

#36.40

8/29/69

Memorandum 69-94

Subject: Study 36.40 - Condemnation (Excess Condemnation: Physical and Financial Remnants)

Attached are two copies of the tentative recommendation relating to excess condemnation (physical and financial remnants) and one copy of the background study. The statutory provisions of the recommendation have been changed to reflect the policy decisions made at the second June, 1969 meeting but are still substantially those examined by the Commission at that time. However, the preliminary part of the recommendation is new, and the entire recommendation should be carefully reviewed. At the September, 1969 meeting, we hope the Commission will complete this review and approve the recommendation for distribution for comment. The staff requests that you make any desired editorial revisions on one copy of the recommendation and return this copy to the staff at the September meeting, so that the revisions may be taken into account when the staff revises the recommendation before sending it out for comment.

Respectfully submitted,

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Associate Counsel

August 29, 1969

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

EXCESS CONDEMNATION--PHYSICAL AND FINANCIAL REMNANTS

PRELIMINARY STAFF DRAFT

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WARNING: This tentative recommendation has been prepared by the staff of the Law Revision Commission to effectuate the Commission's tentative decision to revise the statutes relating to the acquisition of financial and physical remnants of parcels acquired by eminent domain. The draft has not been considered by the Commission and therefore may not reflect the views of the Commission.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. For the most part, the Comments are written as if the legislation were enacted. They are cast in this form because their primary purpose is to undertake to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

TENTATIVE RECOMMENDATION OF THE CALIFORNIA  
LAW REVISION COMMISSION

relating to

EXCESS CONDEMNATION--PHYSICAL AND FINANCIAL REMNANTS

BACKGROUND

The land actually needed for a public improvement often consists of only a portion of each individual parcel located in the path of the improvement. This is ordinarily the case where the location and physical extent of the project are determined by engineering and functional considerations. For example, condemnation of only the portions actually required for the construction of a street ordinarily would leave a string of relatively small, odd-shaped strips and wedges in private ownership. These physical remnants would be virtually useless in private hands; but, if the entire parcels were condemned, the condemnor could often consolidate the physical remnants and resell them to private persons in usable condition. Occasionally, remnants of appreciable size would be rendered economically useless if only the portion of the parcel needed for the public improvement were acquired. This situation arises, for example, where a large portion of a parcel is landlocked or waterlocked by a highway or water project. Condemnation of the entire parcel permits the condemnor to avoid the risk of having to pay severance damages for the remainder substantially equal to its original market value and, at the same time, acquire substantially less than the entire parcel. The proper scope and the means of implementing the authority to condemn such physical and financial remnants is the subject of

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this recommendation.

Generally speaking, those condemnors with any substantial need therefor have been granted specific statutory authority to engage in remnant condemnation.<sup>2</sup> However, these statutes vary from agency to agency, often with little or no apparent reason for the difference.<sup>3</sup> Nevertheless, all of these statutes clearly authorize takings of physical remnants and takings of this sort rarely cause the courts much difficulty.<sup>4</sup>

On the other hand, the California Supreme Court has only recently recognized the authority to take remnants of appreciable size. In the recent case of People ex rel Dep't of Public Works v. Superior Court, commonly known

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1. The material presented here only highlights the most critical aspects of the relevant background. For a more complete presentation of this background, the reader is referred to the study--entitled "Excess Condemnation in California: Proposals for Statutory and Constitutional Change"--prepared for this purpose for the Commission by Michael J. Matheson. See also Capron, Excess Condemnation in California--A Further Expansion of the Right to Take, 20 Hastings L.J. 571 (1969).
  2. E.g., Code Civ. Proc. § 1266 (city and county highway authorities); Sts. & Hwys. Code § 104.1 (Department of Public Works); Water Code § 254 (Department of Water Resources), § 43533 (water districts).
  3. For example, the remnant-condemnation authority of the following adjoining flood control and water districts varies with no apparent justification. Compare San Diego County (Water Code App. § 105-6(12)) and Orange County (Water Code App. § 36-16.1); Alameda County (Water Code App. § 55-28.1) and Santa Clara County (Water Code App. § 60-6.1).
  4. E.g., Kern County Union High School Dist. v. McDonald, 180 Cal. 7, 179 P. 180 (1919); People v. Thomas, 108 Cal. App.2d 832, 239 P.2d 914 (1952).

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as the Rodoni case, the California Supreme Court held a remnant taking valid solely as a means of reducing the cost of the improvement to the condemnor. The Department of Public Works condemned 0.65 acres of a parcel which exceeded 54 acres in size for the construction of a freeway through farmland in Madera County. In doing so, however, the Department had to cut across the only access road to the parcel, rendering it landlocked and presumably of little economic value. Fearing that it would have to pay severance damages for the remainder equal to its original market value, the Department sought to condemn the 54-acre remainder under Section 104.1 of the Streets and Highways Code. That section authorizes the taking of an entire parcel in the course of state highway construction whenever "the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage . . . ."

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According to the majority opinion of Chief Justice Traynor:

Although a parcel of 54 landlocked acres is not a physical remnant, it is a financial remnant: its value as a landlocked parcel is such that severance damages might equal its value . . . . There is no reason to restrict . . . [remnant takings to] parcels negligible in size and to refuse to apply it to parcels negligible in value.

In the present case the entire parcel can probably be condemned for little more than the cost of taking the part needed for the highway and paying damages for the remainder. It is sound economy for the state to take the entire parcel to minimize ultimate costs.

Under these circumstances excess condemnation is constitutional.

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5. Roy and Thelma Rodoni were owners of the parcels in question, and the initial stages of the litigation were conducted under their names. See People v. Rodoni, 243 Cal. App.2d 771, 52 Cal. Rptr. 857 (1966). When the Rodonis' contentions were upheld by the trial court, the condemnor petitioned for a writ of mandate ordering that court to proceed with the trial of the original complaint or in the alternative for a writ of prohibition forbidding the court from proceeding in accordance with its original order. People v. Superior Court, 68 Cal.2d 206, 210, 436 P.2d 342, 345, 65 Cal. Rptr. 342, 345 (1968).
6. Id. at 212-213, 436 P.2d at 346-347, 65 Cal. Rptr. at 346-347.

