

AGENDA STAFF REPORT

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Agenda Number: A

Section Name: PUBLIC HEARINGS

File ID: 0643.3

Project ID: NP2204

MEETING DATE: May 28, 2025

SUBJECT: Consider Adoption of Resolution No. 2025-09, A Resolution of Necessity to Commence an Eminent Domain Proceeding to Acquire 1.26 Acres of Easement, located in the Unincorporated Area of Riverside County, California, Portions of APNs 729-140-011 and 729-140-012, and finding the project categorically exempt from the California Environmental Quality Act under State CEQA Guidelines, Section 15333

TO: BOARD OF DIRECTORS

FROM: ENGINEERING/RIGHT OF WAY, CARRIE OLIPHANT

GENERAL MANAGER RECOMMENDATION:

RECOMMENDATION:

Staff recommends that the Board of Directors approve the following actions:

1. Adopt the attached Resolution entitled, "A Resolution of Necessity of the Board of Directors of the Coachella Valley Water District for the Acquisition by Eminent Domain of an Easement Interest within Certain Real Property located in the Unincorporated Area of Riverside County California and identified as portions of Assessor Parcel Nos. 729-140-011 and 729-140-012, for the Palm Desert Groundwater Replenishment, Phase 2 Mitigation Project."

2. Authorize Legal Counsel to commence an eminent domain proceeding to acquire easement rights within portions of Assessor Parcel Nos. 729-140-011 and 729-140-012 for the Palm Desert Groundwater Replenishment, Phase 2 Mitigation Project.

3. Authorize the General Manager to execute all documents in the name of the Coachella Valley Water District needed to commence and process an eminent domain proceeding to acquire easement rights within portions of Assessor Parcel Nos. 729-140-011 and 729-140-012 for the Palm Desert Groundwater Replenishment, Phase 2 Mitigation Project.

4. Authorize total expenditures of \$33,400 as follows:

- Appraisal amount to be deposited with the State - \$24,000
- Title costs - \$7,000
- Contingency - \$2,400

5. Find the mitigation project Categorical Exempt from the California Environmental Quality Act under State CEQA Guidelines section 15333

BUDGET IMPACT:

The total cost of this request is \$33,400. This Mitigation Project is part of the Palm Desert Groundwater

Replenishment, Phase 2 Project (Project NP2204), which is included in the West Replenishment Fund of the Fiscal Year 2024-25 Capital Improvement Budget in the amount of \$500,000. Therefore, there is no adverse impact to the budget by adopting the Resolution of Necessity and commencing the eminent domain process.

PROCUREMENT METHOD:

☒ N/A

If other, please explain:

BACKGROUND:

1. Project Description:

The purpose of the Palm Desert Groundwater Replenishment, Phase 2, Mitigation Project ("Mitigation Project") is to construct 3.124 acres of freshwater marsh and wetland habitat on a 136-acre property owned by CVWD. The Mitigation Project will satisfy the compensatory mitigation requirements imposed by the United States Army Corps of Engineers (USACE) Clean Water Act Section 404 permit for constructing the Palm Desert Groundwater Replenishment, Phase 2 Project ("Replenishment Project") within the Whitewater River Stormwater Channel.

The location of the Mitigation Project requires specific site characteristics to mitigate for the type of habitat that is being impacted by the Replenishment Project in the stormwater channel. Therefore, the Mitigation Project is proposed to be located where it will create marsh and wetland habitat with ecological benefits to the Salton Sea Watershed. The Mitigation Project involves the conversion of existing upland habitat to wetland habitat through excavation and grading to create the necessary marsh habitat with open water areas and riparian land features. In order for the Mitigation Project to be sustainable, it requires a permanent water source to maintain the wetland habitat conditions. To satisfy this condition, staff is proposing to use Colorado River water via a new pipeline as the permanent water source.

