

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Christine E. Garske, SBN 232879, Michael C. Gasbarro, SBN 339267
Office of the Attorney General, 300 S. Spring St., Ste. 1702, Los Angeles, CA 90013

TELEPHONE NO.: (213) 269-6234 FAX NO.: (916) 731-2120
EMAIL ADDRESS: Michael.Gasbarro@doj.ca.gov
ATTORNEY FOR (Name): State of California, Department of Water Resources

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN COUNTY

STREET ADDRESS: 180 E. Weber Ave.
MAILING ADDRESS:
CITY AND ZIP CODE: Stockton, CA 95202
BRANCH NAME: Stockton Courthouse

CASE NAME:

State of California, by and through the DWR v. J Troost Dairy, L.P.

FILED
FOR COURT USE ONLY
SUPERIOR COURT - STOCKTON

2024 JUN -7 PM 4:02

STEPHAN E. JAMES, CLERK

BY Nomina
62577

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$35,000) ☐ **Limited** (Amount demanded is \$35,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

STK-CV-VED-2024- 6783

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☒ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 6, 2024

Michael C. Gasbarro



Michael C. Gasbarro

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner
Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA

County of San Joaquin
180 E Weber Avenue
Stockton, CA 95202

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

Case Number: **STK-CV-UED-2024-0006783**

A Case Management Conference has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

Hearing: Case Management Conference	Date: 09/05/2024	Time: 8:45 AM Department: 10D
JUDGE	COURT LOCATION	PHONE Numbers:
THIS CASE HAS BEEN ASSIGNED TO JUDGE BARBARA KRONLUND IN DEPARTMENT 10D FOR ALL PURPOSES, INCLUDING TRIAL.	Stockton	Stockton: 209-992-5693 Lodi: 209-992-5522

[☒] ADR & Scheduling Information is available on court website @ [sjcourts.org/self-help](https://www.sjcourts.org/self-help)

- You must:
 - Serve** all named defendant's and file proofs of service on those defendants with the court Within 60 days of the filing of the complaint. (CRC 3.110)
 - File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
 - Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. (CRC 3.724)
 - Collection cases** are managed pursuant to CRC 3.740.
- Case Management Conferences, Law and Motion and Ex Partes will be held remotely unless ordered otherwise. For telephonic appearance phone numbers, information and instructions visit @ <https://www.sjcourts.org/divisions/civil/> .
- If this case was eFiled, the plaintiff/petitioner or their attorney must access their copy of this notice and the issued summons for service from the court's case management system at the following link:
cms.sjcourts.org/fullcourtweb/start.do.
- Courtesy Copies: Courtesy copies must be submitted as outlined in Local Rule 3-117. Courtesy copies (only) may be placed in the drop boxes located on the 10th and 11th floor. Courtesy copies can also be placed in the drop box located outside of the courthouse.

Visit our website @ www.sjcourts.org for more information regarding civil cases, local rules and forms.

Date: 06/07/2024

Norma Ferreira, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

J Troost Dairy, L.P.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

State of California, by and through the Department of Water Resources

 FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

2024 JUN -7 PM 4:03

STEPHANIE BOHRER, CLERK

BY Norma Fm
JURY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Joaquin County Superior Court

180 E. Weber Avenue, Stockton, CA 95202

CASE NUMBER:

STK-CV- VED-2024- 6783

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Deputy Attorney General Michael C. Gasbarro, Office of the Atty Gen., 300 S. Spring St., Ste. 1702, L.A., CA 90013, T: (213) 269-6234

DATE:

(Fecha) 6/7/2024

STEPHANIE BOHRER

Clerk, by

(Secretario)

Norma Fm

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

1 ROB BONTA
Attorney General of California
2 CHRISTINE E. GARSKE
Supervising Deputy Attorney General
3 MICHAEL C. GASBARRO
Deputy Attorney General
4 State Bar No. 339267
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230
Telephone: (213) 269-6234
6 Fax: (916) 731-2120
E-mail: Michael.Gasbarro@doj.ca.gov
7 *Attorneys for Petitioner State of California, by and
through the Department of Water Resources*

FILED
SUPERIOR COURT-STOCKTON

2024 JUN -7 PM 4:03

STEPHANIE KUNNER, CLERK

BY Nomafin
JURY

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN JOAQUIN

12
13 **STATE OF CALIFORNIA, BY AND
14 THROUGH THE DEPARTMENT OF
WATER RESOURCES,**

15 Petitioner,

16 v.

17 **J TROOST DAIRY, L.P.,**

18 Respondent.
19
20

*Exempt from filing fees per Government Code
section 6103*

Case No. STK-CV-VED-2024- 6783

**PETITION FOR ORDER PERMITTING
ENTRY AND INVESTIGATION OF
REAL PROPERTY**

21 ///

22 ///

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24 ///

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28 ///

1 TO THE SUPERIOR COURT OF THE COUNTY OF SAN JOAQUIN:

2 The State of California, by and through the Department of Water Resources, (petitioner)
3 respectfully petitions this court for an order permitting entry and investigation of real property to
4 conduct pre-condemnation activities pursuant to Code of Civil Procedure section 1245.010 et
5 seq., and alleges as follows:

6 1. Petitioner is a public entity organized under the laws of the State of California.

7 2. Petitioner is informed and believes and thereon alleges that respondents are
8 individuals or entities with ownership interests in the parcel of real property in the County of San
9 Joaquin Assessor Parcel Number (APN) 129-200-150-000. The subject property is delineated as
10 SJC-0639 on the map attached as exhibit A to the accompanying Declaration of Andrew Finney,
11 and is depicted in the parcel-specific map also attached as exhibit A to the accompanying
12 Declaration of Allan T. Davis.

13 3. In March 2009, the Judicial Council, pursuant to Code of Civil Procedure section 404
14 et seq., issued an order judicially coordinating numerous petitions for pre-condemnation entry
15 filed by petitioner in five counties, including San Joaquin County, for the purpose of conducting
16 feasibility studies for a state water conveyance project. The coordinated matter is venued in San
17 Joaquin County Superior Court, and entitled Department of Water Resources Cases, Judicial
18 Council Coordinated Proceeding (JCCP), Case No. 4594. Following extensive hearings in 2011
19 and 2016, and in conformance with the Supreme Court's holding in *Property Reserve, Inc. v.*
20 *Superior Court* (2016) 1 Cal.5th 151, the court executed a comprehensive entry order, as well as
21 special and general terms and conditions dated June 16, 2017. Following additional hearings on
22 further sets of entry petitions, the court in the coordinated proceeding executed comprehensive
23 entry orders on April 8, 2022, on March 21, 2023, and on November 21, 2023. The entry orders
24 authorize petitioner entry on specified parcels of real property to conduct certain geological,
25 environmental and cultural activities. (Declaration of Deputy Attorney General Michael C.
26 Gasbarro (Gasbarro Decl.), Exh. 1.)

27 4. Additionally, petitioner, by this petition, provides notice that it intends to request this
28 petition be added on to the coordinated proceeding, JCCP No. 4594, as well as any and all

1 additional respondents whose cases may be added on to the coordination proceedings. (Gasbarro
2 Decl., Exh. 2.)

3 **PETITIONER IS AUTHORIZED TO ACQUIRE PROPERTY FOR A PARTICULAR**
4 **USE BY EMINENT DOMAIN**

5 5. Under Code of Civil Procedure section 1245.010, "any person authorized to acquire
6 property for a particular use by eminent domain may enter upon property to make photographs,
7 studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in
8 similar activities reasonably related to acquisition or use of the property for that use."

9 6. Petitioner is authorized to exercise the power of eminent domain to acquire any
10 property necessary for state water and dam purposes for any and all water, water rights, rights-of-
11 way, easements, land, electric power, power resources and facilities, and property or
12 appurtenances thereto, pursuant to Water Code sections 250, 11575, 11577, and 11580, and Part
13 11, Division 3, Title 2 of the Government Code.

14 **THE PURPOSE FOR THE ENTRIES**

15 7. Under Code of Civil Procedure section 1245.030, subdivision (b), the court shall
16 determine "the purpose for the entry."

17 8. Petitioner seeks limited and temporary access by way of rights of entry onto the
18 subject property for the general purpose of investigating the feasibility of new and future water
19 conversion and conveyance facilities in the Sacramento-San Joaquin Delta (Delta) necessary to
20 restore and protect reliable water deliveries and supplies for fisheries, habitat and other water
21 users in California. The entries are necessary to conduct studies for a Delta Conveyance Project
22 regarding near-term and long-term approaches to meet the objectives of providing for anticipated
23 rising sea levels and other reasonably foreseeable consequences of climate change and extreme
24 weather events, the conservation of covered species and their habitats, addressing the
25 requirements of the federal and state endangered species laws, water supply reliability, seismic
26 and flood durability, ecosystem health and resilience, water quality, and design and construction
27 schedules, costs and options.
28

1 9. Petitioner seeks entries to continue to investigate potential impacts of a water
2 conveyance system to, among other things, biological resources, water resources, environmental
3 resources, geology, archeology and utilities found on the subject property. The information
4 gained through soil borings and Cone Penetrometer Tests (CPT) would be used to develop
5 detailed design criteria for structure foundations, new and modified levee cross sections, ground
6 improvement, dewatering methods and quantities, below-grade construction methods, need for
7 impact pile driving, and methods to reduce ground settlement risk at all construction sites and
8 under crossings. The information would also be used to determine the depths and widths of
9 groundwater cutoff walls to be installed at the intakes. Soil samples obtained during soil borings
10 would also be analyzed to determine the specific structural capabilities of the soil to construct
11 embankments and levees.

12 **THE NATURE AND SCOPE OF THE ACTIVITIES REASONABLY NECESSARY TO**
13 **ACCOMPLISH THE PURPOSE FOR THE ENTRIES**

14 10. Under Code of Civil Procedure section 1245.030, subdivision (b), the court shall
15 determine "the nature and scope of the activities reasonably necessary to accomplish such
16 purpose."

17 11. Petitioner seeks access authorized under Code of Civil Procedure section 1245.010
18 "to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or
19 appraisals or to engage in similar activities reasonably related to acquisition or use of the property
20 for that use." The nature and scope of the activities described herein are reasonably necessary for
21 petitioner to accomplish the purpose for the entries.

22 **I. ACTIVITIES ON THE SUBJECT PROPERTY REASONABLY NECESSARY TO**
23 **ACCOMPLISH THE PURPOSE OF THE ENTRIES**

24 12. Petitioner seeks an immediate order for temporary entry rights to conduct geological
25 activities (Geological Activities) on the subject property at the locations identified in the
26 respective exhibits to the Declarations of Andrew Finney and Allan T. Davis. In particular, the
27 entry on the subject property, APN 129-200-150-000, is requested to perform one soil boring and
28 one CPT. The nature and scope of these Geological Activities are described in greater detail in the
accompanying Declaration of Andrew Finney.

1 13. Petitioner also seeks entry to perform cultural investigations (Environmental
2 Activities) on the subject property, APN 129-200-150-000, as well as cultural and site clearance
3 surveys, as described in greater detail in the accompanying Declaration of Katherine Marquez.

4 **II. TIME REASONABLY NECESSARY TO ACCOMPLISH THE PURPOSE OF THE ENTRIES**

5 14. Petitioner requires up to 11 intermittent 12-hour days for a period of 12 months on the
6 subject property, commencing on the date that the court issues an Order Permitting Entry onto
7 Real Property, to accomplish the purpose for this entry.

