

**First Supplement to Memorandum 2000-79****Prejudgment Deposit Appraisal in Eminent Domain  
(Comments of Caltrans)**

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Attached to this supplemental memorandum as an Exhibit is a letter from Dick Williams on behalf of the Caltrans legal department. The letter comments on the following issues raised in the memorandum.

(1) The memorandum suggests amendment of the eminent domain litigation expense statute (Code Civ. Proc. § 1250.410) to make clear that the prejudgment deposit may be taken into account in determining the amount of litigation expenses to be allowed. Mr. Williams indicates they have no objection to this clarification — as a practical matter in most cases the prejudgment deposit is the same as the prelitigation offer, and the prelitigation offer is already taken into account in determining litigation expenses.

(2) The memorandum proposes amendment of the eminent domain limitations on admissibility of the prejudgment deposit appraisal (Code Civ. Proc. § 1255.060) to make clear that the appraisal may be used for impeachment of a witness who prepared it. Mr. Williams indicates they have no objection to this clarification — it would codify existing case law.

(3) The memorandum concludes that the eminent domain limitations on admissibility of prejudgment deposit evidence protect the property owner as well as the condemnor. Mr. Williams indicates they agree with this interpretation of the law.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**DEPARTMENT OF TRANSPORTATION**

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December 11, 2000

**VIA FACSIMILE AND FIRST-CLASS MAIL**

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 2000-79, Study Em-459: Prejudgment Deposit Appraisal 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 2000-79, Study Em-459:

As a practical matter, in the vast majority of cases, the offer made by the condemnor under Government Code section 7267.2 and the deposit made in connection with an application for an order for possession (Code Civ. Proc., §1255.010, et seq.) are the same. For this reason, we have no objection to the proposed amendment to section 1250.410. It should be noted that there is apparently a typographical error in the quoted existing language of section 1250.410, because the date for the exchange of final offers and demands is now 20 days before trial.

Likewise, we have no objection to the proposed amendments to Code of Civil Procedure section 1255.060. As pointed out by the Commission staff, existing case law has provided an exception to the general evidentiary exclusion by permitting the use of an earlier appraisal for impeachment purposes in cases where the condemnor calls its own prejudgment deposit appraiser as a valuation witness at trial. We also agree with the staff's interpretation of section 1255.060 that the existing statutory language protects appraisal statements made on behalf of condemnees as well as those made on behalf of the condemnor.

Nathaniel Sterling, Esq.

December 11, 2000

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I wish to thank you 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,

A handwritten signature in cursive script, appearing to read "Richard B. Williams".

RICHARD B. WILLIAMS

Attorney

cc Michael R. Nave