

# NORTH DELTA WATER AGENCY

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Melinda Terry, Manager

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January 18, 2012

Anthony Saracino, Chair  
CA Water Commission  
1416 – 9<sup>th</sup> Street  
Sacramento, CA 95814

SUBJECT: Inadequacy of Information for Resolutions of Necessity

Dear Mr. Saracino:

I submit the following written comments as a follow-up to the testimony I provided at today's hearing on properties in the North Delta to be condemned pursuant to Resolutions of Necessity adopted by the Commission for the support of the BDCP.

As I mentioned, we would like DWR to provide the Commission more detailed documentation of the legal descriptions of property to be condemned as follows: the exact location and size of the project activity to be conducted; the proximity of each project activity location to each other if there are more than one on the parcel; as well as a description and documentation of the analysis of the necessity of each location; and the alternative locations that were considered before settling on the locations being proposed in the resolutions.

As an example of the inadequacy of the information provided by DWR upon which the Commission is being asked to make a decision, I will use Agenda Item #20, the Elliott Family property, APN# 132-0120-001-0000, to illustrate my claim. The staff report for this property, Resolution of Necessity No. 2012-07, gives a very vague and incomplete description of the total number of individual activities to be conducted or their exact locations.

When viewing the map provided, there are a total of ten locations identified as having a Temporary Construction Easement of 10,000 square feet, each with a 4X4 Drill Hole easement in the middle. However, Item #1 in the staff report, "Description of the Project and Explanation of Why the Project is Necessary" fails to provide any description of the number of geotechnical borings (ten according to the map), fails to identify the locations of the 30 small test pits, and fails to identify the number and location of cone penetration tests (CPT) to be performed on the property.

The staff report project description also fails to describe the proximity of each of these borings, test pits, and CPTs to each other, nor does it describe why each of them is "necessary." There

should be a description and documentation of why one would be insufficient for purposes of preparing an EIR/EIS and preliminary engineering. No such documentation has been provided to the landowners or the Commission, making a decision on “necessity and least private harm” for a Resolution of Necessity impossible.

Each of the activities to be conducted on the Elliott properties should be identified as separate and distinct locations. So, if there are ten borings then they would be identified as A-J with their specific location on the map, the thirty test pits identified as 1-30 at their locations on the map, and the number of CPTs should be identified with Roman numerals at their proposed locations on the map, as well as their proximity to each other, and a description of why each location is “necessary” rather than relying one location, one boring, one test pit, and one CPT per parcel.

We are told that these explorations are needed to prepare an EIR/EIS and/or for *preliminary* engineering design. However, we would argue that the number of geo-tech borings, test pits, and CPTs for this individual property appears to be more than what is necessary for “*preliminary*” engineering or to prepare an EIR/EIS, and seem more in line with activities that normally are conducted once the “Project” which is identified as the BDCP is approved and permitted. Therefore, the action being requested under this Resolution is excessive, unnecessary, injurious to the landowner, and a gross abuse of discretion by DWR. The same can be said for the other Resolutions which have already been approved or currently proposed to the Commission.

The observations I have made since attending all of your meetings regarding these Resolutions is that DWR has a pattern of providing the Commission incomplete, inadequate, and incorrect documentation, while blaming their short timeline and project critical deadlines as the reasons for not having all of the i’s dotted and t’s crossed. As the saying goes, “Failure to plan on your part does not constitute an emergency on my part.” If the Commission considers DWR’s deadlines as a reason for approving Resolutions without complete and inaccurate information, then it will be violating its statutory mandates and any meaningful due process for landowners. We would encourage you to take all of the time necessary to verify you have all of the information needed to make the statutory findings for approval of these Resolutions.

In addition, we would argue that the Commission should require a detailed description of the timeline, staging area size, hours of operation, types and numbers of vehicles and equipment, and number of personnel to be on the property for the specified number of days.

Finally, we would like to point out that we cannot find any prior documents related to the Commission’s activities and request the Commission’s website be improved to provide easy access to letters written by the public and all documents associated with the Resolutions of Necessity.

Sincerely,



Melinda Terry, Manager