

**PREPARED FOR THE CALIFORNIA WATER COMMISSION  
AMENDED RESOLUTION OF NECESSITY  
DEPARTMENT OF WATER RESOURCES (DWR) STAFF REPORT – ENCUMBRANCES  
March 20, 2013**

**RON No.:** 2011-28  
**Adoption Date:** November 16, 2011  
**Project:** Geotechnical Activities in support of the Bay Delta Conservation Plan (BDCP)  
**APN:** 142-0060-008-0000  
**DWR Parcel No.:** DCAP-191  
**Owner(s):** The Michael G. Leary Trust, Michael G. Leary, Trustee; The Dennis Leary Trust, Dennis Leary, Trustee  
**Rights to be Acquired:** Permanent Non-Exclusive Easement, Temporary Construction Easement, and Temporary Access Easement

**AMENDMENT PURPOSE**

The purpose of this amendment is to include additional findings in the Resolution of Necessity regarding the impacts of the acquisition on the existing encumbrances as identified in California Code of Civil Procedure Sections 1240.510 and 1240.610.

“Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. Where property is sought to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.” California Code Civil Procedure Section 1240.510.

“Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use the property appropriated to public use if the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated. Where property is sought to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.” California Code Civil Procedure Section 1240.610.

## **PARCEL INFORMATION**

Detailed Parcel Description: The subject property is an 80.6-acre rectangular shaped parcel currently planted to 42± acres of pear orchard, 33± acres of irrigated field crops (IFC), and the rest is improved with a home and various agricultural support buildings. The pear orchard is irrigated through a portable sprinkler system with water received from the property's riparian rights. The subject property is located in an unincorporated area of Sacramento County, adjacent to the Sacramento River, and is northwest of Walnut Grove. The property is along Highway 160, a two-lane county road that services the area.

Current Use: Agriculture – Mixed Use (Pear Orchard, Irrigated Field Drops, residential structure, and various agricultural support structures)

**Encumbrances – Public Use:**

<b>Number Listed on Map</b>	<b>Interest Holder</b>	<b>Depicted on Map?</b>	<b>Description</b>	<b>DWR Impacts</b>	<b>Recommended Determination on CCP 1240.510 and 1240.610</b>
Part I 1-4	Various	No (Affects entire parcel)	Misc. Taxes	None	No Apparent public use implicated <sup>1</sup> . No finding required.
Part I 5	Sacramento County	No	Road purposes	None	(1) DWR will utilize the easement area for access purposes and will not obstruct roadways. Throughout DWR's proposed use the condemned area, the public will continue to have transportation access on streets, roads, and highways. Therefore, DWR's proposed use satisfies CCP 1240.510.  (2) DWR's proposed use will enable the collection of geotechnical data to support the evaluation of potential conveyance facilities in the Delta with respect to maintaining the stability of the Delta's water supply and ecosystem DWR's

<sup>1</sup> Where the phrase of "No apparent public use" appears, it means that based on the information received from the title company the interest does not appear to represent a public use. Therefore, no finding is required.

Number Listed on Map	Interest Holder	Depicted on Map?	Description	DWR Impacts	Recommended Determination on CCP 1240.510 and 1240.610
					proposed use is more necessary than the public use to which the property is already appropriated and, therefore, satisfies CCP 1240.610.
Part I 6	Reclamation District Number 3	No (Affects entire parcel)	Rights to highways, roads, ditches, canals, and levees	None	<p>(1) DWR will utilize the easement area for access purposes and will not obstruct roadways, ditches, canals or levees. Throughout DWR's proposed use of the condemned area, the public will continue to have transportation access on streets, roads, and highways and public access to ditches, canals, and levees. Therefore, DWR's proposed use satisfies CCP 1240.510.</p> <p>(2) DWR's proposed use will enable the collection of geotechnical data to support the evaluation of potential conveyance facilities in the Delta with respect to maintaining the stability of the Delta's water supply and ecosystem DWR's proposed use is more necessary</p>

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					than the public use to which the property is already appropriated and, therefore, satisfies CCP 1240.610.
Part I 7	United States of America; State of California	No (Affects entire parcel)	Rights in and to any portion of said land lying below the mean water line of the Sacramento River	None	No apparent public use implicated <sup>1</sup> . No finding required.
Part I 8	Public	No (Affects entire parcel)	Easements Ingress/egress and public recreation purposes	None	(1) Condemned areas will be thoroughly surveyed once DWR has permission to enter properties to identify the location of existing easement areas. If these surveys indicate that DWR's proposed activities would impair or interfere with the existing easements for ingress/egress and public recreation purposes, DWR will not carry out such activities at the affected location. Therefore, DWR's proposed use satisfies CCP 1240.510.  (2) DWR's proposed use will

