

May 2, 2022

SENT VIA U.S MAIL & EMAIL

Executive Officer  
California Water Commission  
PO Box 942836,  
Sacramento, CA 94236-0001  
cwc@water.ca.gov

Re: Objections to Adoption of Proposed Resolution Of Necessity to acquire property owned by Sharon A Campbell (50%) and Glenn H Lynch and Elizabeth C Lynch (50%) - Assessor's Parcel No. 042-260-003 and DWR Parcel No. YBSH-140

To Executive Officer and Commission Members:

It has come to the Owner's attention that the above referenced property has become the subject of possible eminent domain proceedings. The farm property, located in the Yolo Bypass, consists of approximately 160 acres. The property has been in the Campbell family for over 100 years. The property has provided income from rice and tomato crops.

The project for which the State is seeking a permanent easement is known as the Big Notch Project. This

project requires flooding the subject property in order support the Yolo Bypass Salmonid Habitat Restoration and Fish Passage (“Project”). The Yolo Bypass Salmonid Habitat is a project wherein numerous agencies are partnering to reconnect floodplain habitat and improve fish passage. This project provides seasonal inundation that mimics the natural process of the floodplain and improves connectivity within the Bypass to the Sacramento River.

Adult salmon and sturgeon on the way upstream are often attracted to the Bypass after an overtopping event. Without the Project, the fish become stranded nearly 40 miles upstream in the Bypass when the river later drops. This project creates additional exit opportunities by improving connectivity with the Bypass and between the Bypass in Sacramento when the river stage allows.

In order to implement the fish passage the project will: construct a headworks structure (gated notch) and channels on the east side of the Fremont Weir; divert water and fish from the river into the bypass, when the river stage is high enough; allow the amount of water entering the notch to start out low and increase as a river stage rises; further, the gates will close to limit a maximum flow of 6000 cubic-feet-per as the stage approaches overtopping. The project also includes a supplemental Fish Passage structure on the west side of

the Fremont Weir and an agricultural-road-crossing replacement.

In order to inundate the designated properties, DWP needs to acquire an easement over said properties. Further, should the DWP have to obtain such easements by virtue of the process of eminent domain they must adhere to the procedural requirement of having a Resolution of Necessity Hearing.

A Resolution of Necessity, known as a “RON” Hearing, is required to determine whether or not the DWP has met the criteria to go forward with eminent domain proceedings. “The power of eminent domain maybe exercised to acquire property for a proposed project only if all of the following are established: (a) the public interest and necessity require the project; (b) the project as planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and; (c) the property sought to be acquired is necessary for the project.” (Code of Civil Procedure Sec. 1240.030).

Along with notice of the RON hearing, the owners have received correspondence from the DWR regarding the Project. The information packet included: An Appraisal Summary Statement, Right of Way Contract, Map of Proposed Easement Area and a draft of an Easement Deed.

The exact language of the Draft Easement Deed is as follows:

“ Grantee has the right for the flowage of water over and upon the property as may be required for the present and future permitted construction and operation of fish passage and floodplain restoration projects, including the right of access by authorized representative of the grantee. The flowage right includes the right to flow water and materials and by said flow erode; or place or deposit earth, debris, sediment, or other material”.

The proposed Easement language covers unidentified needs and projects beyond the scope of the Big Notch Project.

The owners maintain the project, as Described in the Draft of the Easement Deed, does not satisfy the criteria set forth in section (b) of the RON which states that “the project as planned or located is the most compatible... with the least private injury”.

As mentioned above, the project requires inundating the property. The Draft Easement Deed does not mention time limits whatsoever — it allows for inundation 365 days a year, with no flow limitation.

In essence, the overbroad language of the Draft Easement Deed severely impacts the Subject's agricultural property — changing the property from being a source of income into a tax liability. Thus, failing one of the requirements of the RON hearing — the State must prove that the project has the “....least private injury”.

