

## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-1  
 PALO ALTO, CA 94303-4739  
 650-494-1335 FAX: 650-494-1827  
 Email: agenda@clrc.ca.gov



July 2, 1998

<i>Date:</i> <b>July 17, 1998</b>	<i>Place:</i> <b>San Diego</b>
<b>July 17 (Fri.) 10:00 am – 5:00 pm</b>	<b>State Building Suite B-109 (Auditorium) 1350 Front Street</b>
<b>Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. If you plan to attend the meeting, please call 650-494-1335 and you will be notified of any late changes.</b>	
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**FINAL AGENDA***for meeting of the***CALIFORNIA LAW REVISION COMMISSION**

1. **MINUTES OF JUNE 4, 1998, MEETING (6/17/98)**
2. **ADMINISTRATIVE MATTERS**
  - Election of Officers**  
Memorandum 98-49 (NS) (6/11/98)
  - Location of September Meeting**  
Memorandum 98-50 (NS) (7/2/98)
  - 1998 Strategic Plan**  
Memorandum 98-52 (NS) (6/11/98)
  - Handbook of Practices and Procedures**  
Memorandum 98-53 (SU) (6/15/98)
  - Report of Executive Secretary**
3. **1998 LEGISLATIVE PROGRAM**
  - Memorandum 98-51 (NS) (7/2/98)
4. **TRIAL COURT UNIFICATION (STUDY J-1300)**
  - Issues on Implementing Legislation**  
Memorandum 98-47 (BG) (to be sent)

**Draft of Recommendation**

Memorandum 98-48 (BG) (to be sent)

5. UNIFORM PRINCIPAL AND INCOME ACT (STUDY L-649)

Memorandum 98-36 (SU) (to be sent)

6. ENVIRONMENT CODE (STUDY E-100)

**Division 4 (Air Resources): Parts 5-9**

Memorandum 98-45 (BH) (6/29/98)

**Draft of Tentative Recommendation**

Memorandum 98-46 (BH) (to be sent)

7. EMINENT DOMAIN LAW

**Eminent Domain Law Update (Study EmH-450)**

Memorandum 98-54 (NS) (7/2/98)

**Condemnation by Privately Owned Public Utility (Study EmH-451)**

Memorandum 98-43 (NS) (7/2/98)

**Date of Valuation (Study EmH-452)**

Memorandum 98-44 (NS) (7/2/98)

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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
JULY 17, 1998  
SAN DIEGO

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A meeting of the California Law Revision Commission was held in San Diego on July 17, 1998.

**Commission:**

*Present:* Edwin K. Marzec, Chairperson  
Arthur K. Marshall, Vice Chairperson  
Pamela L. Hemminger  
Ronald S. Orr  
Sanford M. Skaggs  
Howard Wayne, Assembly Member  
Colin Wied

*Absent:* Robert E. Cooper  
Bion M. Gregory, Legislative Counsel  
Quentin L. Kopp, Senate Member

**Staff:** Nathaniel Sterling, Executive Secretary  
Stan Ulrich, Assistant Executive Secretary  
Barbara S. Gaal, Staff Counsel  
Brian P. Hebert, Staff Counsel  
Robert J. Murphy, Staff Counsel  
Deborah Bardwick, Student Legal Assistant

**Consultants:** Gideon Kanner, Eminent Domain Law & Inverse  
Condemnation  
J. Clark Kelso, Trial Court Unification

**Other Persons:**

Douglas Ditonto, Southern California Edison, Rosemead  
Julie Miller, Southern California Edison, Rosemead  
Randall Morrow, Southern California Gas Company, Los Angeles  
Edward Pablos, Jr., Pacific Bell, San Diego  
Bill Winter, California Cable Television Association, Oakland



1 practice included in its Handbook of Practices and Procedures is sufficient for  
2 this purpose:

3           If both the Chairperson and Vice Chairperson are absent when  
4           the meeting should start, a Commission member may convene the  
5           meeting and act as temporary Chairperson.

6 **Location of September Meeting**

7           The Commission considered Memorandum 98-50, relating to the location of  
8           the Commission's September meeting. The Commission selected Sacramento as  
9           the location of that meeting.

10 **1998 Strategic Plan**

11           The Commission considered Memorandum 98-52, relating to the  
12           Commission's "strategic plan" for 1998. This was an informational item only,  
13           with no Commission action required or taken.

