

RESOLUTION 09-17

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TWENTYNINE PALMS WATER DISTRICT DECLARING THAT THE ACQUISITION OF UTILITY EASEMENTS ACROSS CERTAIN REAL PROPERTY BY EMINENT DOMAIN IS NECESSARY FOR THE 2009 REGIONAL WATER LINE PROJECT

WHEREAS, the Twentynine Palms Water District (“District”) proposes to acquire a thirty-three foot wide utility easement across the western border and a forty foot wide utility easement across the southern border of certain real property, designated as APNs 612-151-15 and 612-181-01, for the purpose of constructing new underground water lines and related improvements (“Project”); and

WHEREAS, the District is empowered to acquire real and personal property of every kind necessary by eminent domain pursuant to Water Code section 35600 and Code of Civil Procedure sections 1240.110 and 1240.120; and

WHEREAS, pursuant to Code of Civil Procedure section 1245.235, the District scheduled a public hearing for July 22, 2009 at 6:00 p.m., at the Board Room located at the Twentynine Palms Water District, 72401 Hatch Road, Twentynine Palms, California 92277, and gave to each person whose property is to be acquired and whose name and address appears on the last equalized county assessment roll, notice and a reasonable opportunity to appear at the public hearing and be heard on the matters referred to in Code of Civil Procedure section 1240.030; and

WHEREAS, the public hearing has been held by the District and each person whose property is to be acquired by eminent domain was afforded the opportunity to be heard regarding the subject matter of this resolution; and

WHEREAS, the District may now adopt a resolution of necessity pursuant to Code of Civil Procedure section 1240.040;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by a vote of two-thirds or more of the Board of Directors of the Twentynine Palms Water District as follows:

Section 1. Notice and Hearing Compliance.

The District has provided notice of this hearing as required by Code of Civil Procedure section 1245.235.

Section 2. Public Use.

The public use for which the real property is to be acquired is to construct the Project, which is necessary to ensure adequate future drinking water supplies within the District. The District is authorized to acquire by eminent domain property necessary for such a purpose pursuant to Water Code section 35600 and Code of Civil Procedure sections 1240.110 and 1240.120.

Section 3. Description of Property.

Attached and incorporated herein as Exhibit "A" is the legal description of the real property to be acquired by the District, describing the general location of the property to be acquired with sufficient detail for reasonable identification. Attached and incorporated herein as Exhibit "B" is a description of the easement rights to be acquired.

Section 4. Findings.

Based upon the evidence presented at the public hearing, the District hereby finds and determines the following:

- a. The public interest and necessity require the proposed Project; and
- b. The proposed Project is planned or located in the manner that will be the most compatible with the greatest public good and with the least private injury; and
- c. The property is necessary for the proposed Project; and
- d. The offers required by Government Code section 7267.2 were sent to the record owner of the property described herein at the address as it appears in the records of the San Bernardino County Assessor's Office. A reasonably diligent search of public records produced three additional addresses where the property owner may possibly be located. Offers to purchase were also sent to the record owner at the three additional addresses. A certified mail return receipt was returned to the District signed by a W. J. Gillis on May 4, 2009.

Section 5. Condemnation for Compatible Use and "More Necessary Use".

Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and right-of-way are on file with the District and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. The proposed use is both a compatible use and a "more necessary use" and will not unreasonably interfere or impair the continuance of the public use now existing or may reasonably be expected to exist in the future. The District is authorized to acquire the property subject to such existing public uses pursuant to Code of Civil Procedure sections 1240.510 and 1240.610.

Section 6. Further Activities.

All appropriate officers, representatives and attorneys for the District are hereby authorized to acquire the described real property in the name of and on behalf of the District by eminent domain and are further authorized to institute and prosecute such legal proceedings as may be required. All appropriate officers, representatives and attorneys for the District may take such steps as may be required by law and make such deposits as authorized by law, to permit the District to take possession of and use the real property at the earliest possible time. All appropriate officers, representatives and attorneys for the District are further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that is deemed necessary for the conduct of the condemnation action, or any other proceedings or transactions required to acquire the subject real property.

PASSED, APPROVED AND ADOPTED this 22nd day of July 2009 by the following vote:

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| Ayes: | Directors Anthony, Cisneros, Gallagher, Moore and Yockey |
| Noes: | None |
| Abstain: | None |
| Absent: | None |

Philip C. Cisneros, President
Board of Directors

ATTEST:

Mike Wright, Board Secretary
Twentynine Palms Water District

Attachments: Exhibit "A" – Legal Description of Real Property
Exhibit "B" – Legal Description of Easement Rights