The Rodoni decision necessitates substantial revision of California  
remnant-condemnation statutes. According to the court:

[These statutes] may reasonably be interpreted to authorize only those excess condemnations that are for valid public uses; namely, condemnation of remnants . . . [citations omitted] or condemnations that avoid a substantial risk of excessive severance or consequential damages.

Certain provisions of the statutes referred to appear clearly to violate the Rodoni constitutional standards, as where authority to take depends only on a mere assertion of severance damage claims or a mere showing of "substantial" damage to the remainder. Other provisions appear to fall within the Rodoni criteria, as where the condemnor may take only remainders of little or no value to the owner or in such damaged condition as to require payment of compensation equal to the value of the entire parcel, but may fall short of the full scope of remnant-condemnation powers now recognized by the California Supreme Court. In any case, all of these provisions are in need of revision to achieve uniformity and to eliminate purposeless differences among the powers of various condemnors.

7. Id. at 212, 436 P.2d at 346, 65 Cal. Rptr. at 346.

8. Sts. & Hwys. Code § 104.1 (Department of Public Works), § 943.1 (county highway authorities); Water Code § 254 (Department of Water Resources), § 8590.1 (Reclamation Board), § 11575.2 (Department of Water Resources), § 43533 (water districts).

9. Water Code App. § 28-16 5/8 (Los Angeles County Flood Control District), § 36-16.1 (Orange County Flood Control District), § 48-9.2 (Riverside County Flood Control and Water Conservation District), § 49-6.1 (San Luis Obispo County Flood Control and Water Conservation District), § 51-3.4 (Santa Barbara County Water Agency), § 60-6.1 (Santa Clara County Flood Control and Water Conservation District), § 74-5(12.1) (Santa Barbara County Flood Control and Water Conservation District); see also Water Code App. § 28-16 3/4 (Los Angeles County Flood Control District).

10. Sts. & Hwys. Code § 104.1 (Department of Public Works), § 943.1 (county highway authorities); Water Code § 254 (Department of Water Resources), § 8590.1 (Reclamation Board), § 11575.2 (Department of Water Resources), § 43533 (water districts).

11. Code Civ. Proc. § 1266 (city and county highway authorities); Water Code App. § 105-6(12) (San Diego County Flood Control District).

## RECOMMENDATIONS

The Commission has determined that authority to acquire physical or financial remnants can be of substantial benefit both to public entities and their tax-paying citizens and to the owners of such property. The Commission has concluded therefore that public entities should be given such authority under a procedure that provides assurance that the authority will not be abused. Accordingly, the Commission recommends:

1. One uniform statute, covering all public entities, should be enacted to replace the numerous and diverse statutes that now provide specific authority to engage in remnant condemnation. Both the number and diversity of these statutes lack any justification.

2. Public entities should be given express statutory authority to acquire, by voluntary transaction, and to dispose of both physical and financial remnants and to credit the proceeds therefrom to the fund available for the acquisition of property being acquired for public use. Inasmuch as this authority would only permit voluntary acquisitions, it could hardly be detrimental to either side. On the contrary, it could substantially benefit both the public entity and the property owner. The process of appraising, negotiating, and--if necessary--litigating the elements of severance damage in a partial taking case often proves considerably more difficult and costly than determining and paying the fair market value of the entire parcel. Authority to acquire the entire parcel permits both sides to avoid this expense. In addition, this authority will be of assistance in cases where the property owner otherwise would be left with property for which he has no use and would himself have to bear the cost of disposition of the property.

3. A public entity should be authorized to condemn the remainder, or a portion of the remainder, of a larger parcel of property if the severance damages (less any benefits) exceed 75 percent of the value of such remainder, or a portion of the remainder, in its before condition. The Rodoni opinion held that "condemnations that avoid a substantial risk of excessive or consequential damages may constitutionally be authorized." However, it is difficult to determine what the court meant to include within the term "excessive severance or consequential damage." The definition of excessive damages as those damages exceeding a fixed proportion of the "before" value of the remainder would eliminate the uncertainty resulting from the Rodoni opinion and avoid the time-consuming and costly litigation likely to result therefrom. Moreover, the definition provides a definite, quantitative standard suitable for measuring the extent of all remnant condemnation authority. The authority to condemn a remainder where the severance damage exceeds 75 percent of the value of such remainder in its before condition is in substance the same as the authority to condemn "physical" or "financial" remnants. However, the reference to an ascertainable standard will again provide desirable certainty.

4. The resolution, ordinance, or declaration authorizing the taking of a remainder, or portion of the remainder, should be given the effect of a rebuttable presumption. The condemnee should be able to rebut the presumption if the taking is authorized to avoid excessive damages upon proof of either of the following: (1) That the public entity had a reasonable, practical, financially feasible means of avoiding the excessive damages or diminishing them to such an extent that they would not be

excessive; (2) That the remainder, or portion of the remainder, will not suffer excessive damages.

The court should make the determination whether or not there is an economically feasible means of avoiding excessive damages or diminishing them to such an extent that they will not be excessive. If the determination is in favor of the condemnee, the remainder, or portion of the remainder, sought to be taken should be deleted from the proceeding.

If the taking is contested on the grounds that the remainder, or portion of the remainder, will not suffer excessive damages, the court should postpone determination of the issue until court, jury, or referee has determined (1) the value of the damages and benefits respecting the remainder and (2) the value of the remainder before condemnation and as unaffected thereby. If such determinations do not result in excessive damages, the remainder should be deleted from the proceeding and compensation should be adjudged as in a partial taking. If excessive damages do result, subject to the exception noted below, the remainder should be included in the judgment and compensation should be awarded accordingly.

