#36.80 7/2/73

Memorandum 73-56

Subject: Study 36.80 - Condemnation (Chapter 5--Commencement of Proceeding)

Attached to this memorandum are two copies of a revised version of Chapter 5 of the Eminent Domain Law. We hope that the chapter can be tentatively approved (after any necessary revisions) and can be distributed to the State Bar Committee after the July meeting. We plan to go through the statute section by section at the meeting. Please mark your editorial revisions on one copy for the staff and raise any policy questions at the meeting.

The revised chapter attempts to carry out the directions given and the decisions made at the June 1973 meeting. We have renumbered the sections to conform to our proposed organization for the entire statute and have made some editorial revisions.

The following are the matters that the staff wishes to note for your attention:

§ 1250.130. Additional requirements where service is by publication

We have added a requirement that a lis pendens must be recorded within 10 days after the making of the order for service by publication. See the discussion of this requirement in the discussion of Section 1250.220 below.

§ 1250.220. Naming defendants

Section 1250.220 has been revised in accordance with the Commission's directive to make sure that the substance of Section 1245.3 is not lost. The staff believes that subdivisions (b) and (c) of Section 1250.220 reenact the substance of the first sentence of Section 1245.3. The second sentence of Section 1245.3 is continued and generalized in Section 1250.130 (posting where service is by publication). The substance of the third sentence of Section 1245.3 is retained in Section 1268.020 (payment of judgment). The fourth

sentence of Section 1245.3 is superseded by Section 1250.230 (appearance by third parties). The fifth, and last, sentence of Section 1245.3 is reenacted in subdivision (d) of Section 1250.220.

As indicated above, subdivision (b) of Section 1250.220 is intended to reenact the substance of a portion of Section 1245.3. In doing so, we have retained most of the verbiage of that section. The staff believes that deletion of all the material in brackets in subdivision (b) would work absolutely no substantive change in this provision and would greatly add to its clarity. Can this revision be made?

Our review of Section 1250.220 reveals a few additional problems to be resolved. A judgment rendered in an eminent domain proceeding is binding upon all defendants properly named and served, including unknown persons. See Section 1245.3 (our Section 1250.220(d)). However, it was our intent to continue existing law to the effect that, where a lis pendens has not been recorded, innocent purchasers or encumbrancers would be relieved from the operation of the judgment. See Comment to this section and to Section 1250.150 (lis pendens).

The issue never seems to have arisen whether such third persons should be bound, notwithstanding nonrecordation of a lis pendens, by virtue of being named as an unknown person and served by publication and posting. Arguments can be made on both sides of this issue. However, whatever would be the result under the existing law, the staff believes that this issue should be resolved as follows. The act of recording a lis pendens is relatively simple and inexpensive. Accordingly, the staff believes that innocent purchasers or encumbrancers should be relieved from the operation of the judgment unless and until a lis pendens is filed, i.e., they should not be treated as unknown persons. See Comment to subdivision (c) of Section 1250.220. Moreover, the

filing of a lis pendens should be made an element of service upon unknown persons in the same manner that posting is required by Section 1250.130. See Section 1250.130. This requirement would have the benefit of increasing to the greatest extent possible the chance that all potential claimants will have knowledge of the proceeding. Compare Sections 749, 749.1 (lis pendens must be filed in quiet title action against unknown persons). The failure to record (and publish and post) would render the judgment ineffective against unknown persons unless they otherwise properly became parties, e.g., by appearance. Finally, the statute should also make clear that all owners of record on the date the complaint is filed must be named as defendants by their real names; they should not, of course, be classified as unknown persons. These suggestions may very well continue existing law. Whether they do or not, we do not believe that they work any significant hardship on the condemnor. It can assure itself of title good against anyone by simply recording a lis pendens at the same time the complaint (naming unknown persons) is filed and naming all owners of record at that time. On the other hand, these suggestions do seem to provide adequate notice to all potential claimants to the property.

§ 1250.230. Appearance by unnamed defendant

The staff has reexamined this section in the light of the discussion at the last meeting and with some trepidation have resubmitted it without significant change. In its present form, we believe, the section reenacts without substantive change the second paragraph of present Section 1246. See generally Comment to Section 1250.230. In so doing, it permits any person with a proper interest (who is not named as a defendant in the complaint) to file an appearance as a defendant in an eminent domain proceeding. No motion or leave to

participate is required although his answer is subject to demurrer and motion to strike if, for example, no proper interest is shown. Moreover, no time limit is prescribed as to when he may appear; however, he will as a rule take the proceedings as he finds them, and the court should be able to control delays caused by motions for discovery, continuances, and so on.

Taken together, Sections 1250.220 and 1250.230 and related procedural provisions seem to provide adequately for all parties and all contingencies. The plaintiff can secure a judgment binding on all persons by properly naming and serving both known and unknown persons. Section 1250.220. Where "unknown persons" are named as defendants, every effort is made to see that they are given notice of the proceeding. Section 1250.130. Where "unknown persons" are not named, third persons with a proper interest may appear in the proceeding. Section 1250.230. If either "unknown" or third persons appear and the plaintiff wishes to, it may amend its complaint to exclude the interests alleged (see Sections 1270.010 (abandonment) and 1270.020 (dismissal after complaint amended)), and the judgment will accordingly not be binding upon the excluded interest. If an interest holder is not properly named and served and does not participate voluntarily, his interest is not affected by the proceeding. See Comments to Sections 1250.150 (lis pendens), 1250.220 (naming defendants), and 1250.230 (appearance by unnamed defendants). Our faith in these procedures is bolstered by the fact that we are aware of no unsatisfactory results under the present procedures, and those that we have provided are substantively the same as the present procedures.

§ 1250.240. Joinder of property

This section implements the decision to continue present law permitting any number of parcels located in one county to be joined initially in one complaint. See also discussion below (Section 1250.310).

