

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

ATTORNEYS AT LAW

May 10, 2022

SENT VIA U.S. MAIL & EMAIL

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

Re: Request to Appear and Be Heard at Hearing on Proposed Resolution of Necessity to Acquire Property Owned By Dan and Neil Dougherty, et al; APN 042-270-014 and 042-260-023, DWR Parcel No YBSH-138; Summary of Objections to Adoption of Resolution of Necessity

To Executive Officer and Commission Members:

Our office represents Dan and Neil Dougherty, et al. (“Owners”), owners of the above-referenced real property (“Property”). We are in receipt of the California Water Commission’s (“Commission”) Notice of Intent to Adopt 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 (“Big Notch Project”), dated April 25, 2022 (“Notice”).

This letter constitutes the Owners’ formal request, and reservation of right, for one or more of their representatives to appear and be heard at the Resolution of Necessity (“RON”) Hearing scheduled for May 18, 2022 at 9:30 a.m.

The Owners further submit this correspondence to serve as a summary of written objections to be included in the official record of the proceeding, which will be outlined

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in detail in subsequent correspondence prior to the Hearing.

The Owners object to adoption of the proposed RON on the following grounds:

1. The Owners Have Not Been Provided Adequate Notice.
2. Public Interest and Necessity Do Not Require the Project.
3. The Proposed Project Is Not Planned or Located in the Manner That Will Be Most Compatible with the Greatest Public Good and Least Private Injury.
4. The Subject Property is Not Necessary for the Project.
5. Proposed Acquisition Is for Future Use Beyond the Normal Statutorily-Authorized Period, and Without a Specified Estimated Date of Use.
6. Authorization of a Taking for Indefinite Future Projects Is Improper and Would Expose the RON to an Independent Basis of Attack.
7. DWR Has Presented Insufficient Evidence of Compatibility of Its Intended Use With Current Public Use Pursuant to Conservation Easements.
8. The Requirements of Government Code Section 7267.2 Have Not Been Complied With.

Should a RON be adopted and a condemnation suit initiated, the Owners would be compelled to challenge the right to take, and would assert the objections stated herein, as well as any additional objections raised in subsequent correspondence and at the RON Hearing, or which exceed the parameters set forth in the Notice. The grounds for objection stated herein are informed by the Notice's stated parameters, and the objections are limited to those the Owners are reasonably capable of making prior to being afforded an opportunity to review the text of the proposed Resolution and final plans for the project. The Owners reserve the right to raise additional arguments objecting to the right to take both at the RON Hearing and in any future proceedings.

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We request that the Commission provide by email transmission a copy of the proposed resolution and any other materials relating to consideration of the resolution ahead of the RON Hearing, at the earliest time the documents are available.

We would appreciate confirmation of your timely receipt and filing of this correspondence, and we expect its inclusion in the official record of the proceeding.

Sincerely,

DESMOND, NOLAN, LIVAICH & CUNNINGHAM

Kristen Renfro

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KDR/mj

cc: Clients

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