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Department of Water Resources Cases

Court of Appeal, Third District, California - March 26, 2026 - Cal.Rptr.3d - 2026 WL 835863 - 2026 Daily Journal D.A.R. 2340

Department of Water Resources (DWR) filed series of petitions under precondemnation entry statutes, seeking entry onto landowners' properties to conduct preliminary environmental studies and geological testing activities for water conveyance project.

Petitions were consolidated for coordinated proceeding. The Superior Court entered order granting the petitions. Landowners appealed.

The Court of Appeal held that:

- DWR was not required to comply with project approval requirements before commencing precondemnation entry and testing activities;
- Classic condemnation action was not required; and
- DWR had authority under precondemnation statutes to enter upon landowners' properties.

Department of Water Resources (DWR) was not required to comply with project approval requirements and thus was not required to have an authorized and funded project in place before commencing precondemnation entry and testing activities on landowners' properties in its investigation of properties' suitability for water conveyance project, irrespective of whether those activities would result in taking of property under state takings clause or damaging of property; project approval requirements were limitations on DWR's exercise of its classic eminent domain power to acquire property for a project, while precondemnation entry and testing statutes only required that DWR be legally authorized to acquire property for a particular use by eminent domain.

Precondemnation entry statutes provided a constitutionally valid procedure by which a public entity considering condemnation of property for a public project may enter property and conduct investigatory testing and exploration necessary to determine whether the property was suitable for such purpose, and thus, Department of Water Resources (DWR) did not need to commence classic condemnation action to enter landowners' properties to conduct testing activities in investigating properties' suitability for water conveyance project, even if geotechnical and environmental activities constituted per se physical takings.

Department of Water Resources (DWR) had authority under precondemnation entry statutes to enter upon landowners' properties to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that use, because DWR was authorized to acquire property by eminent domain for state water and dam purposes.

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