8 **THE AMOUNT OF PROBABLE COMPENSATION**

9 15. Under Code of Civil Procedure section 1245.030, subdivision (b), the court shall
10 determine "the probable amount of compensation to be paid to the owner of the property for the
11 actual damage to the property and interference with its possession and use." The nature and scope
12 of the activities described above, although minimally invasive, may result in actual damage to or
13 substantial interference with the possession and use of the subject property. The probable amount
14 of such actual damage or substantial interference is: \$4,500.00. The bases for the probable
15 amount of compensation are set forth in the accompanying Declaration of Allan T. Davis.

16 16. The true names and capacities, whether individual, corporate, or otherwise, of each of
17 the respondents named herein as DOES 1 to 1000, inclusive, are unknown to petitioner which,
18 therefore, seeks jurisdiction over respondents by such names, and will, upon ascertaining the true
19 names and capacities of any of the respondents, amend this amended petition to show their true
20 names and capacities; that the fictitiously named respondents, and each of them, have or claim to
21 have an interest in the subject property heretofore described, but that the nature, character and
22 extent of such interest are unknown to petitioner.

23 17. This petition is based upon the above grounds, all the documents, papers and records
24 on file herein, the supporting declarations of Allan T. Davis, Andrew Finney, Katherine Marquez
25 and Deputy Attorney General Michael C. Gasbarro, and upon such further evidence and oral
26 arguments presented to the court at the time of hearings on the petition.

1 **PRAYER**

2 WHEREFORE, petitioner State of California, by and through the Department of Water
3 Resources, prays for an order of the court:

4 1. Permitting right of entry to petitioner to conduct the Geological Activities described
5 above and in the respective Declarations of Andrew Finney and Allan T. Davis, and identified in
6 exhibits A thereto, on the subject property, APN 129-200-150-000, to perform one soil boring and
7 one CPT, as well as cultural and site clearance surveys described in the Declaration of Katherine
8 Marquez;

9 2. Permitting right of entry to petitioner to conduct the Environmental Activities
10 described in the Declaration of Katherine Marquez on the subject property, APN 129-200-150-
11 000;

12 3. Permitting right of entry to petitioner to conduct the Geological and Environmental
13 Activities described in the respective Declarations of Andrew Finney, Allan T. Davis and
14 Katherine Marquez, for up to 11 intermittent 12-hour days for a period of 12 months on the
15 subject property, commencing on the date that the court issues an Order Permitting Entry onto
16 Real Property;

17 4. Incorporating Attachments B, C, D and E to the entry order dated November 21,
18 2023, into the requested order; and

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1 5. Fixing the probable amount of compensation for actual damage to the subject
2 property and substantial interference with its possession and use as follows: \$4,500.00 for the
3 Geological and Environmental Activities described above and identified in the Declarations of
4 Andrew Finney, Allan T. Davis and Katherine Marquez.

5 Dated: June 6, 2024

Respectfully submitted,

6 ROB BONTA
7 Attorney General of California
8 CHRISTINE E. GARSKE
9 Supervising Deputy Attorney General

10 Michael C.
11 Gasbarro

Digitally signed by Michael C.
Gasbarro
Date: 2024.06.06 23:12:09 -07'00'

12 MICHAEL C. GASBARRO
13 Deputy Attorney General
14 Attorneys for Petitioner State of California,
15 by and through the Department of Water
16 Resources

17 SA2024301955

2024 JUN -7 PM 4:03

STEPHANIE J. ARER, CLERK

BY Norman
#3211

1 ROB BONTA
Attorney General of California
2 CHRISTINE E. GARSKE
Supervising Deputy Attorney General
3 MICHAEL C. GASBARRO
Deputy Attorney General
4 State Bar No. 339267
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230
Telephone: (213) 269-6234
6 Facsimile: (916) 731-2120
E-mail: Michael.Gasbarro@doj.ca.gov
7 Attorneys for Petitioner State of California, by and
through the Department of Water Resources
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN JOAQUIN

11
12 **STATE OF CALIFORNIA, BY AND**
13 **THROUGH THE DEPARTMENT OF**
14 **WATER RESOURCES,**

15 Petitioner,

16 v.

17 **J TROOST DAIRY, L.P.,**

18 Respondent.
19
20

*Exempt from filing fees per Government Code
section 6103*

Case No. STK-CV-LED-2024- 6783

**DECLARATION OF ANDREW FINNEY
IN SUPPORT OF PETITION FOR
ORDER PERMITTING ENTRY AND
INVESTIGATION OF REAL PROPERTY**

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1 I, ANDREW FINNEY make this declaration in support of the Petition for Order
2 Permitting Entry and Investigation of Real Property by the State of California, by and through the
3 Department of Water Resources (DWR). I have personal knowledge of the below, and if called to
4 serve as a witness, I would and could testify to the following.

5 1. I am employed by Jacobs Engineering Group Inc. (Jacobs) and acted as the Field Work
6 and Geotechnical Lead for Jacobs in support of the Delta Conveyance Design and Construction
7 Authority (DCA). I am currently DCA's Senior Geotechnical Consultant. The DCA is providing
8 engineering and design services in support of DWR's water conveyance system development in
9 the Delta.

10 2. During my tenure as Field Work and Geotechnical Lead, I oversaw the DCA's
11 subsurface exploration for DCP design. I am a Civil Engineer and Geotechnical Engineer licensed
12 in good standing with the State of California with over 30 years of experience with large water
13 infrastructure projects. I received a Bachelor of Science degree with a major in civil engineering
14 from Bucknell University and a Master of Science degree in civil engineering from the University
15 of Washington.

16 3. In my prior and current capacity as Field Work and Geotechnical Lead and a Senior
17 Geotechnical Consultant, I provide input for proposed subsurface data collection types and
18 locations for the DCA's geotechnical investigations in support of design and planning for DWR's
19 Delta Conveyance Project (DCP). In making these determinations, I reviewed existing
20 geotechnical data within the Delta provided by the counties, state, and federal agencies and
21 sought to identify locations where additional data are needed for the analysis of environmental
22 impacts and water facilities siting feasibility. Such collected subsurface information will support
23 design efforts for the DCP and other future projects in the Delta and help identify any potential
24 data gaps to be addressed. The information also supports overall understanding of the
25 geotechnical conditions within the Delta as they affect the State Water Project. Thus far, key
26 identified data gaps include: 1) overall subsurface data at a spacing and depth to support
27 continued project design; 2) hydrogeological properties of the subsurface soils and bedrock along
28 the project alignment; 3) groundwater quality to serve as a baseline of existing conditions and to

1 evaluate whether it affects the project design; and 4) the nature and limits of historic faults
2 located at the southern limit of the Delta to inform design considerations relating to seismicity.

3 4. In 2020, DWR adopted a Final Initial Study/Mitigated Negative Declaration (IS/MND)
4 for the Soil Investigations for Data Collection in the Delta Project (2020 Soil Investigations
5 IS/MND). The purpose of conducting geotechnical investigations under the 2020 IS/MND,
6 including relevant addenda, was to collect data on soil conditions to help determine the
7 composition, location, and geotechnical properties of rock and soil materials commonly found in
8 and around the Delta. This information contributed to DWR's overall understanding of Delta
9 geology, and helped to inform the development of alternatives, environmental analysis, and
10 conceptual design for the DCP to support preparation of the DCP Final Environmental Impact
11 Report.

12 5. Separate from the soil investigations covered in the 2020 IS/MND and related addenda,
13 data collection and field work investigations are planned under the DCP Final Environmental
14 Impact Report. On December 21, 2023, DWR certified the DCP Final Environmental Impact
15 Report and approved the Bethany Reservoir Alignment Alternative (Alternative 5). Continued
16 exploratory planning and design field investigations are necessary to advance the conceptual
17 design and feasibility of the Bethany Reservoir Alternative and to collect data needed to satisfy
18 mitigation and monitoring requirements identified in the Final Environmental Impact Report.
19 Additionally, the field investigations are necessary to support state and federal permitting before
20 DWR may implement the DCP.

21 6. The study area for the exploratory planning and design field investigations generally
22 consists of a corridor and individual facility footprints defined as the DCP in the Final
23 Environmental Impact Report certified by DWR and other supporting documents. The study area
24 is located in Alameda, Sacramento, Contra Costa, and San Joaquin Counties, from north of the
25 town of Hood in the north to Bethany Reservoir in the south.

26 7. Entry onto the subject properties is necessary to permit geologists, surveyors, engineers,
27 a drilling rig, other testing vehicles, equipment, and supplies and crews to make borings and cone
28 penetrometer tests (CPTs). Borings will be made with a 6.5-inch to 8-inch diameter auger, or 3.7-

1 inch to 6-inch diameter bit on a mud rotary drill rig. Soil samples will be obtained for testing.

2 8. For a Cone Penetrometer Test (CPT), a cone-tipped rod with a diameter of 1 to 2 inches
3 is pushed through the ground to measure various parameters including tip resistance, side friction,
4 pore pressure, and shear wave velocity of the soil layers. While advancing the cone, bentonite
5 may be used to reduce friction.

6 9. Upon completion of borings and CPT sites, the holes will be sealed with cement-
7 bentonite grout. Depths of boring holes will vary from about five to 250 feet. Boring and
8 geological activities and tests on each boring hole site will occur for 1 to 11 workdays.

9 10. The exploration drills used to make soil borings, including CPTs, are vehicle mounted
10 and powered by a commercial or industrial engine. Noise level of this equipment is comparable to
11 the noise produced by a diesel truck. Dust associated with this equipment is road dust which may
12 result from driving to and from the boring hole sites. The attached map(s), exhibit A, shows the
13 approximate locations of the proposed exploration sites for San Joaquin County.

