

CALIFORNIA WATER COMMISSION

P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 902-7328



Matthew Swanson January 24, 2023
Chair

Fern Steiner
Vice-Chair

Samantha Arthur Cliff Cessna, Public Projects Manager
Member Union Pacific Railroad
Tyrone Bland 1430 Blue Oaks Boulevard, Suite 140
Member Roseville, CA 95747

Daniel Curtin
Member

Kimberly Gallagher Subject: APNs: 008-990-001, 008-990-002, 008-990-003, 008-990-004,
Member 014-980-004, 014-980-005, and portions of land with no APN

Alexandre Makler
Member

DWR Parcel No. YBSH-175 – Informational Hearing

Sandra Matsumoto
Member

Dear Cliff Cessna:

Jose Solorio
Member

This letter serves as notice that the Department of Water Resources (DWR) has sent a notice to the California Water Commission (Commission) that DWR intends to request a Resolution of Necessity at a future meeting. Pursuant to the Commission's Procedures for Resolutions of Necessity and Eminent Domain, the Commission will hold an informational briefing at its February 15, 2023, Commission Meeting. No action will be taken by the Commission at this meeting on this matter.

Union Pacific Railroad Company, LLC (UPPR) is being notified as the owner of this property, or holder of an interest therein, whose name and address appears on the last equalized county assessment roll, pursuant to the California Code of Civil Procedure (CCP) Section 1245.235. UPPR's representative is invited to attend the Commission meeting and comment to the Commission on this matter. Comments will be limited to three (3) minutes, consistent with the Commission's standard practices. The Commission will also consider any written comments you may wish to submit prior to the meeting, pursuant to this Notice. Please submit any written comments at least 3 three business days prior to the Meeting, to allow sufficient time to circulate to the Commissioners for their review.

Please send any written comments to:

Holly Geneva Stout, Esq.
California Water Commission
P.O. Box 942836
Sacramento, CA 94236-0001
Email: cwc@water.ca.gov

The CCP provides procedures for public agencies to acquire private property for public use. It requires that every agency, which intends to condemn property, notify the owners of its intention to condemn.

Section 1240.030 of the CCP provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

1. The public interest and necessity require the proposed project; and
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and
3. This property is necessary for the project.

Section 1245.230 of the CCP further requires that the offer required by Government Code Section 7267.2 has been made to the owner of record. The written offer was sent to the address listed above that appears on the County's records on December 23, 2022. DWR will be presenting on the above listed conditions. The Commission Meeting is scheduled to take place as follows:

California Water Commission – February 15, 2023, Commission Meeting

Date: Wednesday, February 15, 2023

Time: 9:30 a.m.

Location: State of California, Resources Building
715 P St., First Floor Auditorium
Sacramento, CA 95814

Online: <https://us02web.zoom.us/j/81002135246?pwd=SVFqK0gvSGlzaWZWVXF6UVNsK3FSUT09>

The meeting agenda will be published ten (10) days in advance of the meeting on the Commission's website, www.cwc.ca.gov, and will contain the necessary information related to participation.

A description of the required property that is the subject of this informational briefing is attached to this Notice. Also attached is a copy of the Commission's Procedures for Resolutions of Necessity and Eminent Domain, as of February 20, 2013.

DWR proposes to acquire an easement over Parcel No. YBSH-175, all of Yolo County Assessor's Parcel Nos. (APN) 008-990-001, 008-990-002, 008-990-003, 008-990-004, 014- 980-004 and 014-980-005, and portions of land with no APN, through the exercise of the power of eminent domain for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project.

The property right to be acquired is:

Easement: 155.20 ± acres
DWR Parcel No.: YBSH-175

If DWR determines it is necessary to proceed with requesting a Resolution of Necessity, a separate notice will be sent to the address listed above at least 21 days prior to the hearing.

Cliff Cessna, Public Project Manager
Union Pacific Railroad Company
January 24, 2023
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If you have any questions regarding this eminent domain proceeding, please contact Jesus Cedeño, Associate Right of Way Agent, Acquisition and Appraisal Section, Division of Engineering, DWR, at (916) 902-7198, or Jesus.Cedeno@water.ca.gov. If you have questions regarding the Commission meeting or its logistics, please contact Holly Stout, Attorney, California Water Commission, at (916) 902-7098, or holly.stout@water.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Yun", with a horizontal line extending to the right.

