

STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
CALIFORNIA WATER COMMISSION

RESOLUTION NUMBER: 2022-16

RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY BY EMINENT DOMAIN
DWR PARCEL NO. YBSH-136 APN(s): 042-270-013
OWNER: John Whitcombe and Judy Whitcombe; Kenneth O'Brien
and Stacy O'Brien; and James W. Hirschmann II and Laura Ann
Hirschmann

WHEREAS, the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project ("Project") was designed by the Department of Water Resources ("Department") and the United States Bureau of Reclamation ("Reclamation") to achieve compliance with Reasonable and Prudent action ("RPA") I.6.1 and partial compliance with RPA action I.7 of the National Marine Fisheries Service's ("NMFS") 2009 Biological Opinion and Conference Opinion on the Long-term Operations of the Central Valley Project and the State Water Project (LTO BO). RPA actions I.6.1 and I.7 were subsequently included in the baseline conditions for the superseding NMFS's 2019 LTO BO, issued on October 21, 2019, and is necessary for the continued long-term operations of the State Water Project;

WHEREAS, the Project is also required under Section 9.2.2 of the Incidental Take Permit for Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta (2081-2019-066-00), issued March 31, 2020, by the California Department of Fish and Wildlife;

WHEREAS, the Project is designed to improve fish passage and habitat restoration actions in the lower Sacramento River basin, particularly within the Yolo Bypass;

WHEREAS, on July 19, 2019, the Department certified the Project Environmental Impact Statement/Environmental Impact Report and filed a Notice of Determination (SCH# 2013032004) in compliance with the California Environmental Quality Act. Reclamation issued the Record of Decision on September 19, 2019, in compliance with the National Environmental Policy Act;

WHEREAS, the California Eminent Domain Law (the Law) (Title 7 of Part 3 of the Code of Civil Procedure) provides procedures through which public entities may acquire property through the exercise of the power of eminent domain;

WHEREAS, the Law provides that prior to a public entity commencing an eminent domain proceeding to condemn property, the public entity's governing body (i) must

adopt a resolution of necessity that meets the requirements of Article 2 of Chapter 4 of the Law; and (ii) provide notice to the property owner of the intent to adopt a resolution of necessity;

WHEREAS, the Law specifies the Commission is the governing body for adopting Resolutions of Necessity for the Department of Water Resources (Code of Civil Procedure Section 1245.210(h));

WHEREAS, pursuant to the Commission's Procedures for Resolutions of Necessity and Eminent Domain (Procedures), Revised February 20, 2013, the Department submitted a notice to the Commission of the Department's intent to request a Resolution of Necessity for this property and the Department presented an informational briefing at a prior Commission meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Commission, after notice and hearing, pursuant to Code of Civil Procedure Section 1245.235 finds and determines and declares that:

The described real property is necessary for State Water Project purposes (Code of Civil Procedure Section 1245.230(a)) and is to be acquired by eminent domain pursuant to Water Code Section 250, 253, 258, 11575 and 11580; and Code of Civil Procedure Section 1240.510 in that the property being acquired is for a compatible use;

1. The public interest and necessity require the proposed public project, namely for state water purposes (Code of Civil Procedure Sections 1245.230(c)(1));
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 (Code of Civil Procedure Section 1245.230(c)(2));
3. The property sought to be acquired and described by this resolution is necessary for the proposed public project (Code of Civil Procedure Section 1245.230(c)(3));
4. The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record (Code of Civil Procedure Section 1245.230(c)(4)); and
5. That timely notice was sent to the owners and reasonable opportunity to appear and be heard on these matters was provided (Code of Civil Procedure Section 1245.235).

BE IT FURTHER RESOLVED by this Commission that the Department of Water Resources is hereby authorized and empowered;

To acquire, in the name of the People of the State of California, an easement over the

said hereinafter described real property, by condemnation proceeding or proceedings in accordance with the provisions of the Water Code, Code of Civil Procedure, Government Code and of the Constitution of California relating to eminent domain;

Including for future use pursuant to Code of Civil Procedure Section 1240.220(b), and there is a reasonable probability that use will be within 15 years, by May 18, 2037;

The real property or interests in real property, which the Department of Water Resources is by this resolution authorized to acquire, is situated in the County of Yolo, State of California, and described as follows (Code of Civil Procedure Section 1245.230(b)):

DWR Parcel No.: YBSH-136
APN(s): 042-270-013

BE IT FURTHER RESOLVED that this Commission hereby adopts and declares this to be its Resolution of Necessity for purposes of the Law.

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by vote of the Commission this 18th day of May, 2022.

Signed:

Matthew Swanson, Chair
California Water Commission

Date _____

Attest:

Laura Jensen, Assistant Executive Officer
California Water Commission

Date _____