

PETER WESLEY STONE

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October 12, 2011

Dear Tom,

Per your request, I am making my recommendations as to improvements/changes in the "Temporary Easement". I have copied appropriate sections out of the Temporary Easement hopefully for ease of reference. As a result, there are some confusing numbers showing up from the Draft Temporary Easement document. They are static and kept the same so you can locate the section in the original Draft Temporary Easement. You will note that the Draft watermark from your original document shows up on most sections that I have copied. This also will help indicate the sections copied from your Draft.

State of California

DEPARTMENT OF WATER RESOURCES

The California Natural Resources Agency

Grantor: _____

Project: Bay Delta Conservation Plan

APN:

Parcel No.

RIGHT OF WAY CONTRACT – TEMPORARY EASEMENT

New notes, comments a questions below will be in bold and the non-bold is copied from the current proposed Right of Way Contract Temporary Easement sent to me by DWR.

- 1. What does this actually mean? Particularly the statement "... the entire consideration for said document..."**
 1. (A) The parties have herein set forth the whole of their Contract. The performance of this Contract constitutes the entire consideration for said document and shall relieve the State of all further obligations or claims on this account, or on account of the location, grade or construction of the proposed improvement.
- 2. Based on the testimony at the California Water Commission 9-21-2011, this section B (below) does not need to include reference to the "Permanent Easement" as the alternative to this agreement. This is due to the fact that the Resolutions of Necessity should not include a "Permanent Easement" reference as it has been clearly shown during the hearings that a "Permanent Easement" is NOT needed by DWR in any circumstance. And in fact the court did not recommend a Permanent Easement but rather condemnation. Therefore the following phrase should be stricken: "to acquire a permanent easement". The Permanent Easement reference should be stricken from Section C as well.**
 - (B) Both Grantor and State enter into this Contract in lieu of the State proceeding with an eminent domain action to acquire a Permanent Easement as per the recommendation of the Superior Court, State of California, County of San Joaquin, *In Re: Department of Water Resources Cases*, Coordinated Action: JCCP 4594, and outlined in its Opinion and Final Order Denying Petition for Entry for Geologic Activities, entered by the Court on April 8, 2011.
- 3. Paragraph C below should be revocable for acts of God or if the court rules that these activities are not allowable under the law. So the entire "Grantor acknowledged ..." phrase should be removed from this section and replaced by a statement that this can be revoked if the**

court rules that these activities are not allowable under the law

- (C) State requires said property described in Document No. _____ for conducting geotechnical explorations in support of the Bay Delta Conservation Plan, a public use for which State may exercise the power of eminent domain. In consideration of the State foregoing its authority to acquire a Permanent Easement to conduct geotechnical explorations by an eminent domain action, Grantor acknowledges that this Contract is non-revocable, and Grantor will not attempt in any manner whatsoever to request cancellation.

4. As was discussed at the hearing, the time frame in Section 4 below should be significantly tightened up based on a more realistic schedule/need. Further 2013 should be stricken as DWR's environmental document in support of these activities only covers through December 31st, 2012.

4. Grantor will provide access to the property identified in Clause 3 above for two six-month periods between May 1st through October 31st in the years 2012 and 2013. State will provide Grantor with a minimum of 10 days advance verbal notice of State's intent to enter property. Grantor acknowledges and understands that each drill site shown on "Exhibit A" identified as a CPT location will require a maximum of one (1) day to complete, while locations identified as DH will require a maximum of 14 days to complete.

In paragraph 5 change 2013 to 2012.

Paragraph 7 should be revised to read as follows:

"State agrees to indemnify and hold harmless the undersigned Grantor from any liability arising out of the State's operations under this Agreement, *including, but not limited to, any cleanup or other costs associated with the discovery of any hazardous substances in the course of those operations.* State further agrees to assume responsibility for any damages caused by reason of the State's operations under this Agreement; and State will, at its option, either repair or pay for such damages. *For the purposes of this paragraph, the term "hazardous substances" shall mean any substance which at any time shall be listed as "hazardous" or "toxic" in the regulations implementing the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC §§6901, et seq.), or other federal or State law, or any other substance, chemical, material or waste product whose presence, nature or quality is potentially injurious to the public health, safety, welfare, the environment or the property."*

5. **Testing of the residential well water by a private certified firm selected by property owner will be done at DWR's sole expense 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. If those tests show a significant change in water quality then the parties agree that this change is due to the boring activities and DWR will be responsible to restore property to same condition as before which may include digging a new well at DWRs expense.**
6. **To ensure that the irrigation pipes and drainage tiles are not damaged during the drilling/boring process, DWR agrees to hand auger (without using power equipment) the upper 10 feet of soil.**
7. **Owner or his designee(s) will have the right to inspect and observe any or all of the drilling activities.**

As a separate item that should be taken into consideration when redoing the maps for DWR's Staff Reports to the Commission I offer the following:

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, as I 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 toe of the levee on DCAP-222 (assessor’s parcel 119-0230-044-0000), and 2 holes in the toe 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.

Thanks for your consideration.

Sincerely,

Peter W. Stone

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