

Submitted by staff
at 4/24/13 committee
meeting.
Item 3

[SENATE/ASSEMBLY] BILL NO. _____

INTRODUCED BY Senate/Assembly Member _____

[DATE]

An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9109 of the Commercial Code, and to amend Section 1731 and Section 1769 of and to add Article 5.7 (commencing with Section 849) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, to add Article 8 to Chapter 3 of Part 5 of Chapter 118 of the Water Code Appendix, and to add new section Section 6537 to the Government Code and [declaring the need for special legislation.]

Legislative findings. –

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water utilities, and authorizes the Commission to fix just and reasonable rates and charges.

(2) The Legislature previously found that water problems on the Monterey Peninsula area require integrated management. The major water supply for this area is derived from the Carmel River basin and the major uses lie outside that basin. The adopted central coast basin plan divides the management of the several basins, resulting in division, waste, and shortage of water resources. To address the unique needs for integrated water management on the Monterey Peninsula, this Legislature adopted special legislation creating the Monterey Peninsula Water Management District. Chapter 3 of Part 5 of the Monterey Peninsula Water Management District Law, added by Statutes of 1977, chapter 527, as amended, (found at Chapter 118 of West's Water Code Appendix).

(3) California American Water ("CAW") is the water utility that provides water to most of the residents and businesses within the Monterey Peninsula. In the same legislation creating the Monterey Peninsula Water Management District, this Legislature found that CAW did not have the facilities or the ability to perform functions which are normally performed by public agencies, including the ability to raise sufficient capital for necessary public works, contract with, or provide necessary assurances to, federal and state agencies for financing of water projects and supplying of water, and the regulation of the distribution of water developed within or brought into such service area.

(4) CAW provides water to its customers from the Monterey Peninsula Water Resource System ("MPWRS"). The MPWRS includes the surface water in the Carmel River and its tributaries, water in the Carmel Valley Alluvial Aquifer that underlies the Carmel River, and water in the Seaside Groundwater Basin that includes the Northern and Southern Coastal Subunits and the Northern and Southern Inland Subareas.

(5) CAW's lawful right to obtain water supplies from the Carmel Valley Alluvial Aquifer was determined by the California State Water Resources Control Board ("SWRCB") in SWRCB Order No. WR 95-10, dated July 6, 1995. The SWRCB found that CAW does not

possess the legal right to divert from the Carmel River system in the amount of water historically (and presently) being diverted, and required Cal-Am to diligently pursue a legal water supply to substitute for CAW's ongoing illegal diversions. SWRCB Order No. WR 95-10 limited CAW production from the Carmel River system to 10,308 AF annually (Water Year 2012), and ordered CAW to terminate its unlawful diversions from the Carmel River, and in the interim, to maximize its production from the Seaside Groundwater Basin.

(6) Subsequently, the SWRCB issued a Cease and Desist Order ("CDO") against CAW in October 2009 as Order No. WR 2009-0060. The CDO prescribes a series of significant cutbacks to CAW's production from the Carmel River System from 2010 through December 2016. Pursuant to the CDO, CAW's customers are subject to a moratorium on water permits for new construction and remodels, and may be subject to water rationing and/or fines if CAW production limits are exceeded.

(7) CAW's ability to produce water from the Seaside Groundwater Basin also been limited by the adjudication of the Monterey County Superior Court. CAW's right to groundwater from Coastal Subareas and the Laguna Seca Subarea of the Seaside Groundwater Basin, without causing adverse effects such as seawater intrusion, declining water levels, or land subsidence (characterized as "safe yield") was determined in California American Water Company v. City of Seaside (No. M66343). The 2006 final judgment imposes a series of pumping reductions designed to limit production of natural basin water to its safe yield, initially set at 3,000 acre-feet per year. CAW's share of the safe yield is reduced proportionately at each stage.

(8) The need for infrastructure to expand CAW sources of water has been heightened by the lack of legal water supplies resulting from the CDO, SWRCB Order WR 95-10, the listing of the California red-legged frog and the steelhead trout as threatened species under the federal Endangered Species Act, and the limitations on water from the Seaside Groundwater Basin adjudication.