§ 1250.310. Contents of complaint

Section 1250.310, which lists the required contents of a complaint, was tentatively approved at the June 1973 meeting in its present form. However, the staff is concerned with a problem we discovered when we reviewed Sections 1250.020 (place of commencement) and 1250.240 (joinder of property) in the light of this section. Section 1250.020 requires an eminent domain proceeding to be commenced in the county where "the property" is located. Where "property" sought to be taken is located in more than one county, the plaintiff must select one of these counties in which to commence the proceeding. Section 1250.240 permits joinder of "all property located within the same county . . . ." Implicit in both sections is the notion of parcels of property, but this concept is not expressed and indeed was flatly rejected at the June meeting in connection with Section 1250.240. When we turn to Section 1250.310, we find again a simple reference to "the property sought to be taken"; there is no requirement of breaking this into parcels nor are the respective interests of the defendants required to be stated. In short, nothing prevents the plaintiff from describing the property sought to be taken in one undivided metes and bounds description with no breakdown as to existing ownership configurations. Presumably, administrative convenience would generally, if not invariably, dictate a more logical breakdown into separate parcels. Perhaps, therefore, there is no need to change what we have; however, we did wish to point out that, while we have sometimes thought in terms of parcels of property or units of ownership, these thoughts are not necessarily reflected in the terms of the statute.

§ 1250.320. Contents of answer

Section 1250.320 continues the requirement of existing law that the answer include a statement of the defendant's claimed interest in the property.

The answer may, of course, contain certain defenses to the proceeding. See Section 1250.350. The general rule for civil actions on whether an objection is to be made by answer or demurrer is adopted in Section 1250.350.

§ 1250.330. Verification of answer

At the June meeting, the staff was directed to adopt the federal rule regarding verification by an attorney. Section 1250.330 is intended to carry out this direction. The federal rule is set out below in Rule 11 of the Federal Rules of Civil Procedure:

> Rule 11.
>
> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§§ 1250.350-1250.370. Objections to right to take

Section 1250.350 adopts the general rule for civil actions on when an objection to the right to take would be made by demurrer or answer. See Section 430.30. The section also makes clear that the grounds listed in Sections 1250.360 and 1250.370 are grounds for an objection to take. Other grounds for demurrer to the complaint--such as jurisdiction, uncertainty, and the like--will be picked up under the general provision that adopts rules for civil actions.

§ 1250.380. Amending complaint to add or delete property

A new section, not previously presented, is included to deal with the problem of amending the complaint to add or delete property. The provision on adding property is complete and provides that the defendant recovers any expenses he incurred because the complaint was amended to add property. Such expenses could be incurred unnecessarily where, for example, a complaint for a partial taking is amended to take the entire parcel, thus avoiding the issue of severance damages. Appraisal expenses and attorney time charges unnecessarily incurred because the taking has been changed from a partial to a whole take would be recoverable.

So far as amending a complaint to delete property previously sought to be taken is concerned, this is covered by the dismissal procedures in Chapter 11.

Cross-complaints

The attached statute does not contain provisions relating to cross-complaints in eminent domain proceedings. Nevertheless, we should make some revisions of the provisions relating to cross-complaints. We will deal with this problem in a separate memorandum.

Respectfully submitted,

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Assistant Executive Secretary

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CHAPTER 5. COMMENCEMENT OF PROCEEDING

Article 1. Jurisdiction and Venue

§ 1250.010. Jurisdiction in superior court

1250.010. Except as otherwise provided in Section 1230.060 and in Chapter 12 (commencing with Section 1273.010), all eminent domain proceedings shall be commenced and prosecuted in the superior court.

Comment. Section 1250.010 declares the basic rule that eminent domain proceedings are to be conducted in the superior court. This declaration continues prior law. See former Section 1243. For demurrer based on lack of jurisdiction, see Section 430.10.

However, the jurisdiction of the superior court is not exclusive. The issue of just compensation may be submitted to arbitration. See Chapter 12. Moreover, Section 1230.060 preserves such jurisdiction as the Public Utilities Commission may have over issues in eminent domain proceedings. See Section 1230.060 and Comment thereto.

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§ 1250.020. Place of commencement

1250.020. (a) Except as provided in subdivision (b), an eminent domain proceeding shall be commenced in the county in which the property sought to be taken is located.

(b) When property sought to be taken is situated in more than one county, the plaintiff may commence the proceeding in any one of such counties.

Comment. Section 1250.020 specifies where an eminent domain proceeding must be brought. Failure to bring the proceeding in the proper county is a failure to vest the necessary jurisdiction in the court. For provisions authorizing transfer of the proceedings for trial, see Section 1250.040. For demurrer on ground of lack of jurisdiction, see Section 430.10.

Section 1250.020 does not authorize a condemnor to condemn property beyond its territorial limits. See Section 1240.050. For authority to separate property in a complaint for trial, see Section 1048.

Section 1250.020 recodifies the substance of the venue provisions of former Section 1243.

Subdivision (a). Generally speaking, the only place an eminent domain proceeding may be brought is the county in which the property sought to be acquired lies.

Subdivision (b). Where property straddles a county line, the plaintiff has the option to bring suit on either side of the line, and the county so chosen is the proper place of trial for all the property even though a portion is not located in the county. See Section 1250.030. Under former law, where property situated in more than one county was sought to be acquired, the plaintiff could elect to bring separate proceedings relating to separate portions of the property in the county where such portion was situated. See former Section 1243. Subdivision (b), however, requires the plaintiff in this situation to make an election and bring the proceeding in one of the counties in which the tract is situated. In certain situations, relief from the plaintiff's choice of county may be obtained pursuant to Section 1250.040. See Section 1250.040 and Comment thereto.

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§ 1250.030. Place of trial

1250.030. (a) Except as provided in subdivision (b), the county in which an eminent domain proceeding is commenced pursuant to Section 1250.020 is the proper county for trial of the proceeding.

(b) Where the court changes the place of trial pursuant to Section 1250.040, the county to which the proceeding is transferred is the proper county for trial of the proceeding.

Comment. Section 1250.030 continues the substance of a portion of former Section 1243.

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§ 1250.040. Change of place of trial generally

1250.040. The provisions of the Code of Civil Procedure for the change of place of trial of actions apply to eminent domain proceedings.

Comment. Section 1250.040 makes clear that the rules of practice for civil actions generally govern venue change in eminent domain proceedings. This continues prior law. See former Section 1243 and City of Long Beach v. Lakewood Park, 118 Cal. App.2d 596, 258 P.2d 538 (1953). See also Section 1230.040 and Yolo Water & Power Co. v. Superior Court, 28 Cal. App. 589, 153 P. 394 (1915). Contrast City of Santa Rosa v. Fountain Water Co., 138 Cal. 579, ___, 71 P. 1123, 1136 (1903).