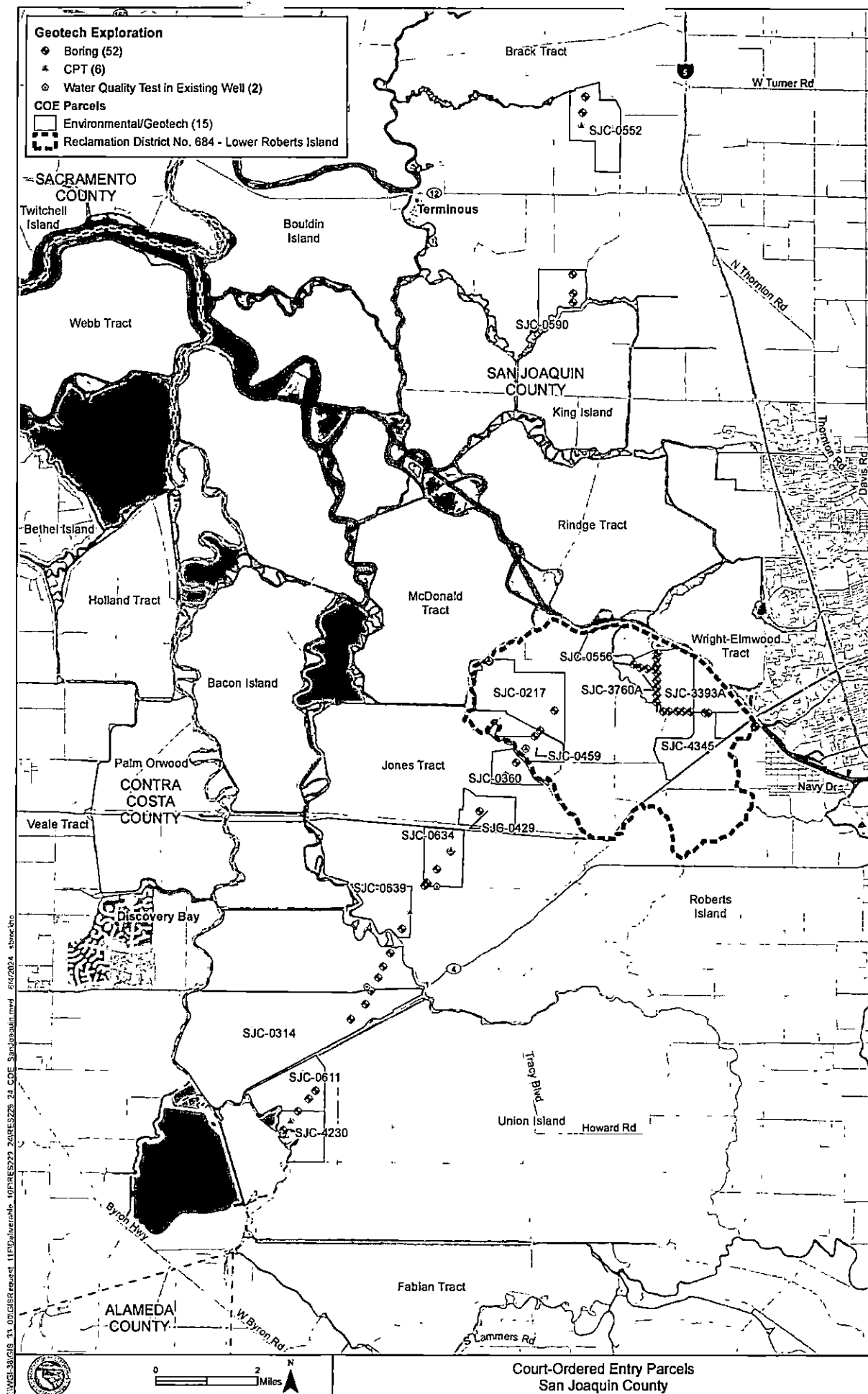
14 11. Entry onto certain properties is also necessary to permit professionals to sample
15 groundwater from existing wells using Environmental Protection Agency procedures. This
16 involves flushing the well with its pump for up to 4 hours to get a representative sample, the
17 water from which is then discharged into the owner's chosen outlet. The amount of water
18 removed from the property owner's well for sampling purposes will vary, but will not exceed 3
19 gallons.

20 I declare under the penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed at Sacramento, California, May 31, 2024.

22
23 
24 ANDREW FINNEY

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26 Declaration-Finney.docx
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EXHIBIT A



1 ROB BONTA
Attorney General of California
2 CHRISTINE E. GARSKE
Supervising Deputy Attorney General
3 MICHAEL C. GASBARRO
Deputy Attorney General
4 State Bar No. 339267
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230
Telephone: (213) 269-6234
6 Facsimile: (916) 731-2120
E-mail: Michael.Gasbarro@doj.ca.gov
7 *Attorneys for Petitioner State of California, by and
through the Department of Water Resources*

FILED
SUPERIOR COURT-STOCKTON

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STEPHANIE S. LUKER, CLERK

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN JOAQUIN

12 **STATE OF CALIFORNIA, BY AND**
13 **THROUGH THE DEPARTMENT OF**
14 **WATER RESOURCES,**

15 Petitioner,

16 v.

17 **J TROOST DAIRY, L.P.**

18 Respondent.
19

*Exempt from filing fees per Government Code
section 6103*

Case No. STK-CV-VED-2024- 0783

**DECLARATION OF ALLAN T. DAVIS
IN SUPPORT OF PETITION FOR
ORDER PERMITTING ENTRY AND
INVESTIGATION OF REAL
PROPERTY**

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DECLARATION

1 I, Allan T. Davis, make this declaration in support of the Petition for Order Permitting
2 Entry and Investigation of Real Property by petitioner State of California, by and through the
3 Department of Water Resources, (DWR) and in support of the amount of probable compensation
4 to be deposited pursuant to Code of Civil Procedure section 1245.030 for the entries identified
5 below. I have personal knowledge of the below, and if called to serve as a witness, I would and
6 could testify to the following.

7 1. I have been employed by the State of California, Department of Transportation and
8 DWR, for over 33 years. Currently, I am the Supervising Right of Way Agent overseeing the real
9 estate activities for DWR. Prior to my current assignment I was a Senior Land Agent for 15 years.
10 During that time, I served as the Supervisor over the Appraisal Unit from August 1992 to October
11 1999 and appraised numerous agricultural, commercial, industrial, residential and vacant
12 properties.

13 2. My experience includes overseeing the valuation of properties throughout the state
14 including in Sacramento, San Joaquin, and Alameda Counties, beginning in 1991. As part of
15 DWR's planning for a proposed Delta conveyance project, including the Bay Delta Conservation
16 Program, I provided opinions on the probable compensation to be deposited in support of the
17 DWR's petitions for orders for entry and investigation of real property on various parcels in
18 Sacramento, San Joaquin, and Alameda Counties. On behalf of DWR I have also provided
19 testimony regarding the appraisals related to hundreds of properties. I have read the Declarations
20 of Andrew Finney and Katherine Marquez prepared in support of this Petition for an Order
21 Permitting Entry and Investigation of Real Property and know the contents thereof.

22 3. It is necessary and essential to obtain permission to enter onto the property described
23 as Assessor Parcel Number 129-200-150-000 (subject property) for the time period of 12 months
24 on the subject property, commencing on the date that the court issues an Order Permitting Entry.
25 The activities described herein are necessary for DWR to evaluate water conveyance design and
26 construction in the Sacramento-San Joaquin Delta.

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1 4. The study of the subject property is expected to include:

- 2 a. One soil boring to maximum of 250 feet;
- 3 b. One Cone Penetrometer Test; and
- 4 c. Cultural studies.

5 5. Geologic activities consist of drilling exploration borings. Drill holes will be between

6 approximately three and eight inches in diameter. All holes will be backfilled and sealed,

7 following the guidelines in DWR's Bulletin 74-90 with respect to the method by which

8 exploratory borings are to be sealed, considering local conditions. Boring and geological

9 activities at the site will occur for one to 11 workdays. In conducting geotechnical studies DWR

10 employs engineering services provided by the Delta Conveyance Design and Construction

11 Authority. Description of the site activities is more fully detailed in the Declaration of Andrew

12 Finney, the Field Work and Geotechnical Lead for the studies, as well as the exhibit attached

13 thereto.

14 6. I am familiar with the proposed entry for environmental studies and environmental

15 and cultural site assessments necessary for analysis of water conveyance facility design and

16 construction. This reconnaissance information is needed to gather information on the geologic

17 conditions, occurrence of sensitive, rare, threatened and endangered species and to locate and

18 identify plant and wildlife habitat to inform the analysis related to siting, design and construction

19 feasibility of water conveyance facilities. These environmental survey activities are further

20 described in the Declaration of Katherine Marquez in support of the petition.

21 7. Archaeological reconnaissance will assist in determining the presence or absence of

22 previously recorded or unrecorded cultural resources in the subject area.

23 8. The subject property will be accessed by use of existing county roads and private

24 roads and will include DWR's or its agents' vehicles, equipment and staff physically on the

25 property to conduct the required studies and mapping activities.

26 9. The proposed entry for environmental surveys, cultural resources inventory,

27 geological testing and environmental site assessments will consist of environmentalists,

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1 biologists, geologists, surveyors, engineers, a drilling rig and crews to perform environmental and
2 geologic studies to determine foundation and construction conditions.

3 10. The attached map, exhibit A, shows the approximate locations and nature of the
4 proposed investigation activities on the subject property, including access where necessary.

5 11. DWR needs to obtain the right of entry for a period of 12 months on the subject
6 property, commencing on the date that the court issues an Order Permitting Entry onto Real
7 Property, to accomplish the purpose for this entry, because many of the surveys must be
8 conducted at a specific time of year when targeted species are expected to be present. Presence of
9 sensitive species or habitat may have a significant impact on the design, scheduling, and costs of
10 the project.

11 12. In order to prepare my opinion relative to setting the probable amount of
12 compensation pursuant to Code of Civil Procedure section 1245.030, I have become familiar with
13 and, to the extent possible, have personally viewed the subject property from public roadways and
14 in all instances have viewed the subject property using Google Earth to determine the probable
15 amount of compensation for actual damage to, or substantial interference with, the respondent's
16 possession and use by reason of the petitioner's entry and activities. I am informed and believe
17 the subject property are primarily used for agriculture.

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1 13. Based upon my experience discussed above, and by using accepted real property
2 valuation and appraisal methods, it is my opinion that \$4,500.00 represents the maximum
3 probable amount of compensation for DWR's entry onto the subject property for the time period
4 requested and for the types of studies and surveys to be performed by DWR staff and its
5 contractors. My opinion is based on possible "actual damage to or substantial interference with"
6 the subject property parcel. Based on the nature of the entry as described herein and its overall
7 impact, I assessed minor impacts to the subject parcel, limited to the use of the property for the
8 designated time period. This amount also provides compensation for the actual damages which
9 may reasonably occur to the subject property by reason of entry by petitioner for the purposes set
10 forth in the petition on file, and for any substantial interference with the possession and use of
11 property by those owning or occupying the property.

12 I declare under the penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed at Sacramento, California, this 6th day of June, 2024.

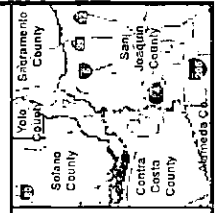
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16 ALLAN T. DAVIS

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EXHIBIT A



☉ Water Quality Test/Boring ▲ CPT = Proposed Existing Access Route ☐ Proposed Work Pad Assessor Parcel Boundary Delta Conveyance Parcel Boundary



DELTA CONVEYANCE PARCEL EXHIBIT San Joaquin County SJC-0639


DCA
 DELTA CONVEYANCE DESIGN
 & CONSTRUCTION AUTHORITY

This exhibit does not represent a Survey and is for informational purposes only
 *Potential access route subject to Land Owner input and approval
 Imagery Source: DWR - Hexagon_Zone10_2020

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2024 JUN -7 PM 4:04

STEPHANIE GARRER, CLERK

BY Nomafun
JURY

1 ROB BONTA
Attorney General of California
2 CHRISTINE E. GARSKE
Supervising Deputy Attorney General
3 MICHAEL C. GASBARRO
Deputy Attorney General
4 State Bar No. 339267
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230
Telephone: (213) 269-6234
6 Facsimile: (916) 731-2120
E-mail: Michael.Gasbarro@doj.ca.gov
7 *Attorneys for Petitioner State of California, by and
through the Department of Water Resources*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN JOAQUIN

12 **STATE OF CALIFORNIA, BY AND**
13 **THROUGH THE DEPARTMENT OF**
14 **WATER RESOURCES,**

Petitioner,

15 v.

17 **J TROOST DAIRY, L.P.,**

18 Respondent.

*Exempt from filing fees per Government Code
section 6103*

Case No. STK-CV-VED-2024- 6783

**DECLARATION OF KATHERINE
MARQUEZ IN SUPPORT OF PETITION
FOR ORDER PERMITTING ENTRY
AND INVESTIGATION OF REAL
PROPERTY**

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BY FAX

1 I, KATHERINE MARQUEZ, make this declaration in support of the Petition for Order
2 Permitting Entry and Investigation of Real Property by State of California, by and through the
3 Department of Water Resources, (DWR) and the geotechnical, environmental and cultural studies
4 of the real property needed to obtain water conveyance system information in the Sacramento-San
5 Joaquin Delta. I have personal knowledge of the following, and if called as a witness, I would and
6 could testify competently thereto.

