

CALIFORNIA WATER COMMISSION

Additional Information for the Commission on Delta Habitat Conservation and Conveyance Program Geologic Exploration Activities

November 16, 2011

INTRODUCTION OF STAFF

PURPOSE OF THIS PRESENTATION

- Declaration of Richard Sanchez: Covers the findings required to adopt a Resolution of Necessity; status legal descriptions; temporary versus permanent easements; status of funding; and hazardous materials testing.
- Other Issues: Contact with Reclamation Districts, Status of CEQA Case,

Facts Supporting Finding No. 1: The Public Interest and Necessity Require the Project for Engineering Geotechnical Studies.

- The proposed engineering geotechnical studies are in support of the DHCCP and Bay Delta Conservation Plan (BDCP).
- These studies are necessary to investigate and determine the best alternatives for Delta water conveyances and other conservation measures.
- The data gathered is required before some federal permits may be issued for the BDCP.
- Inability to access the properties for the geotechnical investigations will cause critical delays in completing studies, which will result in delays in conducting the analysis necessary to complete the environmental documentation process and secure permits.

Facts Supporting Finding No. 2: The Project and Acquisitions Are Planned and Located In a Manner that Is Most Compatible with the Greatest Public Good and Least Private Injury.

- The Geotechnical Exploration and Supplemental Staff Report exhibits in your packets identify the properties with geotechnical investigation sites, the project reason for choosing each site, and considerations for reducing impacts to people and private property. More detailed information will be provided when we discuss individual properties.

Facts Supporting Finding No. 3: The Easements To Be Acquired are Necessary for the Project.

- The Declaration outlines the general process for selecting sites.
- The Geotechnical Exploration exhibit includes a chart identifying each proposed hole and specifying why the locations were chosen.
- Regarding the temporary versus permanent easement issue, based upon our reading of the Superior Court's Order denying DWR's request for geotechnical studies, DWR believes that a temporary easement would be an insufficient property right to place permanent bentonite backfill under the court's reasoning. However, upon completion of DWR's geotechnical investigation on the property, DWR will quitclaim its permanent easement in favor of the landowner(s).

Facts Supporting Finding No. 4: The Written Offer to the Owner of Record Has Been Made.

- Copies of the offers submitted to the landowners of the properties presently before the Commission are included in the attachments to the Declaration.
- Legal Descriptions are included with each offer as well as in the letter to owners notifying them of the Commission meetings, and in the Resolution of Necessity.

Project Funding

- Under the funding agreements, the Department bills certain state and federal water agencies via the State Water Project Annual Statement of Charges. The Department obtained through the SWP Annual Statement of Charges all the funds necessary to cover costs of this work.

Hazardous Materials Testing Is Necessary.

- The testing to be conducted on the soil samples removed from the properties would help identify the presence of chemical substances. Any potential soil contamination must be considered because the discovery of hazardous materials can impact alignment selection, schedule, and increase costs. However, no testing for pesticides will be conducted unless there are indicators (dead vegetation, crusting, discolored soil, odors, etc.) in the immediate area.
- DWR will be responsible for the proper handling and disposal of materials that DWR removes from the property as part of the geotechnical investigation. Under state, federal, and local laws, parties responsible for any hazardous materials preexisting DWR's activities on the property may include current or prior owners, operators, generators, and transporters.

DWR's Authority to Acquire Property

- DWR has covered the authority issue extensively in prior meetings. However, a summary of DWR's authority for the project is included in your packets.

Coordination with the Reclamation Districts

- DWR staff and the program's public outreach consultants (URS) have been keeping local Reclamation Districts informed of our geotechnical activities within their jurisdictions.

Program Environmental Documentation (Initial Study, Mitigated Negative Declaration, Notice of Determination)

- DWR issued a Notice of Intent (Supplemental) on July 1, 2010 and approved a final Mitigated Negative Declaration (MND) on September 23, 2010.
- As a CEQA responsible agency, the Commission would be relying on DWR's Mitigated Negative Declaration when making its decision on whether to adopt a Resolution of Necessity.
- If the Resolution of Necessity is adopted, the Commission would issue its own Notice of Determination (NOD).

Sacramento County Superior Court ruling (CEQA)

- Petitioners Central Delta Water Agency, South Delta Water Agency, RC Farms Inc., and Reclamation District 999 challenged the adequacy of DWR's Initial Study and Mitigated Negative Declaration prepared and adopted by DWR for its project consisting of overwater and land geotechnical studies investigating the engineering properties of soils within the Delta.
- The Court rejected Petitioners' argument that the geotechnical studies were part of the BDCP for purposes of environmental review.
- Judge Connelly stated: "...neither the geotechnical studies nor the non-geotechnical studies are reasonably characterized as part of the planning or development phases of the BDCP. DWR has undertaken the studies to gather information and data to be used in planning or development of a water conveyance alternative under the BDCP. The information and data may be necessary to support the planning and development of a water conveyance alternative".
- The Court further found that a MND, not an EIR, was the proper environmental document to be filed under CEQA and that there were no cumulative impacts to the project that were significant and that the MND was properly noticed and circulated.