

**PREPARED FOR THE CALIFORNIA WATER COMMISSION
AMENDED RESOLUTION OF NECESSITY
DEPARTMENT OF WATER RESOURCES (DWR) STAFF REPORT – ENCUMBRANCES
March 20, 2013**

The Department of Water Resources (DWR) requests that the Water Commission amend Resolutions of Necessity authorizing and empowering DWR to exercise eminent domain to condemn easements in Sacramento and Contra Costa Counties for geotechnical activity purposes. The purpose of the proposed amendments is for the Water Commission to consider the standards set forth in sections 1240.510 and 1240.610 of the California Code of Civil Procedure and make additional findings in the Resolutions of Necessity regarding the impacts of the acquisition on any existing public encumbrances, as described in these Sections.

“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 to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.” California Code Civil Procedure Section 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 the property 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.” California Code Civil Procedure Section 1240.610.

The attached staff reports identify each existing Resolution of Necessity proposed for amendment, describe each public use and non-public use encumbrance associated with the property, and analyze whether DWR’s proposed use is consistent with and/or more necessary than the preexisting public use to which the property is already appropriated. The reports conclude that, with respect to each public use encumbrance,

DWR's proposed use satisfies California Code of Civil Procedure Sections 1240.510 and 1240.610. Therefore, DWR requests that the Water Commission make determinations and amend the Resolutions of Necessity to expressly find that:

1. DWR's proposed use will not unreasonably interfere with or impair the continuance of the public use to which the property is already appropriated and, thus, satisfies California Code of Civil Procedure Section 1240.510; and
2. DWR's proposed use is more necessary than the public use to which the property is already appropriated and, thus, satisfies California Code of Civil Procedure Section 1240.610.