Procedurally, the Rodoni decision presently requires a preliminary determination by the trial court of the probable amount of severance or consequential damages and of the value of the parcels involved even before

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12. For example, condemnees should be permitted to avoid the taking of the entire parcel where the condemnor, through the taking of access easements or the construction of access roads or structures, could economically reduce or eliminate the damage to the remainder. The condemnation of property by a public agency to provide access to a parcel landlocked by its own project would be a valid taking for a public use, and separate proposals have been prepared to make California's statutory authority for such takings explicit and uniform. See Tentative Recommendation Relating to Condemnation Law and Procedure; The Right to Take (Byroads), 9 Cal. L. Revision Comm'n Reports 000 (1969).

the condemnor's initial right to take the remainder can be resolved. However, this can result in the property owner's loss of property in circumstances where the trier of fact would not have found excessive damages and alternatively in a denial of the right to take where the trier of fact does eventually award excessive damages. Moreover, it results in considerable duplication of effort in both presenting and judging the basic valuation case. The procedure recommended above avoids these difficulties and would be more rational, expeditious, and beneficial to both sides in the controversy.

5. If--within ten days from the determination of values, damages, and benefits--the property owner files in the proceeding a remission of all excessive damages, the remainder should not be included in the judgment, and compensation should be adjudged by adding the value of the part taken for the public improvement to the damages that are not remitted. This will permit the owner to avoid the taking but only if he waives such damages as are found to be excessive.

6. Finally, the disposition of remnants acquired by condemnation should also be provided for.

PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by the enactment of the following legislation:

An act to add Sections 1225, 1226, 1266.1 and 1266.2 to, and to repeal Section 1266 of the Code of Civil Procedure, to repeal Sections 104.1 and 943.1 of the Streets and Highways Code, to repeal Sections 254, 8590.1, 11575.2, and 43533 of the Water Code, to repeal Sections 28-16 5/8, 28-16 3/4, 36-16.1, and 48-9.2 of, to amend Sections 49-6.1 and 51-3.4 of, to repeal Sections 55-28.1 and 60-6.1 of, and to amend Sections 74-5 and 105-6 of, the Water Code Appendix, relating to the acquisition of property by a public entity.

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

Code of Civil Procedure Section 1225 (new)--"Public entity" defined

Section 1. Section 1225 is added to the Code of Civil Procedure to read:

1225. As used in this title, "public entity" includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, or any other political subdivision or entity in the state.

Comment. For a comparable definition of "public entity," see Section 811.2 of the Government Code. The definition in this section is provided for convenience in distinguishing governmental from non-governmental condemnors; it does not enlarge or diminish the power of condemnation of any condemnor.

Code of Civil Procedure Section 1226 (new)--"Larger parcel" defined

Sec. 2. Section 1226 is added to the Code of Civil Procedure,  
to read:

(To be drafted later.)

[Comment. As used in Sections 1266.1 and 1266.2, "larger parcel" has the same meaning as those words in Section 1248 and the decisional law construing that term. See People v. Ocean Shore R.R., 32 Cal.2d 406, 196 P.2d 570, 6 A.L.R.2d 1179 (1948); People v. Nyrin, 265 Cal. App.2d 288, 63 Cal. Rptr. 905 (1967).]

Code of Civil Procedure Section 1266.1 (new)--Acquisition of physical or financial remnant other than by condemnation

Sec. 3. Section 1266.1 is added to the Code of Civil Procedure to read:

1266.1. Whenever a part of a larger parcel of property is to be acquired by a public entity for public use and the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to be of little value to the owner or to give rise to claims for severance or other damages, the public entity may:

(a) Acquire the remainder, or portion of the remainder, by any means other than condemnation proceedings; and

(b) Sell, lease, exchange, or otherwise dispose of property so acquired and credit the proceeds from such disposition to the fund or funds available for acquisition of the property to be acquired for the public use.

Comment. Section 1266 is added to authorize any public entity to acquire, by a voluntary transaction, physical or "financial" remnants, to dispose of them, and to credit the proceeds to the fund available for acquisition of the property being acquired for public use. As to "financial" remnants, see Dep't of Public Works v. Superior Court, 68 Cal.2d 206, 436 P.2d 342, 65 Cal. Rptr. 342 (1968); La Mesa v. Tweed & Gambrell Planing Mill, 146 Cal. App.2d 762, 304 P.2d 803 (1956). The language of the section is similar to that contained in former Sections 1266 of the Code of Civil Procedure, 104.1 and 943.1 of the Streets and Highways Code, and Sections 254, 8590.1, 11575.2, and 43533 of the Water Code (all repealed in this recommendation). This section does not provide the procedures to be followed by the entity in disposing of the property so acquired, and that matter is left to be governed by other statutory provisions applicable to the particular entity.

Code of Civil Procedure Section 1266.2 (new)--Acquisition of physical or financial remnant by condemnation

Sec. 4. Section 1266.2 is added to the Code of Civil Procedure, to read:

1266.2. (a) As used in this section, "excessive damages" means damages to the remainder, or a portion of the remainder, of a larger parcel of property by reason of its severance from the part taken for public use and from construction of the public improvement in the manner proposed by the public entity, after being diminished by any benefits, that exceed seventy-five percent of the value of such remainder, or portion of the remainder, immediately before condemnation and as unaffected thereby.

(b) Whenever a part of a larger parcel of property is to be taken for public use by a public entity by condemnation proceedings and the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to give rise to claims for excessive damages, the public entity may take such remainder, or portion of the remainder, in accordance with this section and not otherwise.

(c) The resolution, ordinance, or declaration authorizing the taking of a remainder, or a portion of the remainder, under this section shall specifically refer to this section and shall recite a determination by the officer or body adopting the resolution, ordinance, or declaration that the remainder, or a portion of the remainder, sought to be taken will be left in such size, shape, or condition as to give rise to claims for excessive damages. The determination and recital required by this subdivision shall not be referred to in the trial of the issue of compensation. It shall be presumed from the adoption of the resolution, ordinance, or declaration that the taking of the remainder, or portion of the remainder, is justified under this section.

§ 1266.2

(d) The condemnee may contest a taking under this section upon either or both of the following grounds:

(1) That the public entity has a reasonable, practicable, and financially feasible means of avoiding excessive damages or diminishing them to such an extent that they will not be excessive.