The water source for the Project is proposed to be conveyed through a 12-inch diameter gravity pipeline that will be connected and extended from the existing Irrigation Lateral 91.4, which is part of the Irrigation Distribution System ("Irrigation System") that is owned by the USBR and operated and maintained by CVWD. The new pipeline extension is proposed to be located on an access road within property owned by Anthony Vineyards. Therefore, to construct the 12-inch diameter, 3,100-foot-long pipeline, an easement needs to be obtained from the property owner.

2. Property Description:

The proposed pipeline easement makes up the Subject Property, which is 1.26 acres located at 71200 Garfield Street, Mecca, an unincorporated area of Riverside County, California, within portions of section 25, township 7 south, range 9 east of San Bernardino Meridian. More specifically, the Subject Property is located between 71st and 72nd Avenue to the north and south, respectively, and between Arthur Street and Garfield Street, to the east and west, respectively. CVWD is proposing to acquire Easement rights within portions of Assessor Parcel Nos. 729-140-011 and 729-140-012, as shown on the attached Exhibit "A" and Exhibit "B," legal description and plat depiction, respectively. The Subject Property is owned by Anthony Vineyards, Inc. a California Corporation (the "Owner").

3. Offer to Purchase the Subject Property:

Section 7267.2 of the Government Code provides that "Prior to adopting a resolution of necessity pursuant to Section 1245.230 of the Code of Civil Procedure and initiating negotiations for the acquisition of real property, the public entity shall establish an amount that it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence." CVWD served the Owner with an initial notice of CVWD's decision to appraise the Subject Property on May 10, 2024. An initial appraisal establishing the fair market value of the Subject Property was completed on June 7, 2024, and on June 11, 2024, an initial offer of just compensation was made to the Owner for the full value established by the appraisal.

The Owner accepted the initial offer, but CVWD was subsequently advised by the State of California Fair Political Practices Commission (“FPPC”) that CVWD Board of Director Anthony Bianco, who has an ownership interest in, and is employed by, the Owner, has a disqualifying financial interest in the decision to acquire the Subject Property under the Political Reform Act and Government Code section 1090, et seq., and may not participate in an easement purchase agreement. The FPPC further advised that under the prohibitions in Section 1090, Director Bianco’s interest precludes the Board from entering into an agreement to acquire the Subject Property, as well. However, the FPPC advised that the Board may use its power of eminent domain to acquire the easement through a court-supervised condemnation proceeding without triggering a Section 1090 violation, so long as Director Bianco recuses himself from any participation in the decisions to initiate the condemnation proceeding as well as the purchase agreement.

Thereafter, CVWD served the Owner with a second notice of CVWD’s decision to appraise the Subject Property and an updated appraisal establishing the fair market value of the Subject Property was completed on February 28, 2025. On March 3, 2025, an offer of just compensation was made to the Owner pursuant to Government Code section 7267.2 for the full value established by the appraisal. Because of the FPPC’s advice, CVWD is prohibited from entering into an agreement with the Owner for the purchase of an easement without using the eminent domain process. Therefore, CVWD staff is recommending pursuing the acquisition of the easement area (Subject Property) via eminent domain since CVWD is at a point where it needs to move forward with the Mitigation Project.

RESOLUTION OF NECESSITY.

A public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity that meets the requirements of the Eminent Domain Code. Section 1245.230 of the Code of Civil Procedure requires the Resolution of Necessity to contain the following elements:

- A general statement of the public use for which the property is to be taken and a reference to the statute that authorizes the public entity to acquire the property by eminent domain;
- A description of the general location and extent of the property to be taken; and
- A description of why the property is needed

Each of these items has been included in the attached Resolution of Necessity and described in this Board Action Item under the Background section.

Prior to adopting a Resolution of Necessity, a public hearing must be conducted and, as part of the public hearing, the governing body of the public entity is required to find and determine each of the following items:

- The public interest and necessity require the proposed project;
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- The property described in the resolution is necessary for the proposed project; and
- That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located within the reasonable diligence.¹

In this case, the four findings for adopting the Resolution of Necessity are described below:

- **(1) The public interest and necessity require the proposed Project.**

The Mitigation Project is a direct result of the compensatory mitigation requirements imposed by the United States Army Corps of Engineers (USACE) Clean Water Act Section 404 permit for constructing the Palm Desert Groundwater Replenishment, Phase 2 Project (“Replenishment Project”) within the Whitewater River Stormwater Channel.