Joe Yun
Executive Officer, California Water Commission

Attachments: Property Description
 CWC Procedures for Resolutions of Necessity and Eminent Domain

EXHIBIT "A" LEGAL DESCRIPTION

YBSH-175 UNIT A

All that real property being portions of Sections 1, 2, 3, and 4 in Township 8 North, Range 3 East, and Sections 35 and 36 in Township 9 North, Range 3 East, and Sections 31 in Township 9 North, Range 4 East, Mount Diablo Base and Meridian, Yolo County, State of California, more particularly described as:

Volume I of Deeds, Page 562, recorded October 22, 1869, Volume 76 of Deeds, Page 500, **recorded**, Volume 81 of Deeds, Page 470, **recorded**, Volume 76 of Deeds, Page 486, **recorded**, Volume 76 of Deeds, Page 494, **recorded**, Volume M of Deeds, Page 602, recorded January 6, 1872, Volume 76 of Deeds, Page 482, recorded June 19, 1911, Volume 80 of Deeds, Page 139, **recorded**, Volume 80 of Deeds, Page 465, **recorded**, Volume 76 of Deeds, Page 488?, **recorded**, Volume 81 of Deeds, **Page 28?, recorded**, Volume 81 of Deeds, **Page 153?, recorded**, Volume 76 of Deeds, Page 492, **recorded**, Volume 76 of Deeds, Page 490, **recorded**, Volume 76 of Deeds, **Page 498?, recorded**, Volume 76 of Deeds, **Page 556?, recorded**, Volume 76 of Deeds, **Page 496?, recorded**, Volume 76 of Deeds, **Page 555?, recorded**, Volume 76 of Deeds, Page 480, **recorded**, Volume 81 of Deeds, Page 29, **recorded**, Volume 78 of Deeds, Page 11, **recorded**, Volume 83 of Deeds, Page 498, **recorded**, and **MISSING DEED(s), recorded**, in the Official Records of said County.

recorded=waiting for original copy from F.A.T. to verify/add recording dates and add missing deed(s)

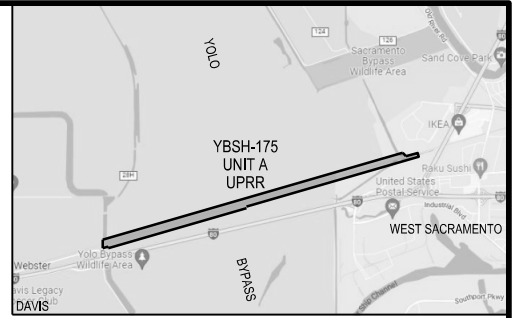
Excepting therefrom those portions lying westerly of the west edge of the west levee road and easterly of the east edge of the east levee road of the Yolo Bypass as it exists presently.

Containing 155.20 acres, more or less.

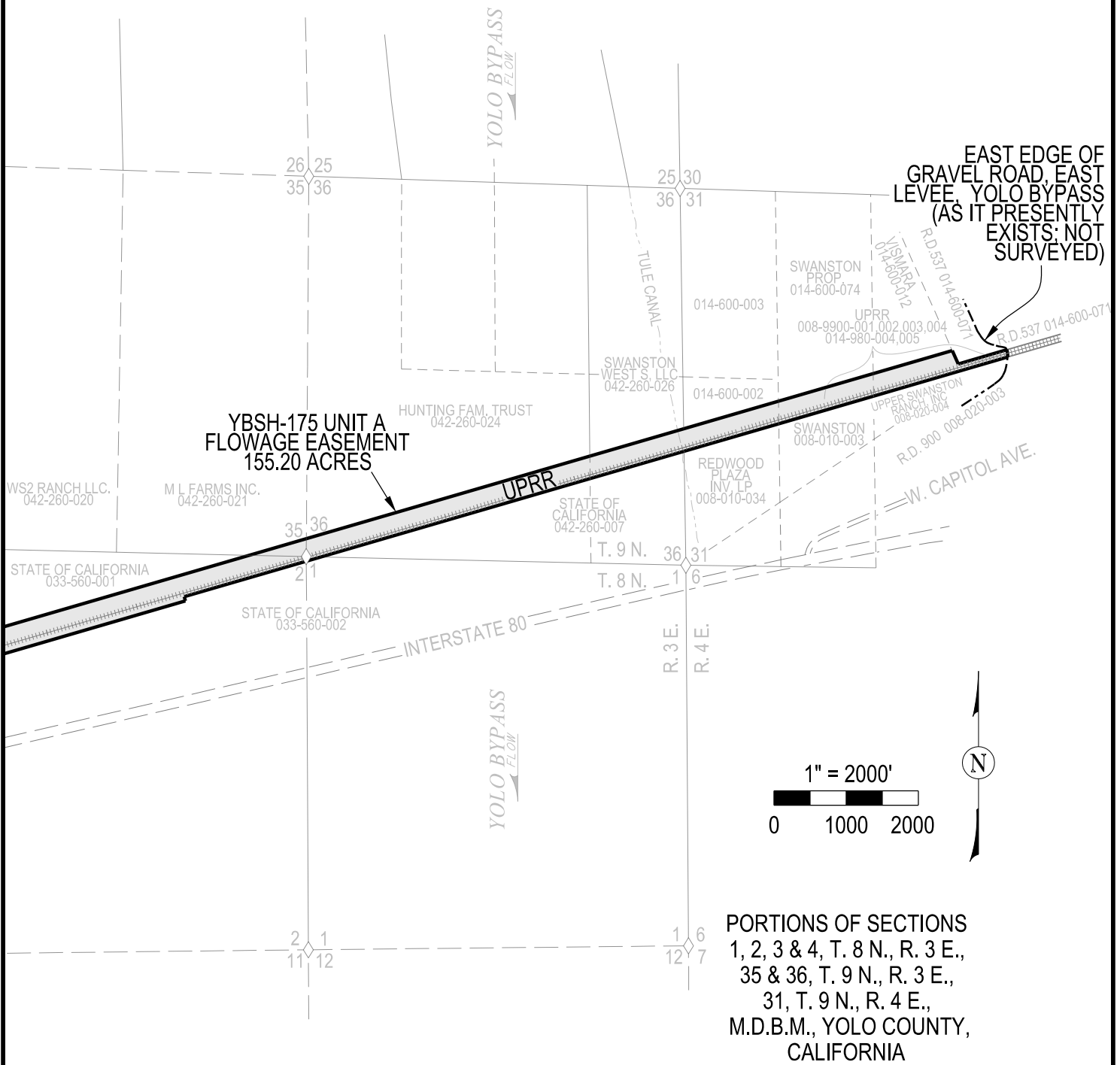
As shown on Exhibit B, attached hereto and by this reference made a part hereof.

