Stone River Ranch

Peter & Karen Stone
8941 River Road
Sacramento, CA 95832-9714
peterwesleystone@gmail.com
(916) 744-1111 (916) 744-1956
APN: 119-0230-009-000
Resolution of Necessity 2011-21

October 19, 2011

State of California, Resources Building
1416 Ninth Street, First Floor Auditorium
Sacramento, CA 95814

To: The California Water Commission

Thank you for the opportunity to provide input to the California Water Commission. I respectfully offer the following input to the California Water Commission regarding the matter of Resolution of Necessity 2011-21:

In response to my e-mail to the Commission on the 11th of October expressing confusion as to whether our comments should only be new items or restate old items. Rachel Ballanti responded the next day to my questions regarding if the staff reports and/or RONs would be modified from the September 21st hearing and whether comments should be repeated or not. She wrote to indicate that "We'll include a copy of your previously submitted comments in the Commissioner binders, but you may wish to re-state some of the points you made previously. You can also update the members on any new developments or additional information since the last meeting." Based on that statement I will be updating my input from last month's hearing as much as is possible based on my interactions with DWR personnel, but there will be repetition.

1. **Permanent vs Temporary Easements** - In terms of the Resolution of Necessity itself, **Section B 4** indicates "The Department is pursuing permanent easements for the geotechnical investigations based on the trial court's determination that the proposed entry was too invasive to allow without the payment of just compensation. We do not want our property needlessly encumbered by a permanent easement when DWR wants access for a temporary period of time." In DWRs latest e-mail they indicate that upon request of the landowner they will quitclaim the permanent easement. However, this will easily leave a cloud on our title for a period of about two years beyond their drilling activities while the quitclaim is in process. As I mentioned last month, DWR has already informed us of a Temporary Easement option and if the Resolution of Necessity is passed I see no reason that the Temporary Easement shouldn't be used. I would go farther to actually request that it be used. If for some reason the Permanent Easements are used despite everything said to the contrary, I request that the Permanent Easement language be clarified to

specifically say that DWR has NO right to access the Permanent Easement after its activities are complete, and that there is NO prohibition to build over the top of it, No prohibition to digging within the easement and NO prohibitions actually written in to it of any sort. Further, I as the landowner should not have to make the request for the quitclaim. Rather, the quitclaim process should be commenced by DWR as soon as the drilling activities are complete. DWR should provide notification to me when the process has begun and provide documentation to me of the appropriate recording of the quitclaim.
On October 12, 2011 I forwarded to DWR land agent Tom O'Neil and the Commission a list of proposed changes to the Temporary Permit language which is attached in your package. Tom is continuing to work on those items which I recommend get modified for the benefit of not just myself but for all the landowners.

2. **Agricultural impact - Parcel Information** section indicates that the proposed drill sites have been located in areas of least impact to agricultural operations and adjacent to interior agricultural roads. While there may have been attempts at this by DWR on their own, there were no discussions with me about how the property was farmed and how to mitigate those impacts. DWR agents Tom O'Neil and Carolyn Dabney visited my property with my permission. We talked about the farming concerns and walked the property and discussed better placement of the drilling holes on our property and Karen Zehnders who was with us at the meeting. Tom indicted that he would mention the request and see what could be done. I received an e-mail from Tom saying that they were going to moving the drilling holes as discussed on both the Zehnder and Stone property. However, I haven't been able to see an updated map showing the new sites. If this flows through to the final map should help reduce the negative impacts on farming.