Included in the provisions incorporated by Section 1250.040 is Section 394. Under the applicable portions of Section 394, if a local public entity commences an eminent domain proceeding in a county in which it is situated against a defendant who is not situated, doing business, or residing in such county, either party may move to have the proceeding transferred for trial to another county. Alternatively, if a local public entity commences an eminent domain proceeding in a county in which it is not situated, either the entity or any defendant who is not situated, doing business, or residing in such county may move to have the proceeding transferred for trial to another county. Upon such motion, the court is obligated to transfer the trial to as nearly a neutral county as possible. The county to which the proceeding may be transferred includes the county (1) upon which the parties agree, (2) in which, as nearly as possible, no party is situated, doing business, or residing, or (3) in which, as nearly as possible, all parties are situated, doing business, or residing. Where the property is located in a neutral county to begin with, the court need not transfer the proceeding even though a motion to transfer would be authorized under Section 394. See City of Stockton v. Wilson, 79 Cal. App. 422, 249 P. 835 (1926). See also City of Los Angeles v. Pacific Tel. & Tel. Co., 164 Cal. App.2d 253, 330 P.2d 888 (1958).

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Section 394 applies to proceedings commenced by any public entity other than the state. See Section 394(3). See also People v. Spring Valley Co., 109 Cal. App.2d 656, 241 P.2d 1069 (1952)(Section 394 not applicable in action by state); Riverside etc. Dist. v. Joseph W. Wolfskill Co., 147 Cal. App.2d 714, 306 P.2d 22 (1957)(Section 394 not applicable in action by state agency); Georgetown Divide Pub. Util. Dist. v. Bacchi, 204 Cal. App.2d 194, 22 Cal. Rptr. 27 (1962)(Section 394 applicable in action by special district having status of local public entity).

Section 394 applies to any defendant regardless of the interest the defendant claims in the property sought to be taken. See Georgetown Divide Pub. Util. Dist. v. Bacchi, supra (joint owners may take advantage of Section 394); City of Oakland v. Darbee, 102 Cal. App.2d 493, 227 P.2d 909 (1951) (separate owners may take advantage of Section 394); City of Long Beach v. Lakewood Park, supra (owners of divided interests may take advantage of Section 394). The mere fact that the proceeding is a "mixed action," one in which only some of the defendants fall within the terms of this section, does not preclude its applicability. See Georgetown Divide Pub. Util. Dist. v. Bacchi, supra; 1 J. Chadbourn, H. Grossman, A. Van Alstyne, California Pleading § 367 (1961). See also People v. Ocean Shore R.R., 24 Cal. App.2d 420, 75 P.2d 560 (1938)(order changing venue on motion by but one of several defendants on grounds of impossibility of impartial trial affirmed).

The term "doing business" as used in Section 394 is intended to mean conducting some substantial activity, e.g., holding one's self out to others as engaged in the selling of goods or services. See City of Los Angeles v. Pacific Tel. & Tel. Co., supra. Ownership of property alone does not amount to doing business.

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Article 2. Commencement of Proceeding Generally

§ 1250.110. Complaint commences proceeding

1250.110. An eminent domain proceeding is commenced by filing a complaint with the court.

Comment. Section 1250.110 supersedes a portion of former Section 1243 which provided that eminent domain proceedings were commenced by filing a complaint and issuing summons. Section 1250.110 makes clear that the filing of a complaint alone is sufficient to commence an eminent domain proceeding and confers subject matter jurisdiction on the court. See Harrington v. Superior Court, 194 Cal. 185, 228 P. 15 (1924); Bayle-Lacoste & Co. v. Superior Court, 46 Cal. App.2d 636, 116 P.2d 458 (1941).

Section 1250.110 is comparable to Section 411.10 which provides that "a civil action is commenced by filing a complaint with the court."

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§ 1250.120. Contents of summons

1250.120. (a) Except as provided in subdivision (b), the form and contents of the summons shall be as in civil actions generally.

(b) Where process is served by publication, the summons shall describe the property sought to be taken in a manner reasonably calculated to give persons with an interest in the property actual notice of the pending proceeding.

Comment. Section 1250.120, which prescribes the contents of the summons, supersedes former Section 1245. Sections 412.20 and 412.30 specify the matters to be included in the summons.

Since the summons does not contain a description of the property (which formerly was required), the defendant must refer to the complaint for this information. However, where service of the summons is by publication, a copy of the complaint is not published. To assure that a person served by publication will be able to determine if he has an interest in the property, subdivision (b) requires the summons to contain a description of the property where process is served by publication. Cf. Section 413.10 (service required in a manner "reasonably calculated to give actual notice").

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c 1250.130. Additional requirements where service is by publication

1250.130. Where the court orders service by publication, it shall also order the plaintiff (1) to post a copy of the summons and complaint on the property sought to be taken and (2) to record a notice of the pendency of the proceeding in the manner provided by Section 1250.150. Such posting and recording shall be done not later than 10 days after the date the order is made.

Comment. Section 1250.130 provides additional requirements where service is by publication. The manner of service generally in an eminent domain proceeding is provided by Sections 415.10-415.50. See Section 1230.040 (rules of practice in eminent domain proceeding).

Due process requires that the rights of a person may be adjudicated only if that person is served with process in a manner reasonably calculated to give him actual notice and an opportunity to be heard. See, e.g., Milliken v. Meyer, 311 U.S. 457 (1940); Title & Document Restoration Co. v. Kerrigan, 150 Cal. 289, 88 P. 356 (1906). If a person cannot, after reasonable diligence, be served personally or by mail, the court may order service by publication. Section 415.50. This may occur either because the whereabouts of a named defendant are unknown or because the identity of the defendant is unknown (as where there are heirs and devisees or all persons unknown are named as defendants pursuant to Section 1250.220). However, where service by publication is ordered pursuant to Section 415.50, Section 1250.130 requires that the court also order the plaintiff to post a copy of the summons and complaint on the property and record a lis pendens within 10 days after the making of the order. This provision is designed to increase the likelihood that interested parties will get actual notice of the proceeding. Cf. Title & Document Restoration Co. v. Kerrigan, supra.

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Section 1250.130 supersedes a portion of the second sentence of former Section 1245.3 relating to service of heirs and devisees, persons unknown, and others. Section 1250.130 extends the posting requirement to the case where any defendant is served by publication. As to the requirement of recording, compare Sections 749, 749.1 (lis pendens must be filed in quiet title action against unknown claimants).

