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**DECLARATION OF RICHARD SANCHEZ
IN SUPPORT OF DEPARTMENT OF WATER RESOURCES'
REQUEST FOR RESOLUTIONS OF NECESSITY**

5 I, RICHARD SANCHEZ, make this declaration in support of the STATE OF
6 CALIFORNIA, DEPARTMENT OF WATER RESOURCES' (DWR's) requests for adoption of
7 Resolutions of Necessity before the California Water Commission. Upon information and belief,
8 I attest to the matters contained in this Declaration and, if called as a witness, I could and would
9 testify completely thereto.

10 1. I have been employed by the State of California and DWR for approximately 33
11 years as an engineer, and I am presently the Chief of the Division of Engineering and DWR's
12 Executive Manager for the Delta Habitat Conservation and Conveyance Program (DHCCP). I
13 oversee the DHCCP budget, schedule, engineering, real estate activities, including geotechnical
14 investigations and feasibility cost estimates.

15 2. In reference to the California Water Commission's February 15, 2012 Meeting
16 Agenda (Attachment 1), information regarding agenda items 6 through 25 is attached to this
17 Declaration. The information of each referenced agenda item is divided into sections and
18 includes the following exhibits:

19 A. Geotechnical Exploration (Exhibit A) – This document provides general
20 background on the method used to determine the best location for the drill holes. The table
21 describes the reason the parcel at issue is necessary for the project, the type of exploration to be
22 performed, the relevant proposed facility, the type of drilling for the proposed hole, and the depth
23 of the proposed hole in feet.

24 B. The Offer (Exhibit B) – This document consists of the cover letter,
25 easement deed (including legal description), and map of the proposed acquisition.

1 **Facts Supporting Finding No. 3:**
2 **The Easements to be Acquired are Necessary for the Project.**
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4 **Site Selection**

5 10. Sites were selected with respect to the alignments identified in the Conceptual
6 Engineering Report (CER) and after consultation with members of the DHCCP team, which
7 included staff from the environmental, legal, real estate, engineering, and geotechnical
8 disciplines. The criteria established by the team was to obtain relevant soil information for
9 preliminary and final design of facilities and permitting requirements (US Army Corps of
10 Engineers, DWR Division of Safety of Dams, etc.), to provide consistency with temporary
11 permit language and landowner concerns, to implement and follow required permits, and to
12 minimize overall impacts. A majority of the sites were selected to provide information and data
13 primarily for the intakes, river crossings, Intermediate Forebay, and the Byron Tract Forebay.
14 Additional sites were selected for the Pipeline/Tunnel Option.

15 11. The Geotechnical Exploration (Exhibit A) includes a chart identifying each
16 proposed hole and specifying why the locations were chosen.

17 **A Temporary Easement Would Not Comply with the Superior Court's Ruling**

18 12. DWR initially attempted to gain access for the geological studies by obtaining
19 voluntary temporary entry permits. When that was unsuccessful, DWR sought access through
20 the court-ordered entry process. After Judicial Council coordination proceedings, the matter was
21 venued in the County of San Joaquin.

22 13. In reviewing DWR's request for court-ordered entry to conduct geological testing,
23 our DWR Legal Office has determined that the Superior Court of San Joaquin County found that
24 the evidence supported the following conclusions: 1) DWR needs to conduct the proposed
25 geotechnical activities in order to determine the best feasible alternative for the water

1 conveyance project; 2) the water conveyance project is a matter of public interest; and 3) DWR
2 is authorized to investigate the project. (April 8, 2011 Order at p. 2.) However, the Court denied
3 DWR's request for entry pursuant to the precondemnation statutes (Code of Civ. Proc. §§
4 1245.010 et seq.) on the grounds that the requested entry would amount to an unconstitutional
5 taking of private property.

6 The Superior Court then noted that the geotechnical borings by DWR would remove about 2.04
7 cubic yards of native soil, which would be replaced permanently with the same amount of
8 bentonite grout.

9 14. Based on DWR's Legal Office review, the Superior Court's Order makes no
10 mention of easements whatsoever, permanent or temporary. The permanent nature of the
11 bentonite backfill was a determining factor for the Superior Court in reaching its decision.
12 DWR's Legal Office believes that a temporary easement would be an insufficient property right
13 to place permanent bentonite backfill under the court's reasoning.

14 15. After the Superior Court issued Order, DWR filed a renewal motion requesting
15 two entry days to conduct surveys solely for the purpose of hole placement. Most of the
16 landowners opposed this motion. The Superior Court declined to rule on the motion on the
17 grounds that the matter was stayed pending DWR's appeal of the Order.