¹If the project for which the property is needed has been determined by the public entity to be an emergency project, which project is necessary either to protect or preserve health, safety, welfare, or property, the requirements of Section 7267.2 of the Government Code need not be a prerequisite to the adoption of an authorizing resolution at the time. However, in those cases the provisions of Section 7267.2 of the Government Code shall be implemented by the public entity within a reasonable time thereafter but in any event, not later than 90 days after adoption of the resolution of necessity

The Replenishment Project will construct groundwater replenishment facilities that will: 1) replenish the local aquifer ensuring long-term availability for the community; 2) provide a groundwater supply needed for drought resilience; 3) support sustainable agricultural and municipal water supplies that benefit all residents; and 4) benefit the local economy by supporting local business, agriculture, and real estate values by ensuring a stable water supply.

The Mitigation Project is proposed to create 3.124 acres of wetlands composed primarily of marsh habitat. To create the wetland habitat, a permanent source of water is needed. The water source is proposed to come from a new pipeline that will connect to an existing Irrigation Lateral. The new pipeline requires an easement from the property owner. The total easement area is 1.26 acres (Subject Property).

Therefore, the public interest and necessity require the easement area (Subject Property) to make the Mitigation Project sustainable and the Mitigation Project is necessary to begin construction on the Replenishment Project. As described above, the groundwater replenishment facilities are for the public good and in the best interest of the community and the pipeline easement is required to begin construction.

- **(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.**

The Mitigation Project site was thoroughly analyzed, and the current site was determined to be the best location based upon the ecosystem benefits that will support the native wildlife, wetland habitats and biodiversity. In addition, the Mitigation Project site is on land that CVWD currently owns.

The establishment of the permanent water source was also analyzed in detail by CVWD staff. Several pipeline alignments were considered to convey water to the Mitigation Project. However, the public right-of-way on 71st Avenue is limited and would require easement acquisitions and relocation or disturbance of facilities, such as fences, yards, trees, and involve at least three different property owners. Staff also reviewed the costs of drilling a well; however, the Army Corps of Engineers requires a specific water quality and there were indications that the water quality at the Mitigation Project site would not be satisfactory into perpetuity. In addition, the cost of the well was more expensive than the proposed pipeline. Therefore, the current proposal to connect to the existing Irrigation Lateral 94.1 and extend a new pipeline within the easement area (Subject Property) to the Mitigation Project is the most reliable, feasible and economical.

Based on these various requirements for the Mitigation Project site and the permanent water source, CVWD staff has determined that use of the easement area (Subject Property) for a pipeline is the most compatible with the greatest public good and the least private injury for the following reasons: 1) it allows the establishment of a water source at the least cost to construct and maintain; 2) it avoids impacting multiple private property owners; 3) it allows construction of the Mitigation Project on property owned by CVWD, which has the necessary characteristics required by the Army Corps of Engineers to advance long-term preservation and sustainable natural resources management in the Coachella Valley.

Compliance with the California Environmental Quality Act ("CEQA") has been satisfied for the Palm Desert Groundwater Replenishment Project [pursuant to CEQA Public Resources Code §§21000 et seq. and CEQA Guidelines §§15000 et seq.]. Specifically, the Notice of Determination was certified by CVWD's Board of Director's on January 9, 2018. The Mitigation Project is a mitigation requirement imposed by the U.S. Army Corps of Engineers as part of its Clean Water Act Section 404 permit. Moreover, the Project is categorically exempt from CEQA under CEQA Guidelines section 15333, which applies to small habitat restoration projects that do not exceed five acres in size and that assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife. Here, the Project falls squarely within the Class 33 exemption as it will provide for 3.124 acres of wetlands

composed primarily of wetland marsh and intermixed riparian habitat.

