

CALIFORNIA WATER COMMISSION

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



Matthew Swanson
Chair April 25, 2022

Fern Steiner
Vice-Chair

Samantha Arthur
Member

Mr. and Mrs. John and Judy Whitcombe, et al.
3500 Anderson Road
Davis, CA 95616

Daniel Curtin
Member

Kimberly Gallagher
Member

Subject: APN 042-270-013 – DWR Parcel No. YBSH-136
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

Alexandre Makler
Member

Jose Solorio
Member

Dear Mr. and Mrs. Whitcombe:

This letter serves as notice that the California Water Commission (Commission) at its May 18, 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.

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

The CCP provides procedures for public agencies to acquire private property for public use. It requires that every agency, which intends to condemn property, notify the owners of its intention to condemn.

Section 1240.030 of the CCP provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

- (1) The public interest and necessity require the proposed project; and
- (2) The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and
- (3) This property is necessary for the project.

Section 1245.230 of the CCP further requires that the offer required by Government Code Section 7267.2 has been made to the owner of record. The written offer was sent to the address listed above that appears on the County's records on January 24, 2022.

The Commission will consider if the above findings concerning your property have been met and, if so, decide whether to adopt a Resolution. Pursuant to CCP Section 1245.210(h), the Commission is the governing body for Resolutions of Necessity for the Department of Water Resources (DWR). The Commission Meeting is scheduled to take place as follows:

California Water Commission – May 18, 2022, Commission Meeting

Date: Wednesday, May 18, 2022

Time: 9:30 am

Location: State of California, Resources Building, 715 P St., First Floor Auditorium, Sacramento, CA 95814

Online: <https://us02web.zoom.us/j/89059390451?pwd=SkIHdm9JTnR5a3BwTUFnS3FrS3hGQT09>

A Resolution, if adopted, will constitute authorization for DWR to acquire the property, or property interest therein, by commencing an eminent domain proceeding. All issues related to the just compensation for the acquisition of the subject property will be resolved either through continuing negotiations or through an eminent domain proceeding.

A description of the required property that is the subject of this Resolution is attached to this Notice. Also attached is a copy of the Commission's Procedures for Resolutions of Necessity and Eminent Domain, as of February 20, 2013.

DWR proposes to acquire an easement over DWR Parcel No. YBSH-136 (all of Yolo County Assessor's Parcel Number 042-270-013) 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: 338.21± acres

If you have any questions regarding this eminent domain proceeding, please contact Nathan Myhre, Associate Right of Way Agent, Acquisition and Appraisal Section, Division of Engineering, DWR, at (916) 902-7547, or nathan.myhre@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 blue ink, appearing to read "Joe Yun", with 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

EXHIBIT "A"

All that real property situated in portions of Sections 35 and 36, Township 9 North, Range 3 East, MDM, in the unincorporated area of the County of Yolo, State of California, described as follows:

YBSH-138

UNIT A

Portion of Parcel 1 per DEED 2015 O.R. 0035690, DEED 2015 O.R. 0035460, and DEED 2011-0009308
88 ACRES, MORE OR LESS
APN 042-270-014

UNIT B

Portion of Parcel 1 per DEED 2015 O.R. 0035690, DEED 2015 O.R. 0035460, and DEED 2011-0009308
235 ACRES, MORE OR LESS
APN 042-260-023

As shown on EXHIBIT "B" attached hereto.

KRISTOPHER KLIMA, PLS

**YBSH-138
FLOWAGE EASEMENT
DAN DOUGHERTY, NEIL DOUGHERTY (50%)
AM INVESTORS II LLC (25%)
STEPHEN G MEEK AND KAREN A MEEK (25%)
PORTIONS OF PARCEL 1 PER DEEDS:
2015 OR 0035690, 2015 OR 0035460, 2011-0009308**

**UNIT A
042-270-014
88 AC. +/-**

**UNIT B
042-260-023
235 AC. +/-**

Note: Information shown on this map is compiled from numerous sources and may not be complete or accurate. This includes Assessor parcel lines and numbers provided by Yolo county. DWR makes no claims, representations, or warranties (express or implied) concerning the validity, reliability, or accuracy of the GIS data contained herein. All areas shown are approximations based on GIS calculations. Each user is responsible for determining its suitability for his or her intended use or purpose. This exhibit does not represent a survey and is for informational purposes only.