14           In connection with the Commission's discussion of the strategic plan,  
15           Commissioner Wayne suggested that the Commission request authority to  
16           propose a logical reorganization and clarification of the statutes governing  
17           criminal sentencing procedures. This suggestion will be considered by the  
18           Commission at its September 1998 meeting, in connection with its review of  
19           proposed new topics and priorities.

20 **Handbook of Practices and Procedures**

21           The Commission considered Memorandum 98-53, relating to the latest  
22           revision of the Commission's Handbook of Practices and Procedures. The  
23           Commission approved the handbook, subject to a staff review of the mechanical  
24           procedures outlined in it to ensure conformity with the state open meeting act.

25 **Commission Consultants**

26           The Executive Secretary reported on his progress in locating an appropriate  
27           consultant for the project to review discovery laws of other jurisdictions with the  
28           view to identifying useful innovations and improvements for California Law.  
29           The Executive Secretary suggested a contract with Professor Gregory Weber of  
30           McGeorge Law School. The contract would contain the same general terms as  
31           and provide compensation commensurate with other Commission consultant  
32           contracts. It would call for delivery of the study within two-plus years. The

1 Commission approved proceeding with contract negotiations along these lines  
2 with Professor Weber.

3 1998 LEGISLATIVE PROGRAM

4 The Commission considered Memorandum 98-51, relating to the  
5 Commission's 1998 legislative program. The staff supplemented the attached  
6 chart with the information that:

7 AB 1683 (Uniform TOD Security Registration Act) has passed the Senate and  
8 is being returned to the Assembly for concurrence.

9 AB 2164 (ALJ Code of Ethics) has been signed by the Governor as Chapter 95  
10 of the Statutes of 1998. Revised Comments reflecting amendments made during  
11 the legislative process are attached to the memorandum.

12 SB 177 (Best Evidence Rule) has been signed by the Governor as Chapter 100  
13 of the Statutes of 1998.

14 SCR 65 (CLRC authority to study topics) has been enacted as Resolution  
15 Chapter 91 of the Statutes of 1998.

16 STUDY E-100 – ENVIRONMENTAL LAW CONSOLIDATION

17 The Commission continued its consideration of new material proposed for  
18 inclusion in the draft Environment Code. The Commission considered  
19 Memorandum 98-45, relating to Parts 5 to 9 of Division 4 of the Environment  
20 Code (Air Resources). The Commission approved the draft attached to the  
21 memorandum for inclusion in the draft code when it is circulated for comment.

22 The Commission also considered Memorandum 98-46, presenting a draft  
23 tentative recommendation relating to the creation of the proposed Environment  
24 Code, including its first four divisions. The Commission approved the tentative  
25 recommendation, subject to one change — the preliminary part should be revised  
26 to better reflect the Commission's understanding that the Commission was  
27 instructed by the Legislature to prepare a draft Environment Code.

28 STUDY EM-450 – EMINENT DOMAIN LAW UPDATE

29 The Commission considered Memorandum 98-54, relating to recent  
30 communications concerning the eminent domain law update project. The staff  
31 noted that the Commission also has recently received a communication from a  
32 practitioner to the effect that Evidence Code Section 822(a)(1) relating to

1 valuation evidence is complex and confusing and should be clarified. The  
2 Commission will add this matter to the list of issues to be addressed in the  
3 project.

4           STUDY EM-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY

5           The Commission considered Memorandum 98-43, along with a letter from  
6 Southern California Edison distributed at the meeting and attached to these  
7 Minutes as an Exhibit, relating to condemnation by a privately owned public  
8 utility. Commissioners Hemminger and Skaggs did not participate in this matter.

9           The staff supplemented the memorandum with empirical information it had  
10 collected concerning the incidence of condemnation by privately owned public  
11 utilities. Based on preliminary reviews of superior court filings and statistics,  
12 reports from practitioners, and published appellate reports, there does not  
13 appear to be an immediate upsurge in public utility filings resulting from public  
14 utility deregulation.

15           After discussing existing constraints on the exercise of eminent domain  
16 authority by a privately owned public utility and the current approach of the  
17 Public Utilities Commission, the Law Revision Commission directed the staff to  
18 prepare a draft proposal to make public utility condemnation authority expressly  
19 subject to the regulatory authority of the Public Utilities Commission. The draft  
20 should be careful not to create a right of a property owner to petition for PUC  
21 intervention, but should leave it to the PUC to determine whether any regulation  
22 is appropriate and, if so, what form it should take.