18 16. Upon completion of DWR's geotechnical investigation on the property, DWR
19 will quitclaim its permanent easement in favor of the landowner(s).

20 **Facts Supporting Finding No. 4:**
21 **The Written Offer to the Owner of Record Has Been Made.**
22

23 17. DWR has repeatedly attempted to obtain voluntary access to the properties, but
24 consent for entry has not been granted. Attached is The Offer (Exhibit B), an example of the
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1 documents sent to all relevant landowners, which includes the offer, the proposed temporary
2 easement deed, legal description and map.

3 18. True and correct copies of the offer submitted to the landowners of the properties
4 presently before the Commission are included in The Offer (Exhibit B).

5 **Additional Information – Project Funding**

6 19. The Department has entered into funding agreements with State and Federal water
7 agencies to fund the work necessary for collecting information and developing environmental
8 documents for the BDCP, including the studies described in this Declaration. Under the funding
9 agreements, the Department bills these water agencies, which provides for collection of funds in
10 advance of the work. The Department has approved the Task Order describing the geotechnical
11 and survey work that will be conducted on the proposed study areas. In 2011, the Department
12 obtained all the funds necessary to cover costs of this work.

13 **Additional Information – Hazardous Materials Testing**

14 20. The testing to be conducted on the soil sampled removed from the properties
15 would help identify the potential presence of chemical substances. Any potential soil
16 contamination must be considered because the discovery of hazardous materials can impact
17 alignment selection, schedule, and increase costs. No testing for pesticides will be conducted
18 unless there are indicators (dead vegetation, crusting, discolored soil, odors, etc.) in the
19 immediate area.

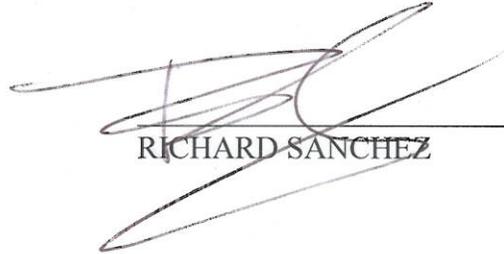
20 21. DWR has conducted numerous drilling activities in the Delta. The results of
21 recent lab testing (soil samples tested over the past three years) have no required any reporting
22 action by DWR. Substances that have been tested have no exceeded the threshold limits
23 established by regulatory departments of the California Environmental Protection Agency.

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1 22. DWR will be responsible for the proper handling and disposal of materials that
2 DWR removes from the property as part of the geotechnical investigation. Under state, federal
3 and local laws, parties responsible for any hazardous materials preexisting DWR's activities on
4 the property may include current prior owners, operators, generators, and transporters.
5 Because DWR does not fall into any of these categories, DWR cannot accept responsibility for
6 preexisting hazardous materials on the property, if any.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed at Sacramento, California, this 8th day of February,
9 2012.

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RICHARD SANCHEZ

The Department of Water Resources'
Legal Authority to Conduct Geotechnical Investigations

I.

General Authority for the State Water Project

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

The Central Valley Project Act authorized and approved the Department's participation in a state-wide water development, storage and distribution system. (Wat. Code § 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. (Wat. Code 11160.)

The Legislature amended the Central Valley Project Act to provide 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. (Wat. Code § 11290.)

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. (Wat. Code § 12934(d).) "State Water Facilities" also included 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. (Wat. Code § 12934(d)(3).)

II.

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. 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. (Wat. Code § 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. (Wat. Code §§ 11577 and 11580.)

In addition, other provisions of law authorize the Department to acquire by eminent domain any property necessary for state water or dam purposes. (Wat. Code §§ 250, 253.)

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 Civ. Proc. § 1245.010.)

III.

The Department Has Authority to Study Water Resource 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:

- A. To carry out surveys and investigations into matters relating to the water resources of the State. (Wat. Code § 225.)

- B. To investigate conditions of the quality of all waters within the state and recommend steps which might be taken to improve or protect the quality of such waters. (Wat. Code § 229.)
- C. To evaluate 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. (Wat. Code § 139.2.)
- D. In cooperation with the Department of Fish and Game, to determine the principal options for addressing various Delta problems, such as: the potential disruption of water supplies; improving quality of drinking water; reducing salinity; maintain Delta water quality; preserving Delta islands; and protecting infrastructure, including levees. (Wat. Code § 139.4.)

Finally, 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). (Wat. Code § 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. (Wat. Code § 85320(b)(2)(B).)