(9) These circumstances create a special and unique need to augment potable water supplies on the Monterey Peninsula. Potential infrastructure projects necessary to develop new sources of supply to resolve the critical water supply shortage within CAW's MPWRS include desalination, aquifer storage and recovery projects, and the production and use of recycled water.

(10) Capital costs associated with infrastructure, plants and facilities necessary to augment the supply of water, and to make existing sources of supply more reliable are considerable.

(11) The State and the people residing on the Monterey Peninsula have an interest in financing the capital costs associated with the construction and installation of water infrastructure, plants and facilities at a lower cost than would be afforded by traditional utility financing mechanisms.

(12) Alternative financing mechanism exist that can result in lower costs to customers of CAW as compared to traditional utility financing mechanisms. To use alternative financing mechanisms, the Public Utilities Commission must be empowered to issue financing orders to allow the issuance of bonds secured by a dedicated rate component.

(13) CAW customers may take advantage of additional costs savings if the Monterey Peninsula Water Management District, or a joint powers agency in which the District is a member, assists in the financing water project capital costs on a tax-exempt basis. It is necessary for the State to provide express authority for the District or such agency to issue bonds or other evidences of indebtedness on such basis.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1. Section 955.1 of the Civil Code is amended to read:

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one intended to create a security interest (paragraph (1) or (3) of subdivision (a) of Section 9109 of the Commercial Code) of any payment intangible (Section 9102 of the Commercial Code) and any transfer of accounts, chattel paper, payment intangibles, or promissory notes excluded from the coverage of Division 9 of the Commercial Code by paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing has priority.

(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

(d) This section does not apply to transfers or assignments of transition property, as defined in Section 840 of the Public Utilities Code, or to transfers or assignments of recovery property, as defined in Section 848 of the Public Utilities Code, or to the transfers or assignments of water expansion property as defined in Section 849 of the Public Utilities Code.

SEC. 2. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the

office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (c) of Section 10308 of the Commercial Code).

(l) Transition property, as defined in Section 840 of the Public Utilities Code, or recovery property, as defined in Section 848 of the Public Utilities Code, or water expansion property as defined in Section 849 of the Public Utilities Code.

SEC. 3. Section 9109 of the Commercial Code is amended to read:

9109. (a) Except as otherwise provided in subdivisions (c) and (d), this division applies to each of the following:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(2) An agricultural lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(4) A consignment.

(5) A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (5) of Section 10508, as provided in Section 9110.

(6) A security interest arising under Section 4210 or 5118.

(b) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(c) This division does not apply to the extent that either of the following conditions is satisfied:

(1) A statute, regulation, or treaty of the United States preempts this division.

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114.

(d) This division does not apply to any of the following:

(1) A landlord's lien, other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary, or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(8) Any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract.

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral.

(10) A right of recoupment or setoff, provided that both of the following sections apply:

(A) Section 9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts.

(B) Section 9404 applies with respect to defenses or claims of an account debtor.

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for each of the following:

(A) Liens on real property in Sections 9203 and 9308.

(B) Fixtures in Section 9334.

(C) Fixture filings in Sections 9501, 9502, 9512, 9516, and 9519.

(D) Security agreements covering personal and real property in Section 9604.

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) Any security interest created by the assignment of the benefits of any public construction contract under the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(15) Transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, recovery property, as defined in Section 848 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.6 (commencing with Section 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, and water expansion property, as defined in Section 848 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.7 (commencing with Section 849) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(16) A claim or right of an employee or employee's dependents to receive workers' compensation under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) of the Labor Code.

(17) A transfer by a government or governmental unit.

SEC. 4. Article 5.7 (commencing with Section 849) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 5.7. Monterey Peninsula Water Expansion Securitization Act

Section 849. Title; Definitions. For purposes of this article, the following terms have the following meanings:

(a) "Ancillary agreement" means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of water rate relief bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(b) "Consumer" means any individual, governmental body, trust, business entity or nonprofit organization which consumes water that has been transmitted or distributed by means of distribution facilities, whether those water transmission or distribution facilities are owned by the consumer, the qualifying water utility, or any other party.

