From:	Peter Stone
To:	California Water Commission
Subject:	Letter with Legal Description Attachment I forgot to include with Yesterday"s e-mail to you.
Date:	Tuesday, October 25, 2011 11:16:41 AM
Attachments:	Letter to CWC re Negotiations on RON 2011-21 - Peter Karen Stone 10-24-2011---.pdf Legal Description Document 10-25-2011.pdf

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To: The California Water Commission

In my letter to the Commission yesterday, I forgot to include the copy of DWR's legal description document. I have attached it to this e-mail "Legal Description Document" and the narrative surrounding it are contained in item B in my letter. I am sorry for any confusion this may cause.
Thanks
Peter

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PETER WESLEY STONE
Sacramento, California
p: 916.744.1111 | m: 916.744.1956
e-mail: peterwesleystone@gmail.com
LinkedIn: http://www.linkedin.com/in/peterwesleystone

---------- Forwarded message ----------
From: **Peter Stone** <peterwesleystone@gmail.com>
Date: Mon, Oct 24, 2011 at 5:54 PM
Subject: Questions I Need Answers To - from the CWC So I Can Negotiate with DWR in Preparation for the November Hearing
To: cwc@water.ca.gov

To: The California Water Commission

Commissioner Saracino and all the other Commissioners, thanks again for the opportunity to present my concerns to the California Water Commission last week regarding the 10-19-2011 hearing on the Resolutions of Necessity. I appreciate your bearing with me in the time it took to restate many of the items that I brought up at the September hearing. I am trying to figure out how best to proceed in negotiations with DWR in preparation for the November hearing. I have prepared the attached letter which contains background and summarized questions that were brought up at the hearing but actually are

still unanswered by you. If you will answer them, it will give me a much better basis to negotiate with DWR. I would appreciate your answers to the questions to facilitate me having many fewer issues to report in November. I also believe that many of the things I am asking here can benefit many Delta landowners if the concepts will be implemented where appropriate on a more universal basis rather than just on my property. This should help DWR do the least possible harm to other landowners and myself.
Thanks very much for your attention, time and answers.
Best regards,

Peter

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PETER WESLEY STONE
Sacramento, California
p: 916.744.1111 | m: 916.744.1956
e-mail: peterwesleystone@gmail.com
LinkedIn: http://www.linkedin.com/in/peterwesleystone

Stone River Ranch

Peter & Karen Stone
Delta Landowner – at the location slated for BDCP Intake Pumping Station #1
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 24, 2011

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

To: The California Water Commission

Commissioner Saracino and the other Commissioners, thanks again for the opportunity to present to the California Water Commission last week regarding the 10-19-2011 hearing on the Resolutions of Necessity. I appreciate your bearing with me in the time it took to restate many of the items that I brought up at the September hearing. As I have told the DWR representatives with whom I have been chatting with for more than a year, my overall philosophy is to get the activities that DWR is seeking to do on my property and the methods of doing them to be as least damaging as possible. In all the discussions about negotiations, they have had a very large hammer to use which is if you don't sign we will sue you. While this is in accordance with the law and their prerogative, I believe that it has led them to an approach that hasn't been helpful in setting up a program that does the least possible damage for <u>ALL</u> landowners (not just those who sign). I will freely admit that because of the lost court case earlier this year, what they are now proposing has become less onerous in some points. However, there are still many points in my response to the TEP over a year ago and recent hearings that still haven't been resolved and which could result in significant damages and/or possible full loss of my property that keep me from signing.