- **(3) The property described in the resolution is necessary for the proposed Project.**

The Mitigation Project requires a permanent water source. The easement area (Subject Property) is necessary for the construction of a pipeline to convey water to the Mitigation Project site. As described above, acquisition of the easement area (1.26 acres) is the most economical, reliable and feasible solution to provide the necessary water to the Mitigation Project. In addition, the Army Corps of Engineers has reviewed and approved the proposed pipeline as the permanent water source. Furthermore, the Mitigation Project components (including the water pipeline) must be approved for construction in order to begin construction on the Replenishment Project. Therefore, the easement area (Subject Property) is necessary to allow both the Mitigation Project and the Replenishment Project to be constructed.

- **(4) An offer required by Section 7267.2 of the Government Code has been made to the owners of record.**

An offer required by Section 7267.2 of the Government Code has been made to the owner of record. On March 3, 2025, an offer of just compensation was made to the Owner. The offer of just compensation was based upon an independent appraisal and the offer was for the full Fair Market Value as determined by the independent appraisal. CVWD negotiated in good faith. Additionally, in accordance with state law, CVWD offered up to \$5,000 to the Owner to reimburse them for the cost of having their own appraisal prepared. The Owner did not pursue their own appraisal.

A litigation guarantee was obtained from First American Title Insurance Company to confirm and identify the parties with an interest in the affected property. CVWD then served the affected property owner with a notice of CVWD's decision to appraise the property. CVWD had the real property interests appraised by the real estate appraisal firm of Frazier Capital Valuation to establish the fair market value of the property interest CVWD is seeking to acquire.

An offer of just compensation was made to the property owner to purchase the property easement interest based on the approved appraisal, and as required by Section 7267.2 of the California Government Code. However, CVWD will acquire the easement interest from the property owner through eminent domain, to ensure the property will be available to meet the time frames associated with the Mitigation Project and in compliance with the advice provided by the FPPC.

PUBLIC HEARING

At the conclusion of the public hearing, staff will recommend that the Board adopt the attached Resolution of Necessity to commence an eminent domain proceeding to acquire an easement over the Subject Property. The Resolution of Necessity may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters listed below, which have been covered in detail in the Resolution of Necessity section of this Board Action Item:

1. The public interest and necessity require the proposed project;
2. The project is planned or located in the manner that will be most compatible with the greatest Public good and the least private injury;
3. The real property to be acquired is necessary for the project; and
4. An offer of just compensation has been made to the property owner.

The record owners must be afforded an opportunity to appear at the hearing and lodge objections. A notice of this hearing was sent by first class mail to the Owner. The notice included a statement of the Board's intent to consider the adoption of resolutions, the right of the property owners to appear and be heard on these issues,

and that failure to file a written request to appear would result in a waiver of the right to appear and be heard. CVWD scheduled this hearing and mailed the required notice to the Owner on April 15, 2025.

PRIOR BOARD ACTION:

The Board authorized professional engineering services to design the Palm Desert Groundwater Replenishment, Phase 2 Mitigation Project at the Board Meeting on February 27, 2024.

DISTRICT STRATEGIC PLAN GOAL(S)/OBJECTIVES(S):

N/A

ENVIRONMENTAL IMPACT:

☒ Yes, attachments included:

☒ Environmental Impact Report

Yes, attachments included: The Board of Directors certified the project Environmental Impact Report (EIR) on January 9, 2018, and addendum No.1 on November 12, 2019, see attachment 5, Notice of Determination.

Moreover, the Mitigation project is categorically exempt from CEQA under State CEQA Guidelines section 15333, see attachment 6, Notice of Exemption.

PUBLIC NOTICE REQUIRED

Notices were mailed to impacted owners of record on April 15, 2025.

LEGAL REVIEW

Best Best & Krieger

ATTACHMENTS

Att 1 - Location Exhibit

Att 2 - Resolution of Necessity

Att 3 - Exhibits "A" and "B"

Att 4 - Appraisal Summary

Att 5 - Notice of Determination

Att 6 – Notice of Exemption