(2) That the remainder, or portion of the remainder, will not suffer excessive damages.

(e) If the condemnee contests the taking on the ground listed in paragraph (1) of subdivision (d), the court shall determine the issue and the burden of proof is on the condemnee. If the determination is in favor of the condemnee, the remainder, or portion of the remainder, shall be deleted from the proceeding.

(f) If the taking is contested upon the ground that the remainder, or portion of the remainder, will not suffer excessive damages, the court shall postpone determination of the issue until the court, jury, or referee has determined values, damages, and benefits respecting the parcel. In addition to the other determinations to be made under Section 1248, the court, jury or referee shall determine specifically the value of the remainder, or portion of the remainder, before condemnation and as unaffected thereby. If such determinations do not result in excessive damages, as defined in subdivision (a), the remainder or portion of the remainder, shall be deleted from the proceeding and compensation shall be adjudged as in a partial taking. If excessive damages do result, the remainder, or portion of the remainder, shall be included in the judgment, and compensation shall be adjudged by adding

the value of the part taken for the public improvement and the value of the remainder, or portion of the remainder, before condemnation and as unaffected thereby. However, if within ten days from the determination of values, damages and benefits, the property owner files in the proceeding a remission of all excessive damages, as defined in subdivision (a), the remainder, or portion of the remainder, shall not be included in the judgment, and compensation shall be adjudged by adding the value of the part taken for the public improvement to the damages that are not remitted.

(g) Nothing in this section affects (1) the privilege of the entity to abandon the proceeding or abandon the proceeding as to particular property, or (2) the consequence of any such abandonment.

(h) A public entity may sell, lease, exchange, or otherwise dispose of property taken under this section or acquired by purchase in lieu of proceedings under this section and may credit the proceeds to the fund or funds available for acquisition of the property to be acquired for the public use.

Comment. Section 1266.2 is added to provide a uniform procedure, applicable to all public entities, for determining whether damages to a remainder of property will be excessive and for avoiding the payment of excessive damages. As to the concept of "excessive severance damages," see Dep't of Public Works v. Superior Court, 68 Cal.2d 206, 436 P.2d 342, 65 Cal. Rptr. 342 (1968); People v. Nyrin, 256 Cal. App.2d 288, 63 Cal. Rptr. 905 (1967); La Mesa v. Tweed & Gambrell Planning Mill, 146 Cal. App.2d 762, 304 P.2d 803 (1956). See, generally, Recommendation Relating to Condemnation Law and Procedure: Number 00, Excess Condemnation--Physical and Financial Remnants, \_\_\_ Cal. L. Revision Comm'n Reports 000 (19 ). The section supersedes Sections 1266 of the Code of Civil Procedure, 104.1 and 943.1

of the Streets and Highways Code, Sections 254, 8590.1, 11575.2, and 43533 of the Water Code, and various sections of special district laws.

Subdivision (a). "Excessive damages" are defined to mean damages, after offsetting benefits, that result to a remainder and that exceed 75 percent of the value of such remainder in the "before condition." For the purposes of this section, only the portion of the damages that exceed 75 percent are "excessive." "Value," "damages," and "benefits" have the same meaning as in Section 1248 (or any successor to that section). The phrase "remainder, or portion of the remainder" contemplates a case in which one portion of the remainder is damaged more severely than another portion. For example, if a highway severs a large, single parcel, the portion remaining on one side of the highway may be substantially damaged, while the portion on the other side is damaged only slightly or not at all.

Subdivision (b). This subdivision authorizes the taking of physical or financial remnants, but requires the taking to be in accordance with this subdivision. The language of the section is similar to that contained in former Sections 1266 of the Code of Civil Procedure, 104.1 and 943.1 of the Streets and Highways Code, and Sections 254, 8590.1, 11575.2, and 43533 of the Water Code (all repealed in this recommendation).

Subdivision (c). To invoke this section, the resolution to condemn must refer to it and must recite a determination that the taking will "give rise to claims for excessive damages"; the resolution is not a determination or concession that damages will exceed 75 percent of the value of the remainder. The subdivision forbids reference to the determination or recital in the valuation trial. For an analogous provision, see Section 1243.5(e) (amount deposited to take immediate possession). The resolution (or ordinance or declaration) is given the effect of raising a presumption that the taking is justified under this section. In the absence of a contest of

that issue, therefore, the subdivision permits a finding and judgment that the remainder be taken.

Subdivisions (d) and (e). These subdivisions permit the condemnee to contest a taking under this section upon the grounds that a "physical solution" could be provided by the condemnor, or that the damages, as assessed, will not prove excessive. In at least a few cases, the condemnee may be able to demonstrate that, given construction of the public improvement in the manner proposed, the entity is able to provide substitute access or take other steps that would be economically feasible under the circumstances of the particular case and would preclude excessive damages. If he can do so, subdivision (e) prevents acquisition of the remainder.

Subdivision (f). If the condemnee contests a taking under this section, subdivision (f) requires the court to postpone determination of the issue until the valuation phase of the proceeding has been completed. The question whether the remainder may be taken is made to turn simply upon the results of the assessment of value, damages, and benefits. The court or jury must specifically assess the value of the remainder in the "before condition" to permit comparison of that figure with the assessed damages-less-benefits. If damages-less-benefits exceed 75 percent of the "before value," the remainder may be taken, but if not, the remainder may not be taken and the matter is resolved as any other partial taking. However, the condemnee is permitted to remit any damages in excess of 75 percent and retain the remainder. As to procedure before enactment of this section, see Dep't of Public Works v. Superior Court, 68 Cal.2d 206, 436, P.2d 342, 65 Cal. Rptr. 342 (1968).

Subdivision (g). Subdivision (g) makes clear that the procedure provided by this section has no bearing upon the privilege to abandon or the

§ 1266.2

consequences of abandonment. The subdivision makes no change in existing law. See Section 1255a and People v. Nyrin, 256 Cal. App.2d 288, 63 Cal. Rptr. 905 (1967).

