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

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

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

2. Several exhibits are attached to this Declaration and will be referred to herein by name. The exhibits are divided into sections for each agenda item and each section includes the following:

a. Geotechnical Exploration – This document provides general background on the method used to determine the best location for the drill holes. The table describes the reason the parcel at issue is necessary for the project, the type of exploration to be performed, the relevant proposed facility, the type of drilling for the proposed hole, and the depth of the proposed hole.

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

c. Supplement to Staff Report: Negotiations Fact Sheet – This document includes Statistics (the total number of parcels to be acquired for the entire drilling project [59], the number of parcels acquired to date [2], the total number of owners [46], the number of

28 owners to settle to date [2]); a description of the proposed property rights to be acquired; parcel-  
29 specific information; a summary of DWR staff's prior contacts with the relevant owner; a  
30 description of the owner's remaining concerns; and an explanation of why an eminent domain  
31 action is required. The "Areas of Main Concern to Owner and DWR's Response" includes an  
32 explanation of how DWR addressed the owner's stated concerns.

33 **Facts Supporting Finding No. 1:**  
34 **The Public Interest and Necessity Require the**  
35 **Project for Engineering Geotechnical Studies.**  
36

37 3. DWR is conducting studies in support of the DHCCP and Bay Delta Conservation  
38 Plan (BDCP) and the near-term and long-term approaches to meeting the goals of protecting,  
39 restoring, and enhancing the ecosystem of the Sacramento-San Joaquin Delta ("the Delta") and  
40 providing a more reliable water supply for the State of California.

41 4. These studies are necessary to investigate and determine the best alternatives for  
42 Delta water conveyances and other conservation measures. The data gathered is required before  
43 some federal permits may be issued for the BDCP, if it is approved. Specifically, detailed  
44 geological data is required for the 404(b)(1) Alternatives Analysis appendix to the final EIR/EIS.  
45 Federal regulations require that before a project can be permitted, the potential environmental  
46 impacts and practicability of construction of the project must be compared with other alternatives  
47 to that project. Agencies will issue permits for a proposed project only if it is found to be the  
48 least environmentally damaging, practicable alternative that meets the project purpose.

49 5. Detailed geological data also is needed to provide information for future  
50 engineering studies required for permitting under the Rivers and Harbors Act Section 14 (33 U.S.  
51 § 408).

52 6. The geologic information is critical to developing the best preliminary  
53 engineering analysis and cost estimates to assist in alternative selection. The geological data will  
54 be used to evaluate the location of potential intake locations, which have been proposed mainly

55 because of their favorable hydraulic characteristics. An alternative will be selected based on the  
56 impacts analysis described in the EIR/EIS and associated preliminary engineering analyses. The  
57 better the analysis in the EIR/EIS and preliminary engineering analyses, the better positioned the  
58 decision-maker is to review and decide project elements.

59 7. Inability to access the properties for the geotechnical investigations will cause  
60 critical delays in completing studies, which will result in delays in conducting the analysis  
61 necessary to complete the environmental documentation process and secure permits.

62 **Facts Supporting Finding No. 2:**

63 **The Project and Acquisitions Are Planned and Located In a Manner that**  
64 **Is Most Compatible with the Greatest Public Good and Least Private Injury.**  
65

66 8. The study area consists of properties located in the Sacramento, San Joaquin,  
67 Contra Costa, Solano and Yolo Counties, and traverse generally south of the City of Sacramento,  
68 south of Clifton Court Forebay, and from the eastern to the western boundary of the legal delta.

69 9. The Geotechnical Exploration and Supplemental Staff Report exhibits identify the  
70 properties with geotechnical investigation sites, the project reason for choosing each site, and  
71 considerations for reducing impacts to people and private property.

72 **Facts Supporting Finding No. 3:**

73 **The Easements To Be Acquired Are Necessary for the Project.**  
74

75 **Site Selection**

76 10. Sites were selected with respect to the alignments identified in the Conceptual  
77 Engineering Report (CER) and after consultation with the members of the DHCCP team, which  
78 included staff from the environmental, legal, real estate, engineering, and geotechnical  
79 disciplines. The criteria established by the team was to obtain relevant soil information for  
80 preliminary and final design of facilities and permitting requirements (US Army Corps of  
81 Engineers, Division of Safety of Dams, etc.), to provide consistency with temporary entry permit  
82 language and landowner concerns, to implement and follow the Mitigated Negative Declaration

83 language and required permits, and to minimize overall impacts. A majority of the sites were  
84 selected to provide information and data primarily for the intakes, river crossings, Intermediate  
85 Forebay, and the Byron Tract Forebay. Additional sites were selected for the Pipeline/Tunnel  
86 Option.

