were impermissibly short. The Court held this standard was met: Monty told them that the guns were "sawed off shotguns," the officers saw the guns themselves and at first sight thought the guns were too short as compared with other guns back at the police station. The affidavit in support of the warrant was also deemed valid since it included detailed observations from the officers and specified exactly what the officers sought from the house.

Last, Monty claimed the officers lacked probable cause to arrest him. Upon entering the house, they only had a warrant to search the house, not to arrest Monty. They therefore had to meet the standard for probable cause to arrest without a warrant, e.g. "at the moment of arrest police ha[d] knowledge of facts and circumstances grounded in reasonably trustworthy information sufficient to warrant a belief by a prudent person that an offense ha[d] been or [wa]s being committed by the person to be arrested." The Circuit Court found this standard satisfied since the arrest was executed in the house Monty lived in and the guns were found in a cabinet full of Monty's guns and trophies.

http://media.ca8.uscourts.gov/opndir/14/03/124038P.pdf (last accessed Mar. 20, 2014).

Takings: California Appellate Court Strikes Down Pre-Condemnation Entry Statutes

Property Reserve Inc. v. Superior Court, No. C067758 (Mar. 13, 2014).

In a decision greatly increasing the procedural burden on the state when contemplating the exercise of its eminent domain powers, the California Court of Appeal for the Third Appellate District has ruled that the state must initiate eminent domain proceedings *before* the Department of Water Resources (DWR) can enter onto private properties for the purpose of conducting environmental studies and geological testing.

California seeks to build a tunnel to transport water from the Sacramento-San Joaquin River Delta to central and southern California, and will need to condemn land for the project. Before condemnation, the state needs to conduct environmental and geological studies on hundreds of properties under which the tunnel may be constructed. The testing activities fall into two general categories. "Environmental activities" involve surveys about hydrology, botany, wildlife, and would include taking minor soil samples and observing and trapping wildlife. "Geological activities" involve soil testing and boring which in some cases would include boring into the ground to a depth of 200 feet and then filling in the hole with a permanent cement/bentonite grout. On each of the approximately 150 properties affected, these activities would require entry for up to 60 intermittent 24-hour days over a two year period, during which equipment may remain on the property.

To facilitate these studies, in 2009 the DWR filed petitions for entry onto a vast number of Delta properties via the state precondemnation statutes (Cal. Civ. Pro. Code §1245.010 *et seq.*), to allow it to enter private land. Most landowners contested these petitions, and the 150 cases

were coordinated in San Joaquin County Superior Court. The trial court considered the environmental and geological activities separately. It granted the state permission to enter for environmental activities, conditioning such entry on the state's deposit of de minimis probable compensation for the damages or loss of use that would result (between $1000 to $6000 per owner). But the court denied the state permission to enter for geological activities, concluding that they resulted in a taking for which DWR would need to comply with California Eminent Domain Law. The state appealed.

HELD: The California Court of Appeal decided in favor of the property owners on both types of entry, finding that the environmental entry constitutes a temporary taking and that the geological activities are a taking *per se* because they will result in a permanent physical occupancy of private property.

DISCUSSION: On appeal, the state argued that the geological activities were not takings, and that the entry statutes were an acceptable constitutional substitute for state eminent domain procedures because the entry statutes provide property owners the same protections as eminent domain procedures. The property owners argued that the environmental activities were also a taking which require the same eminent domain process as the geological activities.

The court rejected the state's argument that the precondemnation statutes satisfied the requirements of subdivision (a) of article I, Section 19 of the California Constitution. On this issue, the court concluded that the entry statutes are unconstitutional because the California takings clause requires the filing of an eminent domain action, which triggers constitutional protections for landowners including a jury trial to determine just compensation. Therefore, in order to enter the land and conduct the geological activities, the state must first condemn the land and pay for the taking through the state eminent domain procedures.

The court reversed the lower court order allowing entries for environmental activities. After noting that the environmental activities did not amount to a *per se* taking, the court considered whether the physical invasion rose to the level of a compensable taking by applying the multi-factor *Penn Central* test. The court's analysis considered the following four factors: (1) the degree to which the invasions are intended, (2) the character of the invasions, (3) duration of the invasions, and (4) the economic impact of the invasions.

The Penn Central test supported the landowners' position: "Thus, in this matter, all the factors weigh in favor of finding a temporary taking. The invasion and its consequences are intended by the state similar to a direct condemnation for a temporary easement. The invasion is a physical invasion, "a government intrusion of an unusually serious character." (*Loretto, supra,* 458 U.S. at p. 433, fn, omitted.) The invasion will take place over a significant period of time, providing a one-year blanket easement to private property for entry by up to eight people for up to 66 days. These characteristics outweigh the preliminary lack of evidence on the invasions' economic impact. In short, if the State intends to take and use a temporary easement, it must directly condemn it."

The Court of Appeals acknowledged the underlying conflict in cases where 'big' state projects are complicated by individual property rights issues, but rejected the state's argument that a

shortcut approach to condemnation may sometimes be warranted, explaining that “constitutional rights against the exercise of eminent domain authority are not subject to the convenience of the government.”

http://www.courts.ca.gov/opinions/documents/C067758.PDF (last accessed Mar. 20, 2014).