End of Description

Surveyor, PLS 1234



VICINITY MAP



22JUN2022

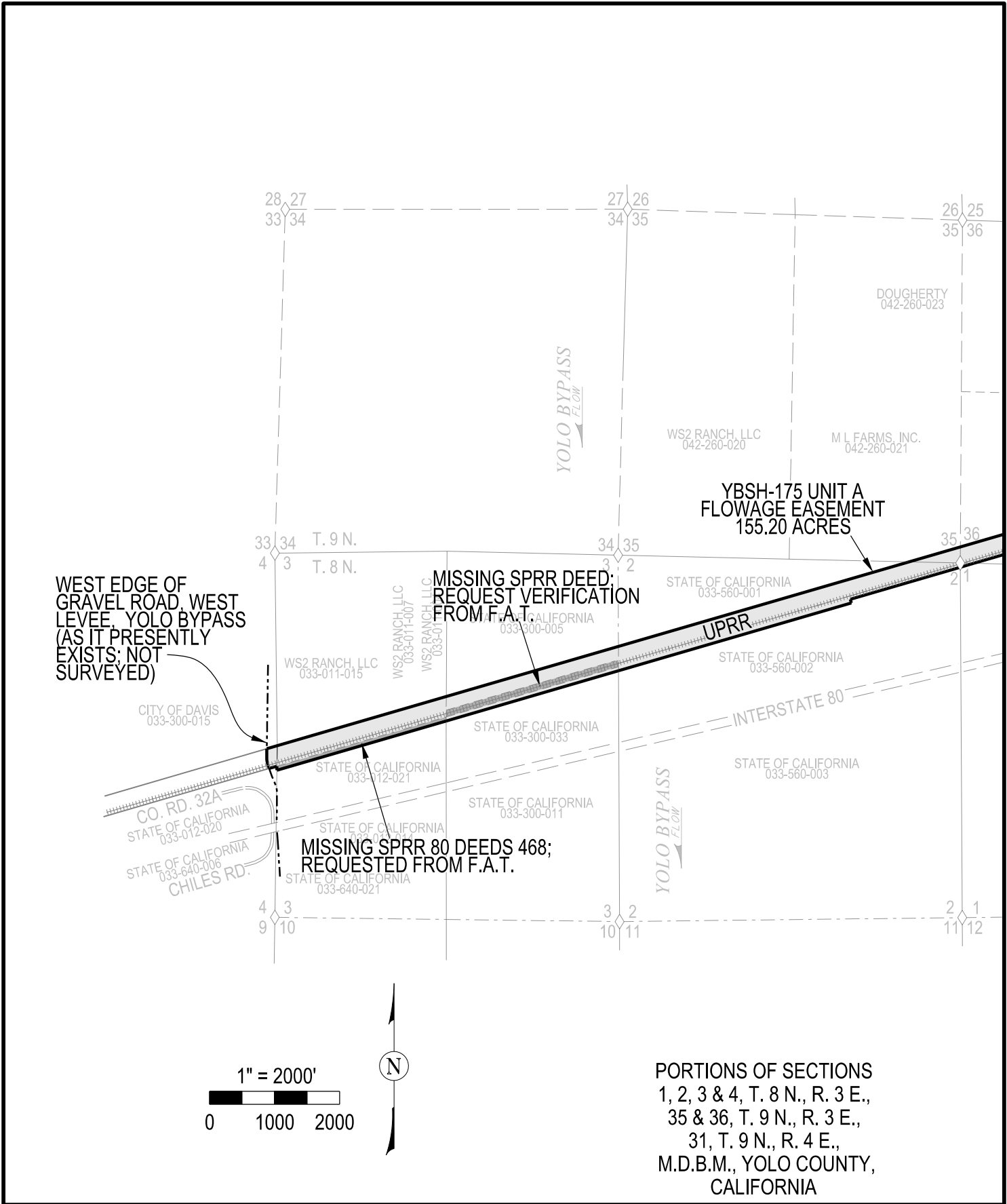
SHEET 1 OF 2

EXHIBIT B

YOLO BYPASS SALMONID HABITAT
RESTORATION AND FISH PASSAGE PROGRAM
YBSH-175 UNIT A
FLOWAGE EASEMENT-UPRR, A UTAH COMPANY

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEOMATICS BRANCH



WEST EDGE OF GRAVEL ROAD, WEST LEVEE, YOLO BYPASS (AS IT PRESENTLY EXISTS; NOT SURVEYED)

MISSING SPRR DEED; REQUEST VERIFICATION FROM F.A.T.

MISSING SPRR 80 DEEDS 468; REQUESTED FROM F.A.T.

YBSH-175 UNIT A FLOWAGE EASEMENT 155.20 ACRES

PORTIONS OF SECTIONS 1, 2, 3 & 4, T. 8 N., R. 3 E., 35 & 36, T. 9 N., R. 3 E., 31, T. 9 N., R. 4 E., M.D.B.M., YOLO COUNTY, CALIFORNIA

22JUN2022

SHEET 2 OF 2

EXHIBIT B

YOLO BYPASS SALMONID HABITAT RESTORATION AND FISH PASSAGE PROGRAM
YBSH-175 UNIT A
FLOWAGE EASEMENT-UPRR, A UTAH COMPANY

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEOMATICS BRANCH



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

1. Notification of Commission Consideration of a Resolution of Necessity

DWR shall inform the Commission it intends to request a resolution of necessity. The Commission will notice the item on its meeting agenda and send a notice to the landowner of the property for which the resolution of necessity is being considered at least 21 days prior to the meeting. The notification to the landowner will include the date, time, and location of the Commission meeting, information about the proposed resolution of necessity, a copy of the Commission's procedures, and an explanation of opportunities to provide written and oral public comments.

In addition, DWR will notify the Commission if additional interests in any of the properties for which it intends to seek a resolution of necessity have already been appropriated for another public use. The Commission will inform these additional interest holders of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting.

2. Consideration of Evidence in support of Resolution of Necessity

At a public meeting, the Commission will consider evidence in support of the specific findings required for a resolution of necessity pursuant to Section 1245.230, which states:

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.

