

Support Material for Agenda Item No. 16

Board of Directors Meeting

May 3, 2017

10:30 a.m.

Location:

San Bernardino County Transportation Authority
First Floor Lobby
1170 W. 3rd Street, San Bernardino, CA 92410

Discussion Calendar

Project Delivery

16. Hearings to Consider Resolutions of Necessity for Parcels for US 395 Phase I Project in/near the Cities of Adelanto and Victorville

That the Board, acting in its capacity as the San Bernardino County Transportation Authority:

A. Conduct public hearings to consider condemnation of real property required for the US 395 Phase I Project in the Cities of Adelanto and Victorville; and

B. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No.17-043 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Adelanto Seneca Land, LLC, a Delaware limited liability company (Assessor's Parcel Number [APN] 3103-511-05; Caltrans Parcel Number [CPN] 23848) (hereinafter "Adelanto Seneca Property"). The Resolution must be approved by at least a two-thirds majority; and

C. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-044 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Alex Abadi, a married man, as his sole and separate property (Assessor's Parcel Number [APN] 3135-361-01; Caltrans Parcel Number [CPN] 23865) (hereinafter "Abadi Property (CPN 23865)"). The Resolution must be approved by at least a two-thirds majority; and

D. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-045 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Villa-Adelanto, LLC (Assessor's Parcel Number [APN] 3135-291-14; Caltrans Parcel Number [CPN] 23853) (hereinafter "Villa-Adelanto Property"). The Resolution must be approved by at least a two-thirds majority; and

Letters of objection to the Resolutions of Necessity are included.

E. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-046 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Abadi Walnut Creek Properties, L.P., a Texas limited partnership (Assessor's Parcel Number [APN] 3135-291-13; Caltrans Parcel Number [CPN] 23854) (hereinafter "Abadi Walnut Property"). The Resolution must be approved by at least a two-thirds majority; and

F. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-047 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: City of Los Angeles, a municipal corporation (Assessor's Parcel Number [APN] 3128-241-08; Caltrans Parcel Number [CPN] 23822) (hereinafter "City of Los Angeles Property (CPN 23822)"). The Resolution must be approved by at least a two-thirds majority; and

G. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-048 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Alex Abadi, a married man as his sole and separate property (Assessor's Parcel Numbers [APN] 0459-342-03 and APN 0459-342-04; Caltrans Parcel Number [CPN] 23835) (hereinafter "Abadi Property (CPN 23835)"). The Resolution must be approved by at least a two-thirds majority; and

H. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-051 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: Intermountain Power Agency, a political subdivision of the State of Utah (Assessor's Parcel Number [APN] 0459-342-19; Caltrans Parcel Number [CPN] 23832) (hereinafter "Intermountain Power Agency Property"). The Resolution must be approved by at least a two-thirds majority; and

I. Upon completion of a public hearing, that the Board of Directors adopt the Resolution of Necessity No. 17-052 authorizing and directing General Counsel, or her designees, to prepare, commence, and prosecute proceedings in eminent domain for the purpose of acquiring necessary right-of-way and real property interests from: City of Los Angeles, a municipal corporation (Assessor's Parcel Number [APN] 0459-342-08; Caltrans Parcel Number [CPN] 23833) (hereinafter "City of Los Angeles Property (CPN 23833)"). The Resolution must be approved by at least a two-thirds majority



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San Bernardino County
Transportation Authority

OFFICE OF THE CITY ATTORNEY

MIKE FEUER

CITY ATTORNEY

May 1, 2017

JOSEPH A. BRAJEVICH
GENERAL COUNSEL
FOR WATER AND POWER

DEPARTMENT OF WATER AND POWER

LEGAL DIVISION
111 NORTH HOPE STREET, ROOM 340
LOS ANGELES, CALIFORNIA 90012-2694
TELEPHONE (213) 367-4500

EMAIL [cfarrington@wss-law.com] AND OVERNIGHT MAIL

San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410
ATTN: Clerk of the Board of Directors

