



Consideration of Evidence in support of Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) (Information Item)

Introduction

The Department of Water Resources (DWR) submitted a notice to the Commission, on February 10, 2022, of DWR’s intent to request Resolutions of Necessity (RONs) for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project or Project). Pursuant to the Commission’s Procedures for Resolutions of Necessity and Eminent Domain (Procedures), Revised February 20, 2013, No. 2, DWR is providing this Staff Report to the Commission that includes the information necessary in order to ensure that all applicable requirements for a RON have been met. DWR will also present evidence in accordance with Procedures No. 2, that at a public meeting the Commission will consider evidence in support of the specific findings required for a resolution of necessity pursuant to Code of Civil Procedure § 1245.230.

The Commission will not take action on the proposed resolution of necessity at this meeting, but will schedule potential action for a subsequent meeting as described in Procedures No. 5 of the Procedures. The Commission may also request additional evidence or information from DWR for consideration.

Property Specific Elements of the Resolution of Necessity

In addition to the information provided in the Staff Report for this Agenda item, this report is the property specific information set forth in Code of Civil Procedure § 1245.230:

...

- (a) A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification.
- (b) A declaration that the governing body of the public entity has found and determined each of the following:

...

- (1) The property described in the resolution is necessary for the proposed project.
- (2) That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

The amount of compensation that is required to be paid to the owner(s) to acquire the real property interest is not at issue in a RON proceeding. The amount of compensation will either be reached by agreement through settlement negotiations or may be determined in a court trial following adoption of the Resolution of Necessity. (Cal. Const., art I, § 19.)

Property Description

The Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Project) is seeking a flowage easement for fish purposes over the Property identified below and in the Attachments:

APN:	042-270-013
DWR Parcel Number:	YBSH-136
Owner of Record:	John Whitcombe and Judy Whitcombe; Kenneth O'Brien and Stacy O'Brien; and James W. Hirschmann II and Laura Ann Hirschmann
Approximate Acres:	338.21± acres

The property is currently used for duck hunting.

The property was identified through hydrodynamic modeling. To meet the demands of the EIS/EIR analyses a 1D/2D hydrodynamic model was created using TUFLOW Classic. Comments received on suggested improvements to previous Bypass modeling efforts were incorporated into the new model as appropriate. The TUFLOW Classic model was used to perform hydrodynamic simulations of a sixteen year period from 1997-2012. The two-dimensional capabilities of the engine allow for the comparison of the spatial distribution of flow, velocity, and depth under existing conditions and with imposed project conditions. The hydrodynamic modeling report is included in the EIS/EIR Appendices.

Pursuant to Government Code § 7267.2, a written offer of just compensation was sent to the landowner of record on January 24, 2022, a copy of which is attached to this staff report. The amount was based on an approved appraisal of the fair market value of the property and an Appraisal Summary provided to indicate clearly the basis for the offer, including, but not limited to, all of the following information: (1) The date of valuation, highest and best use, and applicable zoning of property; (2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value. As DWR is acquiring an easement, existing encumbrances on the Property were also considered by the appraiser. Also included with the offer was a complete legal description of the property to be acquired, a right of way contract for the purchase of the easement, and an informational pamphlet detailing the process of eminent domain and the property owner's rights under the Eminent Domain Law.

Status of Negotiations

Negotiations are still in a preliminary stage and ongoing. DWR's Real Estate Branch is working directly with the landowners to address their questions. Landowner has elected not to

communicate with DWR. At the time of this report, an agreement has not been reached as to compensation.

Proposed design refinements were addressed through the extensive outreach process during the design phase and environmental analysis of the Project.

Notice of this Commission Meeting

Pursuant to the Commission's Procedures, written notice of this meeting was mailed via first class to the property owner(s) listed with Yolo County's Recorder on March 24, 2022. A copy of that letter is attached.

Compatible Public Use

The Property is encumbered by an existing a conservation easement, held by United States Fish and Wildlife Service. Pursuant to Code of Civil Procedure § 1240.055(c), written notice was mailed to the conservation easement holder on January 24, 2022. A copy of that letter is attached. The conservation easement holder has provided written comments about the proposed acquisition.

DWR has determined that the Project is a compatible use with the existing conservation easement, which already allows for the Property to be flooded. Operation of this Project would not unreasonably interfere with or impair the continuance of the conservation easement's public use as it exists or may reasonably be expected to exist in the future (CCP § 1240.510.) DWR is working directly with the conservation easement holders impacted within the Yolo Bypass to address any questions and concerns. Conservation easement holders will receive the notice of the hearing on the resolution of necessity, pursuant to Code of Civil Procedure § 1245.235, sent by first-class mail, and have the right to appear and be heard on this matter.

DWR Contact For This Property

Nathan Myhre
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Sacramento, CA 95814
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Attachments

- First Written Offer Package
- Property Map – Location of Subject Property
- Letter to Conservation Easement Holder
- Notice of to Landowner of Informational Hearing (Informational)