A) During both the September 21st, 2011 and October 19th, 2011 hearings the Commissioners have made it very clear that the landowners need to seek to meet with DWR and negotiate with them. As I reflect back on that, and realize that time will quickly march on to a November meeting I felt that I needed to try and deal with things in advance so November isn't just a rehash of October. As I mentioned to you in the October hearing, when I was trying to set up a meeting with the DWR land agent about a month ago, that would include those

of us who were "Under the footprint of Intake #1", I was told in no uncertain terms (and repeatedly) that he would not meet with more than just me and the neighbor whom DWR's proposed access road on my property would access. Even though I told him that I was trying to get those together who all had drilling sites identified in the toe of the levee which I had described to the Commission in September how a failure of the levee at any one of those points would result in the flooding of all our homes in our reclamation district #744, there was no change in the approach with the stated reason being "confidentiality". I said and still don't understand how if a group of four or five landowners are all willing to meet together and talk about their situation in front of each other how that would be a confidentiality issue. The only thing that I can think of is that DWR wants confidentiality to prevail so one landowner doesn't know what is happening with another. If this is true, I believe that it is not right to not allow a meeting of all the parties to an issue which could result in the flooding of an entire reclamation district. As far as I know at this time, of the five planned drilling holes in the toe of the levee of properties within reclamation district #744 that only one may have been moved away from the toe of the levee.

a. **In terms of my request that improvements to the Resolution of Necessity that are made for the benefit of one landowner should be available to all, I would like you to let me know if DWR will be instructed to make sure that happens? This should help us move away from DWR's confidentiality doctrine relating to matters that are vital not just to one landowner who is knowledgeable but gets at the heart of doing the least possible harm to all landowners in this process.**

B) **One question that came up in the October 21st hearing, regarded the "legal descriptions" of the exact places on each property where the permanent and temporary easements were to be established and whether landowners had received them. I dug through my records and found the document that Al Davis was referring to that I received in early October 2011. I have attached it at the back of this letter. It does contain the "legal description" of my entire property under "UNIT A" and simply refers to the aerial photograph with red squares for the UNIT A easements and blue boxes on the aerial photograph for the UNIT B easements and white lines on the aerial photograph for UNIT C easements but does not contain a "legal description" of the bounds of each of those easements as Commissioner Delfino seemed to be requesting.**

As you may recall, this was in connection with the requirement under the California Code of Civil Procedure, Section 1240.030, which provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are met: (4) An offer to

acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

It was contended that for the offer to be valid that it had to be for a specific plot(s) of ground legally identified. While it doesn't appear to meet that requirement based on Commissioner Delfino's comments and others, I thought that it would be useful to provide the September 27, 2011 letter from DWR containing the notarized description and map of our property for your determination.

C) **At various times during the meeting you charged us as landowners to spend the next month working with DWR to negotiate as best we could. As I mentioned in the beginning of my comments at the hearing, the process hasn't been clear. I am ready to work with DWR to try and eliminate as many of the problems as possible. However I don't know where to start as I have no response from you regarding most of the comments I made on specific points. I recall that you did give marching orders to DWR to provide: 1) more clarity on funding; and 2) provide a legal description. So, I am not sure that the DWR land agents would feel authorized to do anything differently than they have been doing.**

D) **There was no statement from the commission to me or to DWR as to what to do regarding the following of my requests:** (In the absence of direction from the Commission, DWR in the past months has been unable or unwilling to negotiate some points. This may be in part due to DWR's general stated approach that doing many of the right things mentioned in the hearings and discussions with the landowners will be done if the landowner negotiates and agrees to the easement and that generally they won't be done otherwise. While I have been unable to sign due to the significantly onerous aspect of the possible loss of my property over the hazardous waste issue that neither the Commission or DWR has been able to give me any help with, I am seeking to make the rest of the issues as least damaging as possible. Despite DWR's approach stated above, there has been stated movement on some issues by DWR even though they aren't reflected in modified language in any important official documents that I have seen.)