23   STUDY EM-452 – DATE OF VALUATION

24           The Commission considered Memorandum 98-44, relating to date of  
25 valuation issues in eminent domain. Commissioner Orr did not participate in this  
26 matter.

27           The Commission discussed the relatively unusual circumstances in which a  
28 Kirby issue would arise — there is no prejudgment deposit or possession by the  
29 condemnor and the property increases sufficiently in value before the award is  
30 deposited that the property owner believes it is worth the litigation cost to  
31 revalue the property. An added complication for California law, not found in  
32 federal law, is that revaluation would have to be a jury, rather than court, matter.

1       The Commission requested the staff to prepare a draft of a scheme to allow  
2 interest on the award from the date of valuation until the date the award is  
3 deposited as prima facie compensation for the delay. This would tend to  
4 minimize the number of cases in which a Kirby claim would or could be made. A  
5 backup revaluation procedure would have to be provided for the rare case in  
6 which interest was inadequate compensation for the delay. The condemnor can  
7 stop the running of interest at any time by depositing the amount of award.

8                               STUDY H-450 – EMINENT DOMAIN LAW UPDATE

9       See entry in these Minutes under Study Em-450.

10                              STUDY H-451 – CONDEMNATION BY PRIVATELY OWNED PUBLIC UTILITY

11       See entry in these Minutes under Study Em-451.

12                              STUDY H-452 – DATE OF VALUATION

13       See entry in these Minutes under Study Em-452.

14                              STUDY J-1300 – TRIAL COURT UNIFICATION

15       The Commission considered Memorandum 98-47 and its First Supplement,  
16 and Memorandum 98-48, concerning implementing legislation for Proposition  
17 220 (SCA 4). The Commission approved the draft recommendation for printing  
18 and submission to the Legislature, subject to the following revisions:

19       (1) The preclearance provision (proposed Gov't Code § 70216) should be  
20 deleted from the recommendation.

21       (2) The following provision should be added to the recommendation:

22               **Gov't Code § 70216. Unification during municipal court election**

23               70216. (a) If unification of the municipal and superior courts  
24 within a county occurs during an election of a municipal court  
25 judge, the conduct of the direct primary election and general  
26 election is governed by the law otherwise applicable to election of a  
27 municipal court judge.

28               (b) A judge elected pursuant to this section shall be deemed to  
29 be a previously selected municipal court judge within the meaning  
30 of subdivision (b) of Section 23 of Article VI of the California  
31 Constitution.

1 (c) As used in this section, “during an election” means during  
2 the period beginning on the 127th day before a direct primary  
3 election and ending on the day of the general election.

4 **Comment.** Section 70216 is added to clarify how Article VI,  
5 Section 23 of the California Constitution applies where unification  
6 occurs during a municipal court election.

7 Under subdivision (a), the election proceeds as originally  
8 planned, helping to promote an orderly transition to unification.  
9 Cal. Const. art. VI, § 23(a).

10 Under subdivision (b), the winner of the election is a previously  
11 selected municipal court judge, and thus becomes a superior court  
12 judge through unification. Cal. Const. art. VI, § 23(b).

13 Subdivision (c) makes clear that Section 70216 applies where  
14 unification occurs between (1) the first day for filing a declaration  
15 of intention to become a candidate for a municipal court judgeship,  
16 and (2) the day of the general election. See Elec. Code §§ 8020  
17 (nomination documents “shall first be available on the 113th day  
18 prior to the direct primary election”), 8022 (declaration of intention  
19 to become a candidate shall be filed “not more than 14 nor less than  
20 five days prior to the first day on which nomination papers may be  
21 presented for filing”).

22 To reflect the addition of this provision, the preliminary part of the  
23 Commission’s report should be revised as set forth in Memorandum 98-47,  
24 Exhibit page 3.

25 (3) The proposed amendment of Code of Civil Procedure Section 198.5 should  
26 be revised to read:

27 **Code Civ. Proc. § 198.5 (amended). Superior court venires in**  
28 **judicial districts**

29 SEC. \_\_\_\_\_. Section 198.5 of the Code of Civil Procedure is  
30 amended to read:

31 198.5. In (a) Except as provided in subdivision (b), in counties  
32 where sessions of the superior court are held in cities other than the  
33 county seat, the names for master jury lists and qualified jury lists  
34 to serve in those cities may be selected from the judicial district in  
35 which the city is located and, if the judges of the court determine  
36 that it is necessary or advisable, from a judicial district adjacent to a  
37 judicial district in which the city is located.

