

June 30, 1972

<u>Time</u>	<u>Place</u>
July 13 - 7:00 p.m. - 10:00 p.m.	State Bar Building
July 14 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street
July 15 - 9:00 a.m. - 1:00 p.m.	San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

July 13-15, 1972

July 13

1. Minutes of June 8-10, 1972, Meeting (sent 6/20/72)
2. Administrative Matters

Brief oral report on status of 1972 legislative program

3. Study 36 - Condemnation Law and Procedure

36.750 - Uniform Eminent Domain Act

Memorandum 72-48 (sent 6/21/72)

Tentative Draft - Articles I-III (attached to Memorandum)

36.400 - Comprehensive Statute: Review of Comments and Suggested Revisions

Comprehensive Statute (you have this in blue binder)  
Appendix (sent 6/20/72--to be inserted in blue binder)  
Amendments, Additions, and Repeals (to be sent--green binder)  
Memorandum 72-49 (sent 6/20/72)  
Memorandum 72-50 (to be sent)  
Memorandum 72-51 (enclosed)  
Memorandum 72-52 (to be sent)

July 14 and 15

4. Study 39 - Attachment, Garnishment, Execution

39.80 - Civil Arrest and Bail

Memorandum 72-43 (sent 6/13/72)

Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 72-43 (to be sent)

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39.30 - Wage Garnishment and Related Matters

Memorandum 72-44 (sent 6/20/72)

39.70 - Prejudgment Attachment

U.S. Supreme Court Repossession Case (sent 6/23/72)  
Questionnaire on Prejudgment Attachment, etc. (draft sent  
6/28/72)

Memorandum 72-45 (sent 6/23/72)

Memorandum 72-46 (sent 6/23/72)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
JULY 13 AND 14, 1972  
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on July 13 and 14, 1972.

Present: John D. Miller, Chairman  
Marc W. Sandstrom, Vice Chairman  
Noble K. Gregory  
Thomas E. Stanton, Jr.

Absent: Alfred H. Song, Member of Senate  
Carlos J. Moorhead, Member of Assembly  
John J. Balluff  
John N. McLaurin  
Howard R. Williams  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, and Nathaniel Sterling, members of the Commission's staff, also were present. Norman E. Matteoni, Commission consultant on condemnation law and procedure, was present on Thursday. Professor William D. Warren, Commission consultant on attachment, garnishment, and execution, was present on Friday.

The following persons were present as observers on the days indicated:

Thursday, July 13

Norval Fairman, Division of Highways, San Francisco  
James Markle, Department of Water Resources, Sacramento  
John M. Morrison, Office of Attorney General, Sacramento  
Davidson Ream, Continuing Education of the Bar, Berkeley  
Charles Spencer, Department of Public Works, Los Angeles.

Friday, July 14

David A. Leipziger, U.C.L.A. Law School, Los Angeles

ADMINISTRATIVE MATTERS

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The Minutes of the June 8-10, 1972, meeting were approved as submitted.

Cancellation of Meeting Scheduled for July 15

The meeting originally scheduled for July 15 was cancelled because there were insufficient members to constitute a quorum on that date.

Scheduling of Matters at Meetings

The Commission determined that it would be desirable to devote Thursday evening and Friday every other month to condemnation, with the Thursday evening and Friday of the other months being devoted to creditor's remedies. The Saturday meeting each month will be devoted to the subject not considered on Thursday evening and Friday. This schedule will be tried for a few months and the decision to adopt this scheme of scheduling topics will then be reviewed.

It was recognized that the inability of the Commission to meet on Saturdays as a regular practice (because of a lack of a quorum on Saturdays) is largely responsible for the reduction in production during 1972.

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STUDY 36.40 - CONDEMNATION (EXCESS CONDEMNATION)

The Commission considered Memorandum 72-51 and the attached materials.

The following actions were taken:

The proposed statutory provision authorizing condemnation of physical or financial remnants was revised to read:

(a) Whenever a part of a larger parcel of property is to be taken by a public entity through condemnation proceedings and the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to be of little market value, the entity may take such remainder, or portion of the remainder, in accordance with this section.

(b) The resolution, ordinance, or declaration authorizing the taking of a remainder, or a portion of a remainder, under this section and the complaint filed pursuant to such authority shall specifically refer to this section. It shall be presumed from the adoption of the resolution, ordinance, or declaration that the taking of the remainder, or portion of the remainder, is justified under this section. This presumption is a presumption affecting the burden of producing evidence.

(c) The court shall not permit a taking under this section if the condemnee proves that the public entity has a reasonable, practicable, and economically sound means of avoiding or substantially reducing the damages that might cause the taking of the remainder, or portion of the remainder, to be justified under subdivision (a).

(d) Nothing in this section affects (1) the privilege of the entity to abandon the proceeding or abandon the proceeding as to particular property or (2) the consequence of any such abandonment.

The Comment to the above section should be revised to indicate that the section authorizes the taking of both physical and financial remnants. (The provisions relating to the time and manner of raising the objection to a taking under the excess condemnation authority will be considered later in the comprehensive provisions governing preliminary objections to the taking.) The revised section and Comment thereto will be reviewed at a future meeting. The Commission felt that the suggestion that the language of the Rodoni case--

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"excessive severance or consequential damages"--be inserted in the statute as a test for when an excess taking is permitted was unsatisfactory because such standard is no standard at all.