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					enable the collection of geotechnical data to support the evaluation of potential conveyance facilities in the Delta with respect to maintaining the stability of the Delta's water supply and ecosystem. These efforts affect the State of California as a whole. DWR's proposed use is more necessary than the public use to which the property is already appropriated and, therefore, satisfies CCP 1240.610.
Part I 9	Unknown	No (Affects entire parcel)	Title defect due to avulsion or accretion	None	No apparent public use implicated <sup>1</sup> . No finding required.
Part I 10	Unknown	No (Affects entire parcel)	Easement for Water Course	None	No apparent public use implicated <sup>1</sup> . No finding required.
Part II 1	Reclamation District Number 3	No (Affects entire parcel)	Agreement for rebuilding of levee	None	No apparent property interest implicated. No finding required.

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Part II 2	PG&E (successor to Great Western Power Company)	Yes	Easement for electrical and communication facilities	None	<p>(1) DWR will avoid any above ground facilities when crossing the easement area. DWR will navigate around any poles or above ground facilities in the existing easement area. Therefore, DWR's proposed use satisfies CCP 1240.510.</p> <p>(2) DWR's proposed use will enable collection of geotechnical data needed to assist decision-makers in considering various alternatives that relate to the feasibility, location, design, construction and cost of water conveyance facilities in the Delta. Such consideration is part of ongoing efforts to maintain the stability of the Delta's water supply and ecosystem in light of threats to stability such as seismic activity and levee failures. These efforts affect the State of California as a whole. DWR's proposed use is more necessary than the public use to which the property is already appropriated and, therefore,</p>

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					satisfies CCP 1240.610.
Part II 3, 4	Sacramento and San Joaquin Drainage District	Yes	Easements for levee maintenance and flood control/water development project	None	<p>(1) DWR will cross over easement area via access road en route to drilling site. DWR's proposed use will have no impact on the easement area used for flood control purposes. Therefore, DWR's proposed use satisfies CCP 1240.510.</p> <p>(2) DWR's proposed use will enable collection of geotechnical data needed to assist decision-makers in considering various alternatives that relate to the feasibility, location, design, construction and cost of water conveyance facilities in the Delta. Such consideration is part of ongoing efforts to maintain the stability of the Delta's water supply and ecosystem in light of threats to stability such as seismic activity and levee failures. These efforts affect the State of California as a whole. DWR's proposed use is more</p>

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					<p>necessary than the public use to which the property is already appropriated and, therefore, satisfies CCP 1240.610.</p>
Part II 5	Sacramento County	No (Affects entire parcel)	C. C. &R's pursuant to a land conservation contract	None following survey.	<p>(1) DWR's proposed use will not change existing land uses or force any land out of agricultural production. Condemned areas will be thoroughly surveyed once DWR has permission to enter properties to confirm existing land uses. If these surveys indicate that DWR's proposed activities would impair or interfere with the existing land uses, DWR will not carry out such activities at the affected location. Therefore, DWR's proposed use satisfies CCP 1240.510.</p> <p>(2) DWR's proposed use will enable the collection of geotechnical data to support the evaluation of potential conveyance facilities in the Delta with respect to maintaining the stability of the Delta's water</p>

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Part II 6	Unknown	No	Financing Statement	None	No apparent property interest implicated. No finding required.
Part II 7	Benton Oil and Gas Company	No (Does not affect parcel)	Easement for Hydrocarbon Pipelines	None following survey.	<p>(1) Condemned areas will be thoroughly surveyed once DWR has permission to enter properties to identify the location of existing utility lines, underground plumbing, etc. If these surveys indicate that DWR's proposed activities would impair or interfere with the existing utilities, DWR will not carry out such activities at the affected location. Therefore, DWR's proposed use satisfies CCP 1240.510.</p> <p>(2) DWR's proposed use will enable the collection of</p>

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					geotechnical data to support the evaluation of potential conveyance facilities in the Delta with respect to maintaining the stability of the Delta's water supply and ecosystem. These efforts affect the State of California as a whole. DWR's proposed use is more necessary than the public use to which the property is already appropriated and, therefore, satisfies CCP 1240.610.
Part II 8, 9	Unknown	No (Affects entire parcel)	Deeds of Trust	None	No apparent property interest implicated <sup>1</sup> . No finding required.
Part II 10	North Delta Water Agency	No (Affects entire parcel)	Subcontract Agreement	None	No apparent property interest implicated <sup>1</sup> . No finding required.

