

From: [Valerie Kincaid](#)
To: Yun, Joseph@DWR
Cc: Steffenson, David@DWR; holly.stout@water.ca.
Subject: Resolution of Necessity
Date: Thursday, March 31, 2022 1:36:07 PM
Attachments: [image001.png](#)
[2022.03.24 - Ltr from CA Water Comm re FarmTogether Stanley.pdf](#)

Mr. Yun,

Our office represents landowners (including Lance Stanley subject to the attached notice) that have challenged the approval of the Department of Water Resources' Environmental Impact Report (EIR) supporting the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project. The briefing and oral argument for this matter has been completed and the Yolo Superior Court took the matter under submission on January 28, 2022. We are awaiting a proposed judgment in the matter that is likely to set aside the approval for the EIR. I request the Commission delay the adoption of any Resolutions of Necessity until this judgment is issued. It would avoid the need for my clients to seek a temporary restraining order from the court against the Commission and it would save time and resources of the Commission. If judgment does not set aside the EIR, the Commission may consider the Resolution of Necessity (subject to any potential stay issued by court of appeal). If the judgment does set aside the EIR, the Resolutions of Necessity cannot be issued because the EIR and Project approval will be set aside.

I attempted to contact both you and Ms. Stout via phone upon receipt of the attached letter, but understand today is a holiday for the Commission. Please give me a call at your earliest convenience, I would be happy to provide you with the complaint, briefing and oral argument transcript.

Valerie

Valerie C. Kincaid
Partner

 Paris Kincaid Wasiewski ^{LLP}

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CALIFORNIA WATER COMMISSION

901 P STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 902-7328



Teresa Alvarado
Chair
March 24, 2022

Matthew Swanson
Vice-Chair
FarmTogether Stanley, LLC
Mr. Lance J. Stanley
28193 Mace Boulevard
Davis, CA 95618

Samantha Arthur
Member

Daniel Curtin
Member

Subject: APN 057-170-010 – DWR Parcel No. YBSH-125
Notice of Intent to Consider Adopting a Resolution of Necessity to Acquire Certain Real Property or Interest in Real Property by Eminent Domain for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project

Kimberly Gallagher
Member

Alexandre Makler
Member

Dear Mr. Stanley:

Jose Solorio
Member

This letter serves as notice that the California Water Commission (Commission) at its April 20, 2022, Commission Meeting will consider adopting a Resolution of Necessity (Resolution) to acquire an easement on the above – referenced property by eminent domain. You are being notified as the owner of this property, or holder of an interest therein, whose name and address appears on the last equalized county assessment roll, pursuant to the California Code of Civil Procedure (CCP) Section 1245.235.

Fern Steiner
Member

You have the right to appear and be heard on the matters listed below and in CCP Section 1240.030. If you choose to attend and be heard at the Commission Meeting, CCP Section 1245.235(b)(3) requires that you submit your intention to be heard in writing to the Commission within 15 days from the date of this Notice.

Comments will be limited to five (5) minutes for owners or owner representatives, consistent with the Commission's standard practices. The Commission will also consider any written comments you may wish to submit prior to the meeting, pursuant to this Notice. Please submit any written comments at least three (3) business days prior to the Meeting, to allow sufficient time to circulate to the Commissioners for their review.

Please send any written comments to:

Holly Geneva Stout, Esq.
California Water Commission
P.O. Box 942836
Sacramento, CA 94236-0001
Email: cwc@water.ca.gov

DWR proposes to acquire an easement over Parcel No. YBSH-125 (a portion of Yolo County Assessor's Parcel No. 057-170-010) through the exercise of the power of eminent domain for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project.

The property right to be acquired is:

Easement: 8.76± acres

If you have any questions regarding this eminent domain proceeding, please contact Jesus Cedeño, Associate Right of Way Agent, Acquisition and Appraisal Section, Division of Engineering, DWR, at (916) 902-7198, or jesus.cedeno@water.ca.gov. If you have questions regarding the Commission meeting or its logistics, please contact Holly Stout, Attorney, California Water Commission, at (916) 902-7098, or holly.stout@water.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Yun", followed by a horizontal line extending to the right.

Joe Yun
Executive Officer, California Water Commission

Attachment: Property Description
CWC Procedures for Resolutions of Necessity and Eminent Domain

cc: Ms. Valerie C. Kincaid
Paris Kincaid Wasiewski
2617 K Street, Suite 100
Sacramento, CA 95816

EXHIBIT A

All that certain real property being a portion of projected Section 28 in Township 10 North, Range 3 East, Mount Diablo Base and Meridian, Yolo County, State of California, also being a portion of the lands conveyed in the GRANT DEED recorded September 21, 2021, Document 2021-0035854, Official Records of said County described as follows:

All that land lying westerly of a line being the easterly edge of the east levee road of the Yolo Bypass as it exists presently and described as follows;