1) **Simply seeing what the complete set of modifications are to DWR's proposed Resolution of Necessity based on my meeting with DWR and the September hearing before the commission. Some of the changes that I would like to see in updated official documentation are as follows:**
    a. **Changed drilling sites**
    b. **Changed access road to my neighbor's drilling sites**
    c. **All other elements where DWR has been willing to make changes**
2) **Temporary vs Permanent Easements**
    a. **Is DWR going to be required to use temporary easements rather than permanent easements as it has been shown that the permanent easements aren't required?**

b. **Will greater specificity as to what can and can't be done now and after they are gone be included?**
c. **Will DWR include language dealing with the ability to cancel the temporary easement in case an act of God or the cancellation of the project or some other circumstance that would render the process not necessary?**

3) **Testing of water before and after drilling to see if there are any issues with changes in drinking water quality due to the drilling**
   a. **What is the response to my request that testing of my drinking water be done before the drilling activities and two times afterward to determine that there are or are not reductions in drinking water quality due to the drilling?**
   b. **What is the response regarding Daniel Wilson's testimony and request related to drilling around Intake #2 that the drilling holes should be steel cased (just as a well is required to be) to ensure that there isn't water contamination from a poor strata to the one the drinking water for the property is sourced from? It certainly sounds as though his approach would have a greater degree of success. I am still concerned about his comment that artesian/seepage pools could emerge a few years later where the drillings were conducted.**
4) **Since DWR's stated purpose for the drilling is to test for soil strength and stability related to a pipeline, canal and/or pumping intake station, there is no need to include environmental tests that could needlessly result in finding pesticides that should be all over the delta wherever farming has occurred and that then might have to be reported.**
   a. **Will DWR remove the three environmental tests including: 1)TPH-G, D, MO; 2) CAM-17 + Hg; and 3) Pesticides?**
   b. **Will a statement be inserted that no other specific environmental testing will be done?**
5) **Drilling in the toe of the Levees**
   a. **Will DWR be required to modify drilling sites in the toe of the levee of the Sacramento River to comply with the court order quoted below? This specifically would require moving the five sites currently slated for the toe of the Sacramento River levee in reclamation district #744.**

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. <u>There shall be no digging, hand auger, or drilling on or within 100 feet of the base of a levee.</u> 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."

6) **DWR Protocols that haven't been addressed:**
   a. **How DWR makes sure the top 10 feet of soil is restored to as it was including stopping the bentonite grout or well casing?**
   b. **How all damages to our property if any are restored?**
   c. **How damage to drinking water if any would be handled and restored?**
7) **Drilling Schedule**
   a. **Can DWR do the drilling in the late August to October time frame to miss the probable farming schedule rather than May as currently planned?**

E) **As I look at the Draft Resolution of Necessity language, I see no place where any of the requirements as to what DWR may or may not do are listed. The Temporary Easement document that I have been provided by DWR does have some of the specifics and could provide a good place to contain those requirements. (I did submit my recommended changes to the Commission in that document for the October hearing.) However, if we don't sign the Temporary Easement we have very little if any official limitations as to what can and cannot be done by DWR. I respectfully request, that the Resolution of Necessity be required to have language in it similar to what is found in the Temporary Easements so we landowners can actually know what has been agreed to and what DWR can and can't do. Just as a very simple example, DWR has talked about hand augering the top ten feet of soil but I don't see it anywhere except in the Temporary Easement which isn't in the language of the Resolution of Necessity you are poised to approve.**

I actually look forward to getting some official resolution to some of the items mentioned above so that I wouldn't have to keep bringing up so many points each time. Perhaps that is unrealistic on my part but that is why I am trying to get this document to you so soon after the October hearing.

Thanks for your consideration and I look forward to your response.

Sincerely,

Peter W. Stone

Peter W. Stone

DEPARTMENT OF WATER RESOURCES
CALIFORNIA WATER COMMISSION
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

September 27, 2011

Peter & Karen Stone
8941 River Road
Sacramento, California 95832-9714

Subject: Notice of Intent to Adopt Resolution of Necessity

On October 19, 2011 beginning at 1:00 PM, the California Water Commission (Commission) will consider a request by the Department of Water Resources (DWR) to adopt a Resolution of Necessity that will authorize the State of California to acquire property. You are being notified as the owner of this property, or an interest therein, pursuant to California Code of Civil Procedure, Section 1245.235. You and/or your representative are invited to attend the Commission meeting and have the Commission give fair consideration to your testimony.

