



Draft 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 to ensure all legal requirements have been met and affected and interested parties are provided due process.

Step 1. Notification of Commission Consideration of a Resolution of Necessity

DWR shall request a resolution of necessity from the Commission in writing at least sixty (60) days before the meeting at which it would like to request the resolution of necessity. The Commission will schedule action on the proposed resolution of necessity and will notify the affected landowner at least twenty-one (21) calendar days prior to the meeting. (Code of Civil Procedure section 1245.235.) Additionally, the Commission will inform any holder of a recorded interest in the property that has been appropriated for public use, of the Commission's intent to consider a resolution of necessity at least twenty-one (21) days prior to the meeting. DWR shall provide the legal notices to be mailed to the affected landowners and recorded interest holders to the Commission staff at least fourteen (14) days before the notices must be mailed pursuant to Code of Civil Procedure section 1245.235.

Step 2. Consideration of Evidence Supporting Adopting a Resolution of Necessity

The Commission will consider evidence in support of the specific findings required for a resolution of necessity, presented by DWR, at a regularly scheduled public meeting. California Code of Civil Procedure section 1245.230 sets forth the required content of a resolution of necessity:

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.

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(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.

If 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 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).

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- 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.
- Copy of Proposed Resolution.
- Deed.
- Proposed Commission Notice of Determination.
- Relevant CEQA Document(s).

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 or at the meeting. The Commission will consider the evidence presented and determine if there is enough evidence to satisfy CCP 1245.230 and 1240.510 and 1240.610. After considering the evidence presented, the Commission may request additional evidence or information from DWR. The Commission may also request Commission staff to 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.

Step 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.

The Commission may choose to adopt the resolution of necessity at this meeting. Adoption of 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.

Step 4. Subsequent Steps

If the Commission does not adopt the requested resolution of necessity, it shall provide feedback at the meeting explaining its decision. DWR may address the issues at a subsequent Commission meeting by repeating Steps 1 and 2 of this procedure, and specifically highlight the additional information in the supporting documents required in Step 2.

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If the Commission defers its decision on the resolution of necessity pending the outcome of a site visit, Commission staff shall schedule the follow up meeting as soon after the site visit as practicable.

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