RE: LADWP File Nos. P- 100191 and P- 100744
Objections to Resolution of Necessity
SBCTA Parcel Nos. 23833 (APN 0459-342-08) and 23822 (APN 3128-241-08)
US Highway 395 Widening Project

To the Clerk of the Board:

The Los Angeles City Attorney's Office represents the City of Los Angeles, a municipal corporation, acting by and through its Department of Water and Power ("LADWP"). This letter is submitted on behalf of the LADWP and serves as LADWP's objections to the proposed adoption of a Resolution of Necessity on May 3, 2017 for acquisition of the above-referenced properties by the San Bernardino County Transportation Authority ("SBCTA"). LADWP owns the properties and currently operates the 500kV Victorville-Adelanto electric transmission line on SBCTA Parcel 23822 and the 500kV Victorville-Rinaldi electric transmission line on SBCTA Parcel 23822. The Victorville-Adelanto and Victorville-Rinaldi electric transmission lines provide essential electric energy to the City of Los Angeles. As such, the LADWP's properties are already dedicated to an essential public use for the transmission of electric energy to the City of Los Angeles and the Southern California region.

LADWP requests that this letter be included as part of the official record for the above-referenced Resolution of Necessity hearing on May 3, 2017. LADWP understands that SBCTA and the California Department of Transportation ("Caltrans") wish to acquire the LADWP's properties to make certain improvements as part of the US Highway 395 Widening Project ("Project"). SBCTA's Notices of the Resolution of Necessity hearing state that SBCTA intends to acquire the fee interest in LADWP's properties for the proposed Project. LADWP has met with and will continue to communicate with SBCTA and Caltrans regarding the proposed acquisitions. We understand SBCTA's and Caltrans' desire for the properties and LADWP is willing to continue negotiations. At this time, however, SBCTA, Caltrans and LADWP have not

yet concluded negotiations on how the Project can be accommodated on LADWP's properties along with the existing Victorville-Adelanto and Victorville-Rinaldi electric transmission lines. Thus, we respectfully request that the Board not adopt the Resolution of Necessity based on the following:

- The Project has not been planned or located in the manner that will be most compatible with the greatest public good and the least private injury. The LADWP's properties are currently being used as electric transmission corridors to serve the residents of the City of Los Angeles and Southern California. SBCTA's Notice states that it is pursuing a fee interest taking of the properties without providing for any replacement sites or accommodation for keeping the Victorville-Adelanto and Victorville-Rinaldi electric transmission lines in place and operational. The proposed fee take of the LADWP properties would essentially shut down two entire 500kV transmission lines causing an irreparable loss of essential electric energy to the City of Los Angeles and Southern California. The proposed fee take would also cut off access to LADWP's transmission towers east of US Highway 395. Replacement of LADWP's potential loss of legal access has not yet been addressed. There may be alternatives to SBCTA's proposed fee taking of the LADWP's properties that could potentially accommodate both the Project and LADWP's use of the properties. LADWP is willing to continue negotiations with SBCTA and Caltrans to explore options and conditions for a potential solution or alternative to the entire fee take of LADWP's properties.
- The LADWP properties sought to be acquired are not necessary for the Project. SBCTA has proposed to take the entire fee interest in the LADWP properties. As stated above, the LADWP properties are already dedicated to a public use and SBCTA can and should be required to design its Project and plan its acquisition without having to take the entire fee interest in the LADWP properties. The Victorville-Adelanto and Victorville-Rinaldi projects are high voltage electric transmission lines that must be carefully protected, safeguarded and maintained and adequate clearance from vehicular traffic must be provided. If properly planned and designed, "joint-use" including accommodation for keeping the existing transmission line uses in place, could potentially be accomplished. While a concurrent public use of the LADWP properties by both SBCTA/Caltrans and LADWP may be possible, based on the written information (fee take) that has been provided to LADWP thus far, we do not think that the compatible use or necessity findings can be made at this time.