Although generally service statutes are liberally construed (cf. Sections 4 and 187), the due process considerations involved in service by publication demand strict compliance with the statute. See Stanford v. Worn, 27 Cal. 171 (1865). See also City of Los Angeles v. Glassell, 203 Cal. 44, ___ P. ___ (1928).

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§ 1250.140. Persons served where state is a defendant

1250.140. Where the state is a defendant, a copy of the summons and of the complaint shall be served on the Director of General Services and copies of the summons and of the complaint shall be mailed to the Governor, the Attorney General, and the State Lands Commission.

Comment. Section 1250.140 indicates the persons upon whom summons is to be served when property belonging to the state is sought to be taken. Section 1250.140 requires the plaintiff to serve the Director of General Services and to mail copies of the summons and complaint to the Governor, the Attorney General, and the State Lands Commission. This continues the substance of subdivision (8) of former Section 1240 except that formal service is now made only on the Director of General Services. Cf. California & N.R.R. v. State, 1 Cal. App. 142, 81 P. 971 (1905). See also former Section 1245.4. Compare Section 416.50.

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§ 1250.150. Lis pendens

1250.150. The plaintiff, at the time of the commencement of an eminent domain proceeding, or at any time thereafter, may record a notice of the pendency of the proceeding in the office of the county recorder of any county in which property described in the complaint is located.

Comment. Section 1250.150 makes clear that the plaintiff in an eminent domain proceeding may file a lis pendens after the proceeding is commenced. This provision supersedes a portion of former Section 1243 that required the plaintiff to file a lis pendens after service of summons. Compare Section 1250.130 (lis pendens required where service is by publication). Where a lis pendens is recorded prior to a transfer, the judgment in the proceeding will be binding upon the transferee from a named defendant who is properly made a party to the proceeding. Drinkhouse v. Spring Valley Water Works, 87 Cal. 253, 25 P. 420 (1890).

Failure to file such a notice of pendency of the eminent domain proceeding does not deprive the court of subject matter jurisdiction--Housing Authority v. Forbes, 51 Cal. App.2d 1, 124 P.2d 194 (1942)--but relieves innocent third parties from the operation of a judgment affecting the property in dispute. See Bensley v. Mountain Lake Water Co., 13 Cal. 306, 319 (1859).

Section 1250.150 is analogous to Section 409 (obligation to file lis pendens and consequences of failure to do so). See also Roach v. Riverside Water Co., 74 Cal. 263, 15 P. 776 (1887)(Section 409 applicable to condemnation proceedings prior to adoption of former Section 1243).

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Article 3. Parties; Joinder of Property

§ 1250.210. Identification of parties

1250.210. (a) A person seeking to take property by eminent domain shall be designated the plaintiff.

(b) A person from whom property is sought to be taken by eminent domain shall be designated the defendant.

Comment. Although an eminent domain proceeding is a special proceeding, the terms "plaintiff" and "defendant" are utilized throughout the Eminent Domain Law. This usage is consistent with the generally judicial nature of eminent domain proceedings in California as well as with past practice and custom. See former Section 1244(1), (2)(parties styled "plaintiff" and "defendant").

The plaintiff must be a person authorized by statute to exercise the power of eminent domain to acquire the property sought for the purpose listed in the complaint. See Section 1240.020. A proceeding may not be maintained in the name of any other person. See People v. Superior Court, 10 Cal.2d 288, 73 P.2d 1221 (1937); City of Sierra Madre v. Superior Court, 191 Cal. App.2d 587, 12 Cal. Rptr. 836 (1961); Black Rock etc. Dist. v. Summit etc. Co., 56 Cal. App.2d 513, 133 P.2d 58 (1943). Cf. City of Oakland v. Parker, 70 Cal. App. 295, 233 P. 68 (1924)(objection that real party in interest was a private person rejected). As to joinder of the owner of "necessary property" in a proceeding to acquire "substitute property," see Section 1240.340. The defendants can only be those having an interest in the property described in the complaint. San Joaquin etc. Irr. Co. v. Stevinson, 164 Cal. 221, 128 P. 924 (1912); cf. former Sections 1245.3, 1246, 1247.2.

§ 1250.220. Naming defendants

1250.220 (a) The plaintiff shall name as defendants, by their real names, those persons who appear of record or are known by the plaintiff to have or claim any right, title, or interest in the property described in the complaint.

(b) If a person described in subdivision (a) is dead and the plaintiff knows of a duly qualified and acting personal representative of the estate of such person, the plaintiff shall name such personal representative as a defendant. If a person described in subdivision (a) is dead or is believed by the plaintiff to be dead [and if no personal representative of the estate of such person has been appointed by the superior court in the county in which the property is located who is then duly qualified and if no certified copy of an order of the superior court in any other county appointing a personal representative of the estate of such person who is then duly qualified and acting has been recorded in the county in which the property is located] and if plaintiff knows of no [other] duly qualified and acting personal representative of the estate of such person and avers these facts [in the complaint or] in an affidavit [by the plaintiff or its attorney] filed with the complaint, plaintiff may name as defendants "the heirs and devisees of . . . . . (naming such deceased person), deceased, and all persons claiming by, through, or under said decedent," naming them in that manner [and, if it is alleged that any such person is believed by plaintiff to be dead, such person may also be named as a defendant].

(c) In addition to those persons described in subdivision (a), the plaintiff may name as defendants "all persons unknown claiming any right, title, or interest in or to the property," naming them in that manner.

(d) Any judgment rendered in a proceeding under this title shall be binding and conclusive upon all persons named as defendants as provided in this section and properly served.

Comment. Section 1250.220 supersedes portions of former Sections 1244 and 1245.3. Subdivision (a) is substantively the same as paragraph 2 of former Section 1244. Subdivisions (b) and (c) are substantively the same as the first sentence of former Section 1245.3. See also paragraph 2 of former Section 1244. Subdivision (d) is substantively the same as the last paragraph of former Section 1245.3. See also Section 1250.130 and Comment thereto (posting where service is by publication).

The naming of defendants is basically within the control of the plaintiff--People v. Shasta Pipe etc. Co., 264 Cal. App.2d 520, 537, 70 Cal. Rptr. 618, ___ (1964)--but failure to join a proper party to the proceeding leaves his interest unimpaired. Wilson v. Beville, 47 Cal.2d 852, 306 P.2d 789 (1957). Nevertheless, a person not named as a defendant who claims an interest in the property sought to be acquired may participate in the proceeding. Section 1250.230.

