

An Overview of California Reclamation and Levee Districts

Historical Background. Reclamation is one of the first forms of public improvement in California, with the early focus on reclaiming “swamp and overflowed” lands granted to the State under the Federal 1850 Arkansas Act. The term *reclamation* primarily encompasses flood control and drainage, but has also long been held to include irrigation.¹ To help local landowners reclaim the swamp and overflowed lands, the State adopted a series of statutes authorizing them to form local reclamation and levee districts. The area of a proposed district was outlined in a formation petition presented to a State or county board, which would order the district to be formed after a majority vote of the affected landowners. Beginning in 1861, the Board of Swamp Land Commissioners issued the orders organizing reclamation and levee districts. Beginning in 1867, such districts were organized under the Green Act by county boards of supervisors. (Stats. 1867-8, c. 415.) A few reclamation districts were also created by special act of the Legislature. (See, e.g., Stats. 1911, c. 100 (RD 900).) Regardless of how they were formed, however, reclamation districts now operate under Water Code Division 15, § 50000 et seq., and levee districts under Division 19, § 70000 et seq. (See also Stats. 1911, c. 100, § 2.)

Division of Local Government. Reclamation and levees districts are a type of special district, a “public” entity that “exercises certain governmental functions” within its boundaries.² The governmental functions of such districts are generally to acquire, build and operate reclamation works, though they are also authorized to hire employees, incur debt, conduct elections, assess lands, execute contracts, sue or be sued, and acquire property. They are subject to all laws generally applicable to local districts, including the Brown Act (open public meetings), the Public Records Act, the Political Reform Act, the conflict of interest laws, and public bidding. As public entities, reclamation districts are also authorized to join with other entities that wish to share their “common powers” for a common purpose. Joint powers are typically exercised through a joint power agency, which is formed by an agreement of the members.

Purpose. The Water Code authorizes reclamation districts to be formed generally “for the reclamation of any land . . . which land is subject in any manner to overflow.” Water Code § 50110. In short, reclamation districts are formed to build reclamation works or else to maintain, protect and repair existing reclamation works. *Id.* § 50300. Reclamation works are broadly defined as “such public works necessary for the watering, unwatering, or irrigation of district lands”—i.e., flood control, drainage, and water supply. *Id.* § 50013. A district is therefore authorized to “construct, maintain and operate such drains, canals, sluices, bulkheads, water gates, levees, embankments, pumping plants, dams, diversion works, or irrigation works” as well as bridges and road systems to ensure access to the reclamation works. *Id.* §§ 50932, 50933. Districts may acquire any real or personal property necessary to achieve these purposes. *Id.* § 50930. Anyone who cuts, injures or destroys these local public improvements is required by law to pay for all damages. *Id.* § 50140. (For levee district details, see Water Code § 70000 et seq.)

To govern its construction of the reclamation works, the district may adopt a plan of reclamation. *Id.* § 51000 et seq. The plan can include acquisition and improvement or operation of existing works. These plans, and any supplemental plans, must be reported to the county board of

¹ *Hershey v. Reclamation Dist. No. 108*, 200 Cal. 550, 567–68 (1927).

² *Dean v. Davis*, 51 Cal. 406, 410 (1876).

supervisors. *Id.* If the plan involves works within the boundaries of the Sacramento-San Joaquin Drainage District, the county must forward the plan to the Central Valley Flood Protection Board for hearing and approval, modification or rejection. *Id.* § 51020 et seq.

Local Participation in Federal Flood Control Projects. Historically, the Federal and State governments have cooperated to improve some of the flood control works built and maintained by local districts in the Sacramento and San Joaquin River systems, or to build new such works. To satisfy the conditions of Federal involvement in such projects, the State has agreed to operate and maintain the new or improved works. Under Section 8618 of the Water Code, reclamation and levee districts are in turn authorized to make agreements with the Central Valley Flood Protection Board to perform these actions instead of the State. For this limited purpose, reclamation and levee districts are sometimes called “local maintaining agencies.”

Governance. A reclamation district is governed by a board of trustees, who exercise “general supervision and complete control over the construction, maintenance and operation of the reclamation works, and generally over the affairs of the district.” Water Code § 50652. Trustees must be district landowners or agents of district landowners, and they serve four-year terms. Trustees are elected to office by district landowners and residents. The trustees may be compensated for services performed, though if compensation is paid the trustees must receive training in ethics every two years.

Funding. Districts are generally funded by assessments and/or fees and charges. Assessments are a levy against district lands that receive special benefits from operation of the district works. Assessments may be used to pay for the design, construction, operation and maintenance of reclamation works. Assessments are considered a lien against the benefited property, and the property can be sold to pay delinquent assessments. Since 1997, new or increased assessments may be imposed only if proportional to the special benefits provided, supported by a detailed engineer's report, and approved by a majority vote of the affected landowners. Districts may also charge for provision of water or for other services, including drainage. In addition, reclamation districts in the Sacramento–San Joaquin River Delta are eligible to receive reimbursements for flood control work under the Delta Levee Maintenance Program (commonly referred to as the Subventions Program) and the Delta Levees Program.

Liability. Liability for damage of property occurring in association with the failure of flood control works is a complex subject. As declared by the California Supreme Court, a “public agency that undertakes to construct or operate a flood control project clearly must not be made the absolute insurer of those lands provided protection.”³ The California Tort Claims Act, Gov't Code Section § 810 et seq., provides broad statutory immunity from most types of suits seeking money damages against public entities.⁴ A district could potentially be held liable in inverse condemnation for damages resulting from a plan of flood control that is held unreasonable based on application of numerous balancing factors, and in one highly publicized case, the Court of Appeal held that a reclamation district, if tasked merely with maintaining the levees, cannot be held liable for design deficiencies.⁵

³ *Belair v. Riverside County Flood Control Dist.*, 47 Cal.3d 550, 565 (1988).

⁴ *See generally Tilton v. Reclamation Dist. No. 800*, 142 Cal.App.4th 848 (2006).

⁵ *Paterno v. State*, 113 Cal.App.4th 998, 1034 (2003).