LADWP has requested construction plans and drawings for the proposed Project. LADWP will review those plans and drawings and confer with SBCTA and/or Caltrans to determine whether the Project can be made compatible with the Victorville-Adelanto and Victorville-Rinaldi electric transmission lines on the LADWP properties. Until LADWP and SBCTA/Caltrans agree on that determination, we do not believe that the statutory findings can be made by the Board.

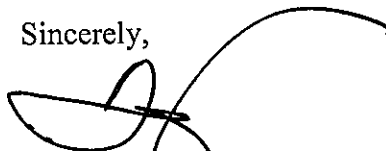
In order to accommodate the existing Victorville-Adelanto and Victorville-Rinaldi electric transmission lines, LADWP will require that the following conditions be imposed on the Project:

1. Adherence to State and Federal Clearance Requirements under CALOSHA and NERC, including NEC grounding requirements.
2. LADWP review and approval of Caltrans plans for proposed widening improvements.
3. All below ground utilities shall be not less than four (4) feet below the surface.
4. No improvements within the LADWP Transmission Line Right of Way shall be constructed without the prior written approval by the LADWP.
5. Any future LADWP transmission line relocations necessitated by wireline clearance violations caused by the Project, Caltrans or its agents shall be at the sole cost of Caltrans or SBCTA.

Again, LADWP is willing to continue to negotiate with SBCTA and Caltrans to determine whether and/or how both projects can be accommodated on LADWP's properties. We respectfully request that the Board defer any action on the Resolution of Necessity to allow these negotiations to progress.

If you have any questions regarding this letter request, please contact me at
(213) 367-4518

Sincerely,



TIMOTHY L. CHUNG
Deputy City Attorney

CC: Craig G. Farrington, Esq., Woodruff Spradlin & Smart
Marc Garcia, Senior Real Estate Officer
David Nevarez, PE, Civil Engineering Associate
Craig Luna, Power System Property Management

TJC:jy
(213) 367-4518

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201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Main 801.532.1234
Fax 801.536.6111

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San Bernardino County
Transportation Authority
Jason S. Nichols
Attorney at Law
Direct 801.536.6907
JNichols@parsonsbehle.com

May 1, 2017

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San Bernardino County Transportation Authority
Attn: Clerk of the Board of Directors
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92410

**RE: Objections to Resolution of Necessity
SBCTA Parcel No. 23832 (APN 0459-342-19)
US Highway 395 Widening Project**

To the Clerk of the Board:

This letter is submitted on behalf of the Intermountain Power Agency (“IPA”), acting by and through its operating agent, the Los Angeles Department of Water and Power (“LADWP”), and serves as IPA’s objections to the proposed adoption of a Resolution of Necessity on May 3, 2017 for the acquisition of the above-referenced property by the San Bernardino County Transportation Authority (“SBCTA”). IPA owns the property and currently operates the Intermountain-Adelanto 500kV DC electric transmission line (the “IPA Transmission Line”) on SBCTA Parcel 23832. The IPA Transmission Line provides essential electric energy to the City of Los Angeles, the City of Anaheim, the City of Riverside, the City of Pasadena, the City of Burbank and the City of Glendale. As such, IPA’s property is already dedicated to an essential public use for the transmission of electric energy to its six California purchasers.

IPA requests that this letter be included as part of the official record for the above-referenced Resolution of Necessity hearing on May 3, 2017. IPA understands that SBCTA and the California Department of Transportation (“Caltrans”) wish to acquire IPA’s property to make certain improvements as part of the US Highway 395 Widening Project (“Project”). SBCTA’s Notices of the Resolution of Necessity hearing state that SBCTA intends to acquire the fee interest in IPA’s property for the proposed Project. IPA, by and through its operating agent, LADWP, has met with and will continue to communicate with SBCTA and Caltrans regarding the proposed acquisitions. IPA understands SBCTA’s and Caltrans’ desire for the property and IPA is willing to continue negotiations. At this time, however, SBCTA, Caltrans and IPA have not yet concluded negotiations on how the Project can be accommodated on IPA’s property along with the IPA Transmission Line. Thus, IPA respectfully requests that the Board not adopt the Resolution of Necessity based on the following:

