CALIFORNIA WATER COMMISSION
RESOLUTION OF NECESSITY
STAFF REPORT
January 18, 2012

RON No.: 2012-03

Project: Geotechnical Activities in support of the Bay Delta Conservation Plan (BDCP)
APN: 156-0010-010-0000
DWR No.: DCAP-287
Owner: Norman J. and Katherine Marks Trust

PROJECT

1. Description of the Project and Explanation of Why the Project is Necessary

The Department of Water Resources is planning to conduct overwater and land geotechnical borings, perform cone penetration tests (CPT) and dig approximately 30 small test pits in order to test soils in the Sacramento-San Joaquin Delta. DWR will investigate the engineering properties of the soils within a narrow corridor transecting the Delta. The purpose of the investigation is to gather necessary geotechnical information to support the preparation of a draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed BDCP and/or preliminary engineering design for the Delta Habitat Conservation and Conveyance Program. This testing is necessary because of the lack of geotechnical data available in the Project location. (Excerpted from the Notice of Determination for the Final Supplemental Initial Study/Mitigated Negative Declaration, dated September 23, 2010 (SCH No. 2010062041))

2. Types of Exploration: Drill Hole, Cone Penetration Testing (CPT), Test Pits

Drill Hole: Time to complete is a maximum of 14 work days (includes site reconnaissance/restoration and drilling). Diameter of hole is approximately 5 inches with a maximum depth of 225 feet. Backfill procedure is a cement bentonite grout. Information to be obtained is continuous soil sample profile, SPT-N values, and strength of material.

CPT: Time to complete is 4-6 hours. Diameter of hole is approximately 2 inches with a maximum depth of 225 feet. Backfill procedure is cement bentonite grout. Information to be obtained is soil behavior type, shear wave velocity, liquefaction potential, and ground water level.

Test Pits: Time to complete is generally 2-4 hours. A typical pit is approximately 3 feet wide, 12 feet deep, and 20 feet long. Backfill procedures are to refill the pit with original material. Information to be obtained includes bulk sample, density testing, and soil profile.

3. Purpose of the Investigation

The purpose of the investigation is to gather necessary geotechnical information to support the preparation of an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed BDCP and the feasibility and preliminary engineering design for the Delta Habitat Conservation and Conveyance Program. These geotechnical explorations are necessary because of the lack of geotechnical data available within the project location. (See attached map labeled as Exhibit A for approximate location of each type of exploration.)

4. Authority to Carry Out the Project for Geotechnical Investigations

A. The Authority of the Department of Water Resources for the State Water Project

Two key sets of statutes authorize and guide the design, planning, construction, operation and maintenance of the State Water Project. These include the Central Valley Project Act, Water Code Section 11100 et seq., and the California Water Resources Development Bond Act, Water Code Section 12930 et seq. (commonly referred to as the Burns-Porter Act).

1. The Central Valley Project Act authorized and approved the Department's participation in a state-wide water development, storage and distribution system. (Water Code Section 11125.) In addition, the Legislature stated that the Department may do such acts and make such agreements as may be necessary and desirable in connection with the construction, operation and maintenance of the water project. (Water Code 11160.)
2. The Legislature amended the Central Valley Project Act specifically authorizing the Feather River Project and diversion works from the Sacramento-San Joaquin Delta. (Water Code Section 11260.) Moreover, the Legislature provided authority to add other units to the water project which are consistent with and which may be constructed, operated and maintained in furtherance of a single unified water system. (Water Code Section 11290.)
3. The Legislature required the Department to design all of the works to be constructed for the project. (Water Code Section 11551.) The Department needs access to the lands where a facility may be located to determine whether the project is feasible and at what cost.
4. The Burns–Porter Act was a General Obligation bond measure that provided funding for the initial construction of the State Water Project and provided additional specific and general authority regarding the water project. For example, the Burns-Porter Act defined "State Water Facilities" to include an aqueduct system to transport water from or near the Delta, including intake and diversion works, conduits, tunnels, siphons, pipelines and pumping systems. (Water Code Section 12934(d).) The definition of "State Water Facilities" also includes master levees, control structures, channel improvements and appurtenant facilities in the Delta for water conservation, water supply in the Delta, transfer of water across the Delta, flood and salinity control and other functions. (Water Code Section 12934(d)(3).)

B. The Department's Authority to Acquire Interests in Real Property

The Central Valley Project Act and other statutes create the Department's authority to acquire the necessary interests in real property for the water project.

