

Third Supplement to Memorandum 2000-12

Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain

We have received the letter attached as Exhibit pp. 1-2 from Richard B. Williams and Maxine (Micki) Ferguson of the Department of Transportation addressing issues raised in Memorandum 2000-12 and its Supplements. They strongly support the concept of early exchange of valuation data and early resolution of legal issues, but identify a number of concerns with the suggestions that have been made.

They agree with Mr. Nave that the staff proposal for early resolution does not provide adequate time for the parties to respond to trial court in limine rulings. However, they see a number of timing issues with the proposal to move the exchange date back to 120 days before trial, and offer several suggestions. They think a workable scheme can be developed.

With respect to more full disclosure of the details of a prejudgment deposit appraisal (and also presumably with respect to more full disclosure of the details of the precondemnation appraisal), they suggest that this be treated as a separate matter. They have not had sufficient time to study this issue, and request an opportunity to respond at a later time.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

DEPARTMENT OF TRANSPORTATION

LEGAL - MS 57

1120 N STREET, SACRAMENTO, CA 95814

P.O. BOX 1438, SACRAMENTO, CA 95812-1438

PHONE (916) 654-2630

FAX (916) 654-6128



February 8, 2000

TRANSMITTED VIA FACSIMILE

Nathaniel Sterling, Esq.
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

In re: Study Em-458, Memorandum 2000-12: Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain

We are submitting this letter setting forth our personal views as practicing eminent domain attorneys for the State of California, Department of Transportation, in response to the Commission Staff Memorandum studying the possibility of amending the Eminent Domain Law to provide for the early resolution of legal issues and early exchange of valuation data.

Having only recently received Memorandum 2000-12 and the First Supplement to Memorandum 2000-12 accompanied by letters written by Michael R. Nave and Norman E. Matteoni, we have not had adequate opportunity to complete an in-depth analysis of the Commission Staff's proposal. Nevertheless, we have begun to consider this proposal and offer the following preliminary comments and observations.

We strongly support the overall concept of the early resolution of legal issues and early exchange of valuation data in eminent domain proceedings. As you know, the Department sponsored the amendment to Code of Civil Procedure section 1258.220 which pushed back the exchange date to 60 days before trial. We believe the current proposal, if amended to consider the issues raised by the comments below, would lead to the settlement of many cases before trial and the streamlining and shortening of the jury trials in cases not resolved by court rulings on the outstanding legal issues.

We concur with Mr. Nave that the language of the staff's proposed new section 1260.040 does not provide adequate time for the parties to respond to the trial court's rulings on the motions in limine. However, we would like additional time to consider the effect of Mr. Nave's suggestion that the date of exchange occur 120 days before trial. An initial review of the proposal and Mr. Nave's comments suggests the following points must be considered:

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- The fast track rules currently require that most cases be disposed of within eleven months of the date they are filed. There must be adequate time between the date of the filing and service of the summons and complaint and the date of exchange to allow the parties to complete initial discovery and to obtain appraisals from their respective expert witnesses. One possibility would be to resolve some of the timing issues at the status or case management conference.
- There must be adequate time between the date of exchange and the date of the motion to complete expert witness depositions and other necessary discovery. Mr. Nave's suggestion of 30 days appears reasonable.
- There must be a provision to permit a party to prepare and exchange new appraisal data if the court rules on motion that its appraiser's testimony is inadmissible. Under Mr. Nave's proposal there would be only 60 days between the date of the court's ruling and the beginning of trial.

We believe these timing issues can be resolved and that a workable proposal can be drafted.

In the First Supplement to Memorandum 2000-12, the Commission staff includes language responsive to the comments submitted by Norman Matteoni in response to Memorandum 2000-11. We submit that it would be inappropriate to include the proposed amendments to sections 1255.010 and 1255.030 of the Code of Civil Procedure in the current proposal for early resolution of legal issues and exchange of appraisal data. Mr. Matteoni's comments relate only to problems he asserts he has had with appraisals prepared to support the condemnor's deposit of probable compensation required before it can seek an order for possession of the property being acquired. These appraisals are used to support the condemnor's initial offer and are not typically those used at trial or those exchanged with the condemnee. In fact they are inadmissible at trial under Code of Civil Procedure section 1255.060.

Mr. Matteoni's letter does not address the merits of the current proposal. We believe that the issues he raises are properly the subject of another memorandum. We have not had the opportunity to study the issues raised by Mr. Matteoni and request more time to respond to them.

We plan to be personally present at the Commission meeting on February 11, 2000, and are looking forward to addressing the issues raised by Memorandum 2000-12 and any other related matters. We appreciate having the opportunity to comment on this proposal.

Very truly yours,


RICHARD B. WILLIAMS
MAXINE (MICKI) FERGUSON
Attorneys