(c) "District" means the Monterey Peninsula Water Management District.

(d) "Financing costs" means the costs to issue, service, repay, or refinance water rate relief bonds, whether incurred or paid upon issuance of the bonds or over the life of the bonds, and approved for recovery by the commission in a financing order. "Financing cost" may include any of the following:

(i) Principal, interest and redemption premiums that are payable on water rate relief bonds.

(ii) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the water rate relief bonds.

(iii) of a qualifying water utility in connection with the issuance of water rate relief bonds, but only to the extent the securities were issued for the purpose of financing water expansion costs.

(iv) Any costs incurred by or on behalf of or allocated to a qualifying water utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement or similar agreement or instrument relating to any existing secured or unsecured obligation of a qualifying water utility or an affiliate of a qualifying water utility, or any costs incurred by or allocated to a qualifying water utility to obtain any consent, release, waiver or approval from any holder of such an obligation, that are necessary to be incurred to permit a qualifying water utility to issue or cause the issuance of water rate relief bonds.

(v) Any taxes, franchise fees or license fees imposed on water expansion charges.

(vi) Any cost related to issuing and servicing water rate relief bonds or the application for a financing order, including, without limitation, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, capitalized interest, rating agency fees and any other related cost that is approved for recovery in the financing order, including any such costs incurred by a public financing entity.

(e) "Financing entity" means (i) the qualifying water utility or any subsidiary or affiliate of the qualifying water utility that is authorized by the commission to issue water rate relief bonds or acquire water expansion property or both, and (ii) any public financing entity authorized to issue water rate relief bonds pursuant to the financing order.

(f) "Financing order" means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to water

expansion charges to ensure recovery of all water expansion costs and all financing costs authorized for recovery under the financing order.

(g) "Qualifying water utility" means California America Water, or any successor public company under Section 2701 et seq of the Public Utilities Code that is engaged in the delivery of water to customers on the Monterey Peninsula

(h) "Public financing entity" means (i) the District or (ii) any joint exercise of powers authority in which the District is a member that is authorized by the District to issue water rate relief bonds or acquire water expansion property or both.

(i) "Service territory" means the geographical area within or surrounding the Monterey Peninsula that the qualifying water utility provides water service to and within which water expansion charges may be imposed and collected as further described in the financing order.

(j) "Water expansion activity" means any activity or activities by or on behalf of a qualifying water utility in connection with the acquisition and construction of infrastructure, plants (including without limitation, desalination facilities), pipelines and other facilities to develop new sources of supply or the distribution of water, or to make existing sources of supply and distribution more reliable, through the replacement or repair of existing facilities.

(k) "Water expansion charges" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover water expansion costs and all financing costs specified in a financing order.

(l) "Water expansion costs" means any reasonable and necessary cost, including capitalized interest cost relating to regulatory assets and capitalized cost associated with design and engineering work, approved in a financing order, incurred or expected to be incurred by a qualifying water utility in undertaking water expansion activities. Water expansion costs include preliminary expenses and investments associated with water expansion activities that are incurred prior to the issuance of a financing order and that are to be reimbursed from the proceeds of water rate relief bonds.

(m) (1) "Water expansion property" means the property right created pursuant to this article, including, without limitation, the right, title, and interest of the qualifying water utility or its transferee:

(A) In and to the water expansion charges established pursuant to a financing order, including all rights to obtain adjustments to the water expansion charges in accordance with Section 849.1 and the financing order.

(B) To be paid the amount that is determined in a financing order to be the amount that the qualifying water utility or its transferee is

lawfully entitled to receive pursuant to the provisions of this article and the proceeds thereof, and in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the water expansion charges that are the subject of a financing order.

(2) "Water expansion property" shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using water or, in those instances where consumers are customers of the qualifying water utility, the qualifying water utility performing certain services.

