



City of Biggs

Where the People Own the Water and the Power

P.O. Box 307
Biggs, CA 95917

December 9, 2014

TO: City Council

FROM: Greg Einhorn, City Attorney
Scott McElhern, Agency Counsel

SUBJECT: Consider Adopting Resolutions of Necessity for Acquisition of Property Interests from Butte County APNs 022-140-009, -010 & -011 (06-007 Biggs Business Trust, Et Al.)

Recommendation

Staff recommends that the City Council of the City of Biggs ("City") adopt the attached proposed Resolution of Necessity for the acquisition of certain property interests for the Wastewater Treatment Plant Enhancement Project (the "Project").

The property bearing Butte County APNs 022-140-009, -010 & -011 is currently owned by 06-007 Biggs Business Trust and various other individuals and entities. The property interests proposed for acquisition from this property are 160± acres in fee.

Required Findings for Adoption of a Resolution of Necessity

The attached proposed Resolution of Necessity lists the findings required by California Eminent Domain Law. Importantly, the Council is recommended to find:

1. The public interest and necessity require the Project;
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;
3. The property interests are necessary for the proposed Project; and
4. The offers required by Government Code Section 7267.2 have been made to the owner or owners of record of the properties.

Support for Findings

Finding 1: The Public Interest And Necessity Require The Project.

The City owns a Wastewater Treatment Plant (WWTP), and this facility is subject to the requirements set forth by the Central Valley Regional Water Quality Control Board

The current National Pollutant Discharge Elimination System (NPDES) Permit (No. CA0078930) for the City of Biggs' WWTP contains stringent ammonia nitrogen removal requirements. The WWTP is currently in violation of this permit. The NPDES permit limits are 1.23 mg/L average monthly and 2.15 mg/L maximum daily effluent limitation for total ammonia discharged into the receiving water. The existing aerated lagoon process has a limited capacity for nitrogen removal. The average monthly ammonia concentration in the plant effluent over the last several years has been approximately 7.9 mg/L with daily maximums of about 18 mg/L. The current Time Schedule Order (TSO R5-2012-0084) has set an interim limitation for ammonia effluent at 27 mg/L.

On October 4, 2012, the City of Biggs received Time Schedule Order (TSO) R5-2012-0048 from the California Regional Water Quality Control Board, Central Valley Region. The TSO found that the City was not able to consistently comply with the new effluent limitation for ammonia and, as such, changes to the City's WWTP were necessary. The City has completed numerous investigations in order to comply with NPDES Permit No. CA0078930 and the TSO. Based on these investigations, options for wastewater disposal were narrowed to a land application solution requiring up to 160 acres.

The City's WWTP Enhancement Project proposes to develop a new effluent disposal process that consists of a reclamation/land disposal system (effluent land disposal system). The net effect of the proposed project is a cessation of all effluent discharged to Lateral K. The proposed project would not increase the capacity of the existing WWTP beyond its current permitted design capacity of 0.38 mgd or its peak facility design flow of 1.05 mgd.

The key outcome of the proposed effluent disposal process would result in compliance with NPDES Permit No. CA0078930 and dissolution of the permit. The use of a land disposal system will allow the City to eliminate the surface discharge of wastewater effluent, which would result in the release of the City from the NPDES permit and convert the facility to a Waste Discharge Requirements (WDR) permit facility.

Finding 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 effluent land disposal process involves the design and development of an effluent land disposal system wherein treated effluent from the WWTP would be used to irrigate agricultural lands associated with growing fodder crops for off-site livestock animals. Wastewater will be treated to similar levels as currently provided by the plant. After treatment, the disinfected water will be directed into a new pump station located adjacent to the existing dechlorination building. Next, the water will be pumped from the WWTP to the first of two proposed storage basins. The first of two basins will cover 28± acres and would be sized to hold 90 million gallons of effluent, and the second basin would cover 38± acres and sized to hold 120 million gallons.

Approximately 77 acres of land just south of the storage basins will be used for land disposal by growing feed-grade fodder crops. This acreage will be flood irrigated with disinfected effluent that would meet Title 22 recycled water requirements. A perimeter tailwater ditch and pump system spanning 2 acres will be employed to prevent irrigation water or first seasonal rainfall from discharging. The collected tailwater will be pumped back to the storage system for reuse. After the first seasonal rainfall, precipitation runoff would be allowed to discharge to the existing agricultural drainage canal.

The proposed effluent land disposal system requires up to 160 acres of land. The subject property consists of 160± acres located directly South of the existing WWTP and is currently fallow. Staff recommends the City acquire the subject property in order to provide an improved WWTP effluent disposal method in a manner which results in compliance with CVRWQCB NPDES Permit No. CA0078930 and compliance with TSO R5-2012-0048.

Finding 3: The Property Interests Are Necessary For The Proposed Project.

The property bearing APNs 022-140-009, -010 & -011 is located at 3951 Farris Road, Biggs, CA 95917, at the northeast corner of the intersection between West Biggs-Gridley Road and Farris Road. The property consists of approximately 160 acres zoned for agricultural use. There are various improvements to the property, such as a Fiber Optic Repeater site, an office building, a shop building, an equipment shed, and a pump house.

As discussed above, the acquisition of the property interests are necessary for the Project in order to provide an improved WWTP effluent disposal method in a manner which results in compliance with CVRWQCB NPDES Permit No. CA0078930 and compliance with TSO R5-2012-0048.

Finding 4: The Offer Required By Government Code Section 7267.2 Has Been Made.

Based on the appraised value, the City made an offer required by Government Code Section 7267.2 on October 20, 2014. To date, the City has been unable to reach an agreement with the property owners for the purchase and sale of the property the City seeks to acquire.