(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.

In addition, in the event 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 in order 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).
 - 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

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 the meeting or at the meeting.

The Commission will consider all information and comment provided. The Commission will not take action on the proposed resolution of necessity at this meeting, but will schedule potential action for a subsequent meeting as described in No. 5 below. The Commission may also request additional evidence or information from DWR for consideration.

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.

4. Site Visit

Commission staff may 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.

5. Consideration of Action on Resolution of Necessity

The Commission will schedule action on the proposed resolution of necessity for a subsequent Commission meeting and will notify the affected landowner at least 21 calendar days prior to

California Water Commission Procedures for Resolutions of Necessity and Eminent Domain

Adopted : August 17,2011

Revised: February 20, 2013

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the meeting. Code of Civil Procedure §1245.235. In addition, the Commission will inform any holder of a recorded interest in the property that has been appropriated for public use, as identified in part one of this document, of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting. The Commission will consider additional information, if any, and determine if there is enough evidence to satisfy CCP 1245.230 and 1240.510 and 1240.610.

At this Commission meeting, DWR staff will provide responses to questions and review the Staff Report. Staff will provide the following additional materials in the agenda packet:

- Copy of Proposed Resolution
- Deed
- Proposed Commission Notice of Determination
- Relevant CEQA Document

The Commission will accept public testimony from the landowner and any other member of the public who appears at the hearing.

The Commission may choose to take action at this meeting. To adopt 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.