(n) "Water rate relief bonds" means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to provide, recover, finance, or refinance water expansion costs and financing costs, and that are directly or indirectly secured by, or payable from, water expansion property. Water rate relief bonds may be issued simultaneously by two financing entities.

Section 849.1. Application for Financing Order; Contents of Financing Order; State Pledge.

(a) (i) The commission may issue financing orders in accordance with this article to facilitate the recovery, financing, or refinancing of water expansion costs. A financing order may be adopted only upon the application of the qualifying water utility and shall become effective in accordance with its terms

(ii) After the effective date of this article, and from time to time thereafter, the qualifying water utility may apply to the Commission for a determination that some or all of the qualifying water utility's water expansion costs may be recovered through water expansion charges, which would be water expansion property under this article.

(iii) The qualifying water utility may request this determination by the commission in a separate proceeding or in an existing proceeding, or both. Any public issuing entity which proposes to issue water rate relief bonds pursuant to Section 6 or Section 7 of this act, upon its own application to the commission, or upon the commission's direction, may become a party to such proceeding, and the commission may request that the public financing entity be a co-sponsor of all or a portion of the qualifying water utility's application for a financing order. The public financing entity shall provide such information as requested by the commission in connection with the application and proceeding.

(iv) In its application the qualifying water utility shall specify that consumers would benefit from reduced rates on a present value basis through the issuance of water rate relief bonds as compared to the use of

traditional utility financing mechanisms. If a public financing entity proposes to issue water rate relief bonds, it shall provide evidence to the commission that the issuance of water rate relief bonds by the public financing entity will provide incremental savings to consumers.

(v) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within [120 days] of the qualifying water utility making application therefor.

(vi) The commission may not refuse to allow the recovery of any costs associated with the performance of water expansion activities by a qualifying water utility solely because the qualifying water utility has elected or may elect to finance the performance of those activities through a financing mechanism other than the issuance of water rate relief bonds so long as such alternative financing mechanism is reasonable and prudent.

(b) The commission shall authorize the imposition and collection of water expansion charges in one or more financing orders if the commission determines, as part of its findings in connection with the financing order, that the imposition and collection of the water expansion charges, and the issuance of water rate relief bonds payable from such charges, would reduce the rates on a present value basis that consumers within the qualifying water utility's service territory would pay as compared to the use of traditional utility financing mechanisms. Water expansion charges shall only be imposed on existing and future consumers in the service territory as determined in the financing order. Consumers within the service territory shall continue to pay water expansion charges until the water rate relief bonds and all financing costs are paid in full by the financing entity. Once the water rate relief bonds and all financing costs have been paid in full, the payment by consumers of water expansion charges shall terminate.

(c) The commission shall establish in a financing order an effective mechanism that ensures recovery of water expansion costs and financing costs through water expansion charges will be non-bypassable and will be recovered from existing and future consumers in the service territory.

(d) A financing order may specify how amounts collected from a consumer shall be allocated between water expansion charges, and other charges of the qualifying water utility.

(e) Notwithstanding Section 455.5 or 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to adjustment of water expansion charges pursuant to clause (h) below, water expansion property that has been made the basis for the issuance of water rate relief bonds, the financing order, and the water expansion charges shall be irrevocable, and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes, the water expansion costs or the financing

costs, determine that the water expansion charges are unjust or unreasonable, or in any way reduce or impair the value of water expansion property either directly or indirectly by taking water expansion charges into account when setting other rates for the qualifying water utility; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. The State of California does hereby pledge and agree with the qualifying water utility, owners of water expansion property, the financing entities, and holders of water rate relief bonds that the state shall neither limit nor alter (except as otherwise provided with respect to adjustment of water expansion charges pursuant to clause (h) below), the water expansion charges, water expansion property, financing orders, or any rights thereunder until the water rate relief bonds, together with the interest thereon, and all related financing costs are fully paid and discharged, or, in the alternative, have been refinanced through an additional issue of water rate relief bonds; provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of the qualifying water utility, financing entities, owners, and holders. The financing entity is authorized to include this pledge and undertaking for the state in the water rate relief bonds. Notwithstanding any other provision of this section, the commission shall approve adjustments to the water expansion charges as may be necessary to ensure timely recovery of all water expansion costs and all financing costs that are the subject of the financing order.

