

# Court's Ruling Could Make Eminent Domain More Complicated and Expensive

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## PRACTICE AREAS

Eminent Domain

*California's eminent domain laws that allow pre-condemnation studies on private property violate the State Constitution, a court has held.*

If not reviewed and overturned by the California Supreme Court, the Third District Court of Appeal's published decision will make eminent domain proceedings far more complicated, time consuming, and expensive for both sides.

Previously, a condemning agency had statutory authority to conduct pre-condemnation geological and environmental studies on private property. Based on this recent decision, the agency must now obtain the landowner's consent or file a formal condemnation proceeding in order to conduct any testing.

### CASE SNAPSHOT

The decision stems from the California Department of Water Resources' (DWR) entry onto hundreds of properties on the San Joaquin-Sacramento River Delta in 2009 for environmental and geological studies related to the Bay Delta Conservation Plan (BDCP) and Gov. Jerry Brown's proposed twin tunnels project; actions they based on pre-condemnation entry statutes.

Landowners refused entry and filed suit. The case made its way to San Joaquin County Superior Court, then appealed to the Third Appellate District where it was initially denied until the California Supreme Court directed the Court of Appeals to consider the landowners' claims. (Property Reserve, Inc. v. Superior Court of San Joaquin)

To determine whether DWR's entries to private property amounted to compensable takings, the Court of Appeals weighed these four factors:

1. the degree to which the entries are intended

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2. the character of the entries
3. the amount of time the entering would last
4. the economic impact of the entries on property owners

It was ultimately decided that the interests could not be acquired under the statutes because the procedural safeguards for landowners set in Article I, Section 19(a) of the California Constitution were not sufficiently satisfied. DWR would have to initiate eminent domain action if it wanted blanket easements without landowner consent.

#### **THE BIG PICTURE**

What does this mean for California's public agencies and governmental entities if the decision is not overturned?

A public entity may now be required to initiate eminent domain proceedings to obtain temporary interests in a property for pre-condemnation surveys and environmental tests if the landowner does not authorize entry. It may also have to file a second proceeding if it is determined that the property is feasible for the project based on the surveys, and a negotiated agreement cannot be reached with the landowners.

**If you have questions, or would like more information on how this ruling may affect your agency and projects, please contact Kirsten Bowman at [kbowman@rwglaw.com](mailto:kbowman@rwglaw.com), or any member of our Eminent Domain Practice.**