



Consideration of Evidence in Support of Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) – Batch E, Step 1

Introduction

The Department of Water Resources (Department) secured all necessary permits and approvals and commenced construction of the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project or Project) in 2022. The Project will improve fish passage and increase floodplain fisheries habitat in the Yolo Bypass and the lower Sacramento River basin. It entails constructing a gated notch in the Fremont Weir, and increasing the flooding of a portion of the Yolo Bypass to allow juvenile salmon to move from the Sacramento River onto the floodplain and adult salmon and sturgeon access into the Sacramento River from the Yolo Bypass. The Project is required by the 2019 National Marine Fisheries Service Biological Opinion (NMFS BO) and the 2020 the California Department of Fish and Wildlife Incidental Take Permit for the continued long-term operations of the State Water Project.

The primary function of the Yolo Bypass is flood control, with much of it also managed as agricultural land or wetland waterfowl habitat. The Yolo Bypass, which currently experiences at least some flooding in approximately 70 percent of years, retains many characteristics of the historical floodplain habitat that are favorable to various fish species. The Yolo Bypass, as well as other areas, has been identified in the NMFS BO as a prime area of the Sacramento River basin for enhancement of seasonal floodplain fisheries rearing habitat.

The Project involves increasing the seasonal flooding of private land, which requires the Department to initiate negotiations pursuant to the State's eminent domain authority. The Department's eminent domain authority requires a Resolution of Necessity from the California Water Commission (Commission) if negotiations between the Department and the landowner reach an impasse. The Commission received a briefing about the Commission's Resolution of Necessity Process in June 2021 and a briefing on the legal considerations for a Resolution of Necessity in January 2022. Consistent with the Commission's RON procedures, adopted in February 2013, the Commission must hear this item as an informational item before formally adopting a Resolution of Necessity at a later Commission meeting. If negotiations do not produce an agreement for the flood easement and an impasse occurs, the Department will return to the Commission for the actual Resolution of Necessity.

Background

California Water Code sections 250, 253, 258, and 11575 allow the Department to acquire land to construct, maintain or operate the State Water Project. Water Code section 11580 allows the Department to use eminent domain proceedings if the Department cannot reach an agreement with the landowner. California Code of Civil Procedure sections 1245.210 and 1245.220 require

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the Department to obtain a Resolution of Necessity from the Commission before proceeding to initiate court action to obtain property rights from private citizens.

On December 20, 2022, the Commission received a request from the Department to begin the process of obtaining a resolution of necessity, pursuant to the Commission's "Procedures for Resolutions of Necessity and Eminent Domain," adopted August 17, 2011, and revised on February 13, 2013. The Commission notified the affected landowners listed in the agenda. The notices were mailed on January 24, 2023, from the Commission's office at 715 P Street, Sacramento, California.

This agenda item is consistent with Goal Three of the Commission's Strategic Plan, to carry out its "statutory authorities associated with the Department ... to ensure that the Department's decisions on key programs and activities are based on sound information and advance climate resiliency." Goal Three specifically includes the Commission's eminent domain obligations within its objectives.

Meeting Overview

At this meeting, Elizabeth (Liz) Vasquez, Environmental Program Manager I from the Department's Division of Integrated Science and Engineering, will present an overview of the Project, including its goals and impacts on the State Water Project operations. Rachel Taylor, from the Department's Office of General Counsel, will present information to the Commission regarding the specific properties listed on the agenda and how those properties are necessary to meet the goals of the Big Notch project. Ms. Taylor will also update the Commission about the efforts DWR has made to work with the landowners. The Commission will not make a decision at this meeting about a Resolution of Necessity, but may direct DWR staff to present additional information at the next meeting or ask to visit the site.

This is an informational item.

Contact

Holly Geneva Stout

Attorney IV

California Water Commission

916-902-7098