to acquire interests in wetlands and to enter into operating agreements with cities, counties, and districts for the management and control of wetlands or interests in wetlands acquired under that act.

This bill would enact the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993.

The bill would authorize, until January 1, 2010, the Department of Fish and Game to qualify wetland mitigation bank sites, as defined, in the Sacramento-San Joaquin Valley, to provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands, under specified federal permits. The bill would authorize the department to credit wetlands created in a bank site for wetlands lost in a qualifying urban area, as defined, through actions by a federal permittee, and would provide for payments by that federal permittee to the operator of the created wetlands under a specified procedure. The bill would require an operator of a bank site, if it is a public entity, to annually pay to the county in which the property is located an amount equal to property taxes, as specified, and to pay specified assessments.

(2) Existing law continuously appropriates the money in the Fish and Game Preservation Fund to the department and the commission to carry out their duties under the Fish and Game Code.

Because this bill would impose additional duties on the department and the commission with regard to mitigation bank sites and bank creation zones, thereby making the money in the fund available for a new purpose, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Chapter 7.8 (commencing with Section 1775) is added to Division 2 of the Fish and Game Code, to read:

Chapter 7.8. Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993

Article I. General Provisions

1775. This chapter shall be known and may be cited as the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993.

1776. The Legislature finds and declares the following:

(a) Wetlands are an important natural resource of the Sacramento-San Joaquin Valley because they provide critical 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, as well as 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 in the Sacramento-San Joaquin Valley that otherwise comply with state and federal law through the creation of wetlands that are at least one and one-half times the size and at least equal in habitat value per unit area to those wetlands lost.

(5) To encourage and maintain a predictable, efficient 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 removal or fill permit issued pursuant to Section 404 of the federal Clean Water Act (33 U.S.C. Sec. 1344 and following).

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

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

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

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

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

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

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

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

28 1776.5. It is the intent of the Legislature that the funds  
 29 necessary to cover the costs of administering this chapter  
 30 be provided by the purchase of credits in mitigation bank  
 31 sites.

32 1777. Unless the context otherwise requires, the  
 33 definitions in this article govern the construction of this  
 34 chapter.

35 1777.2. 'Bank site' or 'mitigation bank site' means a  
 36 publicly or privately owned and operated site on which  
 37 wetlands have been created in accordance with this  
 38 chapter to compensate for adverse impacts caused by  
 39 removal or fill permit activities authorized pursuant to  
 40 Section 404 of the federal Clean Water Act (33 U.S.C. Sec.

1 1344 and following).

2 1777.5. 'Credit' means a numerical value that  
 3 represents the wetland acreage and habitat values of a  
 4 mitigation bank site.

5 1778. 'Operator' means the department, or a public or  
 6 private person or entity approved by the department, to  
 7 administer a wetlands mitigation bank site.

8 1778.5. 'Permittee' means a public or private person  
 9 or entity that meets all of the following conditions:

10 (a) Has received a permit from the United States  
 11 Army Corps of Engineers under Section 404 of the federal  
 12 Clean Water Act (33 U.S.C. Sec. 1344 and following) for  
 13 the removal or filling of wetlands, subject to a condition  
 14 that allows the permittee to compensate for the wetland  
 15 loss through participation in a wetland mitigation bank  
 16 pursuant to this chapter.

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

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

26 1779. 'Qualifying urban area' means any of the  
 27 following when they occur within the Sacramento-San  
 28 Joaquin Valley:

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

33 (b) A portion of any geographical area within a town,  
 34 as defined in Section 21 of the Government Code, which  
 35 has a population density equal to, or exceeding, 1,500  
 36 persons per square mile and which has a population of  
 37 50,000 or more inhabitants.

38 (c) A geographical area having a population density  
 39 equal to, or exceeding, 1,500 persons per square mile, and  
 40 an adjacent city, as defined in Section 20 of the

1 Government Code, where the combined population of  
2 the geographical area and the city equals 50,000 or more  
3 inhabitants.