7 1. I have a Bachelor of Science degree in Animal Biology from the University of
8 California, Davis and a Master of Science in Biological Sciences with a concentration in
9 Biological Conservation from California State University, Sacramento. I have worked
10 approximately 15 years in environmental compliance for DWR.

11 2. I am currently a Program Manager III and Environmental Resources Manager for
12 Delta Conveyance within DWR's Delta Conveyance Office. I oversee environmental compliance
13 for Delta Water conveyance system studies, including the development of environmental
14 documentation for Delta Conveyance Project (DCP). This role includes the development of
15 environmental documentation to support acquisition of permits and approvals and the
16 implementation of environmental commitments associated with those permits and approvals.

17 3. Oversight of environmental planning data collection efforts for the DCP includes
18 environmental studies. The data collected would inform planning and design and help support
19 acquisition of permits and approvals, including but not limited to Section 106 of the National
20 Historic Preservation Act, Section 14 of the Rivers and Harbors Act (33 USC Section 408), and
21 the covered action process for consistency with the Delta Plan. Additionally, data collected would
22 support early planning for future compliance with mitigation measures in which avoidance
23 through project design refinements is the first option to minimize a project impact.

24 4. The study area for DCP biological and cultural studies and site clearance surveys are
25 located in Alameda, Contra Costa, and San Joaquin Counties. Mapping of the subject properties
26 on which temporary entries are sought for the environmental and cultural studies are attached as
27 exhibit A to the declaration of Allan T. Davis.

1 5. Site clearance surveys in support of soil investigations may include support vehicles
2 for DWR and its agent's geologists, biologists, archeologists, scientists, real estate specialists and
3 tribal representatives. These individuals visit each soil investigation site for up to eight hours. Site
4 clearance surveys evaluate access to the exploration locations and identify underground utilities
5 locations, potential cultural and archaeological resources and potential environmental resources,
6 including biological, botanical and wetland resources. Surveyors walk and photograph the area,
7 evaluate potential habitat and record observations. Surveyors may remove minimal vegetation if
8 the ground surface is not visible. After the initial site clearance survey, up to two additional 4-
9 hour site clearance survey visits may be required prior to conducting soil investigations on a site
10 for identification and evaluation of nesting birds as needed.

11 6. Site clearances focus on the immediate area where soil investigations would occur,
12 including parking, staging and access. The immediate investigation area is roughly 10-by-100 feet
13 but may vary by site. A buffer area may be surveyed depending upon which species have
14 potential to occur at that specific site during that season. Surveyors may propose adjustments to
15 the investigation site if necessary to avoid potential impacts to biological resources or cultural
16 resource as well as to respond to safety concerns. Surveys are conducted in this manner to
17 minimize the number of times visits to a site are necessary.

18 7. Site clearance surveys are specific to the discrete geotechnical investigation locations,
19 whereas preliminary environmental studies present opportunities to collect biological and cultural
20 data related to all DCP features.

21 8. Environmental studies for the DCP involve technical experts with a variety of
22 biological or cultural specialties. The opportunity for data collection through preliminary
23 environmental studies is necessary for continued design and planning of the DCP, including to
24 gather information DWR and DCA need to obtain permits and approvals required before DWR
25 may proceed to implement and construct DCP. These studies consist of observations made by
26 environmental specialists under the direction of DWR. Sites may be accessed by foot or by
27 vehicle where roads are available on a property. Study timing and frequency of site access is
28 dependent on the specific resource being evaluated. Biological studies may include botanical,

1 wetland, and wildlife resources studies. Biological studies include walking and photographing the
2 area, habitat evaluation, and recording observations collecting unknown plant species, making
3 wetland delineations when applicable, and examining the soil. Equipment may include
4 binoculars/spotting scopes, cameras, GPS units, and laptop computers.

5 9. Cultural resource studies include archeological historic surveys of the study area and
6 offer tribal representatives an opportunity to survey for tribal resources. The studies consist of a
7 review of California Historical Resources Information System records and a walking survey for
8 historical, archaeological, and/or tribal resources. Surveyors may remove minimal vegetation with
9 a small shovel or hand trowel if the ground surface is not visible; no soils will be removed or
10 collected. All disturbed soil will be returned to the scraped area to restore the scraping area to its
11 original condition as close as possible. Equipment may include cameras, GPS units, and laptop
12 computers.

13 10. Site clearance surveys activities are necessary on all requested entries in areas
14 associated with conducting geotechnical investigations. Access for biological surveys is needed
15 on parcel SJC-590, specifically to identify Sandhill Crane roosts. Cultural surveys are needed on
16 all properties identified for this round of entries.

17 11. The ability to collect site-specific information would support Delta water conveyance
18 planning to protect State Water Project (SWP) water supply reliability; address anticipated
19 impacts of sea level rise and climate change on SWP water supplies; minimize SWP water supply
20 disruption due to seismic risk; and provide operational flexibility to improve aquatic conditions in
21 the Delta.

22 I declare under the penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed at Sacramento, California, on May 24, 2024.

24 
25 _____
26 KATHERINE MARQUEZ

1 ROB BONTA
Attorney General of California
2 CHRISTINE E. GARSKE
Supervising Deputy Attorney General
3 MICHAEL C. GASBARRO
Deputy Attorney General
4 State Bar No. 339267
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013-1230
Telephone: (213) 269-6234
6 Facsimile: (916) 731-2120
E-mail: Michael.Gasbarro@doj.ca.gov
7 *Attorneys for Petitioner State of California, by and
through the Department of Water Resources*

FILED
SUPERIOR COURT-STOCKTON

2024 JUN -7 PM 4:04

STEPHANIE DUNN, CLERK

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN JOAQUIN

11
12 **STATE OF CALIFORNIA, BY AND
13 THROUGH THE DEPARTMENT OF
14 WATER RESOURCES,**

15 **Petitioner,**

16 **v.**

17 **J TROOST DAIRY, L.P.,**

18 **Respondent.**
19

*Exempt from filing fees per Government Code
section 6103*

Case No.: STK-CV-VED-2024- 0783

**DECLARATION OF DEPUTY
ATTORNEY GENERAL
MICHAEL C. GASBARRO
IN SUPPORT OF PETITION FOR
ORDER PERMITTING ENTRY AND
INVESTIGATION OF REAL
PROPERTY**

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BY FAX

1 I, MICHAEL C. GASBARRO, declare:

2 1. I am an attorney licensed to practice before all the courts of the State of California, a
3 Deputy Attorney General with the Department of Justice, and counsel of record for petitioner
4 State of California, by and through the Department of Water Resources, (DWR) in the above-
5 entitled action. In that capacity, I am familiar with the facts and procedural posture of this case
6 and make this declaration in support of the Petition for Order Permitting Entry and Investigation
7 of Real Property by the State of California, by and through the Department of Water Resources.

8 2. Following hearings on October 24 and 26, 2023, and in conformance with the
9 Supreme Court's holding in *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, the
10 court, in Judicial Council Coordinated Proceeding No. 4594, executed an entry order on
11 November 21, 2023, authorizing petitioner entry on specified parcels of real property to conduct
12 certain geological, environmental and cultural activities. In addition to authorizing entry for these
13 activities, the November 21, 2023 entry order set forth a number of general, as well as specific,
14 terms and conditions relative to the permitted geological, environmental and cultural activities.
15 Attached as exhibit 1 is a true and correct copy of the November 21, 2023 entry order.

16 3. Attached as exhibit 2 is a true and correct copy of petitioner's petition to coordinate,
17 which will be filed in the coordinated proceeding, JCCP No. 4594.

18 I declare under penalty of perjury under the laws of the State of California that the forgoing
19 is true and correct and was executed on the 6th day of June, 2024 at South Pasadena, California.

20
21 Michael C. Gasbarro Digitally signed by
22 Michael C. Gasbarro
23 Date: 2024.06.06
24 23:13:07 -07'00'

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26 MICHAEL C. GASBARRO
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EXHIBIT 1

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Filed
STEPHANIE BOHRER, CLERK

By  DEPUTY

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

IN RE: DEPARTMENT OF WATER
RESOURCES CASES

COORDINATED ACTION: JCCP 4594
STK-CV-UED-2023-8476

ORDER PERMITTING ENTRY AND
INVESTIGATION OF REAL PROPERTY
FOR ENVIRONMENTAL, CULTURAL,
GEOLOGICAL AND DRILLING
INVESTIGATIONS ON TEN
PROPERTIES

The Petitions for Orders Permitting Entry and Investigation of Real Property filed by State of California, Department of Water Resources (hereinafter "DWR") came on for hearings on October 24 and 26, 2023. After considering the arguments of counsel, the testimony of witnesses, and evidence and presentations of affected parties, as well as papers filed in support of and in opposition to the Petitions, and applicable law, the court finds and orders as follows:

1. *Authority to Initiate Petition under C.C.P. 1245.010.* The court finds that DWR is a "person authorized to acquire property for a particular use by eminent domain" under Code of Civil Procedure Section 1245.010 pursuant to Water Code sections 22, 250, 11577 and 11580. This court has previously held in its Opinion and

1 Order after the October 24 - 26, 2023 hearings that a classic eminent domain
2 case is not required for this proceeding and that DWR need not comply with the
3 acquisition requirements of Water Code sections 250 or 11580 before proceeding
4 with this petition. See Order and Opinion attached hereto and incorporated
5 herein as Attachment 1. Attachment 2 hereto, the court's October 2, 2023 Order,
6 identifies the Petitions subject to this Order Permitting Entry and Investigation on
7 its Attachment A.
8

9 2. *Particular uses.* The court finds that DWR is authorized and intends to investigate
10 the acquisition of the subject properties by eminent domain within the meaning of
11 the Water Code sections listed above and Code of Civil Procedure Section
12 1245.030, including: (1) to investigate the feasibility of alternative types of water
13 conveyance systems, the best alternative conveyance alignment location; (2) to
14 investigate the various types of conveyance systems, including surface level
15 canals, surface level pipelines, and buried tunnels; (3) to investigate conveyance
16 alternative locations; (4) to investigate micro-siting of facilities; (5) ancillary to
17 the above, to investigate potential impacts of a water conveyance system to,
18 among other things, biological resources, water resources, environmental
19 resources, geology, archeology, and utilities on the subject properties; (6) to
20 investigate whether a water conveyance system should be constructed in the
21 Delta. The court considered the above in light of current formulations, current law
22 and conditions, including Governor Newsom's single-tunnel proposal.
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1 3. *Nature and Scope of the Activities Reasonably Necessary to Accomplish*
2 *Purposes.* The court has determined the nature and scope of the activities
3 reasonably necessary to accomplish the purposes identified, taking due
4 consideration of constitutional and statutory requirements. The court has
5 provided suitable limitations to strike the best possible balance between the
6 needs of DWR and the interests of the property owners. The court has
7 determined that DWR may conduct, on ten (10) properties listed on Attachment A
8 – Entry Petitions Spreadsheet (DWR Trial Exhibit 5), the studies described in
9 *infra*: Attachment B, Scope of Work for All Entries; Attachment C, General
10 Conditions for All Entries; and Attachment D, Special Conditions for
11 Environmental and Cultural Entries, or Attachment E, Special Conditions for
12 Geological Entries; as specifically identified for each property under Type of Entry
13 on Attachments A and B. All of the referenced Attachments are incorporated
14 herein. In case of conflict the order of priority shall be first, this Order; second,
15 Attachments A – Entry Petitions Spreadsheet (DWR Trial Exh. 5) and B – Scope
16 of Work, third, Attachment D or E Special Conditions applicable to the particular
17 activity; fourth, Attachment C, General Conditions. For those Types of Entry
18 identified on Attachment A as “Access,” the permitted scope or work includes only
19 entry and passage across existing roadways.
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21
22

23 4. *Authorization to Enter Described Properties.* The facts and law establish that
24 DWR is entitled to an order under Code of Civil Procedure section 1245.030
25 permitting entry by DWR on the subject properties. The petition was duly filed
26 and lawful prior notice was given to each owner of the property as the court
27 determined appropriate under the circumstances of the particular case for
28

1 different ownership interests. Each person who claimed an interest was given a
2 due process opportunity to be heard on all issues. The court has determined all
3 issues including the probable amount of compensation to be paid to the owner of
4 property for the actual damage to the property and interference with its
5 possession and use.