(f) (1) Neither financing orders nor water rate relief bonds issued under this article shall constitute a debt or liability of the state or of any political subdivision thereof, and shall they constitute a pledge of the full faith and credit of the state or any of its political subdivisions, but are payable solely from the funds provided therefor under this article and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this article or pursuant to Section 7 or Section 8 of this Act. All water rate relief bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(2) The issuance of water rate relief bonds under this article shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. Nothing herein shall prevent or be construed as to prevent any public financing entity from pledging water expansion property, or payments made on water rate relief bonds, together with any reserves or overcollateralization amounts approved in a financing order, to the payment of the water rate relief bonds.

(g) The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the water expansion charges that are the subject of the financing order, as required by subsection (f). The procedure shall require the commission to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the

adjustments, if required, to be approved within 30 days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

(h) Water expansion charges are water expansion property when, and to the extent that, a financing order authorizing the water expansion charges has become effective in accordance with this article, and the water expansion property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this article for the period and to the extent provided in the financing order, but in any event until the water rate relief bonds, including all principal, premium (if any), and interest with respect to such bonds and all other financing costs are paid in full. A financing order may provide that the creation of water expansion property shall be simultaneous with the sale of the water expansion property to a transferee or assignee as provided in the application and the pledge of the water expansion property to secure water rate relief bonds.

(i) Any surplus water expansion charges in excess of the necessary amounts to pay principal, premium (if any), and interest with respect to the water rate relief bonds and all other financing costs shall be remitted to the financing entity and may be used to benefit customers if this would not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including, but not limited to, the following:

(1) Avoiding the recognition of debt on the qualifying water utility's balance sheet for financial accounting and regulatory purposes.

(2) Treating the water rate relief bonds as debt of the qualifying water utility or its affiliates for federal income tax purposes.

(3) Treating the transfer of the water expansion property by the qualifying water utility as a true sale for bankruptcy purposes.

(4) Avoiding any adverse impact of the financing on the qualifying water utility's credit rating.

(j) A financing order may authorize the qualifying water utility to conduct water expansion activities on an estimated schedule approved in the financing order and through the issuance of more than one series of water rate relief bonds. In this case, the qualifying water utility will not subsequently be required to secure a separate financing order for each issuance of water rate relief bonds or for each scheduled phase of the water expansion activities approved in the financing order.

Section 849.2. Duties of a Qualifying Water Utility.

(a) A qualifying water utility for which a financing order has been issued shall cause the proceeds of any water rate relief bonds issued pursuant to a financing order to be placed in a separate account. A qualifying water utility may use the proceeds of the

issuance of water rate relief bonds for paying water expansion costs and financing costs and for no other purpose.

(b) A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of water rate relief bonds. A financing order may authorize the staff of the commission to review and audit the books and records of the qualifying water utility relating to the receipt and disbursement of proceeds of water rate relief bonds. The provisions of this subdivision shall not be construed to limit the authority of the commission under this chapter to investigate the practices of the qualifying utility or to audit the books and records of the qualifying water utility.

(c) A qualifying water rate reduction utility for which a financing order has been issued shall annually provide to its customers a concise explanation of the water expansion charges approved in a financing order, as modified by subsequent issuances of water rate relief bonds authorized under a financing order, if any, and by application of the adjustment mechanism as provided in the financing order. These explanations may be made by bill inserts, website information or other appropriate means. If water rate relief bonds are issued by a public financing entity, the public financing entity, or its trustee or representative, shall provide such information to the qualifying water utility as reasonably requested in order to comply with its obligations hereunder.

(d) The failure of a qualifying water utility to apply the proceeds of water rate relief bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section shall not invalidate, impair or affect any financing order, water expansion property, water expansion charges or water rate relief bonds.