Subdivision (a). Subdivision (a) reenacts the requirement found in paragraph 2 of former Section 1244 that the names of all owners and claimants of the property must be listed in the complaint. This includes occupants of the property who claim a possessory interest in the property. The form of subdivision (a) has been adapted from former Section 1245.3.

Subdivision (b). Subdivision (b) specifies the requirements for naming defendants where one of the claimants to the property is deceased. The basic rule is that the personal representative of the estate of the decedent must be named as defendant in the decedent's place. This codifies prior law.

See Monterey County v. Cushing, 83 Cal. 507, 23 P. 700 (1890)(decided under former Code of Civil Procedure Section 1582, predecessor of Probate Code Section 573).

Where there is no duly qualified and acting personal representative known to the plaintiff, the plaintiff need not await the appointment and qualification of one but may proceed with the suit naming the claimant believed to be dead and his heirs and devisees.

Subdivision (c). Subdivision (c) enables the plaintiff to name unknown holders of interests in the property. By following this procedure and making service in compliance with the general provisions governing service--Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2--and the requirements for service provided by this title (Sections 1250.120 and 1250.130), the plaintiff can obtain a judgment binding upon such persons. This procedure will not, however, be effective against innocent purchasers and encumbrancers who acquire their interests before a lis pendens is recorded. See Section 1250.150 and Comment thereto.

A plaintiff may also proceed pursuant to Section 474 by fictitiously naming defendants who claim an interest but whose names are not known. See Bayle-Lacoste & Co. v. Superior Court, 46 Cal. App.2d 636, 116 P.2d 458 (1941). When the fictitiously named party's true name is discovered, the pleading must be amended accordingly. Alameda County v. Crocker, 125 Cal. 101, 57 P. 766 (1899).

Subdivision (d). Subdivision (d) assures that persons properly named and served are bound by the judgment in the proceeding. See discussion of subdivision (c).

§ 1250.230. Appearance by unnamed defendants

1250.230. Any person, not named in the complaint, who claims any right, title, or interest, whether legal or equitable, in the property described in the complaint may appear in the proceeding as if named as a defendant.

Comment. Section 1250.230 reenacts without substantive change the second paragraph of former Code of Civil Procedure Section 1246 and provides a simple method for interested persons to participate in an eminent domain proceeding.

An eminent domain judgment is generally binding only on persons, including "unknown persons," named in the complaint and properly served. See Sections 1250.150 (lis pendens), 1250.220 (naming defendants); Wilson v. Beville, 47 Cal.2d 852, 306 P.2d 789 (1957)(failure to join interest holder leaves his interest unimpaired). However, a person who has an interest in the property but who is not named and served may, if he chooses, also participate. See Bayle-Lacoste & Co. v. Superior Court, 46 Cal. App.2d 636, 116 P.2d 458 (1941); Stratford Irr. Dist. v. Empire Water Co., 44 Cal. App.2d 61, 111 P.2d 957 (1941)(dictum)(persons not defendants who claim any interest may appear and defend). If he does participate by making a general appearance in the proceeding, he will, of course, be bound by the judgment. Harrington v. Superior Court, 194 Cal. 185, 228 P. 15 (1924); Bayle-Lacoste & Co. v. Superior Court, supra.

In order to participate, a person must have a legal or equitable interest in the property described in the complaint. For examples of interest holders who have been permitted to participate, see Harrington v. Superior Court, supra (named defendant holding fee interest not served but appeared voluntarily); County of San Benito v. Copper Mtn. Min. Co., 7 Cal. App.2d 82, 45 P.2d 428 (1935)(successor in interest to fee holder); Bayle-Lacoste & Co. v. Superior Court, supra (lessee); City of Vallejo v. Superior

Court, 199 Cal. 408, 249 P. 1048 (1926)("owner and holder" of deed of trust); City of Los Angeles v. Dawson, 139 Cal. App. 480, ___ P. ____ (1934)(assignee of eminent domain proceeds).

Section 1250.230 does not authorize the participation of a person who fails to show that he has an interest in the property sought to be taken. Thus, third parties who would not be affected by the adjudication of either title or compensation in the eminent domain proceeding have been denied the right to participate in the proceeding. See San Joaquin etc. Irr. Co. v. Stevinson, 164 Cal. 221, 235-237, 240-242, 128 P. 924, ___-___, ___-____ (1912)(upstream riparian owners); City of Alhambra v. Jacob Bean Realty Co., 138 Cal. App. 251, 31 P.2d 1052 (1934)(owners of abutting property who might suffer consequential damages from the project for which the property is being acquired). See also City of Riverside v. Malloch, 226 Cal. App.2d 204, 37 Cal. Rptr. 862 (1964)(shareholder in company from which property sought to be acquired not permitted to participate). However, what constitutes "property" is subject to both legislative and judicial change. See Sections 1265.310 (unexercised options) and 1265.410 (contingent future interests); Southern Cal. Edison Co. v. Bourgerie, 9 Cal.3d 169, ___ P.2d ____, ___ Cal. Rptr. ____ (1973). Section 1250.230 is intended to be flexible enough to accommodate such changes and to permit participation by any person with a recognizable interest.

In San Bernardino etc. Water Dist. v. Gage Canal Co., 226 Cal. App.2d 206, 37 Cal. Rptr. 856 (1964), it was suggested in dictum that a person who sought to acquire the same property involved in a pending eminent domain proceeding could appear in such proceeding under former Section 1246. However, under the Eminent Domain Law, his proper remedy is to commence another proceeding and move to consolidate the proceedings. See Section 1260.020.

§ 1250.240. Joinder of property

1250.240. The plaintiff may join in one complaint all property located within the same county which is sought to be acquired for the same project.

Comment. Section 1250.240 reenacts the substance of a portion of subdivision 5 of former Section 1244 of the Code of Civil Procedure. Section 1250.240 permits the plaintiff at his option to join an unlimited number of parcels belonging to different defendants in the same eminent domain proceeding provided that the property joined lies wholly or partially in the same county (see Section 1250.020) and it is to be used for the same project. See County of Sacramento v. Glann, 14 Cal. App. 780, 788-790, 113 P. 360, ___-___ (1910). The contents of the complaint must, of course, be complete as to all property joined. See Section 1250.310 and Comment thereto.