1. For the purpose of constructing the water project, the Department may acquire whatever interests in real property the Department determines to be required and necessary for the construction of the project. Water Code Section 11575. When the Department is unable to acquire the necessary property by agreement with the owner, the Department may exercise the power of eminent domain to acquire the property if the project for which the property is being acquired has been authorized and funds are available. Water Code Sections 11577, 11580.
2. In addition, other provisions of law authorize the Department to acquire by eminent domain any property necessary for state water or dam purposes. Water Code Sections 250, 253. The authority for the Department to acquire real property for water and dam purposes includes the authority to acquire such property for future needs. Water Code Section 258.
3. The Department has the authority to enter onto property to do studies, examinations, tests, borings, samplings and similar activities related to the uses for which it has the power of eminent domain. Code of Civil Procedure Section 1245.010.
4. The Department is pursuing permanent easements for the geotechnical investigations based on the trial court's determination that the proposed entry was too invasive to allow without the payment of just compensation.

C. The Department Has Ample Authority to Study Water Resource and Related Issues

The Department has numerous bases of specific and general authorities to study a wide variety of water resource project related issues; a few of these are described below:

1. The Department may carry our surveys and investigations into matters relating to the water resources of the State. Water Code Section 225. The Department has authority to investigate conditions of the quality of all waters within the state and may recommend steps which might be taken to improve or protect the quality of such waters. Water Code Section 229. One of the purposes of the BDCP and DHCCP study efforts is to identify a project that will protect the quality and reliability of the water supply for the State Water Project, while improving Delta habitat.
2. The Department is charged with the evaluation of the potential impacts on water supplies derived from the Delta from subsidence, earthquakes, floods, changes in precipitation, temperature and ocean levels (collectively climate change variables), and combinations of these kinds of occurrences. Water Code Section 139.2.
3. The Department, in cooperation with the Department of Fish and Game, is charged with determining the principal options for addressing various Delta problems, such as: the potential disruption of water supplies; improving quality of drinking water; reducing salinity; maintaining Delta water quality; preserving Delta islands; and protecting infrastructure, including levees. Water Code Section 139.4.

4. The Sacramento-San Joaquin Delta Reform Act of 2009 provided additional direction and authority to study Delta improvements, including the Bay Delta Conservation Plan (BDCP). Water Code Section 85320. This Act required the Department to study and analyze a reasonable range of Delta conveyance alternatives, including the through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines. (Water Code Section 85320(b)(2)(B).)
5. The Water Resources Law of 1945 provides various specific and general authority to the Department for investigating potential water resource projects:
    a. The Department may conduct investigations in any part of the State. (Water Code Section 12606.)
    b. The Department has the power and duty to make necessary studies and surveys, make investigations and prepare plans and estimates of costs and benefits of proposed water resources projects. (Water Code Section 12609.)
    c. The Department may conduct investigations of the water resources of the State, and formulate plans for the control, conservation, protection and utilization of water resources. (Water Code Section 12616.)
    d. The Department may investigate, conduct surveys and studies, prepare plans and estimates and produce reports concerning control, conservation, protection and utilization of water resources, including recommendations for plans and projects. (Water Code Section 12617.)
    e. The Department may recommend the construction of any water resource project and the amount of funds that should be allocated for such a project. (Water Code Section 12618.)
    f. It is the Legislature's intent that the Department shall investigate all phases of any proposed water project so that the public and the Legislature may have the benefit of the investigations and recommendations for such projects in order to assure the fullest development of the water resources of the State. (Water Code Section 12627.)

D. FUNDING: Under executed funding agreements for the BDCP and DHCCP, the participating State Water Contractors and the San Luis & Delta Mendota Water Authority have provided funding for the program, including geotechnical explorations.

Conclusion

The Department's "project" for the geotechnical investigations of Delta soils is an authorized activity and "project" for which funding is available. Therefore, the Department may exercise eminent domain pursuant to Water Code Sections 250 and 11580.

STATISTICS

As of January 11, 2012						
# of Parcels to Acquire	# of Parcels Acquired	# of RONs Acquired	Remaining Parcels to Acquire	# of Owners to Appear	# of Owners to Settle	Remaining Number of Owners to Appear
59	3	21	35	46	3	24

PARCEL INFORMATION

1. Detail Parcel Description:

   The subject property is a 40± acre rectangular shaped parcel currently improved with a two-story residence, a detached garage with possible in-law quarters, solar panels, an agricultural support building, and is currently planted with a cherry orchard. The property is located in an unincorporated area of Sacramento County, adjacent to the Sacramento River and one mile west of Walnut Grove. The property fronts Isleton Road, a county maintained two-lane asphalt road servicing the area.