Section 849.3. Water Expansion Property.

(a) Financing entities may issue water rate relief bonds upon approval by the Commission in the financing order. Water rate relief bonds shall be nonrecourse to the credit or any assets of the qualifying water utility, other than the water expansion property as specified in the financing order.

(b) A qualifying water utility may sell and assign all or portions of its interest in water expansion property to an affiliate. A qualifying water utility or its affiliates may sell or assign their interests to one or more financing entities authorized hereunder that make that property the basis for issuance of water rate relief bonds to the extent approved in the financing order. A qualifying water utility, its affiliates, or financing entities may pledge and assign water expansion property as collateral, directly or indirectly, to the extent approved in the financing order providing for a security interest in the water expansion property, in the manner as set forth in Section 849.4. In addition, water expansion property may be sold or assigned by (1) the financing entity or a trustee for the holders of water rate relief bonds or the holder of an ancillary agreement in connection with the exercise of remedies upon a default, or (2) any person acquiring the water expansion property after a sale or assignment pursuant to this article.

(c) To the extent that any interest in water expansion property is so sold or assigned, or is so pledged as collateral, the commission shall authorize the qualifying water utility to contract with the issuing entity or entities that it will continue to operate its system to provide service to its customers, will collect water expansion charges for the benefit and account of the financing entities and their pledgees, and will account for and remit these amounts to or for the account of the financing entities and their pledgees. Contracting with a financing entity in accordance with that authorization shall not impair or negate the characterization of the sale, assignment, or pledge as an absolute transfer, a true sale, or security interest, as applicable.

(d) Water expansion property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of water expansion charges depend on the qualifying water utility continuing to provide water service or continuing to perform its servicing functions relating to the collection of water expansion charges or on the level of future water consumption. Water expansion property shall exist whether or not the environmental control revenues have been billed, have accrued or have been collected and notwithstanding the fact that the value for a security interest in the water expansion property, or amount of the water expansion property is dependent on the future provision of service to customers by the qualifying water utility. All water expansion property specified in a financing order shall continue to exist until the water expansion bonds issued pursuant to a financing order and all other financing costs are paid in full.

(e) If a qualifying water utility defaults on any required payment of water expansion revenues, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the water expansion charges (and the proceeds thereof) for the benefit of bondholders, any assignee and any financing entities or their pledges, and the counterparties to any ancillary agreements. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the qualifying water utility or any affiliate thereof.

(f) Water expansion property and water expansion charges, and the interests of an assignee, bondholder or financing entity or any pledgee in water expansion property and water expansion charges, are not subject to setoff, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency proceeding of the qualifying utility, any affiliate thereof or any other entity.

(g) Notwithstanding Section 1708 or any other provision of law, any requirement under this article or a financing order that the commission take action with respect to the subject matter of a financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exerting functions similar to the commission, and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by the qualifying water utility or a financing entity of water rate relief bonds shall include the approvals, if any, as may be required by Article 5

(commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of water rate relief bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 is not applicable to the transfer or pledge of water expansion property, the issuance of water rate relief bonds, or related transactions approved in a financing order.

Section 849.4. Security Interest in Water Expansion Property.

(a) A security interest in water expansion property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the water expansion property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the water expansion charges included in the water expansion property.

(2) Value has been given by the pledgees of the water expansion property.

(3) The pledgor has signed a security agreement covering the water expansion property.