GUARANTEE NO. CAFNT0934-0934-0010-005011229Z-FNTIC-2011-GL  
DATED SEPTEMBER 19, 2011

PART I

1-4. MISC TAXES

5. **RIGHTS** OF THE PUBLIC AND THE COUNTY OF SACRAMENTO OVER THAT PORTION OF SAID PREMISES LYING WITHIN THE LINES OF STATE HIGHWAY 160, ALSO KNOWN AS NO. 24 AND RIVER ROAD, ALSO EASEMENTS FOR UNKNOWN PURPOSES AS DISCLOSED BY SAID ASSESSOR'S PLAT.
6. **RIGHTS** OF THE PUBLIC AND/OR RECLAMATION DISTRICT 3, IN AND TO HIGHWAYS, ROADS, DITCHES, CANALS AND LEVEES EMBRACED WITHIN THE BOUNDARIES OF THE LAND DESCRIBED HEREIN.
7. **RIGHTS** OF THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA IN AND TO ANY PORTION OF SAID LAND LYING BELOW THE MEAN WATER LINE OF THE SACRAMENTO RIVER.
8. ANY POSSIBLE **EASEMENTS** FOR INGRESS AND EGRESS AND PUBLIC RECREATION PURPOSES AND INCIDENTAL USES INCLUDING BUT NOT LIMITED TO PARKING, FISHING, PICNICKING, GENERAL VIEWING, PUBLIC PROTECTION AND POLICING AND EROSION CONTROL.
9. ANY DEFECT OF TITLE TO ANY PORTION OF SAID LAND WHICH HAS BEEN CREATED BY **ACCRETION** CAUSED BY ARTIFICIAL MEANS OR STRUCTURES AND TO ANY LAND LOST BY **AVULSION**.
10. ANY **EASEMENT** FOR WATER COURSE OVER THAT PORTION OF PREMISES LYING WITHIN THE LINES OF SACRAMENTO RIVER, AND ANY CHANGES IN THE **BOUNDARY LINES** OF PREMISES THAT HAVE OCCURRED OR MAY HEREAFTER OCCUR FROM NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

PART II

- \*1. AGREEMENT BY AND BETWEEN FORMER OWNERS OF PROPERTY ON GRAND ISLAND WITH RECLAMATION DISTRICT NO. 3, RECORDED MARCH 11, 1892, IN BOOK 1 OF RECLAMATION OF SWAMP LAND, PAGE 266, FOR REBUILDING OF LEVEE WHICH SURROUNDED THE ENTIRE ISLAND TOGETHER WITH A GRANT OF RIGHTS OF WAY NECESSARY FOR RECLAMATION PURPOSES, ETC.
2. EASEMENT(S) FOR ELECTRICAL AND COMMUNICATION FACILITIES FOR GREAT WESTERN POWER COMPANY, A CALIFORNIA CORPORATION, RECORDED DECEMBER 14, 1912, BOOK 367, PAGE 353, EXACT LOCATION OF SAID EASEMENT IS NOT DEFINED OF RECORD.
3. AGREEMENT BETWEEN RECLAMATION DISTRICT NO. 3 AND THE SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, A PUBLIC AGENCY RECORDED NOVEMBER 25, 1953, BOOK 2513, PAGE 108 WHICH CONTAINS OR PROVIDES FOR EASEMENT TO BUILD, CONSTRUCT, RECONSTRUCT, REPAIR AND MAINTAIN THE WEST LEVEE OF THE SACRAMENTO RIVER.
4. EASEMENT(S) FOR ANY PRESENT OR FUTURE FLOOD CONTROL OR WATER DEVELOPMENT PROJECT FOR SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT RECORDED MARCH 21, 1969, BOOK 690321, PAGE 556.
- \*5. COVENANTS AND RESTRICTIONS IMPOSED BY A LAND CONSERVATION CONTRACT BETWEEN DENNIS W. LEARY, MARIE A. LEARY, THE FEDERAL LAND BANK OF BERKELEY AND THE COUNTY OF SAC RECORDED FEB 29, 1972, BOOK 720229, PAGE 318.
- \*6. A FINANCING STATEMENT
7. EASEMENT(S) FOR HYDROCARBON PIPELINES TO BENTON OIL AND GAS COMPANY RECORDED DECEMBER 31, 1991, BOOK 911231, PAGE 1891.  
SAID EASEMENT IS IDENTIFIED BY RECORD DRAWING SURVEY RECORDED MARCH 19, 1992 IN BOOK 19920319, PAGE 853. **DOES NOT AFFECT THE HEREIN PROPERTY.**
- \*8-9. DEED OF TRUSTS
- \*10. SUBCONTRACT AGREEMENT BETWEEN NORTH DELTA WATER AGENCY AND DENNIS LEARY AND MICHAEL LEARY RECORDED JULY 30, 2010, BOOK 20100730, PAGE 1913.



LEGEND:  
PROPERTY LINE ———  
ACQUISITION LINE ———  
\* AFFECTS ENTIRE PARCEL



PREPARED 11/29/12

SACRAMENTO COUNTY

STATE OF CALIFORNIA  
THE NATURAL 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  
PARCEL TITLE EXCEPTIONS**