Section 1250.240 provides simply for joinder in the initial pleading; it in no way limits the authority of the court to order separate trials where appropriate. See Section 1048. See also Section 1230.040 (rules of practice in eminent domain proceedings). But cf. Section _____ (procedure for compensating divided interests in a single parcel).

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Article 4. Pleadings

§ 1250.310. Contents of complaint

1250.310. The complaint shall contain all of the following:

(a) The names of all plaintiffs and defendants.

(b) A description of the property sought to be taken. If the plaintiff claims an interest in the property sought to be taken, the complaint shall indicate the nature and extent of such interest. The description may, but is not required to, indicate the nature or extent of the interests of the defendant in the property.

(c) A statement of the right of the plaintiff to take by eminent domain the property described in the complaint. The statement shall include:

(1) A description of the purpose for which the property is sought to be taken.

(2) An allegation of the necessity for the taking as required by Section 1240.030.

(3) A reference to the specific statutes, resolutions, and declarations authorizing the plaintiff to exercise the power of eminent domain for the purpose alleged. Such authority may be in the alternative and may be inconsistent.

(d) A map indicating generally the property described in the complaint and its relation to the project for which it is sought to be taken.

Comment. Section 1250.310 prescribes the necessary contents of a complaint in an eminent domain proceeding. A complaint that does not contain the elements specified in this section is subject to demurrer. See Sections 430.10 and 430.30. Section 1250.310 is an exclusive listing of the substantive allegations required to be made by the plaintiff. Other substantive

allegations may, but need not, be made. See, e.g., California S.R.R. v. Southern Pac. R.R., 67 Cal. 59, 7 P. 123 (1885)(averment of value not required and is surplusage); County of San Luis Obispo v. Simas, 1 Cal. App. 175, 81 P. 972 (1905)(averment of manner of construction of proposed improvement not required).

Other necessary procedural elements not specified in this section are required to be incorporated in the complaint, however. These include a caption (Sections 422.30 and 422.40), a request for relief (Section 425.10), and a subscription (Section 446). It should be noted that, when a public entity is the plaintiff, the complaint need not be verified but requires a verified answer. Section 446. See also Sections 1250.320 (contents of answer) and 1250.330 (verification).

Subdivision (a). The rules for designating parties to an eminent domain proceeding are prescribed in Sections 1250.210 and 1250.220.

Subdivision (b). Subdivision (b), which requires a description of the property sought to be taken, supersedes subdivision 5 of former Section 1244. The property described in the complaint may consist of anything from a fee interest in land, to water rights, to noise easements, to franchises. See Section 1235.170 ("property" defined).

The description of the property should be sufficiently certain to enable the parties, and any ministerial officer who may be called upon to enforce the judgment, to know precisely what land is to be taken and paid for. See California Cent. R.R. v. Hooper, 76 Cal. 404, 18 P. 599 (1888). See also Section 430.10(g)(demurrer for uncertainty).

Like the former provision, subdivision (b) does not require the complaint to identify the nature of the interests the various parties may have in the property sought to be taken. Specification of the precise interest held by the defendant is left to the defendant. See Section 1250.320 (answer). However, the judgment in an eminent domain proceeding affects only the interests of the parties named in the property described. See Section 1250.220 and Comment thereto. Where the plaintiff has or claims a preexisting interest in the property sought to be taken, this interest must be described in the complaint. See People v. Shasta Pipe etc. Co., 264 Cal. App.2d 520,

70 Cal. Rptr. 618 (1968); cf. City of Los Angeles v. Pomeroy, 124 Cal. 597, 57 P. 585 (1899); People v. Witlow, 243 Cal. App.2d 490, 52 Cal. Rptr. 336 (1966).

Unlike former Section 1244, subdivision (b) does not require that the complaint indicate whether the property taken is a part of a larger parcel but requires only a description of the property taken. Contrast Inglewood v. Johnson (O.T.) Corp., 113 Cal. App.2d 587, 248 P.2d 536 (1952). The "larger parcel" issue is resolved at a later time.

Subdivision (c). Subdivision (c) supersedes subdivision 3 of former Section 1244 requiring a statement of the right of the plaintiff. Subdivision (c) is intended to provide the owner of the property sought to be taken with an understanding of purpose for which his property is being taken and the authority on which the taking is based. The requirements of subdivision (c) may be satisfied in any way convenient to the plaintiff so long as they are indicated in the complaint. This might include summarizing the resolution of necessity, or attaching the resolution to the complaint and incorporating it by reference.

Paragraph (1) requires a description of the public purpose or public use for which the property is being taken. Property may not be taken by eminent domain except for a public use. Cal. Const., Art. I, § 14; Section 1240.010. The public use must appear on the face of the complaint. See Kern County Union High School Dist. v. McDonald, 180 Cal. 7, 10, 179 P. 180, ___ (1919); cf. Aliso Water Co. v. Baker, 95 Cal. 268, 30 P. 537 (1892).

Paragraph (2) requires a description of the public necessity for the taking. The items of public necessity are listed in Section 1240.030 and include public necessity for the project, plan, or location of the project compatible with the greatest public good and least private injury and necessity of the particular property for the project. This extensive description of the necessity for the taking supplants the general allegation permitted under prior law. See, e.g., Linggi v. Garovotti, 45 Cal.2d 20, 286 P.2d 15 (1955). It should be noted that, while subdivison (2) requires an extensive

statement of the necessity for the acquisition, this statement may be satisfied by incorporation of a resolution of necessity containing appropriate findings and declarations, and the resolution, under certain conditions, is given conclusive effect in the proceeding. See Section 1245.250.

Paragraph (3) requires specific reference to the authority of the condemnor. The power of eminent domain may be exercised only by persons expressly authorized by statute for purposes expressly designated by statute. Section 1240.020. In addition, a public entity must first adopt an appropriate resolution before it may proceed to condemn property. See Section 1245.220. The requirement of a specific reference to all authorizing statutes and resolutions supplants the general allegation of right to condemn permitted under prior law. See, e.g., Kern County High School Dist. v. McDonald, supra, and Los Altos School Dist. v. Watson, 133 Cal. App.2d 447, 284 P.2d 513 (1955). Where the plaintiff may be authorized to take the property on differing and inconsistent grounds, the plaintiff may allege such authority in the alternative.

