



**Consideration of Action on Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) – Batch C, Step 2 (Action Item)**

**Introduction**

The Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project or Project) is being advanced by the Department of Water Resources (Department) and will improve fish passage and increase floodplain fisheries habitat in the Yolo Bypass and the lower Sacramento River basin. The Project entails constructing a gated notch in the Fremont Weir and increasing the flooding in a portion of the Yolo Bypass when water surface elevations in the Sacramento River are amenable to fish passage. This will allow juvenile salmon to move from the Sacramento River onto the floodplain and adult salmon and sturgeon access into the Sacramento River from the Yolo Bypass. The Project is required by the 2019 National Marine Fisheries Service Biological Opinion and the 2020 California Department of Fish and Wildlife Incidental Take Permit for the continued long-term operations of the State Water Project.

Because the Project involves increasing the seasonal flooding of private land, the Department has initiated negotiations pursuant to the State's eminent domain authority. Code of Civil Procedure section 1245.210(h) requires the Department to acquire a Resolution of Necessity (RON) from the California Water Commission. The Commission received a briefing about the Commission's Resolution of Necessity Process in June 2021 and a briefing about the legal considerations for a Resolution of Necessity in January 2022. Consistent with the Commission's "Procedures for Resolutions of Necessity and Eminent Domain," adopted August 17, 2011, and revised on February 13, 2013 (Procedures), the Department presented information about the properties noted on the agenda and how they are necessary to meet the goals of the Project as an informational item before the Commission on September 21, 2022. Negotiations have not produced an agreement for the flood easement with the landowners, therefore the Department is requesting the Commission consider adopting a Resolution of Necessity for each of the landholdings noted on the agenda.

The Department will present evidence for the Commission to consider in support of the specific findings required for a resolution of necessity pursuant to Code of Civil Procedure § 1245.230, which requires the Commission to find:

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.

The landowners have been notified of this hearing and their right to attend and be heard or to submit written comments.

### **Commission Decision**

As the Commission considers each landowner and related property(ies) listed on the agenda, the Commission can decide to adopt a Resolution of Necessity (RON). If a RON is adopted, the Department of Water Resources can proceed with the eminent domain process. If the Commission does not adopt a RON, the Department cannot proceed with the eminent domain process. A RON requires a two thirds vote of all members for adoption, or six votes.

### **Background**

California Water Code sections 250, 253, 258, 11575 and 11580 allows the Department to acquire land to construct, maintain, or operate the State Water Project. California Code of Civil Procedure sections 1245.210 and 1245.220 require the Department to obtain a Resolution of Necessity from the California Water Commission before proceeding to initiate court action to obtain property rights from private citizens.

On July 13, 2022, the Commission received a request from the Department to begin the process of obtaining a RON, pursuant to the Commission's Procedures. The Commission notified the affected owners on August 23, 2022 of the Informational Hearing held on September 21, 2022, which is required by the Commission's Procedures. The Commission subsequently notified the affected landowners listed in the agenda of this hearing on Resolutions of Necessity. The notices were mailed on September 26 and 28, 2022, from the Commission's office at 715 P Street, Sacramento, California.

This agenda item is consistent with Goal Three of the Commission's Strategic Plan, to carry out its "statutory authorities associated with the Department ... to ensure that the Department's decisions on key programs and activities are based on sound information and advance climate resiliency." Goal Three's objectives include the Commission's eminent domain obligations.

### **Meeting Overview**

At this meeting, Rachel Taylor, from the Department's Office of General Counsel, will present evidence to the Commission regarding the specific properties listed on the agenda and how those properties are necessary to meet the goals of the Big Notch project. Ms. Taylor will also update the Commission about the efforts the Department has made to work with the landowners. The Department will ask the Commission to consider adopting a Resolution of Necessity for each landowner and properties listed under this agenda item.

This is an action item.

### **Contact**

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