

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Withdrawal of Prejudgment Deposit in Eminent Domain

July 2000

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 15, 2000.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF RECOMMENDATION

This recommendation proposes a revision in the law governing withdrawal of a prejudgment deposit in an eminent domain proceeding. It would make clear that a party's objection to another party's withdrawal of the deposit preserves any rights the objector may have against the condemnor to the extent there is an overwithdrawal.

This recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1999.

1 WITHDRAWAL OF PREJUDGMENT DEPOSIT IN
2 EMINENT DOMAIN

3 Article I, Section 19, of the California Constitution authorizes the Legislature to
4 provide for immediate possession of the property by the condemnor in an eminent
5 domain proceeding.¹ The Legislature has responded with a well-articulated
6 scheme for prejudgment deposit by the condemnor, withdrawal of the deposit by
7 the property owner, and possession of the property by the condemnor.² This
8 scheme was enacted on recommendation of the California Law Revision
9 Commission.³

10 Complications arise under this scheme where one of several persons having an
11 interest in the property being taken seeks to withdraw the deposit.

12 The eminent domain law anticipates the possibility of multiple or divided
13 ownership of the property. If the property owner applies to the court to withdraw
14 the deposit, the condemnor may object on the basis that other parties to the
15 proceeding are known or believed to have interests in the property.⁴ The
16 condemnor may serve notice on the other parties, who have an opportunity to
17 appear and object to the withdrawal. The court then determines the amounts to be
18 withdrawn, if any, and by whom.⁵ The court may order a withdrawing party to
19 give security to the other parties to cover the possibility of an overwithdrawal.⁶
20 Thereafter, the parties have no further claim against the condemnor to the extent of
21 the amount withdrawn — the remedies for excess amounts withdrawn are between
22 the parties.⁷

23 The notice the condemnor gives to other parties having an interest in the
24 property advises them that, “failure to object will result in waiver of any rights
25 against the plaintiff to the extent of the amount withdrawn.”⁸ Notwithstanding this
26 notification, the statute provides that a third party loses any rights against the
27 condemnor whether or not the third party objects to the withdrawal.⁹ This

1. “The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.” Cal. Const. Art. I, § 19.

2. Code Civ. Proc. §§ 1255.010-1255.480.

3. *Taking Possession and Passage of Title in Eminent Domain Proceedings*, 3 Cal. L. Revision Comm’n Reports, at B-1 (1961); *The Eminent Domain Law*, 12 Cal. L. Revision Comm’n Reports 1601 (1974).

4. Code Civ. Proc. § 1255.230(b).

5. Code Civ. Proc. § 1255.230(c)-(d).

6. Code Civ. Proc. § 1255.240.

7. Code Civ. Proc. § 1255.280.

8. Code Civ. Proc. § 1255.230(c).

9. Code Civ. Proc. § 1255.230(c). (“Parties served in the manner provided in Section 1255.450 shall have no claim against the plaintiff for compensation to the extent of the amount withdrawn by all applicants.”)

1 potential trap may be easily cured by revision of the statute to make clear what the
2 notice suggests — that a party waives rights if the party fails to appear and object.
3 The Law Revision Commission recommends this clarification of the law.

4 Ordinarily, an objecting party is able adequately to protect its rights in court.¹⁰
5 The court determines the proportionate amounts of the deposit to be withdrawn by
6 the parties. If it is ultimately determined that a party has overwithdrawn the
7 amount to which the party is entitled, the party is responsible for reimbursement to
8 others having interests in the property.¹¹

9 This scheme founders if a party who withdraws excessive compensation
10 becomes judgment proof and cannot repay others who are entitled to a share of the
11 award. The eminent domain law anticipates this eventuality by enabling the court
12 to require the withdrawing party to give security to the other parties at the time of
13 the withdrawal.¹² The remedy is not completely adequate, however — in some
14 cases the court may fail to require security; in other cases the cost of obtaining
15 security may as a practical matter make it unavailable.¹³

16 If the overwithdrawing party is judgment proof, and if there is no security to
17 cover the shortfall, persons who have an interest in the property are in jeopardy of
18 being denied just compensation for their interests. In such a case, the Law
19 Revision Commission recommends that the law make clear that the condemnor is
20 responsible to ensure that the parties receive the just compensation to which they
21 are constitutionally entitled.

22 The policies that favor this allocation of the risk of loss include:

23 (1) Immediate possession is for the convenience of the condemnor in planning
24 and scheduling the project; the condemnor should pay for any costs associated
25 with that convenience.

26 (2) The condemnor may be the only party to the proceeding with the resources to
27 cover the risk of loss — a property owner may not have the resources, and in fact
28 the financial position of a property owner may be worsened by the proceeding.

