

Second Supplement to Memorandum 2000-64

Withdrawal of Prejudgment Deposit in Eminent Domain (Additional Comments on Tentative Recommendation)

Attached to this supplemental memorandum as an Exhibit is a letter from Dick Williams on behalf of the Caltrans legal department. The letter reiterates their strong opposition to the tentative recommendation on withdrawal of the prejudgment deposit in eminent domain proceedings. See Memorandum 2000-64.

Mr. Williams takes issue with the comments of Michael Berger, attached to the First Supplement to Memorandum 2000-64. Contrary to Mr. Berger's assertion, the condemnor has no knowledge of the extent of each party's relative interest in the compensation for the property. The landlord, tenants, easement owners, etc., have exclusive knowledge of the extent of their relative claims to the deposit. "In all cases they are in a better position than the condemnor to evaluate these claims. The division of the amount deposited is clearly an apportionment issue in which the condemning agency of necessity plays a neutral role." Exhibit p. 1.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

DEPARTMENT OF TRANSPORTATION

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December 11, 2000

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VIA FACSIMILE AND FIRST-CLASS MAIL

File: _____

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: Staff Memorandum 2000-64, First Supplement to Staff Memorandum 2000-64,
Study Em-456: Withdrawal of Prejudgment Deposit in Eminent Domain

After consulting with the legal and right-of-way staff of the Department of Transportation, I offer the following comments regarding Staff Memorandum 2000-64 and the First Supplement thereto, regarding Study Em-456:

We reiterate our strong opposition to Tentative Recommendation #EmH-456 (July 2000), expressed in our letter to you dated September 14, 2000. However, we have no objection to the proposed technical amendments to Code of Civil Procedure section 1255.230 set forth in Staff Memorandum 2000-64.

The comments made by Michael Berger in his letter dated October 2, 2000, are not applicable to the issues raised by Tentative Recommendation #EmH-456. Contrary to Mr. Berger's assertions, the property owner as landlord, and all tenants, trustors and beneficiaries under deeds of trusts, easement owners and lienholders, in most cases have exclusive knowledge of the extent of the relative claims each has to the compensation deposited by the plaintiff condemnor. In all cases they are in a better position than the condemnor to evaluate these claims. The division of the amount deposited is clearly an apportionment issue in which the condemning agency of necessity plays a neutral role.

Nathaniel Sterling, Esq.

December 11, 2000

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I wish to thank you again for this opportunity to participate in the Commission's process and look forward to continuing to work with the Commission on proposals to revise the provisions of the Eminent Domain Law.

Very truly yours,



RICHARD B. WILLIAMS

Attorney

cc Michael R. Nave