6
7 5. *Probable Amount of Compensation.* The court found that witness Allen Davis had
8 observed each parcel, was highly credible and arrived, based on extensive
9 experience, at just and reasonable estimates of probable damages. His
10 testimony was undisputed. Under Code of Civil Procedure section 1245.030 the
11 court determines that the probable amount of compensation is as set forth in
12 Attachment A, column 7 "Probable Damages". DWR shall make the deposit for
13 each property in accordance with paragraph 7 below and prior to entering into any
14 such property.

15
16 The court finds no probable damages from any environmental/cultural
17 studies to any subsurface owner. In the absence of any evidence to support
18 damage, the court finds only speculative or trivial damage to any subsurface
19 owner from CPT or drilling activity, similar to footprints on a field, and sets \$0 as
20 probable damage to subsurface owners. But DWR shall offer access to core
21 sample analysis to subsurface owner(s) and notify subsurface owners of any
22 valuable minerals contained in the core sample(s).

23
24 6. *Order of Entry.* DWR and its designated agents and employees, subject to the
25 restrictions set out above and Attachments A and B and in the General Conditions
26 and Special Conditions, are hereby permitted and authorized to enter upon each
27 property listed in Attachment A to perform the activities set out in this Order. All
28

1 property listed in Attachment A to perform the activities set out in this Order. All
2
3
4 persons having notice of this Order shall refrain from interfering with the entry and
5
6 activities permitted above. THE RIGHT TO ENTER SHALL COMMENCE ON
7
8 NOVEMBER 27 2023 AND TERMINATE ON NOVEMBER 26, 2024, UNLESS
9
10 EXTENDED BY COURT ORDER.

11
12 7. Deposit: DWR shall, within 20 days of this Order, deposit compensation as set
13
14 forth above in accordance with Code of Civil Procedure section 1245.050(b) in the
15
16 Condemnation Deposits Fund in the State Treasury.

17
18 8. Clarification, Modification, other ex parte: Any person seeking clarification,
19
20 modification, or other *ex parte* relief regarding the contents of this order, or its
21
22 implementation, shall give at least 72 hours' notice by telephone and fax or email
23
24 to each party who has filed an appearance in this coordinated action and hearings
25
26 will be set by the court only on Wednesday, Thursday, or Friday, in the absence
27
28 of good cause, to prevent weekend notice.

9. Interim Order: This order is not a final judgment and any party may make an *ex parte* motion upon three (3) days' notice in this court to amend the terms of this order for good cause.

10. CEQA: Nothing in this Order relieves DWR of its duties and responsibilities under the California Environmental Quality Act (Pub. Resources Code § 21000, et seq. ("CEQA")).

SO ORDERED.

Dated: November 21, 2023



Hon. Lydia M. Villarreal
Judge of the Superior Court

ATTACHMENT 1

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NOV 17 2023
Filed
STEPHANIE BOHRER, CLERK
By *[Signature]*
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

Coordination Proceeding Special Title
Rule 3.550

Case No.: JCCP No. 4594
(STK-CV-UED-2023-8476)

DEPARTMENT OF WATER
RESOURCES CASES

**RULING AND ORDER RE: RIGHT TO
ENTRY AND FOR PREPARATION OF
ORDER OF ENTRY**

I. INTRODUCTION

By its "Order Granting Petition for Coordination and Setting Further Hearing," filed October 2, 2023, this court granted Department of Water Resources ("DWR")'s Petition to add an additional ten (10) pre-condemnation entry petitions, filed in Sacramento, San Joaquin and Alameda Counties, to the within coordinated proceedings. DWR's ten entry petitions seek court orders under Code of Civil Procedure §§ 1245.010, *et seq.*, permitting it to enter and conduct examinations and explorations, including environmental studies and soil borings, on privately-owned property within the California Delta prior to final design and construction of a tunnel or canal to facilitate the transport of water from Northern to Central and Southern California. The court set evidentiary hearings for October 24 and 26, 2023, regarding the scope, timing and probable compensation for the

1 activities DWR wishes to complete on the properties as encompassed in the ten entry
2 petitions.

3 **Appearances:** Deputy Attorneys General Christine Garske, Kelly Smith, Michael
4 C. Gasbarro, and Colin D. Smithy, appeared on behalf of the DWR. Attorneys Thomas
5 H. Keeling, of the Freeman Firm, and Dante Nomellini, Jr., of Nomellini, Grilli &
6 McDaniel, appeared on behalf of the Respondent Landowners, and specially appeared
7 on behalf of Mr. Kevin Johnston ("Landowners").
8

9 **Evidence and Submissions:** The court heard and considered testimony from
10 Andrew Finney, Allan T. Davis, and Katherine Marquez, offered by the Petitioners. The
11 Respondents offered no witnesses. The court reviewed DWR's Petitions and their
12 supporting declarations and evidence, each side's opening, reply, and any supplemental
13 briefs, all supporting declarations and any evidence offered pursuant to stipulation of the
14 parties. The court also heard argument by the parties. The court issued a tentative
15 ruling and considered the parties' arguments submitted in response. Based on all of the
16 above, the court now issues the following opinion and orders.

17 **II. LITIGATION HISTORY**

18 The ten entry petitions before this court are the latest in a series of entry petitions
19 by which DWR seeks temporary entry on privately-owned properties within the California
20 Delta to conduct environmental and geological studies and testing towards design and
21 construction of a potential water conveyance project (sometimes the "Delta Conveyance
22 Project" below). The project would involve design and construction of a tunnel or canal
23 to facilitate the transport of water from Northern California to Central and Southern
24 California. The exact route of the tunnel or canal has not been determined; at least three
25 routes are proposed. It remains possible that no tunnel or canal will be built.

26 The constitutionality of DWR's proposed entries for this same water conveyance
27 project was examined in Property Reserve, Inc. v. Superior Court (2016) 1 Cal.5th 151,
28 168. ("Property Reserve"). The Supreme Court explained:

1 "Because the alternative potential locations for the new facilities cross or lie
2 beneath privately owned lands, the Department sought to enter the private
3 properties in question to ascertain preliminary environmental and geological
4 information about the properties. The Department maintains that the proposed
5 entries and testing are necessary for two reasons: (1) to determine the feasibility
6 and best potential location for the contemplated conveyance system, and (2) to
7 assess the potential effects of the project on biological, environmental, geological,
8 and archeological resources within the properties in order to comply with
9 numerous applicable state and federal environmental laws..."

10 *Ibid.*

11 As with prior entry petitions adjudicated in this coordinated proceeding, DWR
12 seeks temporary entries to do the same types of biological surveys of flora, fauna and
13 temporary natural conditions, such as vernal pools, to assess cultural resources (Native
14 American and subsequent historical resources) and to explore subsurface soil and water
15 conditions by way of soil borings and cone penetrometer testing (CPTs). In this round of
16 entries, DWR seeks permission to expand some of the soil borings to 300 feet from the
17 original 200 feet limitation. DWR also seeks to complete additional testing within the
18 drilled boreholes, specifically to complete hydraulic conductivity, PS logging and
19 pressuremeter testing. DWR also seeks to expand CPTs to include CPTw tests on two
20 properties. Under prior orders in this coordinated proceeding, DWR is required to leave
21 each property as DWR found it, as much as possible, but is permitted to remove dirt for
22 examination and testing and to replace it with bentonite, an absorbent clay material.

23 **III. LANDOWNERS ASSERT THAT THESE ENTRIES EXCEED DWR'S**
24 **AUTHORITY BECAUSE WATER CODE §§ 250 AND 11580 REQUIRE**
25 **THERE BE AN AUTHORIZED AND FUNDED PROJECT BEFORE DWR**
26 **MAY PROCEED**

27 Landowners do not object to the types of investigations at issue in this
28 proceeding. Landowners argue DWR is not entitled to perform these pre-condemnation
investigations because it has no eminent domain authority, for lack of an authorized and
funded project as required by Water Code sections 250 and 11580. Because the pre-
condemnation entries constitute takings, eminent domain authority is fundamental to

1 proceeding with its pre-condemnation activities. In other words, without eminent domain
2 authority, DWR lacks authority to conduct pre-condemnation investigations.

3
4 **1. Landowners Argue Water Code Sections 250 and 11580 Limit DWR's**
5 **Authority to Seek Entry Petitions by Requiring that the Project for Which**
6 **the Entries Are Sought Be Authorized and Funded.**

7 Respondents incorporate by reference earlier arguments raised by prior
8 Landowners in investigative proceedings. Before Judge Farrell, (February 16-18, 2022),
9 Landowners argued Water Code sections 250 and 11580¹ (hereinafter sections 250 and
10 11580) limit DWR's authority to exercise its eminent domain powers. These Water Code
11 provisions provide as follows:

12 "In the name of the people of the State of California, the department may acquire
13 by eminent domain any property necessary for state water and dam purposes.
14 The department shall not commence any such proceeding in eminent domain
15 unless the project for which the *property* is being acquired *has been authorized*
16 *and funds are available therefor.*"

17 Wat. Code, § 250 (Emphasis added.)

18 "When the department cannot acquire any necessary property by agreement with
19 the owner, the department may exercise the power of eminent domain to acquire
20 the property in the name of the state if the project for which the *property* is being
21 acquired *has been authorized and funds are available therefor.*"

22 Wat. Code, § 11580 (Emphasis added.)

23 Landowners argue these sections require DWR to have legislative authorization
24 and funding of the "project" in order to have the eminent domain authority that is
25 essential to conducting any pre-condemnation investigations for the Delta Conveyance
26 Project.

27 This argument was rejected by Judge Farrell. Judge Farrell held that to require
28 authorization and funding at this stage ignores Property Reserve, noting that the pre-

¹ Water Code section 11580 is specific to the Central Valley Project; section 250 is of more general application.

1 condemnation activities at issue here are done for the purpose of defining and testing the
2 feasibility of designs and approaches for a water conveyance system. To the extent
3 these investigations involve a "taking" under federal constitutional law, such a taking
4 under Property Reserve simply requires due process and just compensation.

5 On February 21, 2023, DWR sought entry orders with respect to a different group
6 of properties owned by other Respondent Landowners. Landowners narrowed the
7 argument at that evidentiary hearing, arguing that while DWR may not be required to
8 obtain authorization and funding for the entire Delta Conveyance Project under sections
9 250 and 11580, DWR is required to have authorization and funding for the *investigation*
10 phase of the project. Key to Landowners' argument is the determination that the pre-
11 condemnation investigation constitutes a "project" under sections 250 and 11580.
12 Authorization and funding cannot occur unless there is a "project".

13 At the conclusion of the February 2023 evidentiary hearing, the court requested
14 additional briefing on what was meant by a "project" under sections 250 and 11580. In
15 Landowners' Supplemental Brief, filed March 6, 2023, the Respondent Landowners
16 seemed to have abandoned the argument that the investigation phase was the project
17 contemplated by sections 250 and 11580; the February 2023 Landowners returned to
18 the earlier argument that the Delta Conveyance Project is the project contemplated in
19 sections 250 and 11580, requiring authorization and funding before entries could be
20 accomplished by court order. The court found the Delta Conveyance Project was not a
21 project under sections 250 and 11580, and therefore did not need legislative
22 authorization and funding before DWR could commence pre-condemnation entries.