The Commission made no change in its prior decision to provide for the pretrial determination of the objection to an excess taking. Chairman Miller voted against the motion to retain the pretrial determination of the objection to an excess taking. The physical solution provision was again approved.

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STUDY 36.400 - CONDEMNATION (COMPREHENSIVE EMINENT  
DOMAIN STATUTE--FORM OF RECOMMENDATION)

The Commission discussed Memoranda 72-49 and 72-50 and the attached materials.

The Commission tentatively determined that it would publish a tentative recommendation which would include the entire comprehensive statute and significant amendments and repeals. However, it is not presently contemplated that the text of all amendments and repeals of special district statutes will be set out in the tentative recommendation. Bills will be drafted to conform special district laws to the comprehensive statute. These bills will be drafted so that all provisions related to a particular problem will be collected in one bill. This will make it possible to avoid amendments to the conforming bills unless (after introduction of the bill) an amendment is required to each or most of the sections in the bill because of a deficiency in the language used in each conforming amendment made by the bill.

It was agreed that an appendix, containing the text of existing Title 7 and Comments to each section thereto explaining the disposition of the section, should be included in the tentative recommendation.

The general approach suggested by the staff--to eliminate all special condemnation provisions from the various statutes dealing with particular condemnors and to limit such statutes to the grant of condemnation authority to the particular condemnor--was tentatively approved.

It was tentatively decided that the various legislative proposals should be introduced as soon as the entire package of bills has been tentatively approved by the Commission, and these bills should be referred to interim study. During the period of interim study, the Commission's tentative recommendation will be published, comments solicited, and the recommendation to the Legislature prepared.

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STUDY 36.750 - CONDEMNATION (UNIFORM EMINENT DOMAIN ACT)

The Commission considered Memorandum 72-48 and the attached draft of the first three articles of the tentative draft of the Uniform Eminent Domain Act.

The major policy question presented to the Commission for decision was whether the scope of the comprehensive statute being drafted by the Commission would include provisions relating to the "acquisition" of property (fair acquisition policies and relocation provisions) to conform to the scope of the Uniform Act. It was reported by the staff that the Uniform Act as presently drafted would make compliance with fair acquisition policies mandatory and would permit a preliminary objection to the condemnation action on the ground of failure to comply with the fair acquisition policies. If such an objection is made, the judge would determine whether the action should be suspended until compliance is had with the fair acquisition policies, whether compliance with the policies is to be excused or whether something less than compliance is to be required. The staff requested direction on whether the Law Revision Commission wanted to take the same approach as the Uniform Act as presently drafted.

It was noted that California already has enacted a comprehensive relocation and fair acquisition policies statute and that such statute is compiled in the Government Code. It was noted also that there are other requirements, such as the environmental study requirement, and that failure to satisfy these requirements may result in the court enjoining a project.

It was decided not to expand the scope of the comprehensive statute to cover the "acquisition" matters that will be included in the Uniform Act.

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Where the comprehensive statute covers a particular matter, any inconsistent or duplicating or overlapping statutes can be considered for repeal. When the provisions on preliminary objections to the condemnation action are considered, consideration should be given to what matters, such as the environmental statement requirement, constitute a grounds for objection to a taking by eminent domain. Consideration can be given to whether the comprehensive statute should be expanded to include the "fair acquisition" policies and relocation when the condemnation statute has been drafted.

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STUDY 39.30 - ATTACHMENT, GARNISHMENT, EXECUTION  
(WAGE GARNISHMENT AND RELATED MATTERS)

The Commission considered Memorandum 72-44 and approved the submission of a recommendation on wage garnishment and related matters to the 1973 session. The statute, with the revisions proposed by the staff in Memorandum 72-44, together with the Comments were approved for printing and submission to the Legislature. All of the staff suggestions in the memorandum were approved. The withholding formula will be reviewed at the September meeting. Suggested revisions in the Comments were submitted by various Commissioners.

The staff will prepare a draft of the preliminary portion of the recommendation for approval for printing at the September meeting.

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STUDY 39.70 - ATTACHMENT, GARNISHMENT, EXECUTION  
(PREJUDGMENT ATTACHMENT PROCEDURE)

The Commission considered Memoranda 72-45 and 72-46 and an oral presentation from its consultant, Professor William D. Warren, concerning certain aspects of the Commercial Code provisions relating to secured transactions. After lengthy discussion, the Commission determined that, at this point, it was unpersuaded that there is a need for a statute providing the remedy of attachment for claimants generally. The staff was directed (1) to revise the questionnaire presented at this meeting for distribution to determine the needs and desires of persons affected by this general body of law and (2) to analyze and propose necessary or desirable revisions to the attachment provisions enacted in the current legislative session. Professor Warren was asked to provide as soon as possible a draft statute with Comments and background information dealing with judicial repossession.

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STUDY 39.80 - ATTACHMENT, GARNISHMENT, EXECUTION  
(CIVIL ARREST)

The Commission considered Memorandum 72-43 and the First Supplement thereto. The Commission substituted the following for the last sentence of proposed new Section 478:

Nothing in this section affects any power a court may have to imprison a person who violates a court order.

With the revisions suggested in the First Supplement to Memorandum 72-43, the tentative recommendation was approved for printing and submission to the 1973 Legislature.

APPROVED

\_\_\_\_\_  
Date

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Chairman

\_\_\_\_\_  
Executive Secretary