Subdivision (d). Subdivision (d) broadens the requirement formerly found in subdivision 4 of Section 1244 that the complaint be accompanied by a map where the taking was for a right of way. Subdivision (d) requires a map to be attached to the complaint in all cases. The map should be sufficiently detailed and accurate to enable the parties to identify the property and its relation to the project. Where the taking is for a right of way, the map should show its location, general route, and termini with respect to the property sought to be taken. The map need not indicate whether the property sought is a part of a larger parcel.

§ 1250.320. Contents of answer

1250.320. The answer shall include a statement of the right, title, or interest the defendant claims in the property described in the complaint.

Comment. Section 1250.230 continues the requirement of former Section 1246 that the answer include a statement of the defendant's claimed interest in the property. Unlike former Section 1246, which Section 1250.320 supersedes, Section 1250.320 does not require a defendant to specify the compensation he claims for the proposed taking.

The allegations of the answer are deemed denied as in civil actions generally. See Section 431.20(b). Likewise, amendments to the answer are made as in civil actions generally. See Sections 472 and 473.

Defenses that the defendant has to the taking may be alleged in the answer or, where appropriate, may be raised by demurrer. See Section 1250.350. See also Sections 1250.360 and 1250.370 (grounds for objecting to right to take). The rules governing demurrers to the complaint are the same as in civil actions generally. See Section 1230.040 (rules of practice in eminent domain proceedings). See generally Sections 430.10, 430.30-430.80.

As to the use of a cross-complaint in an eminent domain proceeding, see Sections 426.70 (compulsory cross-complaints) and 428.10 (when cross-complaint permitted) and the Comments to those sections.

§ 1250.330. Verification of answer

1250.330. Where the answer is required to be verified, it may instead be signed by the attorney for the defendant. The signature of the attorney constitutes a certificate by him that he has read the answer, to the best of his knowledge, information, and belief there is ground to support it, and that it is not interposed for delay. If the answer is not signed or is signed with intent to defeat the purposes of this section, it may be stricken as sham and false and the proceeding may continue as though the answer had not been served. [For a willful violation of this section, an attorney is subject to appropriate disciplinary action.]

Comment. Section 1250.330 provides an alternative to the ordinary method of verifying an answer. A verification is required where the plaintiff is a public entity or where the complaint is verified. See Section 446. Section 1250.330 authorizes the attorney for the defendant to sign the answer in lieu of a verification. The section is substantively identical to Rule 11 of the Federal Rules of Civil Procedure.

§ 1250.340 [Reserved for expansion]

§ 1250.350. Pleading objections to right to take

1250.350. A defendant may object to the plaintiff's right to take, by demurrer or answer as provided in Section 430.30, on any ground authorized by Section 1250.360 or Section 1250.370. The demurrer or answer shall state the specific ground upon which the objection is taken and, if the objection is taken by answer, the specific facts upon which the objection is based. An objection may be taken on more than one ground, and the grounds may be inconsistent.

Comment. Section 1250.350 makes clear the rules governing the pleading of objections to the right to take. See Sections 1250.360 and 1250.370 (listing grounds upon which objection may be taken). The general rules that determine whether the objection may be taken by demurrer or answer (see Section 430.30) apply to pleading an objection to the right to take. Objections to the complaint, other than objections to the right to take, are governed by the rules applicable to civil actions generally. See Section 1230.040 (rules of practice in eminent domain proceedings).

The facts supporting each objection to the right to take must be specifically stated in the answer. This requirement is generally consistent with former law that, for example, required the defendant to allege specific facts indicating an abuse of discretion such as an intention not to use the property as resolved. See, e.g., County of San Mateo v. Bartole, 184 Cal. App.2d 422, 433, 7 Cal. Rptr. 569, ___ (1960). See also People v. Chevalier, 52 Cal.2d 299, 340 P.2d 598 (1959); People v. Nahabedian, 171 Cal. App.2d 302, 340 P.2d 1053 (1959); People v. Olsen, 109 Cal. App. 523, 293 P. 645 (1930).

§ 1250.360. Grounds for objection to right to take where resolution conclusive

1250.360. Grounds for objection to the right to take, regardless of whether the plaintiff has adopted a resolution of necessity that satisfies the requirements of Article 2 (commencing with Section 1245.210) of Chapter 4, include:

(a) The plaintiff is not authorized by statute to exercise the power of eminent domain for the purpose stated in the complaint.

(b) The stated purpose is not a public use.

(c) The plaintiff does not intend to devote the property described in the complaint to the stated purpose.

(d) There is no reasonable probability that the plaintiff will devote the described property to the stated purpose within seven years or such longer period as is reasonable.

(e) The described property is not subject to acquisition by the power of eminent domain for the stated purpose.

(f) The described property is sought pursuant to Section 1240.340, 1240.410, 1240.510, or 1240.610, but the acquisition does not satisfy the requirements of those provisions.

(g) Any other ground provided by law.

Comment. Section 1250.360 prescribes the grounds for objection to the right to take that may be raised in any eminent domain proceeding regardless of whether the plaintiff has adopted a resolution of necessity that is given conclusive effect on other issues. See Section 1250.370 for a listing of grounds for objection that may be raised only where there is no conclusive resolution of necessity.

Subdivision (a). The power of eminent domain may be exercised to acquire property for a public use only by a person authorized by statute to exercise the power of eminent domain to acquire such property for that use. Section 1240.020.

Subdivision (b). The power of eminent domain may be exercised only to acquire property for a public use. Section 1240.010. Cal. Const., Art. I, § 14. U.S. Const., Amend. XIV.

Subdivision (c). This subdivision codifies the classic test for lack of public use: Does the plaintiff intend to apply the property to the proposed use? See People v. Chevalier, 52 Cal.2d 299, 340 P.2d 598 (1959). Once the acquisition has been found initially proper, the plaintiff may thereafter devote the property to any other use, public or private. See Arechiga v. Housing Authority, 159 Cal. App.2d 657, 324 P.2d 973 (1958). It should be noted that, where the condemnation judgment is procured by fraud, the judgment may be subject to attack in a separate proceeding. See Capron v. State, 247 Cal. App.2d 212, 55 Cal. Rptr. 330 (1966). The statute of limitations for collateral attack on the basis of fraud in the acquisition is three years from discovery of the fraud. See Section 338(4).