(b) A valid and enforceable security interest in water expansion property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 4 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the water expansion property as "debtor" and identifying the water expansion property. Any description of the water expansion property shall be sufficient if it refers to the financing order creating the water expansion property. A copy of the financing statement shall be filed with the commission by the qualifying water utility that is the pledgor or transferor of the water expansion property, and the commission may require the qualifying water utility to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in water expansion property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Water expansion property shall constitute property for all purposes, including for contracts securing water rate relief bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(d) Subject to the terms of the security agreement covering the water expansion property and the rights of any third parties holding security interests in the water expansion property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the water expansion property with other funds of the qualifying water utility that is the pledgor or

transferor of the water expansion property, or by any security interest in a deposit account of that qualifying water utility perfected under Division 9 (commencing with Section 9101) of the Commercial Code into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of subdivision (g) of Section 9302 of the Commercial Code, the pledgees of the water expansion property shall have a perfected security interest in all cash and deposit accounts of the qualifying water utility in which revenues arising with respect to the water expansion property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the water expansion property received by the qualifying water utility within 12 months before (1) any default under the security agreement or (2) the institution of insolvency proceedings by or against the qualifying water utility, less payments from the revenues to the pledgees during that 12-month period.

(e) If an event of default occurs under the security agreement covering the water expansion property, the pledgees of the water expansion property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce their security interest in the water expansion property, subject to the rights of any third parties holding prior security interests in the water expansion property perfected in the manner provided in this section. In addition, the commission may require, in the financing order creating the water expansion property, that, in the event of default by the qualifying water utility in payment of revenues arising with respect to the water expansion property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 849.5, of the water expansion property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the water expansion property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the water expansion property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, on the water rate relief bonds, and other financing costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

(f) Sections 9204 and 9205 of the Commercial Code shall apply to a pledge of water expansion property by a qualifying water utility, an affiliate of a qualifying water utility, or a financing entity (other than a public financing entity).

(g) This section sets forth the terms by which a consensual security interest can be created and perfected in the water expansion property. Unless otherwise ordered by the commission with respect to any series of water rate relief bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subdivision. Upon the effective date of the financing order, there shall exist a first priority lien on all water expansion property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the qualifying water utility, any affiliate thereof, the issuing

entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the water rate relief bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce this statutory lien in the water expansion property. This lien shall attach to the water expansion property regardless of who shall own, or shall subsequently be determined to own, the water expansion property including any qualifying water utility, any affiliate thereof, any financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the water expansion property and all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but shall not be required to, file a financing statement in accordance with subdivision (b). Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the water expansion property.

(h) Notwithstanding anything to the contrary, Section 5451 of the Government Code shall apply to any pledge by the public financing entity of water expansion property or other security for any water rate relief bonds issued by a public financing entity.

Section 849.5. Transfer of Water Expansion Property

(a) A sale, assignment or transfer of water expansion property by a qualifying water utility to an affiliate or to a financing entity, or by an affiliate of a qualifying water utility or a financing entity to another financing entity, which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the water expansion property, other than for federal and state income and franchise tax purposes.

(b) The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by, among other things, the occurrence of any of the following factors:

(1) Commingling of water expansion revenues with other amounts;

(2) The retention by the seller of: (i) A partial or residual interest, including an equity interest, in the water expansion property, whether direct or indirect, or whether subordinate or otherwise; or (ii) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of water expansion revenues;

(3) Any recourse that the purchaser may have against the seller;

(4) Any indemnification rights, obligations or repurchase rights made or provided by the seller;

(5) The obligation of the seller to collect water expansion revenues on behalf of an assignee;

(6) The treatment of the sale, assignment or transfer for tax, financial reporting or other purposes; and

(7) Any adjustment of the water expansion charges as provided in the financing order.

(c) A sale, assignment or transfer of water expansion property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the water expansion charges included in the water expansion property expansion property.

(2) An assignment of the water expansion property in writing has been executed and delivered to the transferee.

(d) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 4 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the water expansion property as debtor and identifying the water expansion property has priority. Any description of the water expansion property shall be sufficient if it refers to the financing order creating the water expansion property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

Section 849.6. Binding upon Successors. Any successor to the qualified water utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the qualifying water utility pursuant to this article in the same manner and to the same extent as the qualified water utility, including, but not limited to, collecting and paying to the holders of water rate relief bonds or any financing entities or their pledgees revenues arising with respect to the water expansion property sold to the applicable financing entity or pledged to secure water rate relief bonds.