3. **Hazardous materials - Property Owner section Item 1** of Resolution of Necessity 2011-21 briefly addresses my concern if hazardous materials are found in the boring core samples. It however, gives no context related to the question nor the original answers I got from the land agent when we talked. The Delta has been farmed for well over 150 years. During the majority of that time, many herbicides and pesticides used for farming were employed that are no longer allowed. Many of those herbicides and pesticides do not go away and may be found in the top layers of the soil throughout the Delta. Accordingly, a boring/drilling anywhere in the Delta that has been farmed could have residue from that farming activity of over 50 years ago. There was much discussion about this at the last meeting and I have been told that any hazardous materials in a boring sample would be disposed of by DWR but that the language I proposed regarding any surrounding contamination being held harmless was rejected. The language I proposed is contained in the document regarding updated language for the Temporary Easement that should be contained in the Commissioners' packets. It should also be noted that in the response e-mail from Tom O'Neil October 14, 2011, he indicated that "DWR is not specifically looking for hazardous materials; rather DWR is concerned with soil stability and is testing for physical and strength characteristics." He also provided a list of tests that were to be run related to soil strength and stability. However, there also were three tests that were labeled as environmental including one testing for pesticides.

The environmental tests indicated in Tom's October 14, 2011 e-mail were:

Analysis	**Test Method**
TPH-G, D, MO	8015G / 8015D/MO
CAM-17 + Hg	SW6010B/ 7471A
Pesticides	SW8081A

This seems to be a throwback to the much broader scope of the Temporary Entry Permits sought last year that the court said were too broad. **Accordingly, I request that these three Environmental Tests be eliminated from the scope of DWR's analysis as they are not necessary to determine soil strength and stability and contrary to the court's order.**

4. **No drilling in the toe of the Levee - Property Owner section Item 2** of staff report related to Resolution of Necessity 2011-21 indicates that "The property owner provided design modifications during the appraisal phase and DWR accepted the modifications including the elimination of three drill holes." The explicit purpose of my requesting the elimination or shifting of these drill holes was to eliminate borings/drillings within 30 feet of the toe of the levee due to the possibility of the drilling and/or related activities undermining the levee in a way which could potentially cause a subsequent levee failure and flooding of my home and the entire reclamation district (which is completely surrounded by levees).
The Superior Court, State of California County of San Joaquin order filed February 22, 2011 its "Order Permitting Entry And Investigation Of Real Property (Other Than Geologic And Drilling), Attachment D – Special Conditions paragraph h) "Levees and Reclamation Facilities. There shall be no digging, hand auger, or drilling on or within 100 feet of the base of a levee. DWR shall comply with any general rules or regulations of a reclamation district which have been adopted or approved by the district, applicable also to the underlying property owner regarding use or weight of vehicles on its easement area, or restricted access to pumping stations, digging near levees, and the like."
Based on this order, and as I generally mentioned at the September hearing before the Commission, I again respectfully request that five (5) drilling sites in the toe of the levee on (3) three properties in Reclamation District 744 be removed to more than 100 feet from the toe of the levee. These properties are DWR's numbers DCAP-111 with one drill hole in the toe of the levee (assessor's parcel 119-0230-011-0000), 2 holes in the t0e of the levee on DCAP-222 (assessor's parcel 119-0230-044-0000), and 2 holes in the t0e of the levee on DCAP-113 (assessor's parcel 119-0230-085-0000). As noted, these five drilling sites are all within the same Reclamation District #744 and would result in my property and every other property in RD #744 being flooded if the levee were undermined in any way at any one of the five sites.

5. **DWR Protocol** - During the course of litigation related to the original Temporary Entry Permits DWR indicated that it had a "protocol" that presumably described everything it was going to do. I asked for a copy of the "protocol" related to what DWR is planning on doing on my property under the current project in much more detail than the summary provided in the Resolution of Necessity Project description. Agenda Item 11 Addendum 2 has a Geotechnic Protocol. That document helps talk about process sequence and safety but didn't address the following that I requested at the September hearing: 1) how we make sure that all top soil for 10 feet is restored as it was; 2) how the bentonite grout stops 10 feet short of the surface and the final 10 feet restored with the native top soil; 3) how all damages to our property are handled and restored; 4) how damage to drinking water

if any will be handled; 5) what procedures are followed related to hazardous wastes; 6) hours of operation of drilling; etc.