**PORTIONS OF SECTION 35 & 36,
T.9 N, R.3 E., M.D.M.,
COUNTY OF YOLO**

**YOLO BYPASS SALMONID HABITAT AND FISH RESTORATION PROGRAM
BIG NOTCH PROJECT - PHASE 3 PARCELS
FLOWAGE EASEMENT EXHIBIT "B"**

This exhibit does not represent a survey and is for informational purposes only.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEOMATICS BRANCH

02/04/2022



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.

Procedures for Consideration of Resolution of Necessity

This document describes the California Water Commission's procedures for considering a resolution of necessity. It is the intent of the Commission to provide a transparent and well-defined process in order to ensure all legal requirements have been met, and affected and interested parties are provided due process.

1. Notification of Commission Consideration of a Resolution of Necessity

DWR shall inform the Commission it intends to request a resolution of necessity. The Commission will notice the item on its meeting agenda and send a notice to the landowner of the property for which the resolution of necessity is being considered at least 21 days prior to the meeting. The notification to the landowner will include the date, time, and location of the Commission meeting, information about the proposed resolution of necessity, a copy of the Commission's procedures, and an explanation of opportunities to provide written and oral public comments.

In addition, DWR will notify the Commission if additional interests in any of the properties for which it intends to seek a resolution of necessity have already been appropriated for another public use. The Commission will inform these additional interest holders of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting.

2. Consideration of Evidence in support of Resolution of Necessity

At a public meeting, the Commission will consider evidence in support of the specific findings required for a resolution of necessity pursuant to Section 1245.230, which states:

In addition to other requirements imposed by law, the resolution of necessity shall contain all of the following:

(a) A general statement of the public use for which the property is to be taken and a reference to the statute that authorizes the public entity to acquire the property by eminent domain.

(b) A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification.

(c) A declaration that the governing body of the public entity has found and determined each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(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.

- Maps (index map, project title sheet, appropriate plan sheets and parcel maps) covering the project and its relationship to the full parcel must be provided.
 - A listing of the owner's primary concerns (compensation, design features, timing of the acquisition, lack of replacement housing, etc.).
 - A description of any design or right of way modifications suggested by the owner, including DWR's opinion on the feasibility of these suggestions and the basis for DWR's opinion (why they are or are not feasible).
 - A description of alternatives to the proposed taking that have been considered by DWR.
 - A description of official contacts or attempted contacts with the property owner (or representative) involving acquisition and formal offers, as well as a summary of each of the owner's concerns.
 - Identification of the appropriate contact persons within DWR that can provide additional detailed information.
- Copy of Notice to Landowner
 - Copy of CEQA Compliance
 - Copy of correspondence between the Department of Water Resources and the landowner only if provided by the landowner to the Commission

All affected landowners and any other members of the public may appear and speak to the Commission. Written comments may also be submitted to the Commission prior to the meeting or at the meeting.

The Commission will consider all information and comment provided. 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 No. 5 below. The Commission may also request additional evidence or information from DWR for consideration.

3. Consideration of Authority

As part of its deliberations, the Commission shall consider the authority of DWR to exercise eminent domain for the project, as specified in California Water Code Section 11580. If the Commission determines that DWR has not provided sufficient information to make a finding of the facts, it may request further evidence or legal analysis.

4. Site Visit

Commission staff may contact the landowner to request a site visit for one or more members of the Commission to view the property in question. This visit will only take place if agreed to by the landowner. However, a site visit is not required prior to Commission consideration of the matter or prior to action on the resolution of necessity.

5. Consideration of Action on Resolution of Necessity

The Commission will schedule action on the proposed resolution of necessity for a subsequent Commission meeting and will notify the affected landowner at least 21 calendar days prior to

California Water Commission Procedures for Resolutions of Necessity and Eminent Domain

Adopted: August 17, 2011

Revised: February 20, 2013

Page 5

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.