23 In the present coordinated matter, filed August 9, 2023, the current Respondent
24 Landowners make both arguments: the Delta Conveyance Project and the Investigation
25 Phase, each, separately, constitute a "project" and therefore are subject to sections 250
26 and 11580.

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1 eminent domain statutes, specifically Water Code sections 250 and 11580. Because
2 the Legislature has not authorized and funded the project, DWR does not have eminent
3 domain authority and is not empowered to move forward by court order with its pre-
4 condemnation investigations.

5 Assuming sections 250 and 11580 address *any* taking, a preliminary issue in
6 Landowners' argument is what "project" must be authorized and funded? What is the
7 project? Other Respondent Landowners, in past proceedings, and again in this
8 proceeding, have argued that the "project" at issue, pursuant to 250 and 11580, is the
9 Delta Conveyance Project. Section 250 states the "department may exercise the power
10 of eminent domain to acquire any property necessary ... if the *project* for which the
11 property is being acquired *has been authorized and funds are available...*". (Emphasis
12 added.)

13 Sections 250 and 11580, in giving DWR the power of eminent domain, instruct
14 DWR that one of the first steps in the exercise of its power to acquire property under its
15 eminent domain authority is to define the "project." Next, DWR must secure funding and
16 authorization of the "project". Then, and only then, can it exercise eminent domain to
17 acquire the property necessary for the "project". The need to secure authorization and
18 funding is fundamental to the acquisition of property necessary for the "project". Thus,
19 Landowners argue without an authorized and funded project, there is no eminent domain
20 authority.

21 The court rejects the argument that the Delta Conveyance Project is a "project"
22 under sections 250 and 11580. Evidence produced at the hearing made clear DWR is
23 gathering information for the evaluation, recommendation, and development of a
24 potential future water conveyance project, under the pre-condemnation statutes, Code of

25
26 *Civ. Proc. §§ 1245.030, subd. (b), (c).* The owner may have just compensation determined by a
27 jury. *Id.*, § 1245.060, subd. (a).

1 Civil Procedure sections 1245.010 – 1245.060. The decision-makers have not yet
2 chosen a "project", and in fact cannot do so until more information is gathered.

3 Uncontradicted witnesses testified at the hearing there are at least four
4 alternatives - the Central, the Eastern, the Bethany Reservoir and "No Alternative/No
5 Project". Without knowing which - if any - water conveyance route will be chosen, the
6 Legislature cannot authorize and fund one of these alternatives. There is no project at
7 this point.³ The Delta Conveyance Project is not a project under these sections.

8 **B. An Investigation is not a Project Under Sections 250 and 11580.**

9 In court on October 24, 2023, Landowners narrowed their definition of project,
10 asserting sections 250 and 11580 apply to the investigatory phase of projects
11 undertaken by DWR: the DWR must define the scope of the investigations and
12 demonstrate the investigations are duly authorized and funded. Landowners argued such
13 an authorization and funding requirement is properly applied to segments or phases of
14 the entire project; in this instance there is an investigation phase or "project". The
15 Landowners argue the authorization and funding obligations for this discrete phase
16 would not impose a burden on the pre-condemnation activities. In fact, Landowners
17 argue it would be quite easy for DWR to obtain legislative authorization and funding.
18 Clearly, the investigation has already been funded. In fact, it seems the investigation is
19 near completion, so funding would not be an issue. Similarly, authorization for a project
20 that is near completion would be easily obtained. Accordingly, it is not an "enormous and
21 irrational burden" on the pre-condemnation activities to require DWR to obtain both
22 authorization and funding of this "project" to carry out the pre-condemnation entries
23
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25

26 ³ While the Landowners argue the project is the Delta Conveyance Project, subject to sections 250
27 and 11580, they also state this argument is "effectively moot in light of DWR's anticipated approval
28 of the Delta Conveyance Project by the end of this year." *Respondents' Brief in Opposition to
Entry Petitions, 15:7-11.*

1 before DWR exercises its power to go beyond 'innocuous or superficial' activities - or
2 engage in a taking — in its investigations.⁴

3 Landowners assert the court has the power to decide what is and is not a
4 "project". Landowners argue an investigation can be a "project", as defined by CEQA.
5 Once the court determines there is an investigative project, DWR would need to comply
6 with the project authorization and funding requirements in Water Code section 250 and
7 11580. However, Landowners provide no authority for the imposition of CEQA rules on a
8 DWR pre-condemnation investigation. Further, Landowners do not provide guidance
9 under CEQA for defining this investigation as a "project". This attempt to define a
10 project as the investigation phase would require the court to read into the statute an
11 obligation not appearing on its face.

12 **C. Water Code Sections 250 and 11580 Do Not Limit DWR's Authority to**
13 **Conduct Pre-Condensation Activities**

14 An essential element of the above argument is that without a "project" with
15 legislative authorization and funding, as mandated by the terms of sections 250 and
16 11580, DWR has no eminent domain authority. Lacking eminent domain authority, DWR
17 cannot undertake pre-condemnation investigations. Landowners argue any
18 interpretation of sections 250 and 1580 which does not require authorization and funding
19 will "deprive DWR of the eminent domain authority it needs to acquire the property
20 interest to carry out the instant activities." This is the logic:

- 21 1. DWR only has authority under eminent domain if its project is authorized
22 and funded pursuant to 250 and 11580.
- 23 2. If DWR does not have eminent domain authority, it cannot proceed with
24 pre-condemnation proceedings (sections 250 and 11580).

25 ⁴ Landowners argue defining the investigation stage as the project would not be burdensome: the
26 court could easily define the investigation as the project, which would then require DWR to obtain
27 authorization and funding. The court cannot base a decision to define a project on how easy it
28 might be to accomplish. This alone is not the basis for a determination or definition of a project.

1 Because neither the Delta Conveyance Project, nor the Investigation Project has been
2 authorized and funded, DWR has no eminent domain authority. Without eminent domain
3 authority there is no authority for the pre-condemnation entries. The petitions must be
4 denied.

5 This logic is flawed. Landowners do not address the language in sections 250
6 and 11580 which limit the statutes to eminent domain actions to acquire property. The
7 court believes these statutes apply only to actual efforts to commence a proceeding to
8 acquire property. It is logical that any effort to exercise eminent domain and take away
9 someone's property should first have legislative approval and funding. This reading of
10 the statutes alone would address Landowners' argument.

11 **D. The Pre-Condensation Entry Statutes Do Not Require Authorization**
12 **and Funding of a Project**

13 DWR is a state entity authorized to "acquire, either in fee or in any lesser estate or
14 interest, any real property which it considers necessary for state water and dam
15 purposes" including "for future needs." *Water Code* §§ 22, 253, 258. To benefit the
16 people of the state of California, "[DWR] may acquire by eminent domain any property
17 necessary for state water and dam purposes." *Id.*, §§ 22, 250, 11580. Thus, DWR is
18 authorized to exercise eminent domain authority to acquire real property it considers
19 necessary for state water purposes where it is unable to obtain the property by
20 agreement. Pursuant to that eminent domain authority, DWR is entitled to seek pre-
21 condemnation entry of various parcels owned by the ten respondents who are the
22 subject of DWR's entry petitions.

23 The pre-condemnation entry statutes are found at Code of Civil Procedure
24 sections 1245.010 through 1245.060, inclusive. As relevant, section 1245.010 provides:

25 "Subject to requirements of this article, any person authorized to acquire property
26 for a particular use by eminent domain may enter upon property to make
27 photographs, studies, surveys, examinations, tests, soundings, borings,
28

1 samplings, or appraisals or to engage in similar activities reasonably related to
2 acquisition or use of the property for that use."

3 Code Civ. Proc., § 1245.010 (emphasis added).

4 Because DWR is a person authorized to acquire property for "state water . . .
5 purposes" by eminent domain, *Water Code* §§ 22, 250, 253, 258, 11580, it is also a
6 person that may "enter upon property to make photographs, studies, surveys,
7 examinations, . . . borings, samplings, or appraisals or to engage in similar activities
8 reasonably related to acquisition or use of the property for that use," i.e., state water
9 purposes. In making such entries it is "subject to the requirements of *this article*⁵ . . .,"
10 i.e., Code of Civil Procedure sections 1245.010 through 1245.060, inclusive.

11 As set forth in section, 1245.020:

12
13 "In any case in which the entry and activities mentioned in Section 1245.010 will
14 subject the person having the power of eminent domain to liability under Section
15 1245.060, before making that entry and undertaking those activities, the person
16 shall secure:

17 (a) The written consent of the owner to enter upon the owner's property and to
18 undertake those activities.

19 (b) An order for entry from the superior court in accordance with Section
20 1245.030.¹¹

21 *Ibid.*

22 With respect to potential liability, section 1245.060 provides in relevant part:

23 "If the entry and activities upon property cause actual damage to or substantial
24 interference with the possession or use of the property, . . . the owner may
25 recover for that damage or interference *in a civil action, as a defendant in an
26 eminent domain action affecting the property, or by application to the court under
27 subdivision (c).*

28 Code Civ. Proc., § 1245.060, subd. (a). (*Emphasis added.*)

⁵ Article 1, "Preliminary Location, Survey and Tests" of Chapter 4, "Precondemnation Activities" of Title 7, "Eminent Domain Law" within the Code of Civil Procedure.

1 Section 1245.060's language ". . . as a defendant in an eminent domain action...",
2 makes clear that an eminent domain action is distinct from proceedings commenced under
3 the entry statutes. Under Water Code section 250 and Code of Civil Procedure section
4 1245.010, DWR is a "person authorized to acquire property for a particular use by eminent
5 domain" and also subject to potential liability under section 1245.060 because it is the
6 public entity seeking the entries "for water . . . purposes." With respect to the 10 petitions
7 before the court, DWR has been unable to obtain each owner's written consent to its entry
8 and activities upon the property, so it is seeking a court order in accordance with section
9 1245.030, which provides:

10 (a) The person seeking to enter upon the property may petition the court for an
11 order permitting the entry and shall give such prior notice to the owner of the
12 property as the court determines is appropriate under the circumstances of the
13 particular case.

14 (b) Upon such petition and after such notice has been given, the court shall
15 determine the purpose for the entry, the nature and scope of the activities
16 reasonably necessary to accomplish such purpose, and the probable amount
17 of compensation to be paid to the owner of the property for the actual damage
18 to the property and interference with its possession and use.

19 (c) After such determination, the court may issue its order permitting the entry.
20 The order shall prescribe the purpose for the entry and the nature and scope
21 of the activities to be undertaken and shall require the person seeking to enter
22 to deposit with the court the probable amount of compensation.

23 Code Civ. Proc., § 1245.030.

24 Section 1245.040 permits modification of entry orders on noticed hearing and
25 deposit of increased probable compensation, as appropriate. Section 1245.050
26 addresses disbursement and retention of the probable compensation. These are the
27 "requirements of this article" -- the pre-condemnation entry statutes -- that DWR must
28 comply with to obtain a court order to enter upon and conduct pre-condemnation
examinations, and, explicitly, borings, "or to engage in similar activities reasonably
related to acquisition or use of the property for" state water purposes. *Code Civ. Proc. §*
1245.010. Contrary to the logic of Landowners' arguments, the "requirements of this

1 article" do not include authorization and funding of the project for which the pre-
2 condemnation entries are sought.