6. **CPT & Drilling Schedule** – The Agenda item 11 Attachment 2 shows the CPT & Drilling schedule commencing on our property and the Zehnder property in May. These two properties are farmed as one field and although not for certain since the crop hasn't been put in the ground yet, a much better time will be in mid-August to mid-October to reduce crop impact.

7. **Should the Resolution of Necessity** be approved, there are certain things that I want to make sure happen as follows:

   a. **Residential well water quality testing** – Our residential drinking water well currently produces very good drinking water. Neighbors have had problems with drinking water quality at differing depths of drilling for their well. Even though the boring holes may be refilled with bentonite, once layers are connected, contamination by lower quality water may occur. Hopefully this will not happen. However, to ensure that we can prove it one way or another, **I respectfully request that I be compensated in advance to have a qualified firm thoroughly test our well water prior to any drilling and then to have the same firm using the same tests to test the well water 2 months after final drilling and 12 months after final drilling.**

   b. **No drilling to be done on our farming road** – If the site map is changed as Tom O'Neil indicated this concern should be alleviated with the location of new drilling holes. The map at the back of the Resolution of Necessity has one of the drilling sites right on our farming road.

   c. **Farm Drainage tile pipes and irrigation pipes** - There are farm drainage tile pipes and irrigation pipes buried throughout the property, approximately 3 – 5 feet from the surface. They serve as part of the farm's irrigation and drainage system. There are no maps that show their location on the property. To ensure that they aren't damaged during the drilling/boring process, DWR has agreed to hand auger the upper 5-10 feet of soil. This will help ensure that the drainage tile pipes and irrigation pipes won't be damaged. **I respectfully request that the top 10 feet of soil be hand augered.**

   d. **Routing of access road easement to neighbor's drilling sites to be shifted** – Accordingly to Tom O'Neil's statements this has been done by putting the access road around the perimeter of the property to access the neighbors drilling sites. **I request that that commitment be reflected in the final maps that come out and I would like to see the map and have the chance to approve it before it is finalized.**

8. *The California Water Commission's meeting notice indicated that it will hear evidence related to four topics. I offer the following input on topic #2:* **Whether 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** – In public BDCP planning meetings over the last three years, we have been told so far that the project is to be based on "good science". In the many public meetings that I have attended, I have not seen actual evidence to support that frequently made statement. Those who actually know how the Delta really works (farmers, engineers, and residents in the Delta) have spoken very eloquently at various public meetings over the last three years about significant flaws in the BDCP plans that appear not to have been addressed. While the options being presented over the last three years have changed to a degree (the most significant addition is the tunnel option being proposed), virtually all of the various real options focus on North Delta intakes. I believe that we need to truly have good science and good engineering and some options that actually solve problems posed over the last three years by those who know the Delta best. I offer very briefly and simply an example of a very different solution that seems likely to solve many problems heretofore unaddressed in the options being presented in the BDCP:
    a. Goals of the "Big Gulp Conveyance Plan" proposed by Dr. Robert Pyke
        i. Natural flows through the Delta should be restored to the maximum practical extent
        ii. Much more water should be extracted at periods of high flow and much less, or zero water should be extracted at periods of low flows
    b. Adherence to these principles, with appropriate pumping and temporary storage facilities, will allow simultaneous recovery of the Delta ecosystem and sustainable exports at existing levels.
    c. Four physical elements involved are:
        i. Restoration of floodplains on the Sacramento and San Joaquin Rivers and their tributaries in order to provide flood storage and stretch out the flood hydrograph in addition to providing significant flood management benefits;
        ii. New pumping facilities somewhere in the South West Delta to allow flows to pass through the Delta in a natural way before surplus flows are extracted; these facilities might include some temporary storage possibly on Sherman Island;
        iii. One or more tunnels that can move the extracted water to a large temporary storage facility until the existing pumps in Tracy can move it south; this storage facility would likely be located adjacent to and might incorporate the existing Clifton Court Forebay;
        iv. Additional south-of-Delta storage, much of it likely as groundwater but also including new Westside surface storage.