- The Project has not been planned or located in the manner that will be most compatible with the greatest public good and the least private injury. IPA's property is currently being used as an electric transmission corridor to serve the residents of its six California purchasers. SBCTA's Notice states that it is pursuing a fee interest taking of the property without providing for any replacement sites or accommodation for keeping the IPA Transmission Line in place and operational. The proposed fee take of the IPA property would essentially shut down the entire 500kV transmission line causing an irreparable loss of essential electric energy to IPA's six California purchasers. The proposed fee take would also cut off access to IPA's transmission towers east of US Highway 395. Replacement of IPA's potential loss of legal access has not yet been addressed. There may be alternatives to SBCTA's proposed fee taking of the IPA property that could potentially accommodate both the Project and IPA's use of the property. IPA is willing to continue negotiations with SBCTA and Caltrans to explore options and conditions for a potential solution or alternative to the entire fee take of the IPA property.
- The IPA property sought to be acquired is not necessary for the Project. SBCTA has proposed to take the entire fee interest in the IPA property. As stated above, the IPA property is already dedicated to a public use and SBCTA can and should be required to design its Project and plan its acquisition without having to take the entire fee interest in the IPA property. The IPA Transmission Line is a high voltage electric transmission line that must be carefully protected, safeguarded and maintained and adequate clearance from vehicular traffic must be provided. If properly planned and designed, "joint-use" including accommodation for keeping the existing transmission line use in place could potentially be accomplished. While a concurrent public use of the IPA property by both SBCTA/Caltrans and IPA may be possible, based on the written information (fee take) that has been provided to IPA thus far, the position of IPA is that the compatible use or necessity findings cannot be made at this time.

IPA, by and through its operating agent, LADWP, has requested construction plans and drawings on the proposed Project. IPA, by and through its operating agent, LADWP, will review those plans and drawings and confer with SBCTA and/or Caltrans to determine whether the Project can be made compatible with the IPA Transmission Line on the IPA property. Until IPA and SBCTA/Caltrans agree on that determination, the position of IPA is that the statutory findings cannot be made by the Board.

In order to accommodate the IPA Transmission Line, IPA will require that the following conditions be imposed on the Project:

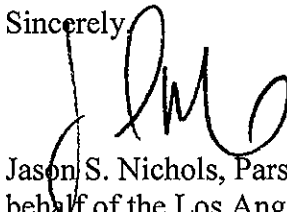
1. Adherence to State and Federal Clearance Requirements under CALOSHA and NERC, including NEC grounding requirements.
2. IPA, by and through its operating agent, LADWP, review and approval of Caltrans plans for proposed widening improvements.
3. All below ground utilities shall be not less than four (4) feet below the surface.

4. No improvements within the IPA transmission line right-of-way shall be constructed without the prior written approval of IPA.
5. Any future relocations of the IPA Transmission Line that are necessitated by wireline clearance violations caused by the Project, Caltrans or its agents shall be at the sole cost of Caltrans and/or SBCTA.

Again, IPA is willing to continue to negotiate with SBCTA and Caltrans to determine whether and/or how both projects can be accommodated on the IPA property. IPA respectfully requests that the Board defer any action on the Resolution of Necessity to allow these negotiations to progress.

If you have any questions regarding this letter request, please contact me at (801) 532-1234.

Sincerely,



Jason S. Nichols, Parsons Behle & Latimer, on behalf of the Los Angeles Department of Water and Power, as the Operating Agent of the Intermountain Power Agency

JSN/jp

cc: Timothy J. Chung, Deputy City Attorney (by email)
Craig G. Farrington, Esq., Woodruff Spradlin & Smart (by email)
Marc Garcia, Senior Real Estate Officer (by email)
Craig Luna, Power System Property Management (by email)
David Nevarez, PE, Civil Engineering Associate (by email)
Kevin Peng (by email)
Ron Rencher (by email)
Paul R. Schultz (by email)