

Memorandum 75-24

Subject: Study 36.520 - Eminent Domain (Conforming Changes--Special Districts)

Attached as Exhibit I (green) is a letter from the general counsel for the Desert Water Agency, a special district whose statute would be affected by AB 129, one of the Commission's bills to adjust the special district acts to the Eminent Domain Law. The letter recommends deletion of two additional sentences of a section the Commission is amending concerning the relation between the Desert Water Agency and neighboring county water districts.

The staff has no problem with the proposed deletion of the sentence labeled 1 (see last page of Exhibit I). We assume that, should the Coachella Valley County Water District object to the deletion, we will hear from them.

The staff does have problems with the proposed deletion of the sentence labeled 2, however. This sentence precludes the Desert Water Agency from condemning property of a county water district encompassing more than 50,000 acres which, according to the letter, would include all the surrounding county water agencies. Deletion of the sentence would enable condemnation of the property of county water agencies by the Desert Water Agency, subject to the Commission's proposed compatible use and more necessary use scheme. While the staff believes that this would be a good change in the law, we doubt that the county water agencies will think so. The assumption in the letter that the property of the county water agencies would not in any case be subject to condemnation by the Desert Water Agency is incorrect, since the Commission has proposed the repeal of those provisions of Code of Civil Procedure Sections 1240(3) and 1241(3) which protected property of local public agencies from condemnation by other local public agencies.

As an alternative to the repeal of sentence 2, the staff recommends that it be amended to read:

The agency shall not have or exercise the power of eminent domain as to any property belonging to a county water district which has more than 50,000 acres of land within its boundaries .

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT I

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March 13, 1975

California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Attention: Nathaniel Sterling, Esq.

Re: Portion of your eminent domain
legislative package applying to
Desert Water Agency (AB 129)

Gentlemen:

Pursuant to my telephone conversation yesterday with Mr. Sterling, enclosed is a draft of a suggested amendment to the portion of AB 129 covering the eminent domain powers of the Desert Water Agency, a special act district created by the State Legislature for purposes including delivery of State Project water to the Palm Springs, Cathedral City and Desert Hot Springs portions of Riverside County. It is the stated intent of the Commission's eminent domain legislation to transfer, consolidate and clarify, and to assist in this regard we recommend the deletion of the language indicated on the attached draft amendment and on the attached copy of the text of AB 129 as introduced.

The language which we request be deleted was inserted into the Desert Water Agency law for good reason when the law was enacted, but has since been overtaken by events and no longer applies. We are concerned that if the Legislature re-enacts it, there could be some confusion about legislative intent, and for this reason we are requesting that it be amended out as part of AB 129. In particular, the language indicated as (1) on the attached bill copy was inserted to assure a neighboring water district that the Desert Water Agency would not be exercising eminent domain powers in an area which the neighboring district wish to serve. That matter has since been clarified and settled by a reorganization agreement with the neighboring water district (Coachella Valley County Water District), as well as by the spheres of influence maps filed

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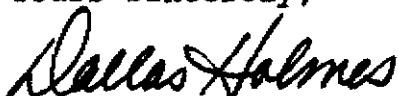
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by both districts with the Riverside County Local Agency Formation Commission. The second sentence to be stricken was relevant at the time of the creation of the Agency, but now is an anachronism because there is no adjacent county water district under 50,000 acres in size and the Agency would of course not have the power to condemn against another co-equal public agency in any case.

We would appreciate very much your attention to these deletions. If we can provide further information, please let us know at your convenience.

Yours sincerely,



Dallas Holmes
of Best, Best & Krieger
General Counsel
Desert Water Agency

DH:rl
Enc.

cc: Tom Carroll, Consultant
Assembly Judiciary Committee

A SUGGESTED AMENDMENT TO SECTION 6
OF ASSEMBLY BILL 129

SEC. 6. Section 15 of the Desert Water Agency Law
(Chapter 1069 of the Statutes of 1961) is amended to read:

Sec. 15. The Desert Water Agency incorporated as
herein provided, shall have the power:

~~Sec. 15. The Desert Water Agency incorporated as
herein provided, shall have the power:~~

1. To have perpetual secession;...

...