YBSH-125 UNIT A

BEGINNING at a point on said easterly edge of east levee road and the south line of the lands described in said Grant Deed from which a found 1-inch iron pin marking the southwest corner of Section 29 as shown on the RECORD OF SURVEY FOR PUR HIRAN FARMS, filed November 19, 2012, in Book 2012 of Maps, at Page 63 of said County records bears South 71° 43' 39" West 8,452.92 feet, said point also bears South 89° 57' 15" West 2,749.58 feet from a found 2-inch iron pipe as shown on said Record of Survey;

THENCE FROM SAID POINT OF BEGINNING, along said easterly edge levee road the following two (2) courses:

- 1) North 05° 00' 02" West 690.53 feet; and
- 2) North 04° 51' 52" West 635.32 feet to the north line of lands described in said Grant Deed;

Containing 8.76 acres, more or less.

Bearings and distances used in the above description are based on the California Coordinate System, CCS83 Epoch 2010.00(2011.00), Zone 2, US Survey feet. The above distances are grid, to convert to ground multiply by 1.00006197.

As shown on Exhibit B, attached hereto and by this reference made a part hereof.

End of Description



Procedures for Resolutions of Necessity and Eminent Domain

Overview

The Department of Water Resources (DWR) may acquire property for constructing, maintaining, or operating State Water Project facilities but it may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity. The governing body is the California Water Commission. Code of Civil Procedure Section 1245.210.

California Water Code Section 11575 gives DWR the authority to acquire land for the purpose of constructing, maintaining or operating the State Water Project.

CWC §11575. For the purpose of constructing, maintaining, and operating the project and for the purpose of providing and substituting new facilities for facilities to be taken or destroyed, the department may acquire for and in the name of the state, by gift, exchange, purchase, or eminent domain proceedings, within or without the state, any and all water, water rights, rights-of-way, easements, land, electric power, power resources and facilities, and property or appurtenances thereto of every kind and description and any appurtenances to any such property as the department determines to be required and necessary for the proper construction, maintenance, and operation of the project and for effectuating the purposes and objects to be accomplished by the construction, maintenance, and operation of the project, and for providing and substituting new facilities for facilities taken or destroyed.

Water Code Section 11580 gives DWR the ability to exercise the power of eminent domain if DWR cannot acquire the necessary property through an agreement with the owner and if the project for which the property is being acquired has been authorized and funds are available.

CWC §11580. When the department cannot acquire any necessary property by agreement with the owner, the department may exercise the power of eminent domain to acquire the property in the name of the state if the project for which the property is being acquired has been authorized and funds are available therefore.

Before DWR may commence any eminent domain proceeding, it must obtain a resolution of necessity from the California Water Commission:

CCP 1245.220. A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of this article.

CCP 1245.210. As used in this article, "governing body" means: (h) In the case of a taking by the Department of Water Resources, the California Water Commission.

(3) The property described in the resolution is necessary for the proposed project.

(4) 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.

In addition, in the event a property (or recorded interest in a property) that is the subject of a resolution of necessity has already been appropriated for public use, the Commission must follow the procedures outlined in this document to make determinations that the new use is either compatible with or more necessary than the existing use as required under CCP 1240.510 and 1240.610:

CCP 1240.510. Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. Where property is sought and the resolution of necessity if one is required, shall refer specifically to this section.

CCP 1240.610 Any person authorized to acquire property for a particular use by eminent domain may exercise the power appropriated to public use if the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated. Where property is sought to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.

DWR will prepare and provide a Staff Report to the Commission for the agenda that includes the information necessary in order to ensure that all applicable requirements for a resolution of necessity have been met (CCP 1245.230 and 1240.510 and 1240.610). The report shall include the following:

- A description of the project.
- An explanation of why the project is necessary and in the public interest.
- An explanation of the legal authority for the project and the availability of funds for the project.
- A description of any findings required under CCP 1240.510 and 1240.610.
- The status of other parcels required for the project: Total parcels; number of parcels acquired; number or parcels under right of entry; number of other owners expected to request appearance before the Commission.
- Detailed Parcel Description.

California Water Commission Procedures for Resolutions of Necessity and Eminent Domain

Adopted : August 17,2011

Revised: February 20, 2013

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the meeting. Code of Civil Procedure §1245.235. In addition, the Commission will inform any holder of a recorded interest in the property that has been appropriated for public use, as identified in part one of this document, of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting. The Commission will consider additional information, if any, and determine if there is enough evidence to satisfy CCP 1245.230 and 1240.510 and 1240.610.

At this Commission meeting, DWR staff will provide responses to questions and review the Staff Report. Staff will provide the following additional materials in the agenda packet:

- Copy of Proposed Resolution
- Deed
- Proposed Commission Notice of Determination
- Relevant CEQA Document

The Commission will accept public testimony from the landowner and any other member of the public who appears at the hearing.

The Commission may choose to take action at this meeting. To adopt a resolution of necessity requires a two-thirds vote of all members, which is a minimum of six votes in favor of the resolution of necessity regardless of the number of Commission members present at the meeting.