29 (3) The condemnor is the only party in a position to spread the risk of loss — it
30 acts on behalf of the public, for the public benefit, and the public should
31 compensate affected property owners for the losses involved.

32 The combination of circumstances giving rise to liability of a condemnor for an
33 overwithdrawal is unusual, and any resulting increase in the condemnor's
34 acquisition budget under this proposal is likely to be nominal. The Law Revision
35 Commission believes that this addition to the law will ensure just compensation to

10. Code Civ. Proc. § 1255.230(d). (“If any party objects to the withdrawal, or if the plaintiff so requests, the court shall determine, upon hearing, the amounts to be withdrawn, if any, and by whom.”)

11. Code Civ. Proc. § 1255.280(a).

12. Code Civ. Proc. § 1255.240.

13. In this circumstance, a requirement of security may deny a party the constitutional right of compensation for the taking of the party's property. It should be noted that the cost of security is recoverable in the proceeding. Code Civ. Proc. §§ 1255.240(b), 1268.710.

- 1 all parties whose property is taken for public use, without imposing an undue
- 2 burden on the public.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 1255.230 (amended). Objections to withdrawal**

2 1255.230. (a) No withdrawal may be ordered until 20 days after service on the
3 plaintiff of a copy of the application or until the time for all objections has expired,
4 whichever is later.

5 (b) Within the 20-day period, the plaintiff may file objections to withdrawal on
6 any one or more of the following grounds:

7 (1) Other parties to the proceeding are known or believed to have interests in the
8 property.

9 (2) An undertaking should be filed by the applicant as provided in Section
10 1255.240 or 1255.250.

11 (3) The amount of an undertaking filed by the applicant under this chapter or the
12 sureties thereon are insufficient.

13 (c) If an objection is filed on the ground that other parties are known or believed
14 to have interests in the property, the plaintiff shall serve or attempt to serve on
15 ~~such~~ the other parties a notice that they may appear within 10 days after ~~such~~
16 service and object to the withdrawal. The notice shall advise ~~such~~ the parties that
17 their failure to object will result in waiver of any rights against the plaintiff to the
18 extent of the amount withdrawn. The notice shall be served in the manner provided
19 in Section 1255.450 for service of an order for possession. The plaintiff shall file,
20 and serve on the applicant, a report setting forth (1) the names of the parties upon
21 whom the notice was served and the dates of service and (2) the names and last
22 known addresses of the other parties who are known or believed to have interests
23 in the property but who were not so served. The applicant may serve parties whom
24 the plaintiff has been unable to serve. Parties served in the manner provided in
25 Section 1255.450 who fail to appear within 10 days after service and object to the
26 withdrawal shall have no claim against the plaintiff for compensation to the extent
27 of the amount withdrawn by all applicants. The plaintiff shall remain liable to
28 other parties having an interest of record ~~who are not so served~~ but, if ~~such~~ the
29 liability is enforced, the plaintiff shall be subrogated to the rights of ~~such~~ the
30 parties under Section 1255.280.

31 (d) If any party objects to the withdrawal, or if the plaintiff so requests, the court
32 shall determine, upon hearing, the amounts to be withdrawn, if any, and by whom.

33 **Comment.** The sixth and seventh sentences of Section 1255.230 are amended for consistency
34 with the first, second, and third sentences.

35 **Code Civ. Proc. § 1255.280 (unchanged). Repayment of amount of excess withdrawal**

36 1255.280. (a) Any amount withdrawn by a party pursuant to this article in excess
37 of the amount to which he is entitled as finally determined in the eminent domain
38 proceeding shall be paid to the parties entitled thereto. The court shall enter
39 judgment accordingly.

1 (b) The judgment so entered shall not include interest except in the following
2 cases:

3 (1) Any amount that is to be paid to a defendant shall include legal interest from
4 the date of its withdrawal by another defendant.

5 (2) If the amount originally deposited by a plaintiff was increased pursuant to
6 Section 1255.030 on motion of a party obligated to pay under this section, any
7 amount that is attributable to such increase and that is to be repaid to the plaintiff
8 shall include legal interest from the date of its withdrawal.

9 (c) If the judgment so entered is not paid within 30 days after its entry, the court
10 may, on motion, enter judgment against the sureties, if any, for the amount of such
11 judgment.

12 (d) The court may, in its discretion and with such security, if any, as it deems
13 appropriate, grant a party obligated to pay under this section a stay of execution
14 for any amount to be paid to a plaintiff. Such stay of execution shall not exceed
15 one year following entry of judgment under this section.

16 ☞ **Note.** The text of Section 1255.280 is set out here for convenience of reference.