38 (b) In a county in which there is no municipal court, if sessions  
39 of the superior court are held in a location other than the county  
40 seat, the names for master jury lists and qualified jury lists to serve  
41 in a session may be selected from the area in which the session is  
42 held, pursuant to a local superior court rule that divides the county

1 in a manner that provides all qualified persons in the county an  
2 equal opportunity for jury service.

3 **Comment.** Section 198.5 is amended to accommodate  
4 unification of the municipal and superior courts in a county. Cal.  
5 Const. art. VI, § 5(e). Subdivision (b) is drawn from Section 191  
6 (policy of state to select jury from population of area served by  
7 court; all qualified persons to have an equal opportunity to be  
8 considered for jury service). A local rule promulgated pursuant to  
9 subdivision (b) may differentiate between misdemeanors and  
10 limited civil cases, on the one hand, and felonies and civil cases  
11 other than limited civil cases, on the other. See Code Civ. Proc. § 85  
12 (limited civil cases) & Comment; Penal Code § 691 (definitions) &  
13 Comment.

14 (4) The list of “Issues in Judicial Administration Appropriate for Future  
15 Study” should be revised to include reexamination of the statutes governing jury  
16 selection.

17 (5) Proposed Code of Civil Procedure Section 395.9(b) should be revised as  
18 follows:

19 ~~(b) If an action or proceeding is commenced as a limited civil~~  
20 ~~case or otherwise pursuant to Section 422.30, and it later~~ If it  
21 appears from the verified pleadings, or at the trial, or hearing, that  
22 the determination of the action or proceeding, or of a cross-  
23 complaint, will necessarily involve the determination of questions  
24 inconsistent with that classification the jurisdictional classification  
25 of the case, the court shall, on motion of either party within 30 days  
26 after the party became or reasonably should have been aware of the  
27 grounds for misclassification, or five days in a proceeding for  
28 unlawful detainer, forcible detainer, or forcible entry establishing  
29 the grounds for misclassification and good cause for not seeking  
30 reclassification earlier, or on the court’s own motion at any time,  
31 reclassify the case.

32 (6) The proposed procedure for conducting a unification vote should be  
33 retained in the report, but subsequent provisions should be renumbered to  
34 conform to the numbering in SB 2139 (Lockyer).

35 STUDY L-649 – UNIFORM PRINCIPAL AND INCOME ACT

36 The Commission considered Memorandum 98-36 reporting on the progress of  
37 the working group that is considering technical issues in the Uniform Principal  
38 and Income Act of 1997. The staff reported that significant progress had been

1 made and that the working group should be able to complete its review of the  
2 uniform act in time to enable the staff to prepare a draft for Commission  
3 consideration at the September meeting.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

APPROVED AS CORRECTED  
(for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary



Julie A. Miller  
Attorney

July 15, 1998

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

Re: Public Utility Eminent Domain Law

Dear Mr. Sterling:

The Law Revision Commission is undertaking a review of the use of the power of eminent domain by public utilities to determine whether there is any need to statutorily limit its use. It has been argued that such restraint may be needed in light of deregulation. The eminent domain law already has significant safeguards built into it to protect landowners from a public utility that might try to abuse its power. Such a statutory limitation is therefore unnecessary.

Public Utilities Code section 701 gives the California Public Utilities Commission plenary power to regulate public utilities. A public utility abusing its power could be easily brought to task at the Commission.

With regard to electric utilities, Commission General Order 131-D allows the Commission to control the planning and construction of electric facilities. General Order 131-D provides for notification of affected property owners and a forum for them to be heard on the issues prior to condemnation.

We believe that the Law Revision Commission need not draft new statutes to control public utilities' use of eminent domain. At a minimum, we request that electric utilities be exempted because statutes and case law already have adequate safeguards built in, and grant the Public Utilities Commission authority to develop regulations, such as General Order 131-D.

Very truly yours,

A handwritten signature in cursive script that reads "Julie A. Miller".

Julie A. Miller

JAM:djd:LW881960.208