AGENDA ITEM NO. 20
Steven S. and Susan M. Oates;
John W. and Rosalia Fernandez-Merwin;
Alison L. Merwin-Eyster

Background: The initial parcel selections were based on utilizing the most current available data, which included aerial photos, previously drilled holes and other pertinent data to assist in the proposed hole location.

Sites were selected with respect to the alignments identified in the Conceptual Engineering Report (CER) and after consultation with the members of the DHCCP team, which included staff from the environmental, real estate, engineering, and geotechnical disciplines. The criteria established by the team was to obtain relevant soil information for preliminary and final design of facilities and permitting requirements (US Army Corps of Engineers, Division of Safety of Dams, etc.), providing consistency with temporary entry permit language and landowner concerns, to implement and follow the Mitigated Negative Declaration language and required permits, and species to minimize overall impacts. A majority of the sites were selected to provide information and data primarily for the intakes, river crossings, Intermediate Forebay, and the Byron Tract Forebay. Additional sites were selected for the Pipeline/Tunnel Option.

After the Superior Court issued Order, DWR filed a renewal motion requesting two entry days to conduct surveys solely for the purpose of hole placement. Most of the landowners opposed this motion. The Superior Court declined to rule on the motion on the grounds that the matter was stayed pending DWR's appeal of the Order.

AGENDA ITEM NO.	**20.**
LAND OWNER	**OATES**
DWR PARCEL NO.	**DCAW-140**
APN	**043-050-004**
EXPLORATION NO.	**DCW-CPT-007**
FACILITY	**Within Proposed Footprint of Canal Embankment**
METHOD	**CPT**
DEPTH	**100**
REMARKS	**ICF-West Option; the proposed CPT is located on the proposed West Option canal alignment to collect geologic data to help identify impacts on local and regional ground-water regime from the proposed canal excavation, to evaluate the stability of the canal embankments, to study the potential canal water seepage into adjacent farm-lands, and impacts resulting from other construction-related activities on local environment and community.**

STATE OF CALIFORNIA -- THE CALIFORNIA NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
`ACRAMENTO, CA 94236-0001
916) 653-5791

July 7, 2011

John W. and Rosalia Fernandez-Merwin, Co-Trustees, Merwin-Fernandez Trust
38980 Netherlands Road
Clarksburg, California 95612

SUBJECT: Purchase of Property Rights

Our records indicate that you are the owner of certain property situated in Yolo County, identified as Assessor's Parcel No. 043-050-004-000. The State of California Department of Water Resources (DWR), proposes to purchase property rights over this property, identified as DWR Parcel No. DCAW-140, to accomplish the goals of the Bay Delta Conservation Plan.

Section 7267.2 of the California Government Code and the California Relocation Assistance and Real Property Acquisition Guidelines require that each property owner from whom the State of California purchases real property, or an interest therein, be provided with a summary of the appraisal of the real property, or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property rights being purchased, unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of the real property taxes which are allocable to any period subsequent to the passage of title or possession.

2. The State will offer to purchase any remnant considered by the State to be an uneconomical unit which is owned by you and which is contiguous to the land being conveyed.

3. The rights to be acquired include a 16 square feet Permanent Non-Exclusive Easement, a 10,000 square feet Temporary Construction Easement, and a 34,330 square feet Temporary Access Easement.

4. The market value of the property rights being purchased is based upon a market valuation, which is summarized in the enclosed Valuation Summary Statement. As full just compensation for the property rights to be acquired, we offer you $[redacted], as shown on the enclosed Right of Way Contract.

   The State's offer:

   a. Represents the full amount of just compensation for the property rights to be purchased;

   b. Is not less than the approved valuation of the fair market value of the property as improved;

   c. Does not reflect any consideration of, or allowance for, any relocation assistance and payments or any other benefits to which you may be entitled; and

   d. Disregards any decrease or increase in the fair market value of the real property rights to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired, or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant.

5. In accordance with Section 1263.025 of the California Code of Civil Procedure you are entitled to seek a second opinion on the value of your property and to receive reimbursement of up to $5,000 to pay for reasonable appraisal costs. In order to be reimbursed, you must sign an Appraisal Costs Reimbursement Agreement and engage an appraiser licensed by the State of California with the Office of Real Estate Appraisers. The appraiser must be either a MAI designated appraiser or hold an equivalent designation recognized by the Appraisal Foundation. For further information on the requirements for reimbursement and to ensure that you are aware of proper procedures, please contact DWR prior to engaging an appraiser. The request for an Appraisal Costs Reimbursement Agreement may be submitted to the Department of Water Resources, Real Estate Branch, 1416 Ninth Street, Room 425, Sacramento, California 95814.

6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property, which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the Grantor's ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.

7. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

Included as part of this package, you will find the following information relating to this proposed acquisition:

- Valuation Summary Statement
- Right of Way Contract
- Easement Deed
- Map of the Proposed Acquisition Area
- Comparable Data List
- Comparable Sales Map
- Payee Data Record

Please sign and date the Deed **exactly** as shown in the designated location and have your signature **notarized**. If needed, a Public Notary can be made available to notarize your signature(s). Also, sign and date **two** copies of the Right of Way Contract and complete Sections 2-5 of the Payee Data Record. The Payee Data Record is needed in order for the State to issue payment. Please return the signed Right of Way Contracts and the Payee Data Record along with the notarized Deed in the envelope provided. A fully executed copy of the Contract will be forwarded to you at a later date.

If you have any questions or need additional information, you may contact me directly by telephone at (916) 657-5129, or toll free at (866) 688-3227.

Sincerely,

Daniel Vasquez
Associate Land Agent

Enclosures

CERTIFIED MAIL

cc: Steven S. and Susan M. Oates, 6215 Dipper Lane, Klamath Falls, Oregon 97601
Alison L. Merwin-Eyster, 1649 Grey Owl Circle, Roseville, California 95661

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

DEPARTMENT OF WATER RESOURCES
Division of Engineering
Real Estate Branch
1416 9th Street, Room 425
Sacramento, CA 95814

SPACE ABOVE THE LINE FOR RECORDER'S USE

PERMANENT NON-EXCLUSIVE EASEMENT
(TO THE STATE)

Project Delta Habitat Conservation Conveyance Project

Parcel No. DCAW-140 (Units A, B and C)

WE, John W. Merwin and Rosalia Fernandez-Merwin, Co-Trustees, The Merwin-Fernandez Trust, Dated February 8, 1994, as the sole and separate property of John W. Merwin, an undivided one-third (1/3) interest;
Susan M Oates, a married woman, as her sole and separate property, an undivided one-third (1/3) interest;
Alison L. Merwin-Eyster, a married woman, as her sole and separate property, an undivided one-third (1/3) interest,

GRANT to the STATE OF CALIFORNIA, its successors or assigns, hereinafter called STATE, an EASEMENT and right of way, upon, over, and across that real property in the County of Yolo, State of California, identified in the records of the Department of Water Resources as:

DWR Parcel No.	Area	Estate
DCAW-140 (Unit A)	16 square feet	Permanent easement
DCAW-140 (Unit B)	10,000 square feet	Temporary easement
DCAW-140 (Unit C)	34,330 square feet +/-	Temporary easement

(In the event of any discrepancy between the above identification and the real property described herein, the real property described will control.)

DCAW-140

UNIT A

A permanent non-exclusive easement for drilling purposes, over, upon, under and through the following described parcel of land, being a portion of that parcel described in that grant deed recorded on January 12, 2007 as Instrument Number 2007-0001520-00 in the Official Records of Yolo County, and more particularly described as follows:

One 4 foot by 4 foot location in the Southerly 350 feet more or less of said parcel and delineated on attached Exhibit "A".

UNIT B

TOGETHER WITH a temporary construction easement for the purpose of moving and/or maneuvering construction equipment and vehicles, the temporary storage of equipment, and materials necessary for drilling, together with the equipment used in the drilling of earthwork, the temporary storage of spoil or excavated material during the period of drilling and related construction work, and any other operations necessary and appurtenant to the drilling, over, through, and across the following described parcel of land shown on attached Exhibit "A".

UNIT C

TOGETHER WITH a 10 foot wide temporary access easement for the purpose of moving and/or maneuvering construction equipment and vehicles, during the period of drilling and related construction over and across an existing access and/or service road shown on attached Exhibit "A".

Temporary easements for access and construction shall terminate on October 31, 2013.

All works, structures and facilities remaining on said parcel of land after said termination date shall become the property of Owner and the State shall have no obligation to remove, operate, or maintain any works, structures, or facilities on said parcel of land.

Annette Lockhart
LS 8246

July 7, 2011

PROFESSIONAL LAND SURVEYOR
ANNETTE M. LOCKHART
No. 8246
Exp. 12/31/11
STATE OF CALIFORNIA

Executed on_____

_____ _____

_____ _____

_____ _____

_____ _____

GRANTOR(S)

STATE OF CALIFORNIA }

SS

County of _____

On _____, 20 ____ , before me, _____

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

[SEAL]

_____
NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

(CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE, SECTION 27281)

This Is To Certify, That the State of California, grantee herein, acting by and through the Department of Water Resources, hereby accepts for public purposes the real property, or interest therein, described in the within deed and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this_____ day of _____, 20_____

_____
Director of Water Resources

By_____

_____
Attorney in Fact

Yolo County

N

N.T.S.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF ENGINEERING - GEODETIC BRANCH

This exhibit does not represent a Survey and is for informational purposes only

DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM EXHIBIT A

SUPPLEMENT TO STAFF REPORT: NEGOTIATION FACT SHEET
PROPOSED ACTION IN EMINENT DOMAIN
CALIFORNIA WATER COMMISSION
November 16, 2011