3
4 **E. Property Reserve and the Legislative History Do Not Require Project**
5 **Authorization and Funding for Pre-Condemnation Entries**

6 A requirement that the project be already authorized and funded is also
7 inconsistent with the legislative history of the entry statutes and Water Code sections 250
8 and 11580. In Property Reserve, the Supreme Court reformed the pre-condemnation
9 entry statutes to conform with the constitutional requirement that an owner be afforded a
10 jury trial to ascertain just compensation for damages caused during the course of a court-
11 ordered entry. *Property Reserve, Inc. v. Superior Court*, *supra*, 1 Cal.5th 151, 208; *Cal.*
12 *Const., Article I, § 19, subd. (a)*.⁶ Subsequently, the Legislature amended the entry
13 statutes to conform with *Property Reserve* and to make technical changes. Landowners
14 whose property is damaged or substantially interfered with as a result of an agreed or
15 court-ordered entry may have a jury trial on just compensation for the damages suffered,
16 and they may seek those damages by a separate civil action, by application to the court
17 under section 1245.060, subd. (c) of the entry statutes, or as a defendant in an eminent
18 domain action. *Code Civ. Proc. § 1245.060, subd. (a)*. *Property Reserve* did not require,
19 and the Legislature has not made, any changes to Water Code sections 250 and 11580.

20 Finally, Respondent Landowners' proposed requirements of project authorization
21 and funding would be inconsistent with the Supreme Court's recognition that pre-
22 condemnation entries are a practical and fiscally prudent way of limiting the properties to
23 ultimately be condemned. The Supreme Court recognized:

24 "In view of the unquestioned need for pre-condemnation entry and testing in order
25 to avoid the ill-advised and premature condemnation of private property and the

26 ⁶ "Private property may be taken or damaged for a public use and only when just compensation,
27 ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The
28 Legislature may provide for possession by the condemnor following commencement of eminent
domain proceedings upon deposit in court and prompt release to the owner of money determined
by the court to be the probable amount of just compensation." *Cal. Const., Art. I, § 19, subd. (a)*.

1 substantial uncertainties inherent in the pre-condemnation testing context, the
2 Legislature established a statutory scheme that takes into account the significant
3 public and private interest in an expedited pre-condemnation procedure and at the
4 same time extends to a property owner the fundamental procedural protections
5 embodied in the second sentence of article I, section 19, subdivision (a) of the
6 California Constitution whether or not a public entity's proposed pre-condem-
7 nation activities actually rise to the level of a taking or damaging of property for
8 purposes of the state takings clause."

9 *Property Reserve, supra, 1 Cal.5th 151 at 200.*

10 Further, the Court explained,

11 "The entire purpose of pre-condemnation entry and testing is to enable the public
12 entity to determine whether or not the property is suitable and should be acquired
13 for a public project and whether a classic condemnation action should be
14 commenced. It is counterintuitive to maintain that the commencement of a classic
15 condemnation action is required before such pre-condemnation activities may be
16 undertaken."

17 *Property Reserve, supra, at 197. (Emphasis added.)*

18 IV. CONCLUSION

19 The court declines to adopt Respondent Landowners' logic. Respondents'
20 argument overlooks the pre-condemnation entry statutes that are the reason for these
21 coordinated proceedings. Nowhere do the pre-condemnation entry statutes require a
22 project, authorization or funding beyond what is necessary to satisfy an owner's quantum
23 of damages if, in pursuing and completing the court-ordered entries, DWR becomes
24 liable for such damages. The pre-condemnation entry statutes anticipate that a person,
25 such as DWR, authorized to acquire property for a particular use by eminent domain,
26 may enter upon the property to study it, survey it, make borings and engage in similar
27 activities "reasonably related to acquisition or use of the property" for such use, including
28 water conveyance. No authorized, funded project is required because DWR does not yet
seek to acquire by eminent domain, purchase or other agreement. Explicitly, at this pre-
condemnation stage of a Delta Conveyance Project only the "requirements of this
article," i.e., Code of Civil Procedure sections 1245.010 – 1245.060, need be complied
with by DWR. Nothing more is required.

V. NOTICE TO SUBSURFACE OWNERS

Petitioners, in accordance with due process to owners of property and to meet the statutory requirement of notice to owners (Code Civ. Proc. § 1245.030(a)), provided reasonable notice to subsurface owners who might be affected by its orders. DWR conducted a reasonable search of title for subsurface owners on record. For such properties, DWR mailed by certified mail a notice of hearing on the proposed drilling and/or CPT tests on the affected property to the record owner of the subsurface estate at the last known address, if available. DWR also posted a similar notice of hearing listing all the affected properties in a local newspaper for one day in each of two consecutive weeks. No party responded to the Notice.

VI. CONCLUSION AND ORDER FOR PREPARATION OF A FORMAL ORDER OF ENTRY,

The court has reviewed the evidence and listened to the testimony of witnesses and the arguments of counsel. The court determines DWR is entitled to enter the ten (10) properties for various activities as will be set forth in the final order of entry, subject to restrictions set forth in such order. The court has determined the probable amount of compensation, and such shall be set forth for each parcel in an attachment.

SO ORDERED.

Date: November 17, 2023.


Hon. Lydia M. Villarreal
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS: 180 E Weber Avenue MAILING ADDRESS: 180 E Weber Avenue CITY AND ZIP CODE: Stockton, CA 95202 BRANCH NAME: Superior Court San Joaquin	FOR COURT USE ONLY
State of California by and through Department of Water Resources vs Cortopassi Partners, LP et al.	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: STK-CV-UED-2023-0008476

I certify that I am not a party to this cause. I certify that a copy of Ruling and Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Stockton, California, on 11/21/2023.

By: Grant Preeo, Deputy Clerk

Andy Pinasco
 Attorney at Law
 Neumiller & Beardslee
 3121 W. March Lane, Suite 100
 Stockton, CA 95219

Judicial Counsel Of California
 C/O Shawn Parsley; Admin. Office Of The Courts
 455 Golden Gate Ave.
 San Francisco CA 94102-3660

Christine E Garske
 1300 I Street, Suite 125
 Sacramento CA 94244

Thomas Rector; General Counsel
 O'Neill Vintners & Distillers
 101 Larkspur Landing Cir, Suite 350
 Larkspur, CA 94939-1749

Dante John Nomellini Jr
 PO BOX 1461
 Stockton CA 95201-1461

Stratton Constantinides
 Nixon Peabody, LLP
 300 South Grand Avenue, Suite 4100
 Los Angeles, CA 90071-3151

Thomas H Keeling
 1818 Grand Canal Blvd Suite 4
 Stockton CA 95207

Roffoni Family
 c/o John James Roffoni and Dierdre I. Roffoni
 535 West Anapamu Street
 Santa Barbara, CA 93101

CLERK'S CERTIFICATE OF SERVICE BY MAIL

Maureen G. Roffoni
c/o Roffoni Management LLC
P.O. Box 977
San Luis Obispo, CA 93406

Tim Johnston, Susan M. Johnston,
and Kevin C. Johnston
2288 Buena Vista Ave.
Livermore, CA 94550

Maureen G. Roffoni, Trustee of the
Maureen G. Roffoni Trust; Coleen
Edwards and Robert Hather, Co-
Trustees of the John A. Roffoni
Family Trust; John James Roffoni;
Dierdre I. Roffoni, Trustee of the
Dierdre I. Roffoni Separate Property Trust
Maureen G. Roffoni/Roffoni Management, LLC
Agent for Service of Process:
Daniel K. Rutledge
820 Walnut Street
San Luis Obispo, CA 93401

Coleen Edwards, Trustee
John A. Roffoni Family Trust
P.O. Box 2574
Orcutt, CA 93457-2574

Coleen Edwards and Robert Hather,
Trustees of the John A. Roffoni Family Trust
3675 Sequoia Drive
San Luis Obispo, CA 93401

CLERK'S CERTIFICATE OF SERVICE BY MAIL

ATTACHMENT 2

OCT 02 2023
Filed
STEPHANIE BOHRER, CLERK
By [Signature]
DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title
Rule 3.550

Case No.: JCCP No. 4594
(STK-CV-UED-2023-8476)

DEPARTMENT OF WATER RESOURCES
CASES

ORDER GRANTING PETITION FOR
COORDINATION, COORDINATING
ENTRY PETITIONS, AND SETTING
FURTHER HEARING

Date: September 26, 2023
Time: 10:00 AM
Dept. 8A – by Zoom
Hon. Lydia R. Villarreal

Petitioner, State of California, Department of Water Resources ("DWR") petitions to add an additional ten (10) Petitions for Orders Permitting DWR to Enter and Investigate Real Property to the above-titled coordination proceeding. These Entry Petitions have been previously filed in Alameda, San Joaquin, and Sacramento counties. The hearing came on pursuant to notice at 10:00 a.m. on September 26, 2023, in Department 8A before the Hon. Lydia M. Villarreal; the court and all parties appearing via Zoom. The court having read the moving, opposing and reply papers and heard and considered the parties' further arguments, it now rules on the Petition to Add Cases to the Coordinated Proceeding.

Appearances: Deputy Attorneys General Christine Garske and Kelly Smith appeared on behalf of DWR; Attorneys Thomas H. Keeling, The Freeman Firm, Dante Nomellini, Jr., Nomellini, Grilli & McDaniel appeared on behalf of Respondents

JCCP 4594 – DEPARTMENT OF WATER RESOURCES – MOTION TO COORDINATE ADD ON CASES
– HEARD ON SEPTEMBER 26, 2023

1 Cortopassi Partners, L.P., a California Limited Partnership; Ensher, Alexander &
2 Barsoom, Inc.; Patrick Kalei Estes; Jackson Land Holdings, LP, a California Limited
3 Partnership; LMT Investments, LLC, a California Limited Liability Company; Frank A.
4 Loretz, Trustee of the Frank Loretz Family Trust dated November 26, 2013; Thomas
5 McCormack and Judith Hunt; Cynthia K. Seebeck, Trustee of Family Trust A, The
6 William Garrett Seebeck Family Trust; and Silverdale Farms, Inc.

7
8 Stratton Constantinides, Nixon Peabody, LLP appeared on behalf of Respondent
9 Constellation Brands U.S. Operations, Inc., a New York corporation. Thomas Rector
10 appeared on behalf of Respondent O'Neill Beverages Co., LLC, a Delaware limited
11 liability company.

12 No appearance was made on behalf of Tim, Susan M. and Kevin C. Johnston at
13 this hearing.

14 **Filings Read and Considered:** The court read and considered the following
15 submissions: DWR's Notice of Petition to Coordinate Add-On Cases (Entry Petitions),
16 the moving memorandum of points and authorities and supporting declaration of Deputy
17 Attorney General Kelly T. Smith, including the referenced declarations and exhibits, the
18 Notice of Opposition to DWR's Petition for Coordination filed on behalf of Respondents,
19 represented by counsel Keeling and Nomellini as identified above, their Opposition
20 Memorandum of Points and Authorities, Declaration of Dante J. Nomellini, Jr. and
21 Request for Judicial Notice, and DWR's Reply Memorandum and Request for Judicial
22 Notice. No other written submissions were filed.

