

American River Flood Control District
Assembly Bill 137 – Declaring Levees as Critical Public Infrastructure
Staff Report

Assembly Bill 137 (Cooper)

The Central Valley Flood Protection Board was recently alerted to the threat to the levee system posed by unauthorized campers and their camp materials. Upon hearing presentations from ARFCD, RD 1000, and others, the Board directed their staff to work with local agencies to develop legislation that could prevent this threat to public safety. District staff worked with the Board, RD 1000, the City of Sacramento, and various Local Maintaining Agencies to modify sections of the California Public Resources Code and Water Code. Assemblyman Cooper offered to carry the legislation and use the gut and amend process to insert this proposed language into a bill he had introduced previously. The bill is now titled Assembly Bill 137 and was cleared by the Rules Committee on July 3th and approved by the Water and Natural Resource Committee on July 9th.

This bill intends to accomplish three important tasks (see attached language and bill analysis):

- Designate the State's levees as critical public infrastructure
- Declare that individuals cannot obstruct or obscure the levee
- Establish that law enforcement officials can cite individuals for violating this section

The effect of AB 137 on the District

The effect this will have on the operation and maintenance activities of the American River Flood Control District will be that District crews will once again be able to mow, spray, and trim vegetation along the levees in continuous sections rather than leaving gaps in maintenance where presently camps may exist. Over the last 2-3 years, the District has had an increasing number of locations where it is not possible to perform adequate operations and maintenance due to the physical and visual obstructions created by the presence of camps and their inhabitants. The passage of AB 137 will restore the free access of the levees to District O&M crews for their work to maintain public safety.

The Effect of AB 137 on the Campers

The effect this bill will have on individuals currently camping on the levee footprint will be that they will need to return to a practice of camping off the levee footprint. This was the common expectation prior to 2-3 years ago. The influx of individuals camping along the region's waterways in the last few years caused a backlog in local law enforcement's

ability to clear campsites off the levees. The problem grew rapidly in proportion as campers saw that other campers were not being directed to move their campsites off the levees. It had previously been common knowledge amongst the camping population that camping was not allowed on levees. This understanding quickly became disregarded without the assistance of law enforcement to remove the campers. The problem worsened considerably with the *Martin vs. City of Boise* decision from the 9th Circuit Court of Appeals. This decision stated that Cities and municipalities could not enforce a no camping ordinance in public places if they did not have available beds for the displaced campers. With that decision, local law enforcement became averse to removing campers from levees until further legal direction could be obtained. The passage of AB 137 will declare that the State's levees are critical public infrastructure. This declaration clarifies that levees can be preserved and protected against damage and obstruction from camping. Campers will then need to return to a practice of placing their camps off the levee footprint and on other grounds. Once this knowledge circulates through the camping population, it is anticipated that the campers will change their practices to avoid citations.

The Reason ARFCD needs to take a position on AB 137

It is important that the American River Flood Control District takes a position on this bill. The District is one of the most heavily impacted flood control districts from the threat of damage to levees from unauthorized campers. The District is a highly urbanized population center with levees that protect hundreds of thousands of inhabitants, thousands of businesses, and the State Capitol. With the high population also comes the challenges faces by other California cities and a rapidly expanding homeless population. While other local agencies are more aptly suited to address the needs of homeless individuals, the District carries the mantle and holds the expertise in the preservation of the region's levees. Taking a position on this bill shows the public that the District is engaged in this discussion and has contemplated a vision for the future operation, maintenance, and protection of the region's levees.

Recommendation

The General Manager recommends that the Board of Trustees approve a motion to support Assembly Bill 137

AMENDED IN SENATE JUNE 28, 2019

AMENDED IN SENATE JUNE 25, 2019

AMENDED IN ASSEMBLY MARCH 11, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 137

Introduced by Assembly Member Cooper

December 7, 2018

An act to amend Section 8720 of, to add Section 8540 to, and to repeal and add Section 8712 of, the Water Code, relating to flood control.

LEGISLATIVE COUNSEL'S DIGEST

AB 137, as amended, Cooper. Facilities of the State Plan of Flood Control: public access. *Control.*

Existing law establishes the Central Valley Flood Protection Board and authorizes the board to engage in various flood control activities along the Sacramento River, the San Joaquin River, their tributaries, and related areas. ~~Under existing law, it is unlawful for any person or public agency to interfere with, obstruct the performance, maintenance, or operation of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, as defined, designated floodways, or streams that are regulated by the board. Existing law requires every plan of reclamation, flood control, drainage, improvement, dredging, or work, that includes or contemplates the construction, enlargement, revetment, or alteration of any levee, embankment, canal, or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, upon any land adjacent thereto,~~

within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, to be approved by the board before construction is commenced. Existing law prohibits a levee along a river or bypass at any of those specified places, or any levee forming part of any adopted flood control plan, from being cut or altered without permission of the board. Existing law makes a violation of the latter provisions a misdemeanor.