9. To have and exercise the right of eminent domain
~~and in the manner provided by law for the condemnation
of private property for public use,~~ to take any property
necessary to supply the agency or any portion thereof
with water, ~~whether such property be already devoted
to the same use or otherwise, and may condemn any
existing waterworks or system, or any portion thereof, or
any waters or water rights owned by any person, firm or
private corporation. In proceedings relative to the
exercise of such right, the agency shall have all of the
rights, powers and privileges of a city, provided, the.~~ The
agency in exercising such power, shall in addition to the
damage for the taking, injury, or destruction of property,
also pay the cost of removal, reconstruction, or relocation
of any structure, railways, mains, pipes, conduits, wires,
cables or poles of any public utility which is required to
be removed to a new location. The agency shall not
exercise the power of eminent domain with respect to

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property situated outside the boundaries of the agency unless it first obtains the consent of the board of supervisors of the county in which such property is located; provided, however, that the agency may exercise the right of eminent domain for the condemnation of property outside the boundaries of the agency for the acquisition of rights-of-way in any county in which territory of the agency is located or in any county adjacent to such county without obtaining the consent thereto of the board of supervisors thereof. When the agency proposes to exercise the power of eminent domain, under this section, for the condemnation of property outside the boundaries of the agency for the acquisition of rights-of-way in any county in which territory of the agency is located or in any county adjacent to such county, it shall give written notice, at least two weeks prior to condemning the property, to the board of supervisors of the county in which the property is located. Such written notice shall contain a description of the property to be condemned. ~~The agency shall have the power to acquire by eminent domain with respect to property situated outside the boundaries of the agency other than the power to acquire by eminent domain any integrated water production, transmission and distribution facilities located partially within and without the boundaries of the agency, provided such integrated facilities are located southerly and westerly of the White~~

Water-River-and-northerly-of-the-township-line-between
Township-4-South-and-Township-5-South,-S-B-B-6-M,-and
exclusive-of-that-certain-subdivision-know-as-Palm
Springs-Outposts-Estates-situated-in-Section-21,-Township
4-South,-Range-5-East,-S-B-B-6-M.--The-agency-shall-not
have-or-exercise-power-of-eminent-domain-as-to-any
property-belonging-to-a-county-water-district-which-has
more-than-50,000-acres-of-land-within-its-boundaries.

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1 (Chapter 1069 of the Statutes of 1961) is amended to read:

2 Sec. 15. The Desert Water Agency incorporated as
3 herein provided, shall have the power:

4 Sec. 15. The Desert Water Agency incorporated as
5 herein provided, shall have the power:

6 1. To have perpetual succession;

7 2. To sue and be sued, except as otherwise provided
8 herein or by law, in all actions and proceedings in all
9 courts and tribunals of competent jurisdiction;

10 3. To adopt a seal and alter it at pleasure;

11 4. To take by grant, purchase, gift, devise, or lease,
12 hold, use, enjoy, and to lease or dispose of real and
13 personal property of every kind, within or without the
14 Desert Water Agency;

15 5. To acquire, or contract to acquire, waterworks or a
16 waterworks system, waters, water rights, lands, rights and
17 privileges and construct, maintain and operate conduits,
18 pipelines, reservoirs, works, machinery and other
19 property useful or necessary to store, convey, supply or
20 otherwise make use of water for a waterworks plant or
21 system for the benefit of the agency, and to complete,
22 extend, add to, repair or otherwise improve any
23 waterworks or waterworks system acquired by it as
24 herein authorized.

25 6. To construct, maintain, improve and operate public
26 recreational facilities appurtenant to any water reservoir
27 operated or contracted to be operated by the Desert
28 Water Agency, and to provide by ordinance regulations
29 binding upon all persons to govern the use of such
30 facilities including regulations imposing reasonable
31 charges for the use thereof. Violation of any such
32 regulation shall be a misdemeanor.