As to the “ least private injury” requirement, language that mitigates the impact can be found in documents produced by the DWR. The language enumerates the time (“gated notch could operate between November 1 and March 15”) and amount of flow (“ allow flow up to 6000 CFS through gated notch”).

Most importantly, this same document analyzes the economic impact on agricultural users in the Yolo bypass and comes to the conclusion “Inundation structure closures dates prevent most impacts to agricultural users”.

In summary, the Draft easement's indefinite language would impose a severe hardship, as opposed to easement language that would enumerate the time periods, the amount of flow, etc.

Simply put, The owners maintain that the amount offered by the State does compensate for the severe impact on the owner's property.

In order to evaluate the offer, not for the amount offered per acre, but to the percentages they used to evaluate the impact of the easement.

One of the requirements the State must meet can be found in Sec. 7267.2 subdivision (a)(1) of Government Code requires: “ prior to adopting a Resolution of Necessity pursuant to section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefore, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established.”

The Owner's maintain that the state has not taken into consideration the Right of Way Contract — which conveys an overly broad easement over the entire property.

The language found in THE RIGHT OF WAY CONTRACT provided by the State is as follows: “ STATE desires to purchase from GRANTOR and GRANTOR desires to sell to STATE a permanent non-exclusive flowage easement “the easement” via document number YBSH – 140 ( the

easement deed), covering the entirety of the Property, known to the STATE as DWR Parcel No. YBSH – 140 and more particularly described in the easement deed which shall be executed and delivered to Fahmi Kassis, Right of Way Agent for the STATE.

In the appraisal summary statement, dated November 17, 2021, following Areas and Rights defined:

Area and property right to be acquired:

155.55\* × 20% Rights

Area of remainder: 155.55\* × 80% Rights

Market value of required property:

Permanent easement

Land:  $155.55^* \times \$7,000/\text{AC} \times 20\% = \$217,770$

Damages to the remaining property due to the states acquisition \$-0-

Total payment is: \$218,000

The use of a 20% rights reflects an easement that has minimal affect. However, the Draft easement language reflects a severe impact—90-100%.

When the percentage of Fee is 90% to 100% the impact on the surface is severe and can effect conveyance of future uses an example of potential type of easement is a Flowage Easement.

When the percentage of Fee is 11% to 25%, the impact is generally on sub surface or air rights with minimal affect on use and utility. An example of this type of easement is one which affects air rights, water or sewer lines.

Combine the language found in the sales contract — the STATE intends to flood the entirety of the Property, with indefinite language of the Draft Easement Deed, one can readily determine that the owners will lose up to 100% of their ability to farm.

It should be noted that the adaptive management language in the Draft Easement was received and noted on March 7, 2022. This calls into question what Easement language the assessor was relying when he prepared in his appraisal statement on November 17, 2021. It appears by using the 20% factor that he was relying on the more restrictive Easement (November-March 15, etc) language.

Therefore, the easement deed in this matter creates a burden wherein the whole property can be flooded at any time thus creating a severe impact, 90 to 100% on the surface use of the PROPERTY.

Just compensation, mandated by Article 1, Section 19 of the California Constitution and the Eminent Domain law, is not reflected in the appraisal and offer to purchase.



Thus, the DWR cannot be said to have complied with section 7267.2 when it's appraisal does not value the proposed easement based on the most injurious way the State will be permitted to lawfully use the easement – – i.e. to flow unlimited water for 365 days of the year.

## Conclusion

The Owner's respectively request The Commission to require the DWR to make an offer that reflects the high impact that the easement has on the owner's property rights.

Further, the owner's reserve the right to make additional arguments and objections; objecting to the right to take both at the hearing and any additional proceedings.

Please confirm receipt of this correspondence and be sure to include the correspondence in the official record of the proceeding.

Sincerely,

*Elizabeth Campbell Lynch*

Elizabeth Campbell Lynch

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