4 (d) A geographical area within the sphere of influence  
5 of a city or community services district for which the  
6 projected population of the adopted general plan equals  
7 10,000 or more inhabitants.

8 1779.5. 'Sacramento-San Joaquin Valley' means the  
9 central valley region, as defined in subdivision (g) of  
10 Section 13200 of the Water Code.

### 11 Article 2. Legislative Goals

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13  
14 1780. The purpose of this chapter is to ensure that no  
15 net loss of wetland acreage or habitat values within the  
16 Sacramento-San Joaquin Valley occurs as a result of the  
17 removal or fill permit activities pursuant to Section 404 of  
18 the federal Clean Water Act (33 U.S.C. Sec. 1344 and  
19 following).

20 1781. It is the state's goal to increase the total  
21 wetlands acreage and values within the Sacramento-San  
22 Joaquin Valley.

### 23 Article 3. Wetlands Mitigation Banks

24  
25  
26 1784. (a) The department, in cooperation with those  
27 agencies specified in Section 1786, shall adopt regulations  
28 that establish standards and criteria for the bank site  
29 qualification process, for the evaluation of wetland  
30 acreage and habitat values created at the bank sites, and  
31 for the operation and evaluation of bank sites, and any  
32 other regulations that are necessary to implement this  
33 chapter.

34 These criteria shall require, at a minimum, that the  
35 newly created wetland provide the hydrologic,  
36 vegetative, and wildlife characteristics, including the  
37 food web components, of a naturally occurring wetland  
38 system.

39 (b) With respect to bank site standards and operator  
40 qualifications, the department shall consider, at a

1 minimum, all of the following criteria:

2 (1) A requirement that the bank site have a reliable,  
3 adequate, and available water supply necessary to  
4 provide wetland values.

5 (2) The relative ease or difficulty of converting  
6 uplands into wetlands at the bank site.

7 (3) The anticipated maintenance necessary to sustain  
8 the recreated wetlands at the bank site.

9 (4) The proximity of the bank site to other established  
10 preserves or natural features historically associated with  
11 abundant wildlife values.

12 (5) The proximity of the bank site to urban or  
13 populated areas that could reduce the bank site's  
14 long-term biological values.

15 (6) The demonstrated ability of the bank site operator  
16 to create, administer, maintain, and protect the bank site  
17 in perpetuity, including financial, technical, and  
18 management ability.

19 (7) The relative abundance or scarcity of the wetland  
20 type to be created at the bank site.

21 (8) Every reasonable effort shall be made to avoid  
22 establishing wetland mitigation banks pursuant to this  
23 chapter on land designated as prime farmland or  
24 farmland of statewide importance in accordance with  
25 Section 65570 of the Government Code.

26 1785. If any person desires to establish a wetlands  
27 mitigation bank site under this chapter, the person shall  
28 apply to the department for a determination that the  
29 bank site and the operator qualify under the criteria  
30 established by the department pursuant to this chapter.  
31 The determination that a bank site qualifies under this  
32 chapter is a project for purposes of Section 21065 of the  
33 Public Resources Code.

34 1786. (a) Before any wetlands are created on the  
35 bank site qualified pursuant to Section 1785, the  
36 department shall coordinate and shall be a signatory to a  
37 memorandum of understanding with the operator, the  
38 United States Environmental Protection Agency, the  
39 United States Army Corps of Engineers, the Fish and  
40 Wildlife Service of the United States Department of the

1 Interior, and the State Department of Health Services or  
 2 its designee. Any county located in whole or in part in the  
 3 Sacramento-San Joaquin Valley may, by ordinance,  
 4 require that it be a signatory to any memorandum of  
 5 understanding for a bank site to be established within its  
 6 boundary.

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

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

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

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

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

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

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

1 1787. (a) If the bank site operator is a public entity,  
 2 that entity shall pay annually to the county in which the  
 3 property is located an amount equal to the county taxes  
 4 levied on the property at the time title to the bank site  
 5 is transferred to that entity. The public entity shall also  
 6 pay the assessments levied upon the property by any  
 7 irrigation, drainage, or reclamation district.