Subdivision (h). This subdivision authorizes the entity to dispose of property acquired under this section or acquired in lieu of such proceedings. However, it does not specify or provide the procedure to be followed. Accordingly, such procedure is left to be governed by statutory provisions applicable to the particular entity or agency.

Sec. 5. Section 1266 of the Code of Civil Procedure is repealed.

~~1266.--Whenever land is to be condemned by a county or city for the establishment of any street or highway, including express highways and freeways, and the taking of a part of a parcel of land by such condemning authority would leave the remainder thereof in such size or shape or condition as to require such condemnor to pay in compensation for the taking of such part an amount equal to the fair and reasonable value of the whole parcel, the resolution of the governing body of the city or county may provide for the taking of the whole of such parcel and upon the adoption of any such resolution it shall be deemed necessary for the public use, benefit, safety, economy, and general welfare that such condemning authority acquire the whole of such parcel.~~

§ 104.1

Sec. 6. Section 104.1 of the Streets and Highways Code is repealed.

~~104.1. --Wherever a part of a parcel of land is to be taken for state highway purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for state highway purposes.~~

§ 943.1

Sec. 7. Section 943.1 of the Streets and Highways Code is repealed.

~~943.1.--Whenever a part of a parcel of land is to be taken for county-highway purposes and the remainder of such parcel is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damages, the county may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for county-highway purposes.~~

§ 254

Sec. 8. Section 254 of the Water Code is repealed.

~~254.--Whenever a part of a parcel of land is to be taken for state dam or water purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for state dam or water purposes.~~

§ 8590.1

Sec. 9. Section 8590.1 of the Water Code is repealed.

~~8590.1.--Wherever a part of a parcel of land is to be taken for purposes as set forth in Section 8590 of this code and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the board may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for purposes as set forth in Section 8590 of this code.~~

Sec. 10. Section 11575.2 of the Water Code is repealed.

~~11575.2. Whenever a part of a parcel of land is to be taken for state water development purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and shall sell the remainder or shall exchange the same for other property needed for state water development purposes.~~

Sec. 11. Section 43533 of the Water Code is repealed.

~~43533. . . Whenever a part of a parcel of land is to be acquired pursuant to this article and any portion of the remainder is to be left in such shape or condition as to be of little value to its owner, the board may acquire and sell such portion or may exchange the same for other property needed to carry out the powers conferred on said board.~~

Sec. 12. Water Code Appendix Section 28-16-5/8 is repealed:

~~Sec. 16-5/8. Whenever a part only of a larger parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land of which the area required for public use is a part. Or, in lieu of such acquisition, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the said remainder for use by the public, including the owner of the land.~~

.. Sec. 13. Water Code Appendix Section 28-16 3/4 is repealed.

~~Sec. 16-3/4. --Whenever a part only of a house or other structure must be taken or removed in order to use the land on which such structure is situated for flood control or water conservation purposes and the severance of such portion of the structure from the whole structure would cause a substantial damage to the structure, the Board of Supervisors of the Los Angeles Flood Control District may condemn or otherwise acquire the entire house or structure and thereafter sell or otherwise cause the said structure to be removed from the portion of the land so required for a public use.~~

Sec. 14. Water Code Appendix Section 36-16.1 is repealed.

~~Sec. 16.1. --Whenever a part only of a parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

§ 48-9.2

Sec. 15. Water Code Appendix Section 48-9.2 is repealed.

~~48-9.2.---Whenever a part only of a parcel of land is required by the district for any purpose authorized by this act and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may purchase, condemn, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes.---In lieu of such acquisition of the remainder, the district may purchase, condemn or otherwise acquire a right-of-way or real property for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

Sec. 16. Water Code Appendix Section 49-6.1 is amended to read:

~~49-6.1. Whenever a part only of a parcel of land is required by the district for the control or conservation of flood, storm, or other waste waters, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~ No authority is hereby granted to the district by Section 1266.1 or 1266.2 of the Code of Civil Procedure to acquire riding and hiking trails by condemnation.

Sec. 17. Water Code Appendix Section 51.3.4 is amended

to read:

~~51.3.4~~ The agency shall have the power of eminent domain to acquire within or outside the agency by condemnation in the manner and to the extent prescribed in Article I, Section 14 of the Constitution and Title 7, Part 3 of the Code of Civil Procedure, as now existing or hereafter amended, all property or interests therein necessary or convenient for carrying out the powers and purposes of the agency except that the agency shall not have power to acquire by condemnation publicly owned property held or used for the development, storage or distribution of water for public use; and it is hereby declared that the use of the property which may be condemned, taken or appropriated under the provisions of this act, is a public use, subject to regulation and control of the state in the manner prescribed by law. The district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location, and provided further that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

(Whenever real property which is devoted to or held for some other public or quasi-public use is required by the agency for any purpose authorized by this act, the agency may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the agency.)

The power of eminent domain vested in the agency shall include the power to condemn in the name of the agency either the fee simple or any lesser estate or interest in any property which the board of directors by resolution shall determine is necessary for carrying out the purposes of the agency. Such resolution, adopted by a two-thirds vote of all its members, shall be conclusive evidence of all of the following:

- (a) The public necessity for the proposed public improvement.
- (b) The property or property interest being acquired is necessary for the proposed public use.
- (c) Such proposed public improvement is planned or located in the manner which will be compatible with the greatest public good and the least private injury.

~~Whenever a part only of a parcel is required by the agency for any purpose authorized by this act, and the taking thereof and the construction of the proposed public improvement thereon will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the agency may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for agency purposes. Or, in lieu of such acquisition of the remainder, the agency may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

Sec. 18. Water Code Appendix Section 55-28.1 is repealed.

~~Sec. 28.1. Whenever land is to be condemned by the district for any of the uses and purposes permitted by law, and the taking of a part of a parcel of land would leave the remainder thereof in such size or shape or condition as to require the district to pay in compensation for the taking of such part an amount equal to the fair and reasonable value of the whole parcel, the resolution of the board may provide for the taking of the whole of such parcel and upon the adoption of any such resolution it shall be deemed necessary for the public use, benefit, safety, economy, and general welfare that the district acquire the whole of such parcel.~~

§ 60-6.1

Sec. 19. Water Code Appendix Section 60-6.1 is repealed.