   Current Use: Orchard
   Zoning: AG 40 (Agriculture, 40-acre minimum, Delta Waterways Combining Zone)

2. Status of Parcel:

   Owner is currently engaged in negotiations with DWR. Owner has requested tenant's involvement due to concerns regarding potential damages to the cherry orchard and irrigation system. DWR has scheduled an on-site meeting with the owner and tenant to review concerns.

3. First Written Offer (FWO):

- Date of FWO: September 23, 2011
- Amount of Agency's Latest Written Offer: Offer made pursuant to approved staff appraisal.
- Amount of Owner's Counteroffer: None
- Rights Sought:

Parcel Number	Area	Rights to be Acquired
Unit A	32 sq. ft.	Permanent Non-Exclusive Easement
Unit B	10,000 sq. ft	Temporary Construction Easement
Unit C	16,080 sq. ft	Temporary Access Easement

4. Location:

- The attached Exhibit A shows the parcel boundary and approximate location of the rights to be acquired.

- DWR proposes to conduct two (2) CPT and two (2) drill hole within the two 4' x 4' permanent easement areas. The proposed drilling activities are necessary as the subject property lies within the footprint of the Pipeline/Tunnel Option. The geologic data collected will help identify impacts on the local environment and community as a result of the tunnel excavation and will help in determining the optimum tunnel profile along the proposed alignment. The data collected will also address the construction method for tunnel construction shafts and its temporary support during shaft excavation.
- To minimize impacts on agricultural operations, the proposed drill holes are located at the southern boundary of the property on an interior agricultural road.

PROPERTY OWNER

1. A listing of owner's primary concerns and DWR's response:

   Owner expressed concern regarding potential damages to the cherry orchard and irrigation system due to drilling activities. DWR informed owner that DWR will make every effort to avoid damaging orchard and the irrigation system. If any damages occur due to DWR's actions, DWR will pay for damages.

2. A description of any design or right of way modifications suggested by the owner, including DWR's opinion on the feasibility of these suggestions and the basis for DWR's opinion (why they are not feasible):

   Owner did not provide any design modifications for DWR to consider.

3. A description of official contacts or attempted contacts with the property owner (or representative) involving acquisition and formal offers:

- July 2010: Temporary Entry Permit was mailed. Phone calls were made and letters were sent. TEP was not signed.
- September 2011: Mailed First Written Offer to secure permanent and temporary easements for geotechnical activities. To date eight (8) calls were made in which four messages were left and four calls resulted in conversations with the owner; seven (7) follow up letters have been sent; one (1) site visit.
- October 13, 2011: Letter mailed informing owner of the temporary easement alternative.

4. A description of alternatives to the proposed taking that have been considered by DWR:

- Temporary Entry Permit requested. (July 1010)
- Permanent and Temporary Easements requested. (September 2011)
- Right of Way Contract for Temporary Easement offered. (October 2011)

For further information please contact Allan Davis at (916) 952-2779 or by email at aldavis@water.ca.gov.

Temporary 10' Wide Access Road (16,080 sq ft)

Temporary Construction Easement (10,000 sq ft)

4'x4' Drill Hole Easement

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

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

APN:156-0010-010

PERMANENT NON-EXCLUSIVE EASEMENT
(TO THE STATE)

Project Bay Delta Conservation Plan

Parcel No. DCAP- 287 (Units A, B, and C)

Norman J. Marks and Katherine A. Marks, Trustees of the Norman J. and Katherine A. Marks Trust DTD 10/1/89, 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-287 (Unit A)	32 square feet	Permanent easement
DCAP-287 (Unit B)	10,000 square feet	Temporary easement
DCAP-287 (Unit C)	16,080 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-287

UNIT A

Being a fractional part of Swamp Land Survey No. 328 in "Projected" Section 34, Township 5 North, Range 4 East, M.D.B &.M., County of Sacramento, being a portion of that land described in Quitclaim Deed recorded in Book 20010713, Page 1791 Official Records of Sacramento County, State of California, described as follows:

A permanent non-exclusive easement for drilling purposes, over, upon, under and through that parcel of land more particularly described as follows:

Two 4 foot by 4 foot locations as 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.

LICENSED LAND SURVEYOR
Kristopher Klima
8602
STATE OF CALIFORNIA

9/9/2011

KRISTOPHER KLIMA
LS 8602

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
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DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM EXHIBIT A