Thanks for your consideration.

Sincerely,

Peter W. Stone

Peter W. Stone

10-19-2011 California Water Commission Hearing on DWR's proposed Resolution of Necessity related to properties in the Sacramento River Delta for the Bay Delta Conservation Plan's peripheral canal or tunnels.

DWR's Proposed Resolution of Necessity 2011-21
Sacramento County Parcel # 119-0230-009-0000
Owned by Peter and Karen Stone

Correction of Error in pictoral evidence provided to the California Water Commission from DWR's Research related to Proposed Drilling near State Highway 160 with comments on the Resolution of Necessity related to the requirement "that the project is located in such a manner as to offer the greatest public benefit with the least private detriment"

Portion of DWR supplied Map & Legend from California Water Commission -- 10-19-2011 Agenda Item 11 Attachment 7 describing locations of "photos along Hwy 160"

Item 11 Attachment 7 (Top two photos and description of first page of photos copied from the DWR submission to the CWC)

Drilling Parcels adjacent to Highway 160
Determination of possible Highway 160 drilling sites

Figure 1

Figure 2

Item 11 Attachment 7 (Bottom two photos and description of first page of photos copied from the DWR submission to the CWC)

Figure 3

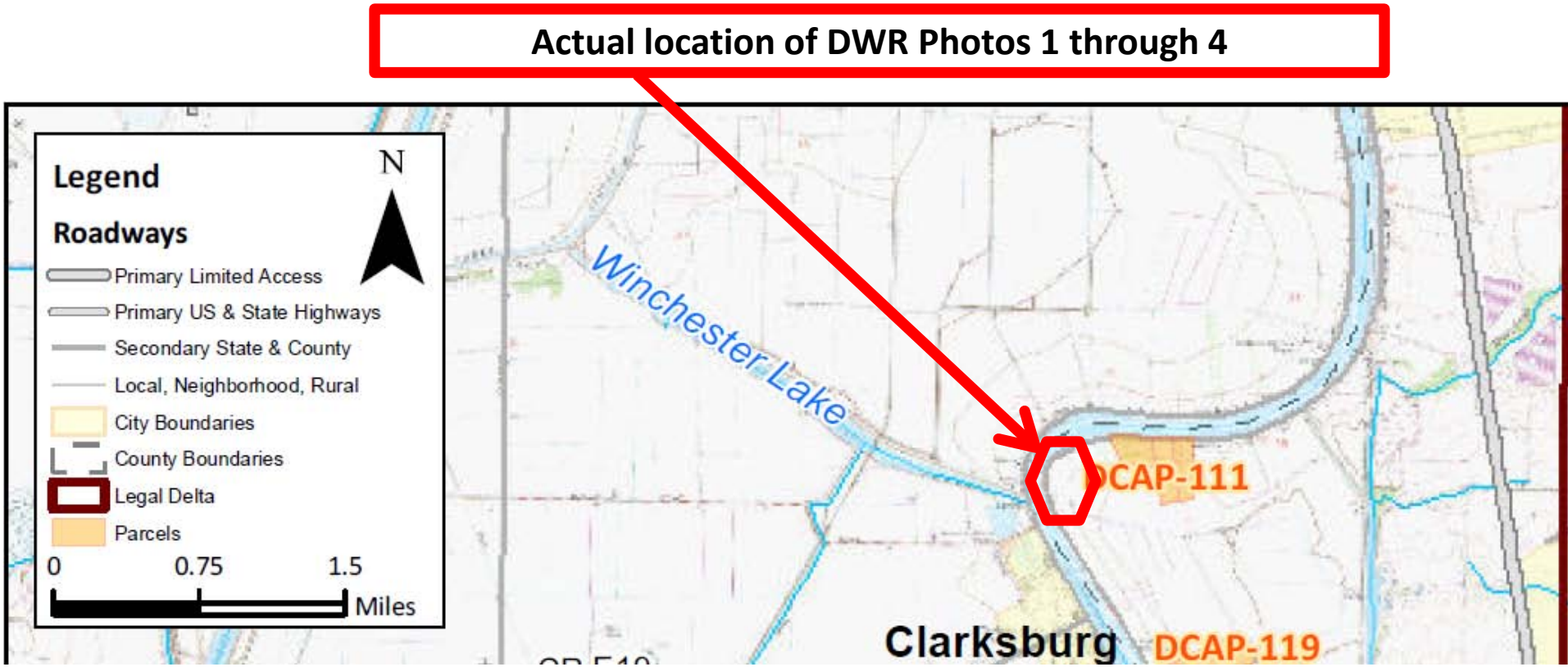
Figure 4

DCAP-110 119-0230-009 Resolution NO: 2011-21 and DCAP 111 119-0230-011 Resolution No. 2011-22

HWY 160 North view - Figures 1, 2 and 3; South view Figure 4

Conclusion: No available temporary construction site qualifying for drilling activities.

Portion of DWR supplied Map & Legend from CWC 10-19-2011 Agenda Item 11 Attachment 7 describing locations of "photos along Hwy 160"



CWC 10-19-2011 Agenda Item 11 Attachment 7
Description of what the previous pages' photos are supposed to be

DWR's Research Results section Alternative 1 states that "The attached series of photographs were taken in September 2011 near the approximate access for each parcel off of Highway 160"

Below is a close up of the description of the two parcels that is directly below the 4 DWR pictures shown on the previous pages.

Figure 3 | Figure 4

DCAP-110 119-0230-009 Resolution NO: 2011-21 and DCAP 111 119-0230-011 Resolution No. 2011-22

HWY 160 North view - Figures 1, 2 and 3; South view Figure 4

Conclusion: No available temporary construction site qualifying for drilling activities.