87 11. The Geotechnical Exploration exhibit includes a chart identifying each proposed  
88 hole and specifying why the locations were chosen.

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

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

94 13. In reviewing DWR's request for court-ordered entry to conduct geological testing,  
95 the Superior Court of San Joaquin County found that the evidence supported the following  
96 conclusions: 1) DWR needs to conduct the proposed geotechnical activities in order to  
97 determine the best feasible alternative for the water conveyance project; 2) the water conveyance  
98 project is a matter of public interest; and 3) DWR is authorized to investigate the project. (April  
99 8, 2011 Order at p. 2.) However, the Court denied DWR's request for entry pursuant to the  
100 precondemnation statutes (Code of Civ. Proc. §§ 1245.010 et seq.) on the grounds that the  
101 requested entry would amount to an unconstitutional taking of private property. The Court  
102 construed the precondemnation statutes:

103 [T]o only authorize borings to the extent constitutionally permissible. Alternatively, the  
104 court would declare Section 1245.010 unconstitutional under Article I, Section 19 of the  
105 California Constitution to the extent it authorized borings such as in the Project while  
106 including the removal and taking of native soil and the injection of a *permanent* foreign  
107 substance in the quantities contemplated in the Project. (Order at p. 8, emphasis added.)  
108

109 In reaching its decision, the Court relied on a United States Supreme Court opinion which held  
110 that the installation of a cable television box and wire occupying about 1.5 cubic feet on an

111 apartment building was a *permanent physical occupation of property* and therefore constituted a  
112 taking. (Order at p. 4, citing *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S.  
113 419, 438.) The Superior Court then noted that the geotechnical borings would remove about  
114 2.04 cubic yards of native soil, which would be replaced permanently with the same amount of  
115 bentonite grout.

116 14. The Superior Court's Order makes no mention of easements whatsoever,  
117 permanent or temporary. However, just as the permanent nature of the cable box was a  
118 determining factor for the U.S. Supreme Court, the permanent nature of the bentonite backfill  
119 was a determining factor for the Superior Court in reaching its decision. Likewise, just as a  
120 temporary easement would be an insufficient property right to place a permanent cable box,  
121 under the Superior Court's Order, DWR believes that a temporary easement would be an  
122 insufficient property right to place permanent bentonite backfill under the court's reasoning.

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

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

129 **Facts Supporting Finding No. 4:**  
130 **The Written Offer to the Owner of Record Has Been Made.**

131 17. DWR has repeatedly attempted to obtain voluntary access to the properties, but  
132 consent for entry has not been granted. Attached is an example of the documents sent to all  
133 relevant landowners, which includes the offer, the proposed temporary easement deed, legal  
134 description, and map.  
135

136 18. True and correct copies of the offers submitted to the landowners of the properties  
137 presently before the Commission are included in the attachments.

138 **The Project Is Funded.**

139 19. The Department has entered into funding agreements with public water agencies  
140 that receive water from the State Water Project (SWP) for purposes of funding work necessary  
141 for collecting information and developing environmental documents for the BDCP. Under the  
142 funding agreements with the SWP water agencies, the Department bills these water agencies  
143 through the SWP Annual Statement of Charges, which provides for collection of funds through  
144 equal monthly payments in advance of the work. The Department has approved the Task Order  
145 describing the geotechnical and survey work that will be conducted on the proposed study areas.  
146 In addition, in 2011, the Department obtained through the SWP Annual Statement of Charges all  
147 the funds necessary to cover costs of this work.

148 **Hazardous Materials Testing Is Necessary.**

149 20. The testing to be conducted on the soil samples removed from the properties  
150 would help identify the potential presence of the chemical substances. Any potential soil  
151 contamination must be considered in the early stage of project development as the discovery of  
152 hazardous materials can impact project alignment, schedule, increase project cost, and adversely  
153 impact the health and safety of workers.

154 21. DWR has conducted numerous drilling activities in the Delta. The results of  
155 recent lab testing (soil samples tested over the past three years) have not required any reporting  
156 action by DWR. Substances that have been tested have not exceeded the threshold limits  
157 established by regulatory departments of the California Environmental Protection Agency.

158 22. DWR will be responsible for the proper handling and disposal of materials that  
159 DWR removes from the property as part of the geotechnical investigation. Under state, federal,  
160 and local laws, parties responsible for any hazardous materials preexisting DWR's activities on

161 the property may include current or prior owners, operators, generators, and transporters.  
162 Because DWR does not fall into any of these categories, DWR cannot accept responsibility for  
163 preexisting hazardous materials on the property, if any.

164 I declare under penalty of perjury under the laws of the State of California that the  
165 foregoing is true and correct. Executed at Sacramento, California, this 20 day of December,  
166 2011.

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RICHARD SANCHEZ