

A Resolution of Necessity Should Not Issue

Star Scrap Metal's Presentation

12/10 Caltrans Hearing

Any Resolution of Necessity Will Be Improper And Likely Enjoined By The Court

The Legal Standard:

California Courts will overturn a resolution of necessity where there is a gross abuse of discretion by the issuing agency in determining that:

1. The public interest and necessity required the project;
2. The proposed project is planned in a manner most compatible with the greatest public good and the **least private injury**; and/or
3. The **property described in the resolution is necessary** for the project

A gross abuse of discretion occurs where:

“At the time of the agency hearing, the condemnor has **irrevocably committed itself to the taking of the property regardless of the evidence presented.**” (*Santa Cruz Cnty. Redev. Agency v. Izant* (1995) 37 Cal.App.4th 141, 149.)

Here, was **irrevocably committed** before our meeting and a California court likely will overturn any resolution of necessity issued by Caltrans.

Caltrans Irrevocably Committed To A “Plan” Without Considering Lesser Private Harm

The following was demonstrated at our last hearing:

- Caltrans admitted its proposed alignment had been “set in stone” since the EIR was approved in 2007 – well before its meeting with Star Scrap in 2014.
- Caltrans admitted that it never considered a North-side alignment until Star Scrap/Metal Depot complained of the impact on their businesses.
- Caltrans admitted that it never has analyzed the comparative harm of an alternative (North-side) alignment in terms of business dollars, employment numbers, or business volume.
- Caltrans admitted that it was “too late” to consider an alternative alignment before it ever met with Star Scrap / Metal Depot to discuss the impact of this taking on their businesses.
- Caltrans admitted that, by the time it met with Star Scrap / Metal Depot, there was nothing it could do to realign its proposal; in other words, by that time Caltrans was “irrevocably committed” to the take.

Caltrans Irrevocably Committed To A “Plan” Without Considering Lesser Private Harm

As a simple reminder, this was Caltrans’ bottom line:

Mr. Rowen: What I’m asking you is, in the current context of adopting a resolution of necessity, really, you’re telling us that the alignment – current alignment is set in stone and there is no real reason for this meeting because we can’t convince you, no matter what we say, that some alternate alignment would be –

Mr. Neurenberg: We can’t implement an alternate alignment at this point.

Ms. Bowen: Minor tweaks, we might be able to do. To move an entire alignment at this stage, yeah.

Mr. Rowen: But to avoid the impact to our client’s property, there is no alignment that you could work on that would work – there is nothing you could do at this point, correct?

Mr. Neurenberg: No.

Mr. Rowen: So, no? You can’t do it?

Mr. Neurenberg: No, there is nothing. *(Id. at 42:3-22.)*

That is a textbook example of being “irrevocably committed.”

CalTrans' Failed to Offer Just Compensation As Required by the Code

The following things also were demonstrated at our last hearing:

- Caltrans did not make a good faith offer of just compensation; it made an offer it knew to be insufficient.
- Caltrans surreptitiously altered its two FF&E appraisals to re-categorize over \$1.1 million in fixtures that it would be obligated to compensate as realty, wrongfully re-labeling them “movable.”
- Caltrans never communicated its “re-categorization” and Star Scrap only learned of the deception when full copies of the conflicting FF&E appraisals were inadvertently sent to its counsel.

Since our last hearing, Caltrans has sent another revised appraisal that again alters the valuation, and back-peddles on the re-characterization.

The Current Situation

Regardless, where we stand today is much closer to resolution – consider:

- Caltrans and Star Scrap and Metal Depot have been negotiating extensively.
- Star Scrap and Metal Depot have transmitted full-blown appraisals for realty, FF&E, goodwill, and all other issues needed to resolve this dispute, and the parties have agreed upon a framework for a partial settlement.
- The parties are extremely close to a consensual resolution of all issues, including dollar values for most everything except the businesses' goodwill.
- Caltrans has indicated that it can agree to a global settlement of all issues, including a value for the goodwill, but it needs its own expert appraisal.
- Caltrans is trying to work around its protocols that prohibit it from retaining an expert until there is active litigation.
- Once Caltrans has retained an expert and reviewed the resulting appraisal, the parties should be able to resolve all issues, without any litigation.

A delay until the next commission hearing could solve all of this and result in an agreement not to challenge the resolution and to move out by a specific date.

The Bottom Line

No resolution of necessity should issue at this time.

1. Caltrans “irrevocably committed itself” to the proposed taking, before giving Star Scrap adequate opportunity to propose and present alternatives.
2. Caltrans failed to conduct a proper analysis of the relative harms of proposed alternative takings.
3. Caltrans acknowledged an alternative alignment, but failed to consider it as a legitimate option until it was too late to implement that alternative.
4. Caltrans manipulated its own experts’ appraisals to artificially deflate the FMV of the real property and reduce in bad faith its just compensation obligation.
5. Despite all of this, Star Scrap/Metal Depot have transmitted huge volumes of information and the parties are close to a consensual resolution of all issues and a global settlement that would avoid any litigation.

But, the parties are close to a consensual resolution, and more time is needed; we suggest that this be put over to the next Commission hearing.