~~Sec. 6.1. Whenever a part only of a parcel of land is required by the district, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder of a portion thereof, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land or such portion of the remainder to which access is impaired and may sell the remainder or exchange the same for other property required for district purposes. Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

Sec. 20. Water Code Appendix Section 74-5 is amended

to read:

74.5. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual succession.
2. To sue and be sued in the name of said district.
3. To adopt a seal.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation, expropriation, or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights-of-way, easements, and privileges, and to construct, maintain, alter and operate any and all works or improvements, within or without the district, necessary or proper to carry out any of the objects or purposes of this act and convenient to the full exercise of its powers, and to complete, extend, add to, alter, remove, repair or otherwise improve any works, or improvements, or property acquired by it as authorized by this act.
5. To control the flood and storm waters of said district and the flood and storm waters of streams that have their courses outside of said district, but which streams and the floodwaters thereof flow into said district, and to conserve such waters for beneficial and useful purposes of said district by spreading, storing, retaining and causing to percolate into the soil within or without said district, or to save or conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the watercourses, waterbeds, harbors, public highways, life and property in said district, and the watercourses outside of the district of streams flowing into the district, and to prevent waste of water or diminution of the water supply in, or exportation of water from said district, and to obtain, retain and reclaim drainage, storm, flood and other waters for beneficial use in said district; provided, that nothing in this act contained shall authorize the carrying out of any plan of improvement, the purpose of which is, or the effect of which will be, to take water which flows in any watershed in said district and transport or sell same for use anywhere outside of the district when the water level of any gravel beds within the district is below the normal level and such water could reasonably be used to replenish the water level of said gravel beds; provided further, that none of the provisions of this act shall preclude the exercise by any other political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising its powers, although such powers may be of the same nature as the powers of said district. Any such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which said district has an interest.
6. To cooperate and to act in conjunction with the State of California, or any of its engineers, officers, boards, commissions, departments or agencies, or with the Government of the United States, or any of its engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of Santa Barbara, in the construction of any work for the controlling of flood or storm waters of or flowing into said district, or for the protection of life or property therein, or for the purpose of conserving said waters for beneficial use within said district, or in any other works, acts, or purposes provided for herein, and to adopt and carry out any definite plan or system of work for any such purpose.
7. To carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies, and inspections pertaining to water supply, water rights, control of storm waters and floods and use of water, both within and without said district, and for such purposes said district shall have the right of access through its authorized representatives to all properties within said district. The district, through its authorized representatives, may enter upon such lands and make examinations, surveys, and maps thereof.

8. To enter upon any land, to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways and other rights-of-way; to acquire by purchase, lease, contract, condemnation, gift, devise, or other legal means all lands and water and water rights and other property necessary or convenient for the construction, use, supply, maintenance, repair and improvement of said works, including works constructed and being constructed by private owners, lands for reservoirs for storage of necessary water, and all necessary appurtenances; to enter into contracts and agreements with, and do any acts necessary or proper for the performance of any such contracts and agreements with the United States, or any state, county, district of any kind, public or private or municipal corporation, association, firm, or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, works or other property of a kind which might be lawfully acquired or owned by the district; to acquire the right to store water in any reservoir, or to carry water through any canal, ditch or conduit not owned or controlled by the district; to grant to any owner or leasee the right to the use of any water or right to store such water in any reservoir of the district, or to carry such water through any tunnels, canal, ditch, or conduit of the district; to enter into and do any acts necessary or proper for the performance of any agreement with any district of any kind, public or private corporation, association, firm or individual, or any number of them for the transfer or delivery to any such district, corporation, association, firm or individual of any water right or water pumped, stored, appropriated or otherwise acquired or secured, for the use of the district or for the purpose of exchanging the same for other water, water right or water supply in exchange for water, water or water supply to be delivered to said district by the other party to said agreement.

9. To incur liabilities and to issue bonds in the manner herein provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, and to employ labor, and to do all acts necessary for the full exercise of all powers vested in said district or any of the officers thereof by this act.

12. To exercise the right of eminent domain, either within or without said district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or other public corporation, or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, main, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location; and provided further, that notwithstanding any other provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in said district to take by proceedings in eminent domain any property, including water rights, appropriated to public use by any existing city and county or municipal utility district. The district shall also have and may exercise the right to condemn any existing works or improvements in said district or along streams flowing into said district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in said district or along streams flowing into said district from damage from such flood or storm waters, and it is hereby declared that the use of the property, lands, rights-of-way, easements, or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the state in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize said district, or any person or persons to divert the waters of any river, creek, stream, irrigation system, canal or ditch, or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement, or interest in any real property which the board of directors of the district by resolution shall determine is necessary for carrying out the purposes of this act. Such resolution, adopted by a two-thirds vote of all its members, shall be conclusive evidence of all of the following:

- (a) The public necessity for the proposed public improvement.
- (b) The property or property interest being acquired is necessary for the proposed public use.
- (c) Such proposed public improvement is planned or located in the manner which will be compatible with the greatest public good and the least private injury.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing city and county or municipal utility district or other district or public agency to provide for a water supply for such city and county or municipal utility district, or as affecting the absolute control of any properties of such city and county or municipal utility district necessary for such water supply and nothing herein contained shall be construed as vesting any power of control over such properties in such Santa Barbara County Flood Control and Water Conservation District or in any officer thereof, or in any person referred to in this act.

~~12-17--Whenever a part only of a parcel is required by the district for any purpose authorized by this act, and the taking thereof, and the construction of the proposed public improvement thereon, will interfere with reasonable access to the remainder, or will otherwise cause substantial damage to the remainder, the district may condemn, purchase, or otherwise acquire the whole parcel of land and may sell the remainder or exchange the same for other property required for district purposes.--Or, in lieu of such acquisition of the remainder, the district may condemn, purchase, or otherwise acquire an easement for ingress to and egress from the remainder for use by the public, including the owner of the land.~~

13. To make contracts with the County of Santa Barbara and with municipalities and public agencies, and to employ labor for the purpose of doing flood control work and for inspecting and passing upon the adequacy of drainage plans provided for each proposed new subdivision in the County of Santa Barbara.