Budget Implications

The approved appraised value of the proposed acquisition is within the City's approved budget for the Project. The funding to acquire the property interests is in the City's cash flow and is available to be deposited to the State Treasurer's Condemnation Fund.

Documents Incorporated Into This Report

Attachment A – Draft Resolution of Necessity for APNs 022-140-009, -010 & -011

The Central Valley Regional Water Quality Control Board National Pollutant Discharge Elimination System Permit No. CA0078930 is available for review.

The California Regional Water Quality Control Board, Central Valley Region, Time Schedule Order R5-2012-0048 is available for review.

The Final Environmental Impact Report for the Wastewater Treatment Plant Enhancement Project is available on the City's website at <http://www.biggs-ca.gov/>.

The City of Biggs Project Plans for Construction of the Wastewater Treatment Plant Enhancement Project are available for review.

The First Written Offer package sent to the property owners is available for review.

Notice of Resolution of Necessity Hearing dated November 19, 2014, is available for review.

Correspondence between Gregory P. Einhorn and Timothy P. Thomas are available for review.

RESOLUTION NO. 2014-25

**A RESOLUTION OF THE CITY OF BIGGS
DECLARING THE PUBLIC NECESSITY FOR THE TAKING OF CERTAIN PROPERTY
FOR CONSTRUCTION, INSTALLATION, REPAIR, AND MAINTENANCE OF THE
WASTERWATER TREATMENT PLANT ENHANCEMENT PROJECT
(CODE CIV. PROC. § 1245.230)**

Property Owners: 06-007 Biggs Business Trust, Et Al. (APNs 022-140-009, -10 & -11)

WHEREAS, the City of Biggs (the “City”) intends to construct, install, repair, and maintain the Wastewater Treatment Plant Enhancement Project (the “Project”). The Project will consist of the acquisition of 160 acres of land to facilitate the construction of a treated effluent land disposal facility and associated infrastructure (effluent pump station to support movement of the treated wastewater to the land disposal site, modifications to the irrigation, tail water, aeration system and chemical systems, and minor modifications to the existing facility controls); and

WHEREAS, the City has determined that it needs to acquire certain property interests from the parcel currently bearing Assessor’s Parcel Numbers 022-140-009, 022-140-010, and 022-140-011 (the “Property”) in order to complete the Project. The property interests that the City needs to acquire for the Project are more specifically described in Exhibit A attached hereto; and

WHEREAS, the City has advised the owners of the Property of the need for the Project and offered the owners an opportunity for a hearing before the City Council on December 9, 2014, pursuant to Section 1245.235 of the California Code of Civil Procedure; and

WHEREAS, the City is authorized to acquire property for the Project pursuant to, among other statutes, Code of Civil Procedure Sections 1230.010, et seq. and Government Code Sections 38730 and 40404; and

WHEREAS, the City Council of the City adopts this resolution in compliance with Section 1245.230 of the Code of Civil Procedure.

NOW, THEREFORE, BE IT RESOLVED THAT:

Based upon the evidence presented, the City Council by vote of two-thirds or more of its members hereby finds and determines each of the following:

1. The public interest and necessity require the Project.
2. The Project proposed is planned and located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The property interests described in Exhibit A are necessary for the proposed Project.
4. The offer of just compensation required by Government Code Section 7267.2 has been made to the owners of record of the Property.

5. All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property interests described in Exhibit A attached hereto have been complied with by the City.

6. The City possesses the statutory authority to acquire the Property by eminent domain.

The City Council hereby authorizes and empowers legal counsel retained or employed by the City to take the following actions:

1. To acquire in the name of the City, by condemnation, the property interests described in Exhibit A attached hereto in accordance with the provisions of the Constitution of California and the Eminent Domain Law of California;

2. To prosecute in the name of the City such proceedings in the proper court as necessary for such acquisition; and

3. To deposit the probable amount of compensation, based on an appraisal, and to apply to the court for an order permitting the City to take possession of the property for public uses and purposes.

I HEREBY CERTIFY that the above and foregoing **Resolution** was duly and regularly introduced, passed and adopted by the City Council of the City of Biggs at a regular meeting on the 9th day of December, 2014, by a two-thirds (2/3) or greater vote as follows:

AYES: COUNCILMEMBER _____

NOES: COUNCILMEMBER _____

ABSENT: COUNCILMEMBER _____

ABSTAIN: COUNCILMEMBER _____

ATTEST:

APPROVED:

Roben Dewsnup
City Clerk

Mayor

EXHIBIT A

FEE TITLE

CITY OF BIGGS hereby acquires all that real property, or interest therein, together with all improvements and fixtures thereon, in the County of Butte, State of California, described in Exhibit A, attached hereto and made a part hereof.

EXHIBIT A TO FEE TITLE

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF BUTTE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL I:

LOT 4, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF THE W. T. BOULWARE ESTATE, BIGGS, BUTTE COUNTY, CALIFORNIA", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON APRIL 22, 1912 , IN BOOK 7 OF MAPS, AT PAGE(S) 78.

APN 022-140-009

PARCEL II:

LOTS 5 AND 6, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF THE W. T. BOULWARE ESTATE, BIGGS, BUTTE COUNTY, CALIFORNIA", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON APRIL 22, 1912 , IN BOOK 7 OF MAPS, AT PAGE(S) 78.

APN 022-140-010

PARCEL III:

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF THE W. T. BOULWARE ESTATE, BIGGS, BUTTE COUNTY, CALIFORNIA", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON APRIL 22, 1912 , IN BOOK 7 OF MAPS, AT PAGE(S) 78.

APN 022-140-011