~~This bill would authorize the board to designate recreational areas within the State Plan of Flood Control to ensure public access to rivers, streams, overflow channels, basins, and bypasses, as prescribed. The bill would authorize the board to coordinate with other state and local entities to prohibit or limit public access to facilities of the State Plan of Flood Control as necessary to protect this critical public infrastructure.~~ *instead prohibit a person from concealing, defacing, destroying, modifying, using, occupying, cutting, altering, or physically or visually obstructing any levee along a river or bypass at any of those specified places, any levee forming part of any flood control plan, or any other facility of the State Plan of Flood Control without permission of the board. By expanding the behavior that would be punishable as a misdemeanor, the bill would impose a state-mandated local program. The bill would authorize the board or its designee, or a local agency that maintains the levee or facility, to inspect and remove any physical or visual obstructions placed or alterations made on any of the above-specified levees or facilities. The bill would authorize a peace officer, as defined, to enforce those provisions punishable by a misdemeanor in any place in the state to which the peace officer's authority extends.*

This bill would declare, among other things, that facilities of the State Plan of Flood Control are critical public infrastructure necessary for the protection of life, property, and the economy.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 8540 is added to the Water Code, to read:

2 8540. ~~(a)~~ The Legislature finds and declares as follows:

3 ~~(1)~~

4 (a) The federal, state, and local governments have invested
5 billions of dollars into improving the State Plan of Flood Control,
6 which is composed of essential public safety infrastructure.

7 ~~(2)~~

8 (b) The purpose of and need for the State Plan of Flood Control
9 is to protect life, property, and the economy.

10 ~~(3)~~

11 (c) Facilities of the State Plan of Flood Control are critical public
12 infrastructure necessary for the protection of life, property, and
13 the economy.

14 ~~(b) The board may designate recreational areas within the State
15 Plan of Flood Control to ensure public access to rivers, streams,
16 overflow channels, basins, and bypasses, where the board finds
17 that public access to the area will not harm facilities of the State
18 Plan of Flood Control.~~

19 ~~(e) The board may coordinate with other state and local entities
20 to prohibit or limit public access to facilities of the State Plan of
21 Flood Control as necessary to protect this critical public
22 infrastructure.~~

23 *SEC. 2. Section 8712 of the Water Code is repealed.*

24 ~~8712. No levee along a river or by-pass at any of the places
25 mentioned in this article, nor any levee forming part of any of the
26 plans of flood control adopted by this part or by the board, shall
27 be cut or altered without permission of the board.~~

28 *SEC. 3. Section 8712 is added to the Water Code, to read:*

29 8712. (a) A person shall not conceal, deface, destroy, modify,
30 use, occupy, cut, alter, or physically or visually obstruct any levee
31 along a river or bypass at any of the places mentioned in this
32 article, any levee forming part of any of the plans of flood control
33 adopted by this part or by the board, or any other facility of the
34 State Plan of Flood Control without permission of the board.

35 (b) The board or its designee, or a local agency that maintains
36 the levee or facility, may inspect and remove any physical or visual
37 obstructions placed or alterations made on any levee along a river
38 or bypass at any of the places mentioned in this article, any levee

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1 *forming part of any of the plans of flood control adopted by this*
2 *part or by the board, or any other facility of the State Plan of Flood*
3 *Control.*

4 *SEC. 4. Section 8720 of the Water Code is amended to read:*

5 *8720. (a) Any person who does any act contrary to or in*
6 *violation of any of the provisions of this article is guilty of a*
7 *misdemeanor.*

8 *(b) A peace officer, as defined in Chapter 4.5 (commencing with*
9 *Section 830) of Title 3 of Part 2 of the Penal Code, may enforce*
10 *the provisions of this article in any place in the state to which the*
11 *peace officer's authority extends.*

12 *SEC. 5. No reimbursement is required by this act pursuant to*
13 *Section 6 of Article XIII B of the California Constitution because*
14 *the only costs that may be incurred by a local agency or school*
15 *district will be incurred because this act creates a new crime or*
16 *infraction, eliminates a crime or infraction, or changes the penalty*
17 *for a crime or infraction, within the meaning of Section 17556 of*
18 *the Government Code, or changes the definition of a crime within*
19 *the meaning of Section 6 of Article XIII B of the California*
20 *Constitution.*

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SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

**Senator Henry Stern, Chair
2019 - 2020 Regular**

Bill No:	AB 137	Hearing Date:	July 9, 2019
Author:	Cooper		
Version:	June 28, 2019		
Urgency:	No	Fiscal:	Yes
Consultant:	Dennis O'Connor		

Subject: Facilities of the State Plan of Flood Control

BACKGROUND AND EXISTING LAW

Existing law:

- 1) Establishes the Central Valley Flood Protection Board (board) and authorizes the board to engage in various flood control activities along the Sacramento River, the San Joaquin River, their tributaries, and related areas.
- 2) Defines "Facilities of the State Plan of Flood Control" as the levees, weirs, channels, and other features of the federally and state-authorized flood control facilities located in the Sacramento River and San Joaquin River drainage basin for which the board or the Department of Water Resources (DWR) has given the assurances of nonfederal cooperation to the United States required for the project, and specific units or portions of works of the Sacramento River Flood Control Project. (PRC §5096.805(j))
- 3) Requires the board, in Article 7, Chapter 3, Part 4, Division 5, of the Water Code, to approve every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, before construction is commenced. (WC §§ 8710 et seq.)
 - a) Specifically, and among other things, it is unlawful to cut or alter any levee along a river or by-pass at specific locations identified in Article 7, nor any levee forming part of any of the plans of flood control, without permission of the board.
 - b) Any person who does any act contrary to or in violation of any of these provisions is guilty of a misdemeanor.

PROPOSED LAW

This bill would:

- 1) Expand the prohibition on cutting or altering specific levees to a prohibition on concealing, defacing, destroying, modifying, using, occupying, cutting, altering, or physically or visually obstructing any levee forming part of any of the plans of flood

control adopted by this part or by the board, or any other facility of the State Plan of Flood Control without permission of the board.

- 2) Authorize the board, its designee, or a local agency that maintains the levee or facility, to inspect and remove any physical or visual obstructions placed or alterations made on any levee along a river or bypass at any of the places mentioned in Article 7, any levee forming part of any of the plans of flood control adopted by this part or by the board, or any other facility of the State Plan of Flood Control.
- 3) Authorize a peace officer, as defined, to enforce the provisions of Article 7 in any place in the state to which the peace officer's authority extends.

ARGUMENTS IN SUPPORT

According to the author, "There are 1,100 miles of levees in the Sacramento-San Joaquin Delta. California relies on the extensive systems of levees, weirs and flood bypasses to protect the lives and property of thousands of residents. Some levees date as far back to 1850, when California first joined the union."

"As engineered structures designed to prevent flooding, levees require regular operation and maintenance against erosion and other threats including major earthquakes, rising sea levels due to climate change and water seepage through the earthen barriers."

"Recent media reports highlighted a new threat to the levee system, the increasing issue of unauthorized excavations on the levees which in some cases results in significant damage. The unauthorized excavations are a growing threat to the integrity and stability of the levee system that protect large areas of Sacramento from flooding."

"Local maintaining agencies (LMAs) are frequently encountering large swaths of levee being removed leaving deep trenches on the side of the levees. The unauthorized alteration of the levee slope and riprap threatens not only the integrity of the engineered levee structure but also results in costly unbudgeted repairs by the LMAs. Last year alone, one LMA repaired 30 unauthorized cuts to the levee system."

"AB 137 strengthens protections against unauthorized excavations, cuts, alterations, or destruction of the levee system in order to protect against premature levee failure which could result in flooding, displacement of residents and thousands of dollars of damage to homes and property."

ARGUMENTS IN OPPOSITION: None received

COMMENTS

Problem Just Recently Recognized. In early May 2019, there were a number of news reports documenting situations where homeless encampments included significant excavation of levees. The picture on the next page shows one such excavation.

Northgate & Garden Highway



(Source: Reclamation District 1000)

Existing Authorities Insufficient To Address This Situation. The authorities granted to the board were in anticipation of such things as unauthorized fences across levees, pipes running through levees, etc. For example, the need for law enforcement actions to clear an encampment as shown above was never anticipated when the flood statutes were most recently revised in 2007. (The flood package of bills included AB 5 (Wolk, Stat. 2007, Ch. 366), AB 70 (Jones, Stat. 2007, Ch. 367), AB 156 (Laird, Stat. 2007, Ch. 368), AB 162 (Wolk, Stat. 2007, Ch. 369), SB 5 (Machado, Stat. 2007, Ch. 364), SB 17 (Florez, Stat. 2007, Ch. 365))

Technical Amendment Needed. The bill expands the list of actions requiring the board's permission and authorizes the board and others to enforce those provisions on "any levee along a river or bypass at any of the places mentioned in [Article 7], any levee forming part of any of the plans of flood control adopted by this part or by the board, or any other facility of the State Plan of Flood Control." In order to ensure that the board and others have access to inspect the facilities and enforce the prohibitions, it probably makes sense to clarify that those facilities include any associated right of way is also. (See suggested amendments)

SUGGESTED AMENDMENTS

AMENDMENT 1

On page 3, line 34, delete "Control" and insert "Control, including but not limited to any and all associated right of way"

AMENDMENT 2

On page 4, line 3, delete "Control." and insert "Control, including but not limited to any and all associated right of way."

SUPPORT

California Central Valley Flood Control Association
Reclamation District 1000
Reclamation District 999

OPPOSITION

None Received

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