Sec. 21. Water Code Appendix Section 105-6 is amended to read:

Sec. 6. The district is hereby declared to be a body corporate and politic and as such shall have, in addition to the other powers vested in it by this act, the following powers:

1. To have perpetual existence.
2. To sue and be sued in the name of the district.
3. To adopt a seal and alter it at pleasure.
4. To acquire by grant, purchase, lease, gift, devise, contract, condemnation or otherwise, and to hold, use, enjoy, sell, let, and dispose of real and personal property of every kind, including lands, structures, buildings, rights of way, easements, and privileges, excepting water rights owned by a public corporation or agency without the consent of such public corporation or agency, and to construct, maintain, alter and operate any and all projects or works of improvement, within or without the district, necessary or proper to carry out any of the objects or purposes of this act, or convenient to the full exercise of its powers, and to construct, complete, extend, add to, alter, remove, reconstruct, repair or otherwise improve any projects or works of improvement, or property acquired by it as authorized by this act.
5. To control the flood and storm waters of the district, and the flood and storm waters of streams that have their source outside of the district, but which streams and the flood waters thereof flow into the district, and to conserve such waters for beneficial and useful purposes within the district by retarding, spreading, storing, retaining and causing the same to percolate into the soil within or without the district, or to save and conserve in any manner all or any of such waters and protect from damage from such flood or storm waters the water-courses, watersheds, public highways, life and property in said district; provided, that water rights now existing, public or private, be not thereby taken or damaged without compensation; provided further, that none of the provisions of this act shall in any manner limit or preclude the full exercise by any county, city, district, public or municipal authority, agency or corporation, or any political subdivision that may now or hereafter exist, wholly or in part, within the district from exercising any of its powers, although such be of the same nature as the powers of the district. Any such other public entity may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which any such other public entity has an interest, or for the use, or joint use, of property or facilities in which the district has an interest.
6. To cooperate and to act in conjunction with or contribute funds to, the United States or the State of California, or any of their engineers, officers, boards, commissions, departments or agencies, or with any public or private corporation, or with the County of San Diego, or with any public agency or district, in the construction of any projects or works of improvement for the controlling of flood or storm waters of or flowing into the district, or for the protection of life or property therein, or for the purposes of conserving said waters for beneficial use within said district, or for the protection of beaches and shorelines from erosion, or for the restoration of beaches and shorelines, or in any other works, acts or purposes provided for herein, and to adopt and carry out any definite plan or system of projects or works of improvement for any such purpose; and to enter into, and to do any and all acts necessary or proper for the performance of, any agreement with, or necessary to comply with any act of authorization of, the United States, or any state, county or district of any kind, or necessary and proper for the performance of any agreement with any public or private corporation, association, firm or individual, or any number of them, for the joint financing, acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any rights, projects or works of improvement, or other property of any kind which might be lawfully required or owned by the district.
7. To acquire the right to store water in any reservoirs, or to carry water through any canal, ditch or conduit not owned by the district, and to grant to any person the right to carry any water owned by such person through any tunnel, canal, ditch or conduit of the district; provided, that the district shall not acquire any such rights from a municipality or public water agency or district other than with the consent of such municipality or public water agency or district.
8. To carry on technical and other investigations of all kinds, make measurements, collect data, and to make analyses, studies, and inspections pertaining to water supply, water rights, ocean currents, tides, erosion, control of floods, and use

of water, and to make surveys, studies, and maps and plats relative to the location of necessary projects and works of improvement including but not limited to dams, levees, channels, conduits, canals, pipelines, roadways and other rights-of-way, and relative to the acquisition of lands, or interests therein, and other property; provided, that the foregoing powers may be exercised by the district to the extent necessary to accomplish the purposes of this act; and further provided, that the district has the right of access, and may enter upon any lands within or without the district, irrespective of the ownership of such lands, with or without the permission of the owner of such lands, in order to accomplish the acts authorized by this section, or any of them, and such entry by the district or by its authorized representative shall not constitute, nor give rise to, any cause of action in favor of the owner or owners of such land except for injuries resulting from negligence, wantonness, or malice.

Whenever a project or work of improvement is contemplated due consideration shall be given to the location of existing sewage lines and to the possible locations of future sewage lines, and the district shall solicit the recommendations of public sewage disposal agencies in order that district facilities may be located equitably in light of such sewage lines.

9. To incur indebtedness and to issue bonds in the manner hereinafter provided.

10. To cause taxes or assessments to be levied and collected for the purpose of paying any obligation of the district, and to carry out any of the purposes of this act, in the manner hereinafter provided.

11. To make contracts, to employ labor, to employ expert appraisers, consultants and technical advisors and assistants, and to do all acts necessary for the full exercise of all powers vested by this act in said district or in any of the officers thereof.

12. The district has and may exercise the right of eminent domain within the County of San Diego, either within or without the district, and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to carry out any of the objects or purposes of this act, whether such property be already devoted to any public use by any district or public corporation or agency, or otherwise; provided, however, that the district in exercising such power shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles or other property of any public utility or public corporation or district which is required to be moved to a new location; and provided further, that notwithstanding any provision of this act or any other law, no property shall be taken unless it is taken upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated; and provided further, that no right shall exist in the district to take by proceedings in eminent domain any water rights appropriated to public use by any existing municipal corporation, water district, or other public agency. The district shall also have the right to and may condemn, within the County of San Diego, any existing works or improvements in the district or along streams flowing into the district now or hereafter used to control flood or storm waters, or to conserve such flood or storm waters or to protect any property in the district or along streams flowing into the district from damage from such flood or storm waters, or to protect beaches or shorelines from erosion or to restore such beaches or shorelines, and it is hereby declared that the use of the property, lands, rights-of-way, easements or materials which may be condemned, taken or appropriated under the provisions of this act is a public use subject to the regulation and control of the State of California in the manner prescribed by law; provided, however, that nothing in this act contained shall be deemed to authorize the district or any person to divert the waters of any river, creek, stream, irrigation system, canal or ditch or the waters thereof or therein unless compensation therefor be first provided in the manner prescribed by law.

