AGENDA ITEM NO. 27
The Michael G. Leary Trust; Michael G. Leary, Trustee; Dennis Leary, Trustee

GEOTECHNICAL EXPLORATION
NOVEMBER 9, 2011

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.	**27.**
LAND OWNER	**Michael Leary**
DWR PARCEL NO.	**DCAP-191**
APN	**142-0060-008**
EXPLORATION NO.	**DCA-CPT-033** **DCA-DH-033**
FACILITY	**Within Proposed Footprint of Construction Shaft/ Tunnel**
METHOD	**CPT/DH**
DEPTH	**200/300**
REMARKS	**ICF-Pipeline-Tunnel Option; the proposed boring/CPT are located along the tunnel alignment and at one of the construction shaft immediate south of the Sacramento River. The location of these CPT/DH are essential to allow the collection of the geologic data to help identify impacts on local environmental setting resulting from pipeline-tunnel excavation, the collection of dissolved gas (if any), to determine the optimum tunnel profile along the entire alignment, to address the construction method for tunnel construction shafts and its temporary support during shaft excavation, and to evaluate the potential need and method for soft/weak soft mitigation and improvement.**

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

August 2, 2011

Dennis Leary, Trustee
Dennis Leary Trust
Post Office Box 178
Ryde, California 95680

DWR No.: DCAP-191
County: Sacramento
APN(s): 142-0060-008-0000

Michael G. Leary, Trustee
Michael G. Leary Trust
13376 State Highway 160
Walnut Grove, California 95690-9738

Dear Mr. Leary:

Our records indicate that you are the owner of certain property situated in Sacramento County, identified as Assessor's Parcel No. 142-0060-008-0000. The State of California Department of Water Resources (DWR), proposes to purchase property rights over this property, identified as DWR Parcel No. DCAP-191, 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 foot Permanent Non-Exclusive Easement, a 10,000 square foot Temporary Construction Easement, and a 21,580 square foot 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. 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) 653-7654, toll free at (866) 688-3227, or by email at toneil@water.ca.gov.

Sincerely,

Tom O'Neil
Associate Land Agent

Enclosures

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 Bay Delta Conservation Plan

Parcel No. DCAP-191 (Units A, B, and C)

DENNIS LEARY, AS TRUSTEE OF THE DENNIS LEARY TRUST UNDER AGREEMENT DATED NOVEMBER 19, 1990 AS TO AN UNDIVIDED 88.46% AND MICHAEL G. LEARY, AS TRUSTEE OF THE MICHAEL G. LEARY TRUST UNDER AGREEMENT DATED MARCH 14, 1996 AS TO AN UNDIVIDED 11.54%, 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 Sacramento, State of California, identified in the records of the Department of Water Resources as:

DWR Parcel No.	Area	Estate
DCAP-191 (Unit A)	16 square feet	Permanent easement
DCAP-191 (Unit B)	10,000 square feet	Temporary easement
DCAP-191 (Unit C)	21,580 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.)

DCAP-191

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 in DEED recorded in Book 19960110 Page 15, in the office of the County Recorder of Sacramento, State of California, on January 10, 1996, and more particularly described as follows:

One 4 foot by 4 foot location as shown 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.

Kristopher Klima
LS 8602

7/28/11

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)

