



Consideration of Evidence in Support of Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) – Batch D, Step 1

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 (NMFS BO) and the 2020 California Department of Fish and Wildlife Incidental Take Permit for the continued long-term operations of the State Water Project.

The primary function of the Yolo Bypass is flood control, with much of it also managed as agricultural land or wetland waterfowl habitat. The Yolo Bypass, which currently experiences at least some flooding in approximately 70 percent of years, retains many characteristics of the historical floodplain habitat that are favorable to various fish species. The Yolo Bypass, as well as other areas, has been identified in the NMFS BO as a prime area of the Sacramento River basin for enhancement of seasonal floodplain fisheries rearing habitat.

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 if negotiations between the Department and the landowner reach an impasse. 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 RON procedures, adopted in February 2013, the Commission must hear this item as an informational item before formally adopting a Resolution of Necessity at a later Commission meeting. If negotiations do not produce an agreement for the flood easement and an impasse occurs, the Department will return to the Commission for the actual Resolution of Necessity.

Background

California Water Code sections 250, 253, 258, and 11575 allows the Department to acquire land to construct, maintain or operate the State Water Project. Water Code section 11580 allows the

Department to use eminent domain proceedings if the Department cannot reach an agreement with the landowner. 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 September 8, 2022, the Commission received a request from the Department to begin the process of obtaining a resolution of necessity, pursuant to the Commission's "Procedures for Resolutions of Necessity and Eminent Domain," adopted August 17, 2011, and revised on February 13, 2013. The Commission notified the affected landowners listed in the agenda. 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 specifically include the Commission's eminent domain obligations.

Meeting Overview

At this meeting, Elizabeth (Liz) Vasquez, Environmental Program Manager I from the Division of Integrated Science and Engineering, will present an overview of the Project, including its goals and impacts on the State Water Project operations based on the report required by the Commission's adopted procedures. Rachel Taylor, from the Department's Office of General Counsel, will present information 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 Commission will not make a decision at this meeting about a Resolution of Necessity, but may direct Department staff to present additional information at the next meeting or ask to visit the site.

This is an informational item.

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