RON #: 2011- 06
Project: Geotechnical Activities in support of the Bay Delta Conservation Plan (BDCP)
APN: 043-050-004-000 (Yolo County)
DWR #: DCAW-140
Owner: **Steven S. and Susan M. Oates; John W. and Rosalia Fernandez-Merwin; Alison L. Merwin-Eyster**

Statistics

AS OF NOVEMBER 9, 2011					
# of Parcels to be Acquired	# of Parcels Acquired	Remaining Parcels to Acquire	# of Owners to Appear	# of Owners to Settle	Remaining Number of Owners to Appear
59	2	57	46	2	44

Property Rights to be Acquired

DWR Parcel No.	Area	Rights
Unit A	16 sq. ft.	Permanent Non-Exclusive Easement
Unit B	10,000 sq. ft.	Temporary Construction Easement
Unit C	34,330 sq. ft.	Temporary Access Easement

Parcel Information

Current Use: Agriculture – Irrigated Field Crops
Zoning: Agricultural Preserve Zone (A-P)
Date of First Written Offer: July 7, 2011
Amount of Agency's Latest Written Offer: Offer made pursuant to approved staff appraisal.
Amount of Owner's Latest Counter Offer: N/A
Type of Geotechnical Activity: One (1) CPT and one (1) drill hole

Previous Contacts

Temporary Entry Permit (TEP) Phase

LETTERS (6)

- Initial mailing of TEP, follow-up letters, and referral to AG letter (4/10/09, 4/24/09, 5/04/09, 5/12/09, 5/18/09, and 5/29/09).

TELEPHONE CALLS (5)

- Left messages and conversations with owners at multiple phone numbers. (7/01/09, 7/07/09, 7/07/09, 7/8/09, and 7/31/09)

SITE VISITS (1)

- Conducted site visit for general observation and verification of land use. (11/30/09)

Recent Contacts

First Written Offer (FWO) Phase

- **FWO package included the following documents: Cover Letter, Valuation Summary Statement, Right of Way Contract, Easement Deed, Map of the Proposed Acquisition Area, Comparable Data List, Comparable Sales Map, and Payee Data Record**
- **Agent confirmed receipt of the FWO package.**

LETTERS (10)

- Notice to Appraise Letter, First Written Offer, response letter/Temporary Easement Alternative, follow-up letters, invitations to Commission meeting, Notices of Intent to Adopt Resolution of Necessity, and Letter providing clarification regarding permanent easement and hazardous materials (5/02/11, 7/07/11, 7/29/11, 8/01/11, 8/15/11, 8/30/11, 9/09/11, 9/27/11, 10/13/11 and 10/25/11).

TELEPHONE CALLS (19)

- DWR called and left messages at multiple phone numbers requesting return call. (7/08/11, 7/08/11, 8/02/11, 8/18/11, 8/18/11, 8/22/11, 8/22/11, 8/31/11, 10/17/11, 10/26/11))
- DWR called and spoke with owner (partial interest) and was directed to speak with spouse. (7/08/11 and 8/18/11)
- DWR called and spoke with owner (partial interest) and discussed the response letter; owner confirmed sharing all information with remaining owners; owner (partial interest) needs to discuss FWO with remaining owners and reach a decision. (8/02/11)
- DWR called and spoke with owner (partial interest) and was directed to speak with spouse; owner confirmed she is receiving information from other owner. (8/02/11 and 11/3/11)
- DWR called and spoke with owner (partial interest) and discussed FWO and temporary easement alternative; owner to discuss temporary easement alternative with remaining owners and reach a decision. (10/11/11 and 10/17/11)
- DWR called and spoke with owner (partial interest) and discussed the hearing and negotiations. Owner busy with harvest, but may be willing to meet on the subject parcel and discuss Temporary Easement Contract in the future. (10/18/11)
- DWR received call from owner (partial interest) stating that since hearings weren't going well for DWR, the owners want to wait for the CWC's decision at the next hearing before continuing negotiations. (10/26/11)

EMAILS (3)

- DWR emailed owner and expressed desire to discuss FWO; owner replied with a list of questions. (7/18/11)
- DWR responded to owner's questions via email with a response letter attached. (7/29/11)
- Owner emailed DWR and decided against making any decision on FWO until after court hearing; DWR requested clarification on what hearing owner was referring to and expressed desire to maintain communication. (8/19/11)

SITE VISITS (1)

- Conducted site visit for general observation and verification of land use. (11/1/11)

Areas of Main Concern to Owner and DWR's Response

- Owner expressed concern with DWR's acquisition of a permanent easement.

  DWR informed owner of the temporary easement alternative.

No specific concerns identified in relation to the location of the proposed drill site.

Why Necessary to Initiate Eminent Domain Action

DWR has been unable to reach an agreement to acquire the necessary property rights through either negotiation or attempted negotiation. DWR desires to initiate eminent domain action to ensure that DWR meets its geotechnical schedule.