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

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

19  
 20 Article 4. Wetlands

21  
 22 1790. Upon the successful creation of any wetlands of  
 23 at least 20 acres, or in the case of vernal pools, upon  
 24 successful creation of vernal pools on a site at least 20  
 25 acres in size, the operator may request a determination  
 26 by the department of the number of acres in the  
 27 mitigation bank site, and the relative habitat value  
 28 thereof, that qualify for credit against prospective  
 29 wetland loss in the qualifying urban area.

30 1791. (a) Upon receipt of a request pursuant to  
 31 Section 1790, the department shall determine the  
 32 number of acres which are wetlands in the bank site  
 33 based on the criteria established pursuant to Section 1784,  
 34 and the department shall classify those wetlands  
 35 according to established biological criteria.

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

- 38 (1) Perennial freshwater marsh.
- 39 (2) Perennial brackish marsh.
- 40 (3) Seasonal freshwater marsh.

- 1 (4) Wet meadow.
- 2 (5) Vernal pool.
- 3 (6) Riparian woodland.
- 4 (7) Riparian scrub.

5 1792. After the department determines the number  
6 of wetland acres in the bank site that qualify for credit  
7 against wetland loss in the qualifying urban area, the  
8 operator shall provide to the department, and the  
9 department shall verify, an accounting of the average  
0 cost for each wetland acre created, by wetland type for  
1 the purpose of determining credits, using the following  
2 factors:

- 3 (a) Land costs, including the reasonable interest cost  
4 of holding the land.
- 5 (b) Wetland creation costs.
- 6 (c) Wetland administration, maintenance, and  
7 protection costs.
- 8 (d) Annual taxes, including all tax increases allowed  
9 under applicable state law, and in-lieu payments  
0 pursuant to Section 1787, if applicable.
- 1 (e) Costs incurred by the department in establishing  
2 the bank site, and the direct cost of necessary ongoing  
3 monitoring and oversight.
- 4 (f) Any other information relevant to a determination  
5 of the cost of preserving the wetlands in perpetuity.

6 1792.5. The department shall be reimbursed for those  
7 expenses of the department identified in Section 1792  
8 according to a schedule contained in an agreement with  
9 the person establishing a wetland mitigation bank. The  
0 agreement shall be approved by all parties prior to the  
1 commencement of planning activities.

Article 5. Discharge into Wetlands

1793. A permittee shall provide compensation as  
determined by the department. The department shall  
classify the wetlands that the permittee will remove  
according to wetland type, consistent with Article 4  
(commencing with Section 1790).

1794. Compensation pursuant to Section 1793 is

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

5 (a) The full payment shall be used to purchase credits  
6 in the mitigation bank site, based upon the costs  
7 determined pursuant to Section 1792.

8 (b) The payment shall provide for purchase of  
9 wetland acreage required by the applicable provision of  
10 Section 1793 of the wetland acreage being removed or  
11 filled and having the same hydrologic, vegetative, and  
12 other characteristics as the system for which it will serve  
13 as mitigation.

14 (c) A permittee shall not participate in a wetlands  
15 mitigation bank if a net loss of wetland habitat values  
16 occurs.

17 (d) A permittee may pay an amount greater than is  
18 required by subdivision (b) of Section 1793 in order to  
19 meet the requirements of subdivisions (b) and (c).

20 1795. After payment to the operator pursuant to this  
21 article, the permittee has no further obligations with  
22 respect to the operation of the bank site to which  
23 payment was made.

24 1796. No bank site shall be qualified under Section  
25 1785 on or after January 1, 2010. The department shall  
26 report to the Legislature on or before February 1, 1993,  
27 and once annually thereafter with a description and  
28 evaluation of each mitigation bank site approved  
29 pursuant to this chapter, including, but not limited to, the  
30 number of wetland acres and habitat values created, the  
31 number of credits issued, an assessment of the biological  
32 productivity of the created wetlands, a comparison of the  
33 wetlands acreage and values that were created in the  
34 mitigation bank and those that were lost by the various  
35 projects for which credits were obtained, and any  
36 recommendations for improving the program.