SEC. 5. Section 1731 of the Public Utilities Code is amended to read:

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued pursuant to either Article 5 (commencing with Section 816) or Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action or proceeding.

(c) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Chapter 4 of the Statutes of the 2001-02 First Extraordinary Session shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

(d) No cause of action arising out of any order or decision of the commission construing, applying, or implementing the provisions of Article 5.6 (commencing with Section 848) or Article 5.7 (commencing with Section 849) of Chapter 4 shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 10 days after the date of issuance of the order or decision. The commission shall issue its decision and order on rehearing within 20 days after the filing of that application.

SEC. 6. Article 8, commencing at Section 118-685, is added to Chapter 3 of Part 5 of Chapter 118 of the of Water Code Appendix, entitled the "Monterey Peninsula Water Management District Law."

Article 8 - Tax Exempt Water Relief Reduction Bonds

Section 118-685. Issuance of Tax Exempt Water Rate Relief Bonds

(a) If authorized a resolution, adopted by the board, the district may issue water rate relief bonds for the primary purpose of purchasing water rate relief bonds which are authorized to be issued by an affiliate of a qualifying water utility in a financing order issued pursuant to Section 849 et seq of the Public Utilities Code, to fund any necessary reserves and to pay the costs of issuance of the bonds. Such bonds may be issued only if the commission finds in a financing order that such issuance, due to the availability of federal income tax exemption, will provide savings to water customers on the Monterey Peninsula. The bonds so issued by the district, or the "district bonds", shall

be denominated "Monterey Peninsula Water Management District Water Rate Relief Bonds", and shall have such designations, details and terms, shall be payable at such times and places, and shall be sold in such manner as the board shall determine. The resolution shall authorize the district to enter into a trust agreement or similar security agreement to secure payment of the district bonds.

(b) The district bonds shall be special limited obligations of the district, and shall be payable solely from payments made on the water rate relief bonds purchased with the proceeds of the district bonds and any reserve funded from the proceeds of the district bonds. The bonds shall not be payable from any other funds or assets of the district, and neither the full faith and credit nor taxing power of the district shall be pledged to or exercised for the payment of said bonds.

Section 118-686. District Not Qualified to File for Bankruptcy under Chapter 9.

If the district authorizes the issuance of bonds under Section 118-686, the district, notwithstanding Section 53760 et seq of the Government Code will be not be eligible to file for bankruptcy pursuant to Chapter 9 of Title 11 of the United State Code so long as the district bonds and any related financing costs are outstanding and unpaid and for a period of one year and one day thereafter.

SEC. 7. Section 6537 is added to Chapter 5 of Division 7 of Title 1 of the Government Code:

Section 6537. The Legislature finds that it is in the best interest of the communities on the Monterey Peninsula that any joint exercise of powers authority formed under Article 1 (commencing with Section 6500) of this Chapter to which the Monterey Peninsula Water Management District and one or more other public agencies are members is authorized to issue water rate relief bonds (referred to herein as "agency bonds"), the proceeds of which will be used to purchase water rate relief bonds which are authorized to be issued by an affiliate of a qualifying water utility in a financing order issued pursuant to Section 849 et seq of the Public Utilities Code, to fund any necessary reserves and to pay the costs of issuance of the agency bonds. The agency bonds may be issued only if the commission finds in a financing order that such issuance, due to the availability of federal income tax exemption, will provide savings to water customers on the Monterey Peninsula. Notwithstanding any other provision of law, the joint powers agency may issue bonds pursuant to Article 2 (commencing with Section 6540) of this chapter or Article 4 (commencing with Section 6584) of this chapter. If the agency issues bonds under this Section 6537, the agency, notwithstanding Section 53760 et seq of the Government Code, will be not be eligible to file for bankruptcy pursuant to Chapter 9 of Title 11 of the United State Code Chapter so long as the bonds and any related financing costs are outstanding and unpaid and for a period of one year and one day thereafter.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 10. [The Legislature finds and declares that, because of the unique circumstances applicable on the Monterey Peninsula and to CAW and the District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore this special statute is necessary.]