Subdivision (d). This subdivision adds a test for public use new to California law. If the defendant is able to demonstrate that there is no reasonable probability that the plaintiff will apply the property to the proposed use within seven years or within a reasonable period of time, the plaintiff may not take the property. Cf. Section 1240.220 (future use).

Subdivision (e). Certain property may not be subject to condemnation for specified purposes. For example, a city may not acquire by eminent domain an existing golf course for golf course purposes. Govt. Code § 37353(c). Property appropriated to a public use may not be taken except for more necessary or compatible uses. Sections 1240.510 and 1240.610. Cemetery land may not be taken for rights of way. Health & Saf. Code §§ 8134, 8560, 8560.5. Certain land in the public domain may not be taken at all. Pub. Res. Code § 7994. An industrial farm may not be established by a county on land outside the county. Penal Code § 4106. The Department of Commerce may not condemn for World Trade Centers. Govt. Code § 8324. The Department of Aeronautics

may not take an existing airport owned by a local entity. Pub. Util. Code § 21632. See also Section 1240.010 and Comment thereto (eminent domain only for purposes authorized by statute); cf. subdivision (f) infra (more necessary public use).

Subdivision (f). Section 1240.340 permits property to be taken for substitute purposes only if: (1) the owner of the property needed for the public use has agreed in writing to the exchange and, under the circumstances of the particular case, justice requires that he be compensated in whole or in part by substitute property rather than by money; (2) the property to be exchanged is in the vicinity of the public improvement for which the property needed is taken; and (3) taking into account the relative hardship to the owners, it is not unjust to the owner of the property to be exchanged that his property be taken so that the owner of the needed property may be compensated by such property rather than by money.

Section 1240.410 permits property excess to the needs of the proposed project to be taken only if it would be left as a remainder in such size, shape, or condition as to be of little market value.

Property appropriated to a public use may be taken by eminent domain only if the proposed use is compatible with or more necessary than the existing use. See Sections 1240.510 (compatible use), 1240.610 (more necessary use).

Subdivision (g). While the provisions of Section 1250.360 catalog the objections to the right to take available under the Eminent Domain Law where the resolution is conclusive, there may be other grounds for objection not included in the Eminent Domain Law, e.g., where there exist federal or constitutional grounds for objection or where prerequisites to condemnation are located in other codes.

§ 1250.370. Grounds for objection to right to take where resolution not conclusive

1250.370. Grounds for objection to the right to take where the plaintiff has not adopted a resolution of necessity that conclusively establishes the matters referred to in Section 1240.030 include:

(a) The plaintiff is a public entity and has not adopted a resolution of necessity that satisfies the requirements of Article 2 (commencing with Section 1245.210) of Chapter 4.

(b) The public interest and necessity do not require the proposed project.

(c) The proposed project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(d) The property described in the complaint, or right or interest therein, is not necessary for the proposed project.

Comment. Section 1250.370 lists the grounds for objection to the right to take that may be raised only where there is not a conclusive resolution of necessity. Thus, they may be raised against a nonpublic-entity plaintiff in all cases and against a public-entity plaintiff in cases where it has not duly adopted a resolution or where the resolution is not conclusive. See Section 1245.250 for the effect of the resolution.

Subdivision (a). This subdivision applies only to public entities. A public entity may not commence an eminent domain proceeding until after it has passed a resolution of necessity that meets the requirements of Article 2 of Chapter 4. Section 1245.220. A duly adopted resolution must contain all the information required in Section 1245.230 and must be adopted by a vote of a majority of all the members of the governing body of the local public entity. Section 1245.240.

Subdivision (b). The power of eminent domain may be exercised to acquire property for a proposed project only if the public interest and necessity require the proposed project. Section 1240.030(a).

Subdivision (c). The power of eminent domain may be exercised to acquire property for a proposed project only if 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. Section 1240.030(b).

Subdivision (d). The power of eminent domain may be exercised to acquire property for a proposed project only if the property and particular interest sought to be acquired are necessary for the proposed project. Section 1240.030(c).

§ 1250.380. Amending complaint to add or delete property

1250.380. (a) A complaint may be amended to add property sought to be taken only if the plaintiff has adopted a resolution of necessity that satisfies the requirements of Article 2 (commencing with Section 1245.210) of Chapter 4 for the property to be added. If such an amendment is made, the defendant has the option to select a single date of valuation for the whole proceeding which shall be either the date that would be applicable to the proceeding as commenced or the date that would be applicable to the newly commenced portion of the proceeding. The defendant is also entitled to recover costs, disbursements, and expenses (including attorney's fees, appraisal fees, and fees for the services of other experts) reasonably and necessarily incurred by him for the proceeding as originally commenced to the extent that they would not have been incurred had the property sought to be acquired following amendment been the property originally sought to be acquired.

(b) A complaint may be amended to delete property previously sought to be taken only if the plaintiff has followed the procedure for partial abandonment of the proceeding as to that property.

Comment. Section 1250.380 supplies special rules applicable to amendments that seek to change the property to be taken. Section 1250.380 is an exception to the normal rules of liberality of amendment. Compare, e.g., Kern County Union High School Dist. v. McDonald, 180 Cal. 7, 179 P. 180 (1919), and Yolo Water etc. Co. v. Edmands, 50 Cal. App. 444, 195 P. 463 (1920).

Subdivision (a). In order to add property to the complaint, there must be a valid resolution of necessity for the property to be added. Where property is added, the defendant may select a single valuation date for the

whole proceeding. This date may be based either on the date for the original proceeding or on the date for the newly added portion of the proceeding computed as if it were a separate proceeding. See Section 1263.110 et seq. Where the additional property renders some of the defendant's earlier expenses useless (e.g., expenses to value a partial take that is amended to a whole take), the plaintiff is obligated to reimburse the defendant for those expenses that were useless.

Subdivision (b). In order to delete property from the complaint, the plaintiff must follow the procedures and pay the price for abandonment. See Section 1268.510. This provision continues prior law as to "partial abandonment"; see, e.g., County of Kern v. Galatas, 200 Cal. App.2d 353, 19 Cal. Rptr. 348 (1962); Metropolitan Water Dist. v. Adams, 23 Cal.2d 770, 147 P.2d 6 (1955); Merced Irr. Dist. v. Woolstenhulme, 4 Cal.3d 478, ___ P.2d ____, ___ Cal. Rptr. ____ (1971).