California Water Commission

Resolution No. 2011-28

RESOLUTION OF NECESSITY

A Resolution Determining that the Public Interest and Necessity Require the Acquisition of DWR Parcel No. DCAP-191, a portion of Sacramento County Assessor's Parcel No. 142-0060-008-0000 for the Engineering Geotechnical Project Necessary for Developing Recommendations for the Bay Delta Conservation Plan, a Public Use.

WHEREAS, pursuant to California Water Code Sections 250 and 11580, the Department of Water Resources ("DWR" or "Department") has the authority to acquire by eminent domain, in the name of the people of the State of California, any property necessary for state water and dam purposes;

WHEREAS, DWR may commence an eminent domain lawsuit only if the California Water Commission has adopted a resolution of public necessity;

WHEREAS, in order to adopt a resolution of necessity, the California Water Commission must find: (1) that the project for which the property is to be acquired is necessary, and in the public interest; (2) that the property is necessary for the public project; (3) that the project is located in such a manner as to offer the greatest public benefit with the least private detriment; and (4) that an offer to purchase the property required by Government Code Section 7267.2 has been made to the owner of record;

WHEREAS, DWR has prepared an Initial Study and Mitigated Negative Declaration for Engineering Geotechnical Studies for the Bay Delta Conservation Plan and/or Preliminary Engineering Studies for the Delta Habitat Conservation and Conveyance Program (MND) and filed a Notice of Determination (NOD) on September 23, 2010 (SCH No. 2010062041) (collectively referred to hereafter as "CEQA Documents"). The Project Description, taken from the MND, is as follows:

> The Department of Water Resources (DWR) plans to do further geotechnical information gathering in the Delta. The work includes overwater and land geotechnical borings, cone penetration tests (CPT) and small test pits in order to investigate soils in the Sacramento-San Joaquin Delta between 2010 and 2012. This testing is necessary because of the lack of geotechnical data available to the Department of Water Resources in the relevant area for evaluation possible conservations measured in the Delta. The Department of Water Resources is tasked with providing information for the Bay Delta Conservation Plan for developing conveyance alternatives and the development of the broader goals for Delta improvements addressed by the Delta Stewardship Council for its Delta Plan. Work will continue under this process to gather geotechnical data on proposed conveyance alternatives, and the additional geotechnical exploration

proposed in this project will aid the Department of Water Resources in meeting its statutory responsibilities with respect to evaluating the feasibility of the proposed conveyance alternatives.

The Department of Water Resources' geotechnical staff and/or its consultants will investigate the engineering properties of the soils in the Delta along various alignment options, including auxiliary structures, as well as the proposed intakes and the proposed forebays for all options. 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 Bay Delta Conservation Plan and/or for preliminary engineering studies for the Delta Habitat Conservation and Conveyance Program. The Department of Water Resources requires Delta soils and groundwater information for conceptual design and construction costs of conveyance facilities and to identify possible constraints and feasibility in developing conveyance alternatives.

WHEREAS, certain real property located within Sacramento County, California, a legal description of which is a part of the attached Deed and incorporated herein by this reference ("the Parcel"), is necessary for conducting Engineering Geotechnical Studies to support environmental studies, feasibility studies and preliminary engineering for making a recommendation for the Bay Delta Conservation Plan ("the Plan");

WHEREAS, the Department of Water Resources needs to conduct cone penetration testing, core drilling and test pits as described in the CEQA Documents to study the best feasible alternative for the alternative water conveyance project;

WHEREAS, DWR has considered the need to acquire Permanent and Temporary Easements ("the Easements") for purpose of conducting geotechnical activities;

WHEREAS, DWR has been unable to negotiate the voluntary acquisition of the Easements;

WHEREAS, the California Water Commission has given notice to the Parcel's owner as required by California law;

WHEREAS, a hearing has been held in the manner provided by law, and the persons whose property is to be acquired have been given a reasonable opportunity to appear and be heard before the California Water Commission on the following issues:

a. whether the public interest and necessity require the project for engineering geotechnical studies, as described above;

b. whether the Project and the acquisition of the Easements are planned and located in the manner that will be most compatible with the greatest public good and least private injury;

c. whether the Easements to be acquired are necessary for the Project;

d. whether the written offer required by law has been made to the owner of record; and

e. other matters concerning the authority of DWR to engage in such a project or its right to take.

NOW THEREFORE, BE IT RESOLVED BY THE CALIFORNIA WATER COMMISSION AS FOLLOWS:

1. The Commission has reviewed and considered DWR's CEQA Documents, and hereby:
    a. Adopts the Mitigated Negative Declaration for Engineering Geotechnical Studies for the Bay Delta Conservation Plan and/or Preliminary Engineering Studies for the Delta Habitat Conservation and Conveyance Program;
    b. Adopts DWR's mitigation and conservation measures and best management practices;
    c. Adopts DWR's mitigation and monitoring plan;
    d. Adopts the Department of Water Resources' Survey Protocol for Property to be Accessed as Part of the Engineering Geotechnical Studies for the Bay Delta Conservation Plan and/or Preliminary Engineering Studies for the Delta Habitat Conservation and Conveyance Program;
    e. Adopts the Delta Habitat Conservation and Conveyance Program Steps in Drilling and Soil Logging; and
    f. Determines that the Project would not have any significant environmental effects.

2. The Project for Engineering Geotechnical Studies is authorized pursuant to the Central Valley Project Act and the Burns-Porter Act.

3. DWR has demonstrated that is has sufficient funds available for the Project for Engineering Geotechnical Studies.

4. The public interest and necessity require the Project for Engineering Geotechnical Studies, including the acquisition of the Permanent and Temporary Easements described in the attached Deed as part of the Project.

    The Project for Engineering Geotechnical Studies is planned and located in the manner that will be most compatible with the greatest public good and least private injury.

5. The Easements described in the attached Deed are necessary for the Project.

6. The offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record.

7. DWR has complied with the provisions of the California Environmental Quality Act regarding environmental review of the Project.

8. DWR is hereby authorized and empowered to acquire the Permanent and Temporary Easements through the power of eminent domain, including obtaining an order for prejudgment possession.

9. Commission staff shall have a CEQA Notice of Determination filed with the Office of Planning and Research State Clearing House.

10. Within 120 days of completion of its geotechnical work on the property and at no cost to the landowner, the Department will quitclaim its permanent easement in favor of the landowner or, if no permanent easement has yet been acquired, the Department will abandon its attempt to acquire a permanent easement on the property.

11. DWR shall limit its laboratory testing of soil and water samples to the "Geotechnical Laboratory Testing Methods" and the "Special Laboratory Testing Methods" set forth in the "DHCCP Laboratory Testing Methods, Draft Revision 1, Dated: 6-24-11," except that DWR may also perform one or more of the "Environmental Laboratory testing methods" set forth therein in the event DWR observes on-site indicators in the immediate area of the geotechnical activities (e.g., dead vegetation, crusting, discolored soil, odors, etc.) that indicate the likely presence of above-threshold levels of the constituent or constituents which are the subjects of those testing methods.

PASSED, APPROVED and ADOPTED this 21st day of March 2012, by the following vote:

AYES: _____ ABSENT: _____
NOES: _____ ABSTAINED: _____

Anthony Saracino, Chairperson
California Water Commission

Attest: _____
Executive Officer

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

Temporary 10' Wide Access Road (15,630 sq ft)

Temporary Construction Easement (10,000 sq ft)

4'x4' Drill Hole Easement

Sacramento County

N

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