California Water Commission October 2011 Meeting

Date: October 19, 2011
Time: 9:00 AM *
Location: Resources Building Auditorium
1416 Ninth Street, First Floor
Sacramento, California 95814

* NOTE: The Water Commission meeting will begin at 9:00 AM to consider other Commission business. The agenda items on the proposed Resolution of Necessity actions will be heard beginning at 1:00 PM. A copy of the full agenda will be posted at www.cwc.ca.gov beginning October 7, 2011.

DWR proposes to acquire Parcel No. DCAP-110 (Sacramento County Assessor's Parcel Number 119-0230-009-0000) through the exercise of the power of eminent domain for the Geotechnical Investigations in support of the Bay Delta Conservation Plan EIR/EIS. Consistent with the Commission's Procedure for Resolutions of Necessity, this is your second advance notice regarding these proceedings.

California Code of Civil Procedure, Section 1240.030, provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

(1) The public interest and necessity require the proposed project;

(2) The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury;

(3) This property is necessary for the project; and

(4) An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

At its meeting on October 19, 2011, the Commission intends to decide whether the above conditions have been met concerning your property and, if so, whether to adopt a Resolution of Necessity ("Resolution"). A Resolution, if adopted, will constitute official authorization for DWR to acquire the property, or property interest therein, by exercise of the power of eminent domain.

A map and legal description of the property that is the subject of this Resolution are enclosed with this notice and marked "Exhibit A" and "Exhibit B," respectively.

The property rights to be acquired are:

Permanent Non-Exclusive Easement:	64 square feet
Temporary Construction Easement:	40,000 square feet
Temporary Access Easement:	19,200 square feet

You are invited to appear before the Commission to comment on the four findings necessary for the proposed Resolution of Necessity. In lieu of personally appearing before the Commission at its meeting on October 19, 2011, the Commission will consider any written comments you may wish to submit pursuant to this Notice. We request written comments be filed with the Executive Officer of the Water Commission in Sacramento at least 24 hours prior to the hearing.

Please send any written comments or requests to: Susan Sims, Interim Executive Officer, California Water Commission, P.O. Box 942836, Sacramento, CA 94236-0001 or by email to cwc@water.ca.gov.

The Commission must adopt a Resolution of Necessity before an eminent domain proceeding can be commenced. Should the Commission adopt the Resolution, it is anticipated that DWR would commence eminent domain proceedings in the Superior Court of Sacramento County. In any such eminent domain proceeding, the amount of just compensation would be determined at the time of trial.