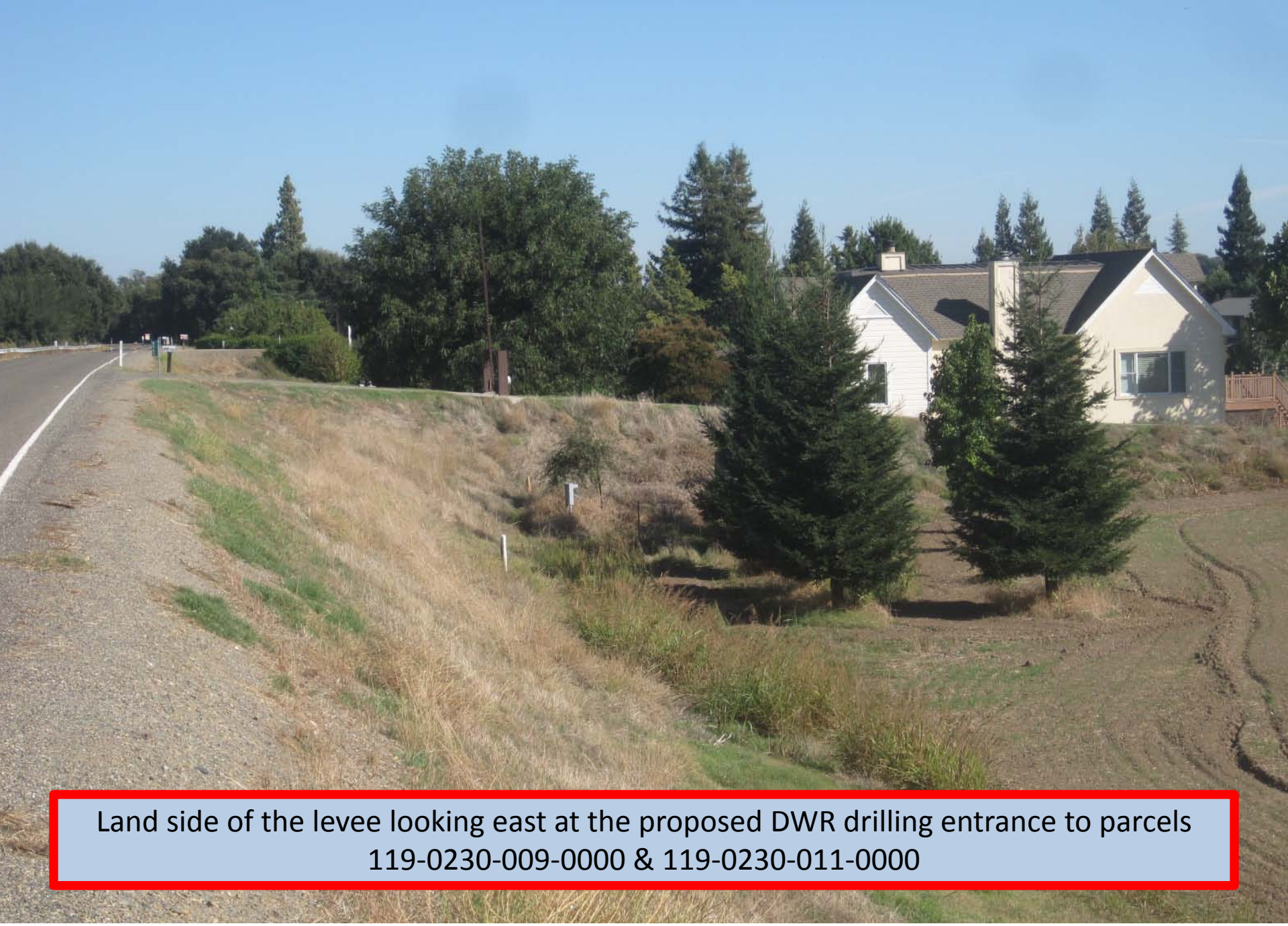
On the following three pages, are photos that I took at the correct location showing the river side of the levee for the two properties listed above and both east and west side of the proposed DWR access to both of these properties. DWR's proposed access road for both properties is my driveway ramp which is shown in the photos. (parcel 119-0230-009-0000).

Portion of DWR supplied Map & Legend from CWC 10-19-2011 Agenda Item 11 Attachment 7 describing locations of "photos along Hwy 160"

Actual location of DWR Photos 1 through 4

Location of my Photos at the real "access for both parcels"

River side of the levee at parcels 119-0230-009-0000 & 119-0230-011-0000



Land side of the levee looking east at the proposed DWR drilling entrance to parcels 119-0230-009-0000 & 119-0230-011-0000

Land side of the levee looking west at the proposed DWR drilling entrance to parcels 119-0230-009-0000 & 119-0230-011-0000

A better aerial photo to show the whole section at once

Actual location of DWR Photos 1 through 4

Location of my Photos at the real "access for both parcels"

Recommended Change to the Resolution of Necessity

Resolution of Necessity requirement "that the project is located in such a manner as to offer the greatest public benefit with the least private detriment"

- It is interesting to note that the DWR levee photos don't show the "access for both parcels" as is labeled; but, the photos are of the large 49 acre farm field ½ mile to the west that could be used for intake #1 that wouldn't ultimately require taking any homes large or small.
- My photos that actually show the proposed "access for both parcels" with our large completely restored home and outbuildings as the focal point for intake pumping station #1 which **should not be the focal point for intake pumping station #1.**
- When you actually see what is on the ground, I contend that the intake pumping station #1 isn't located in the place with the least private detriment and **recommend that it be moved to the 49 acre parcel where the DWR photos were actually taken.**