

CALIFORNIA WATER COMMISSION

October 19, 2011

Presentation Overview

- INTRODUCTION OF STAFF
 - Allan Davis, Supervising Land Agent, DWR
 - Karin Shine, Senior Staff Counsel, DWR
 - Robin Brewer, Senior Staff Counsel, DWR
- OVERVIEW OF EMINENT DOMAIN AND LAND ACQUISITION PROCESS
 - DWR's Role
 - Resolution of Necessity
 - Commission's Role
 - Department of Justice's Role
- ENVIRONMENTAL DOCUMENTATION
- ADDITIONAL DOCUMENTATION REQUESTED BY THE COMMISSION

DWR's Role

DWR's AUTHORITY

- Water Code section 11575 outlines DWR's authority to acquire property rights through various means, including eminent domain.
- Water Code Section 11580 specifically states that DWR may acquire property rights through eminent domain if the project has been authorized and funded.

The Commission's Role

Authority of the Commission

For purposes of eminent domain, the Commission is the governing body for DWR. (CCP § 1245.210(h))

Vote Requirement

“Unless a greater vote is required by statute, charter or ordinance, the resolution shall be adopted by a vote of two-thirds of all the members of the governing body of the public entity.” (CCP § 1245.240)

The Commission Role (cont'd)

What is a Resolution of Necessity?

Resolution of Necessity – The public entity's formal decision to acquire property by eminent domain.

The Commission must adopt a Resolution of Necessity before DWR may proceed with an eminent domain action.

Complaints for eminent domain would be filed in the county in which the property is located.

The Commission's Role (cont'd)

REQUIRED FINDINGS WHEN CONSIDERING A RESOLUTION OF NECESSITY

- Whether the public interest and necessity require the project;
- Whether the project and acquisition are planned or located in the manner that is the most compatible with the greatest public good and least private injury;
- Whether the property to be acquired is necessary for the project; and
- Whether the written offer required by Government Code section 7267.2 has been made to the owner of record or whether the offer has not been made because the owner cannot be located.

The Role of the Department of Justice

The State Attorney General is DWR's legal representative for eminent domain actions.

Preparation of an Eminent Domain Action

- Lis Pendens
- Summons and Complaint
- Motion for Order of Possession
- Discovery
- Trial

Environmental Documentation

- DWR issued a Notice of Intent (Supplemental) on July 1, 2010 and approved a final Mitigated Negative Declaration (MND) on September 23, 2010.
- As a CEQA responsible agency, the Commission would be relying on DWR's Mitigated Negative Declaration when making its decision on whether to adopt a Resolution of Necessity.
- If the Resolution of Necessity is adopted, the Commission would issue its own Notice of Determination (NOD). The NOD need not state that DWR's MND complies with CEQA, but the Commission must have relied upon the MND in making its findings. (CEQA Guidelines § 15096)

Environmental Documentation

- Under Section 15233 of the CEQA Guidelines, if a lawsuit is filed challenging a Negative Declaration for noncompliance with CEQA, the responsible agency shall act as if the Negative Declaration complies with CEQA.
- If no injunction or stay has been granted in the lawsuit, the responsible agency shall assume that the EIR or Negative Declaration fully meets the requirements of CEQA.
- An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit.

Additional Documentation Requested by the Commission

- Copy of Temporary Entry Permit
- Geotechnical Clearance Process and Protocols and Tentative Geotechnical Drilling Schedule
- Environmental Clearance Protocols
- Program Environmental Documentation (Initial Study, Mitigated Negative Declaration, Notice of Determination)
- San Joaquin County Superior Court ruling
- Photos of area along Highway 160
- Draft Letter to Property Owners regarding: hazardous waste, acquiring Permanent Easements versus Temporary Easements, Quit Claims
- Funding Agreements