33 7. To lease of and from any person, firm or public or
34 private corporation, or public agency, with the privilege
35 of purchasing or otherwise, all or any part of water
36 storage, transportation or distribution facilities, existing
37 waterworks or a waterworks system, and to carry on and
38 conduct waterworks or a waterworks system; also to sell
39 water under the control of the agency to cities, and to
40 other public corporations and public agencies within the

1 agency, and to the inhabitants of such cities and of oth
2 territory within the agency, and to persons, corporation
3 and other private agencies within the agency for u
4 within said agency without any preference; also to s
5 water outside the boundaries of the agency to the exte
6 that the lands and inhabitants so served are southerly ar
7 westerly of the White Water River and northerly of th
8 township line between Township 4 South and Townsh
9 5 South, S.B.B. & M., and exclusive of that certa
10 subdivision known as Palm Springs Outposts Estat
11 situated in Section 21, Township 4 South, Range 5 Eas
12 S.B.B. & M. and it may, whenever the board shall fin
13 that there is a surplus of water above that which may b
14 required by such consumers within said agency, sell c
15 otherwise dispose of such surplus water to any person
16 firms, public or private corporations or public agencies c
17 other consumers;

18 8. The agency may supply and deliver water t
19 property not subject to agency taxes at special rates
20 terms, and conditions as are determined by the board fo
21 such service.

22 9. To have and exercise the right of eminent domain
23 and in the manner provided by law for the condemnation
24 of private property for public use; to take any property
25 necessary to supply the agency or any portion thereof
26 with water; whether such property be already devoted
27 to the same use or otherwise; and may condemn any
28 existing waterworks or system; or any portion thereof; or
29 any waters or water rights owned by any person, firm or
30 private corporation. In proceedings relative to the
31 exercise of such right, the agency shall have all of the
32 rights, powers and privileges of a city; provided, the . The
33 agency in exercising such power, shall in addition to the
34 damage for the taking, injury, or destruction of property,
35 also pay the cost of removal, reconstruction, or relocation
36 of any structure, railways, mains, pipes, conduits, wires,
37 cables or poles of any public utility which is required to
38 be removed to a new location. The agency shall not
39 exercise the power of eminent domain with respect to
40 property situated outside the boundaries of the agency

1 unless it first obtains the consent of the board of
2 supervisors of the county in which such property is
3 located; provided, however, that the agency may exercise
4 the right of eminent domain for the condemnation of
5 property outside the boundaries of the agency for the
6 acquisition of rights-of-way in any county in which
7 territory of the agency is located or in any county
8 adjacent to such county without obtaining the consent
9 thereto of the board of supervisors thereof. When the
10 agency proposes to exercise the power of eminent
11 domain, under this section, for the condemnation of
12 property outside the boundaries of the agency for the
13 acquisition of rights-of-way in any county in which
14 territory of the agency is located or in any county
15 adjacent to such county, it shall give written notice, at
16 least two weeks prior to condemning the property, to the
17 board of supervisors of the county in which the property
18 is located. Such written notice shall contain a description
19 of the property to be condemned. ~~The agency shall have~~
20 ~~the power to acquire by eminent domain with respect to~~
21 ~~property situated outside the boundaries of the agency~~
22 ~~other than the power to acquire by eminent domain an~~
23 ~~integrated water production, transmission and~~
24 ~~distribution facilities located partially within and without~~
25 ~~the boundaries of the agency, provided such integrated~~
26 ~~facilities are located southerly and westerly of the White~~
27 ~~Water River and northerly of the township line between~~
28 ~~Township 4 South and Township 5 South, S.B.B. & M., and~~
29 ~~exclusive of that certain subdivision known as Palm~~
30 ~~Springs Outposts Estates situated in Section 21, Township~~
31 ~~4 South, Range 5 East, S.B.B. & M. The agency shall not~~
32 ~~have or exercise power of eminent domain as to any~~
33 ~~property belonging to a county water district which has~~
34 ~~more than 50,000 acres of land within its boundaries.~~
35 10. To issue bonds, borrow money and incur
36 indebtedness as authorized by law or in this act provided;
37 also to refund (by the issuance of the same obligations
38 following the same procedure) or retire any
39 indebtedness or lien that may exist against the agency or
40 property thereof; also to issue warrants to pay the