

Resolution # TC-16-9-14

Authorizing the Chief Engineer to negotiate with and tender damages to C. Kevin Stees

Approved by the Transportation Commission on Sept. 15, 2016.

WHEREAS, the Transportation Commission is authorized pursuant to Section 43-1-106(8), C.R.S. to formulate the general policy with respect to management, construction and maintenance of public highways and other transportation systems in the state and to promulgate and adopt all budgets of CDOT; and

WHEREAS, pursuant to Colorado law at Section 43-1-208, C.R.S., the Colorado General Assembly has conferred the power of eminent domain upon CDOT to acquire property necessary for state high ways purposes; and

WHEREAS, pursuant to the final sentence of Section 43-1-208(3), C.R.S., since 1994 the Transportation Commission has authorized CDOT to condemn private property without following the more prescriptive practice for condemnation set forth in Section 43-1-208(1), (2) and the first two sentences of (3); and

WHEREAS, there is pending before the Colorado Supreme Court a challenge to the Transportation Commission's and CDOT's authority to condemn private property pursuant to the final sentence of Section 43-1-208(3) which case is titled *Department of Transportation v. Amerco Real Estate Company; U-Haul Company of Colorado; et al.*, 2016SA75; and

WHEREAS, the pendency of the Colorado Supreme Court case is having a negative impact on CDOT's ability to timely acquire possession of property sought for state highway purposes under the authority granted pursuant to the final sentence of Section 43-1-208(3); and

WHEREAS, in order to allow CDOT construction projects to proceed in a more timely fashion, the Transportation Commission, without admitting the validity of the challenge to its condemnation authority presented in the pending Colorado Supreme Court case, is electing to follow the prescriptive practice set forth in Section 43-1-208(1), (2) and the first two sentences of (3); and

WHEREAS, the Transportation Commission is authorized pursuant to Section 43-1-208(2), C.R.S. to determine whether a proposed change to a state high way will serve the interest and convenience of the public; and

WHEREAS, the Transportation Commission may enter a resolution upon its minutes approving the proposed high way changes and authorizing the

CDOT Chief Engineer to tender landowners the amount of damages, as estimates by the Chief Engineer; and

WHEREAS, CDOT has an immediate need for the Property and the inability to work on the Property will likely cause delay to Unit 1 of the PR US 34 Big Thompson Canyon Project which is a Flood Project, resulting in significant monetary harm to CDOT; and

WHEREAS, CDOT and Mr. C. Kevin Stees have not been able to agree on the fair market value of the Property; and

WHEREAS, without admitting that CDOT is required to comply with the provisions of Section 43-1-208(1), (2) and the first two sentences of (3), C.R.S., the Transportation Commission acknowledges that it has reviewed the written report of the Chief Engineer in relation to Unit 1 of the PR US34 Big Thompson Canyon Project and the C. Kevin Stees Property; and

WHEREAS, after reviewing the Chief Engineer's written report regarding Unit 1 of the PR US34 Big Thompson Canyon Project and the Property, the Transportation Commission has determined that the proposed changes to the alignment of US Highway 34 will *serve* the public interest and convenience of the travelling public; and

WHEREAS, the Transportation Commission also approves the Chief Engineer's estimate of damages set forth in his written report.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby declares that the public interest and convenience will be served by the proposed changes US Highway 34 by virtue of Unit 1 of the PR US34 Big Thompson Canyon Project, and authorizes the Chief Engineer to negotiate with the Owner regarding the amount of damages, and tender at least the damages estimated by him, and authorizes CDOT to proceed with condemnation of the Property in the event negotiations are unsuccessful.

Herman J. Stockinger III
Herman Stockinger, Secretary
Transportation Commission of Colorado

9-15-16
Date of Approval