The power of eminent domain vested in the district shall include the power to condemn in the name of the district either the fee simple or any lesser estate, easement or interest in any real property which the board by resolution shall determine is necessary for carrying out the purposes of this act.

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by this act; and
2. That the taking is necessary to such use; provided, when the board, by resolution adopted by vote of two-thirds of all its members, has found and determined that the public interest and necessity require the acquisition, construction or completion by the district of some project or work of improvement, and that the property described in such resolution is necessary therefor, such resolution shall be conclusive evidence:

(a) of the public necessity for such proposed project or work of improvement;

(b) that such property is necessary therefor, and

(c) that such proposed project or work of improvement is planned or located in the manner which will be most compatible with the greatest public good, and the least private injury; provided, however, that said resolution shall not be such conclusive evidence in the case of the taking by the district of property located outside of the territorial limits thereof.

Whenever land is to be condemned by the district for any of the uses and purposes permitted by law, and the taking of a part of a parcel of land would leave the remainder thereof in such size or shape or condition as to require the district to pay in compensation for the taking of such part an amount equal to the fair and reasonable value of the whole parcel, the resolution of the board may provide for the taking of the whole of such parcel and upon the adoption of any such resolution it shall be deemed necessary for the public use, benefit, safety, economy, and general welfare that the district acquire the whole of such parcel.

Whenever real property which is devoted to or held for some other public or quasi-public use is required by the district for any purpose authorized by this act, the district may condemn real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.

Nothing in this act contained shall be construed as in any way affecting the plenary power of any existing municipal corporation, water district or other public agency providing water to the public or as affecting the absolute control of any properties of such municipal corporation, water district or public agency necessary for such water supply, and nothing herein contained shall be construed as vesting any power of control over such properties in the district or any officer thereof, or in any person referred to in this act, except to the extent consented thereto by such municipal corporation, water district or public agency.

13. To plan, improve, operate, maintain, and keep in a sanitary condition a system of public parks, playgrounds, beaches, swimming areas, and other facilities for public recreation, for the use and enjoyment of all the inhabitants of the district, as an incident to the carrying out of the projects and works of improvement of the district and on land acquired or used for the flood control, drainage, beach or shoreline erosion control, or water conservation purposes of this act; to construct, maintain, and operate any other amusement or recreational facilities on such lands, including picnic grounds and equipment incidental thereto, bathhouses, golf courses, tennis courts and other special amusements and forms of recreation; to fix and collect reasonable fees for the use by the public of any such special facilities, services or equipment; and to adopt such rules and regulations as in the discretion of the board are necessary to the orderly operation and control of the use by the public of such lands and facilities for recreational purposes; provided, however, that the district shall not, for the purposes specified in this subsection, interfere with the control or operation of any existing public park, playground, beach, swimming area, parkway, recreational ground, or other public property, owned or controlled by any other district, county or municipal corporation, except with the consent of the governing body of such district, county or municipal corporation, and upon such terms as may be mutually agreed upon between the board and such governing body; and further provided, that no such recreational facility shall be established in any city or in the unincorporated territory of a county without the consent of the governing body of such city or county, and further provided, that if any such recreational facility is located within the unincorporated territory of a county then that county, or if any such recreational facility is located within the corporate limits of any city then that city, by resolution duly passed by the governing body of such county or city, may assume the management and control of such recreational facility, in which event such county or city shall establish and collect nondiscriminatory fees and charges for the use of such recreational facility and may establish rules and regulations pertaining to such recreational facility, and the county or city annually shall deduct from such fees and charges an amount sufficient to reimburse the county or city for the costs and expenses incurred in such management and control of such recreational facility, and shall pay over to the district, for use for general district purposes, all money collected in excess of the amount necessary for such reimbursement.

14. The powers herein granted shall include the design, construction, or maintenance of any levees, seawalls, groins, breakwaters, jetties, outlets, channels, harbors, basins, or other projects or works of improvement pertaining thereto for the protection of shoreline or beaches.

15. To lease, sell or dispose of any property or interest therein whenever, in the judgment of the board, said property or said interests therein or part thereof is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of such property for the purposes of the district, and to pay any compensation received therefor into the general fund of the district and use the same for the purposes of this act; provided, however, that nothing herein contained shall authorize the board or any officer of said district to sell, lease or otherwise dispose of any water, water right, reservoir space or storage capacity or any interest or space therein, except to public agencies for recreational purposes or except as heretofore provided in subsection 6 of this section, or except, in the discretion of the board, as is necessarily incidental to the accomplishment of the purposes of this act or to the public welfare; provided, however, that the district may grant and convey to the United States, or to any federal agency authorized to accept and pay for such land or interests in land, all lands and interests in land, now owned or hereafter acquired, lying within any channel, dam, or reservoir site, or shoreline or beach, improved and constructed, in whole or in part, with federal funds, upon payment to the district of sums equivalent to actual expenditures made by it in acquiring the lands and interests in land so conveyed, and in improving such lands and interests in land, deemed reasonable in the discretion of the board.

16. To grant or otherwise convey to counties, cities and counties, cities, the State of California or the United States easements for street and highway purposes over, along, upon, in, through, across or under any real property owned by the district.

17. To remove, carry away and dispose of any rubbish, trash, debris, or other inconvenient matter that may be dislodged, transported, conveyed, or carried by means of, through, in or along the works and structures operated or maintained hereunder and deposited upon the property of the district or elsewhere.

18. Notwithstanding any provision of this act, the district shall not have the power to compete with water selling or distribution agencies, either public or private, by selling or distributing water to consumers for domestic, agricultural or industrial use; provided, however, that the district shall have the power to sell to water agencies, either public or private, such surplus water as it may accumulate. (Stats. 1966, 1st Ex. Sess., c. 55, p. —, § 6.)