

## Second Supplement to Memorandum 2001-24

### **Evidence of Prejudgment Deposit Appraisal in Eminent Domain: Comments on Tentative Recommendation**

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Attached to this supplemental memorandum is a letter from Richard B. Williams commenting on the tentative recommendation on evidence of the prejudgment deposit appraisal in eminent domain.

Mr. Williams agrees with the changes suggested in Memorandum 2001-24 to make clear that the prelitigation offer and prejudgment deposit are not to be used to determine entitlement to litigation expenses. They are only used as a factor in determining the amount of litigation expenses, if entitlement is otherwise established.

Otherwise, the Caltrans legal department is neutral on this proposal. It would not affect them, since they ordinarily use a different expert witness at trial than the appraiser used to make pretrial appraisals.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**DEPARTMENT OF TRANSPORTATION**

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March 22, 2001

**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 2001-24, Tentative Recommendation Regarding Study Em-459: Prejudgment Deposit Appraisal in Eminent Domain

After consulting with the legal staff of the Department of Transportation, I offer the following comments regarding Staff Memorandum 2001-24 and the Tentative Recommendation regarding Study Em-459:


We agree with the comments made by June Ailin and the Commission staff's revision of the sentences in the tentative recommendation relating to litigation expenses. It must be made absolutely clear that the amount of the offer made under Government Code section 7267.2 and the amount of the deposit made under Code of Civil Procedure sections 1255.010-1255.480 are to be used only to determine the amount of litigation expenses and not entitlement to an award of litigation expenses.

With the clarification outlined above, we maintain the position of neutrality set forth in my letter to you dated December 11, 2000. Because the Department of Transportation rarely uses the same appraiser for the initial offer and prejudgment deposit as opposed to testimony at the valuation trial, enactment of this proposed legislation would have little effect on the department's operations.

William E. Thompson, Esq.  
March 22, 2001  
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Again, 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,

  
RICHARD B. WILLIAMS  
Attorney

cc Michael R. Nave  
Joseph Vanderhorst