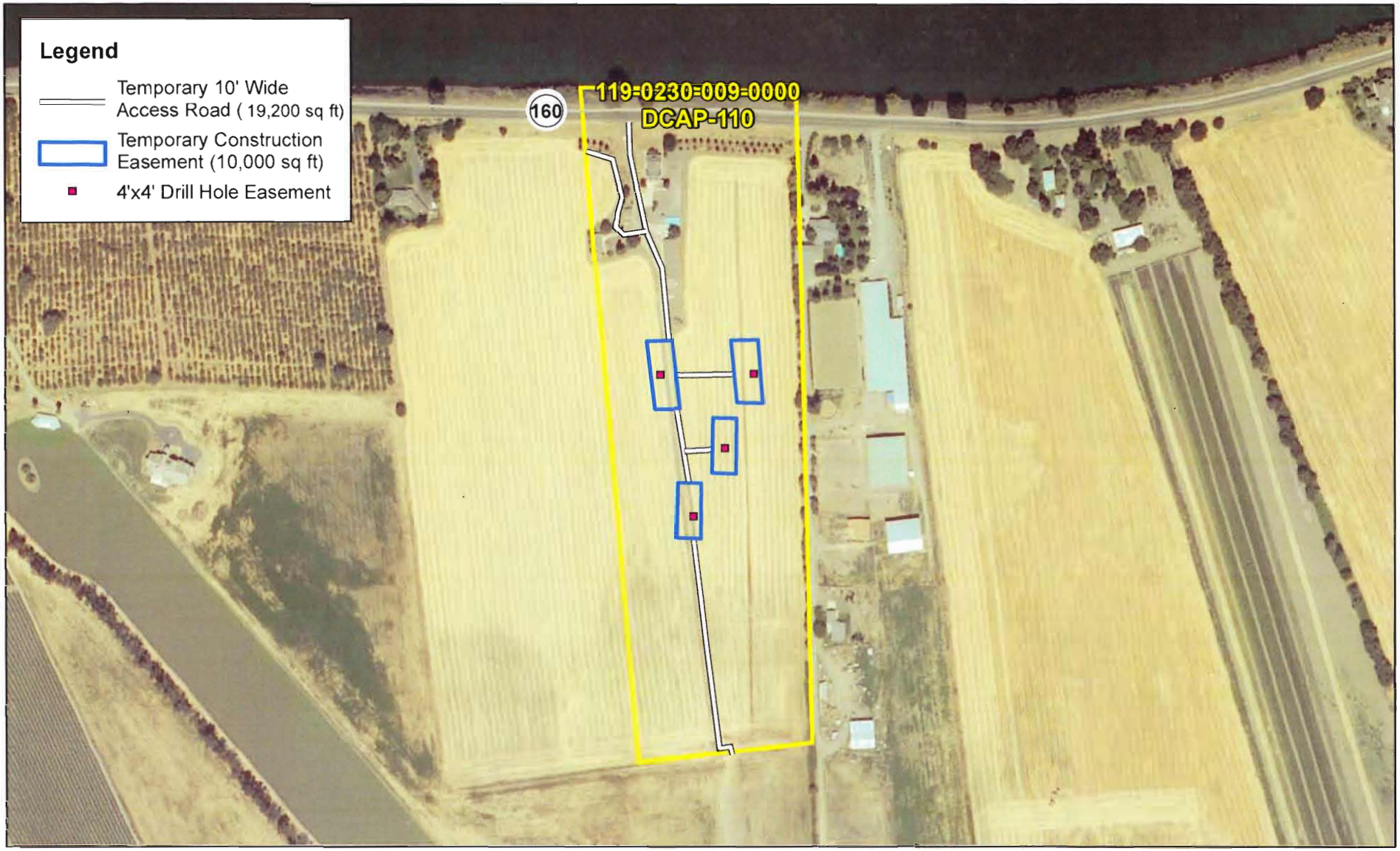
If you have any questions regarding this matter, please call Allan Davis, Supervising Land Agent, Division of Engineering, DWR, at (916) 952-2779 or Rachel Ballanti, Policy Analyst, California Water Commission at (916) 653-8517.

Sincerely,

Susan Sims
Interim Executive Officer

Enclosures

cc: Allan Davis, Supervising Land Agent
Department of Water Resources
Division of Engineering, Real Estate Branch
1416 Ninth Street, Room 425
Sacramento, California 95814



Sacramento County

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

DCAP-110

UNIT A

A permanent non-exclusive easement for drilling purposes, over, upon, under and through the following described parcel of land, being all that portion described as Parcel B, as shown on Parcel Map entitled "Tract 10, 23 and a Portion of Tract 11 of Reclamation District 744, a Portion of Sections 26 and 27, Township 7 North, Range 4 East, Mount Diablo Base and Meridian", recorded May 12, 1977 in Book 32 of Parcel Maps, at Page 10, Sacramento County Records, and more particularly described as follows:

Four 4 foot by 4 foot locations as shown and delineated on attached Exhibit "A".

UNIT B

TOGETHER WITH temporary construction easements 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.

Kristopher Klima
LS 8602 7/28/11

LICENSED LAND SURVEYOR
Kristopher Klima
8602
STATE OF CALIFORNIA

EXHIBIT B