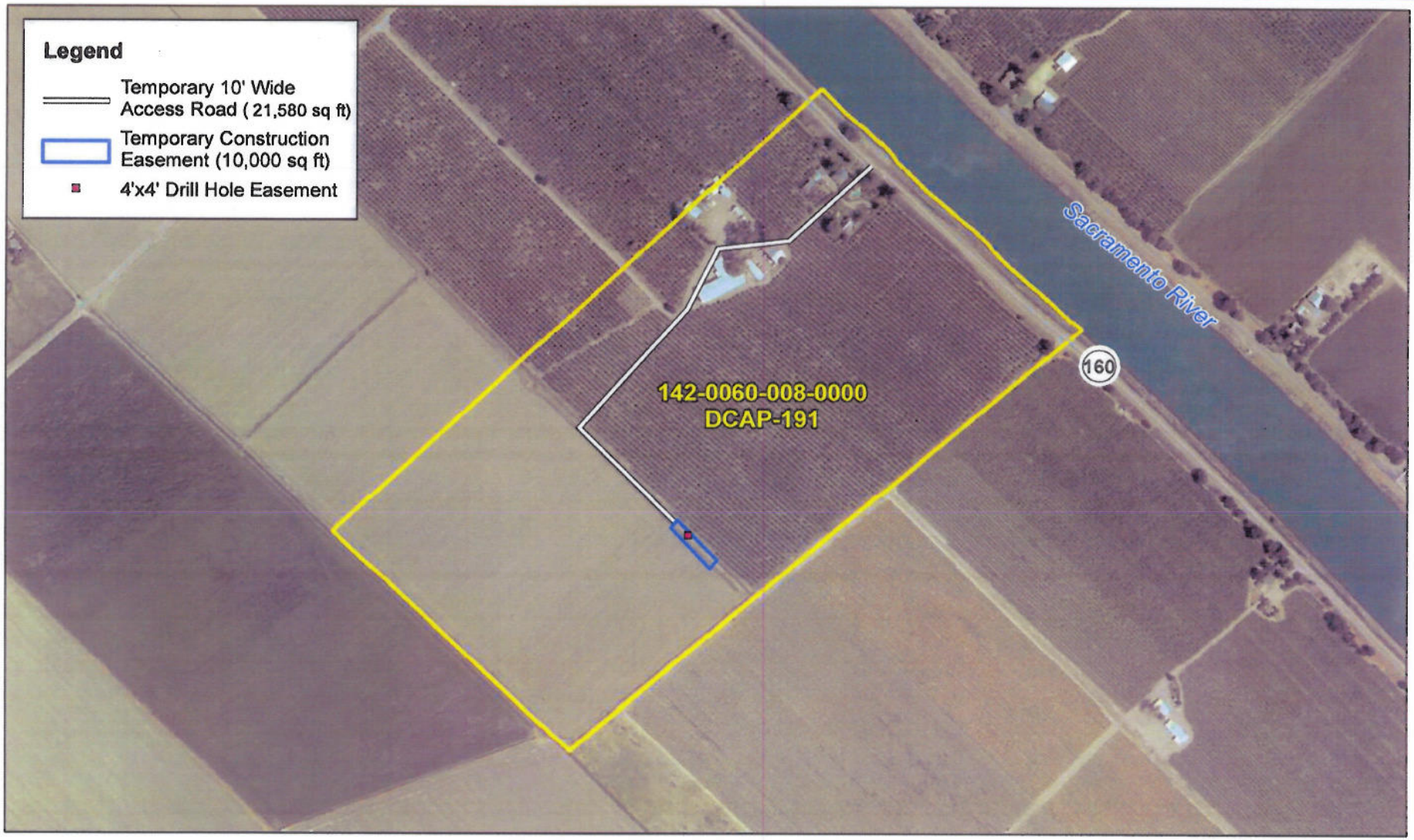
This Is To Certify, That the State of California, grantee herein, acting by and through the Department of Water Resources, hereby accepts for public purposes the real property, or interest therein, described in the within deed and consents to the recordation thereof.

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

_____
Director of Water Resources

By _____

_____
Attorney in Fact



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

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

RON #: 2011-28
Project: Geotechnical Activities in support of the Bay Delta Conservation Plan (BDCP)
APN: 142-0060-008-0000 (Sacramento County)
DWR #: DCAP-191
Owner: **Michael G. Leary Trust, et al.**

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	21,580 sq. ft.	Temporary Access Easement

Parcel Information

Current Use: Mixed use (Pear Orchard, Irrigated Field Crops, residential structure and various agricultural support structures)
Zoning: AG 80 DW (Agriculture, 80-acre minimum, Delta Waterways Combining Zone)
Date of First Written Offer: August 2, 2011
Amount of Agency's Latest Written Offer: Offer made pursuant to approved staff appraisal.
Amount of Owner's Latest Counteroffer: 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, referral to AG letter (7/07/10, 8/12/10, 9/03/10, 9/10/10, 1/27/11, and 2/02/11).

TELEPHONE CALLS (3)

- Left messages for owner. (8/03/10 and 8/05/10)
- Conversation with owner regarding TEP; owner advised DWR he was represented by counsel. (9/03/10)

SITE VISITS (1)

- Conducted site visit for general observation and verification of land use. (10/07/10)

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 (11)

- Notice to Appraise Letter, First Written Offer, follow-up letters, invitations to Commission meeting, Temporary Easement Alternative, Notices of Intent to Adopt Resolution of Necessity, and Letter providing clarification regarding permanent easements and hazardous materials, Letter addressing concerns and encouraging negotiations (5/23/11, 8/02/11, 8/22/11, 8/30/11(two different letters), 9/06/11, 9/09/11, 9/27/11, 10/13/11, 10/25/11 and 11/04/11).

TELEPHONE CALLS (9)

- DWR called and left messages for owner. (8/04/11, 9/30/11 and 10/31/11)
- DWR called and spoke with owner; discussed the project, the FWO, proposed revisions to contract, to set up a meeting, to confirm DWR's compliance with owner's request to move drill hole, and the provide notice of RON being removed from October hearing. (8/18/11, 9/30/11, 10/12/11, twice on 10/17/11, and 10/24/11)

SITE VISITS (1)

- DWR met with owner at subject parcel; discussed the temporary easement contract, asked owner again for suggested revisions, and discussed moving the proposed drill hole; owner to provide suggested revisions to the temporary easement contract. (10/03/2011)

Areas of Main Concern to Owner and DWR's Response

- **Owner expressed concern with the proposed drill locations and suggested alternate locations.**

  DWR complied with owner's request to move drill locations.

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.