23 The court heard and considered the arguments of counsel supporting and
24 objecting to the petition for coordination.

25 **Service of Process:** At the hearing, counsel for DWR reported that it had
26 effectuated service on Cynthia Kay Seebeck, Trustee of Family Trust A, the William
27 Garrett Seebeck Family Trust LLC, who is represented by Messrs. Keeling and
28 Nomellini. With the exception of the Johnston respondents (Alameda County Action No.
23CV035622), it appears that all respondent parties with respect to this Petition

1 are represented or negotiating agreements with DWR and in some cases, both.
2 Counsel for DWR advised that negotiations for entry are ongoing or resolved with
3 respect to Constellation Brands (Sacramento County Superior Court Action 23 CV
4 004122), Ehlers Farms, et al., (San Joaquin County Action No.: STK-CV-UED-2023-
5 0005932), Maureen G. Roffoni, Trustee of the Maureen G. Roffoni Trust, et al. (Alameda
6 County Superior Court Action No. 23CV035749.) No party-specific objections or
7 challenges to the court's jurisdiction were raised at the hearing.

8 INTRODUCTION

9 DWR has moved to coordinate petitions filed in Alameda, San Joaquin and
10 Sacramento counties seeking to permit DWR employees and contractors to enter
11 certain private properties to conduct environmental surveys, geological drilling and
12 exploration for planning and design of a system to convey water from northern
13 California to central and southern California. DWR's Petition seeks to add fifteen (15)
14 additional entry petitions to those previously coordinated in this proceeding; with respect
15 to five (5) of the Petitions, landowners are negotiating or have negotiated agreements to
16 permit DWR's entry and investigations.

17 In the most recently resolved add-on coordination proceeding, on March 21,
18 2023, the court added sixteen (16) entry petitions to the coordination proceeding and
19 issued entry orders permitting DWR to enter subject properties to accomplish
20 above-ground surveys and underground geotechnical exploration towards design and
21 construction of the Delta Conveyance Project.

22 Respondents object to the addition of these Petitions into this coordinated
23 proceeding. Respondents argue these add-on Entry Petitions confirm the Petitioner is
24 "piecemealing" Petitions into this "stale" coordinated proceeding. Respondents object to
25 this petition and perpetuation of DWR's piecemeal approach. Respondents argue it is
26 contrary to the purposes of coordination and not supported by law. According to
27 Respondents, it is inefficient, duplicative, repetitive and burdensome to the resolution of
28 common issues of fact and law.

1 Respondents argue DWR should be required to bring in all known future
2 intended entry petitions into this coordinated proceeding before the court proceeds to
3 hearing evidence and ruling on the merits of the entries. Respondents argue Petitioner's
4 piecemeal approach resolves only a handful of petitions, rather than all petitions, as is
5 the intent of coordination. *Code Civ. Proc. § 404.1*. Further, permitting DWR to add
6 petitions *after* the court has determined – in earlier proceedings – common questions of
7 facts and law, is contrary to the intent of section 404.1 which anticipates that common
8 questions of fact and law be *pending* and not already decided.
9

10 LITIGATION HISTORY

11 DWR's entry petitions are filed pursuant to Code of Civil Procedure section
12 1245.010 *et seq.*, which requires that a hearing be held prior to any such petition being
13 granted. *Property Reserve, Inc. v. Superior Court (2016) 1 Cal.5th 151, 175-176*. The
14 referenced Supreme Court decision followed the cross-appeals of the trial court's
15 original decision granting DWR permission to enter certain properties to undertake
16 non-invasive surveys but denying DWR permission to enter those properties to
17 undertake geotechnical investigations requiring drilling and physical ground penetration.
18 *Property Reserve, Inc. v. Superior Court (2016) 1 Cal.5th 151* upheld the trial court with
19 respect to its ruling on non-invasive entries (which the trial court permitted) and
20 overruled the trial court with respect to its ruling on geotechnical investigations requiring
21 drilling (which the trial court denied). The Supreme Court remanded the case to the
22 Third District Court of Appeal, which issued its decision, *Property Reserve, Inc. v.*
23 *Superior Court (2016) 6 Cal.App.5th 1007*, consistent with the direction of the Supreme
24 Court. On remand to the trial court, after additional hearings, the trial court reformed its
25 order and permitted the petitioned-for entries to also permit geotechnical investigation,
26 with conditions to address the landowners' concerns and requirements. This trial court
27 is bound by both above-referenced published decisions.
28

ARGUMENTS

Respondent landowners assert that permitting DWR to bring new petitions into the coordination proceeding, in piecemeal fashion, is an inefficient, duplicative, repetitive, and burdensome approach to resolving common issues of fact and law. Respondents argue the purpose of coordination is to resolve common questions of law and fact that are "pending". This purpose is undermined if these questions have been decided and brought to resolution in prior actions, and then after resolution, additional actions, sharing those same common questions, are added to the coordinated proceedings. Respondents assert that landowners brought in later are denied the opportunity to be heard in the earlier proceedings that decided the same issues to be resolved in their own current proceedings. In fact, at this later point in the proceedings, there are no "pending" issues. All the common questions of fact and law have already been decided. Further, Respondent landowners brought into these later proceedings are denied an impartial tribunal because the court has already reached a conclusion about common questions of fact and law in prior proceedings. Before the court, Respondents argued that the landowners would benefit from a new judge who would take a new look at these issues. Here, all the decisions are "baked in", according to Respondents. For these reasons, DWR should be required to bring in all future landowners into this coordination petition *before* the merits of pending questions of facts and law are resolved in the coordination petition and entry petitions. Respondents further suggested this coordinated proceeding could be terminated, and if there are new Entry Petitions, DWR can initiate a new case.

According to Respondent landowners, piecemeal coordination does not meet the standards in Code of Civil Procedure section 404.1. In fact, it entirely defeats the purpose of the coordination. Allowing serial determinations of common questions of fact and law undercuts the point of coordination, which is to permit consistent determination of such common questions. Additionally, the convenience of parties, witnesses and

counsel is not accomplished by serial rounds of coordination proceedings for groups of
JCCP 4594 – DEPARTMENT OF WATER RESOURCES – MOTION TO COORDINATE ADD ON CASES
– HEARD ON SEPTEMBER 26, 2023

1 entry petitions and serial merit hearings. Piecemealing the coordination motions results
2 in rounds of add-on coordination petitions which do not conserve judicial resources.
3 Piecemealing the coordination proceedings and subsequent merit hearings risks
4 inconsistent rulings and undermines potential resolution of future petitions by
5 settlement.

6 Respondents argue the court should require Petitioner to advise the court and
7 parties of any additional petitions it has determined needs to be filed and how many
8 there are. DWR should be required to add these to the proceedings before the court.
9 *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 812. Respondents
10 urged that the court not go forward with a coordination hearing until DWR has added all
11 entry petitions it intends to file.
12

13 In opposition to Respondent landowners' arguments, DWR argues that Rules of
14 Court, Rule 3.554 permits coordination of additional cases into an existing coordinated
15 proceeding. The term "pending" refers to the recently filed actions sharing common
16 questions of law or fact with others already coordinated and therefore potentially
17 capable of being added to an existing coordinated proceeding. The pending cases in
18 this proceeding are those petitions filed in various superior courts seeking real property
19 entry for environmental and geological studies for design of a Delta Water Conveyance
20 and that have not yet been determined.

21 DWR points to the March 2009 California Supreme Court order which judicially
22 coordinated these proceedings -- pre-condemnation real property entries to conduct
23 feasibility studies for a state water conveyance project in the Delta. These proceedings
24 involve that same question -- feasibility studies for a Delta Water Conveyance project.

25 DWR believes it can minimize the number of entries to only those necessary to
26 acquire an understanding of the Delta's geotechnical and environmental conditions for
27 the benefit of California's water users and the Delta environment. The least intrusive
28 manner to do this is necessarily iterative. In addition, phasing manageable numbers of
entries provides certainty to landowners as to when entries can commence and by

1 when they must be completed. Requiring DWR to do as many entries, soils
2 investigations, drillings and environmental surveys as possible at one time, or over an
3 extended period of time, would create scheduling impossibilities, timing difficulties and
4 public cost increases requiring multiple drilling seasons which would likely increase
5 intrusion and disruption to affected landowners.

6 DWR asserts that serial coordination is consistent with the standards of
7 coordination. Each entry petition provided its respondent landowner(s) with notice of
8 DWR's intention to coordinate the petition into this proceeding. All landowners were
9 provided notice of the coordination hearing and notified of the opportunity to object.
10 Only ten parcel owners objected, and counsel submitted opposition on their behalf.
11 Landowners have received notice and taken action each deems appropriate.

12 DWR states the landowners will have an opportunity to be heard with respect to
13 the merits of the individual entries themselves. The hearing is unique to each
14 landowner, although the law and issues are the same. The landowners are not subject
15 to duplication and repetitive hearings. In *Property Reserve, Inc. v. Superior Court*
16 (2016) 1 Cal.5th 151 the Supreme Court found the statutory pre-condemnation
17 procedures provide respondent landowners with the due process to which they are
18 entitled. *Code Civ. Proc. § 1245.010*.

19 DWR argues that presenting the petitions for coordination in stages provides
20 convenience to the parties and reduces the risk of inconsistent rulings. DWR is
21 attempting to conduct the investigations only if necessary and with the minimum
22 disruption necessary. All landowners, at whatever point each may be brought into this
23 coordination proceeding, receive notice of the proceedings and activities pertinent to the
24 parcels they own.

25 DWR argues that landowners are protected because entry orders are interim
26 orders, not final ones, and can be and have been modified. DWR also points out the
27 iterative add-on process improves and updates the additional entry orders and
28 environmental protections, and thus better accommodates landowners.

RULINGS

Requests for Judicial Notice: All Requests for Judicial Notice are granted.

There were no objections to granting Judicial Notice.

Landowners request that DWR be required to file all known petitions and to postpone the hearing on the merits until all petitions have been added.

This court DENIES this request:

1. Rules of Court, Rule 3.554 permits litigants to add on new petitions or complaints into an existing coordinated proceeding where the existing proceedings and the new petitions or complaints share common questions of facts and law. There is no question that the new petitions seek entry to real property for environmental and geologic studies for design and construction of a Delta Water Conveyance System and therefore share common questions of fact and law with the earlier-filed petitions. The fact that decisions have been issued on the earlier-filed petitions does not prohibit a newly added respondent landowner from raising any issue, or appealing a decision, or seeking a new hearing. So long as proper notice and an opportunity to be heard is provided, no due process deprivation of rights occurs. Each landowner has rights to object with respect to its own property. The court does not perceive that an affected landowner has the right to object with respect to the rights of other landowners, current or future. Facts and law are specific to each case. The court has an obligation to take care to craft orders responsive to the needs of each respondent landowner when those concerns and needs are brought to the court's attention. By way of example, the court's previous orders addressed property used as vineyards and property used for hunting and treated each differently. Even when petitions are 'batched' the court considers each property individually, to the extent distinctions are brought to its attention. Facts and law also change as the proceedings

1 continue. In the earliest proceedings, it was not necessary for DWR to undertake
2 surveys related to cultural sites significant to Native Americans. Now DWR must
3 do so, and the last round of petitions encompassed that fact. In the very earliest
4 petitions, DWR intended to place markers on property so that it could conduct
5 aerial surveys. Because of technological advances, it no longer needs to do so.
6 Presenting the petitions in groups helps the court address these changed
7 requirements in an orderly fashion. Additionally, respondents in later-filed cases
8 have the benefit of publication of the controlling Supreme Court and Third District
9 Court of Appeal case law and the trial court's previous orders, so they can focus
10 their arguments and objections.

11
12 2. Respondents request that the court order DWR to bring all petitions, current and
13 future, into the coordination proceeding before the next phase of the hearing
14 begins. Such a requirement would delay the information gathering by DWR, it
15 would create scheduling impossibilities, timing difficulties and public cost
16 increases requiring multiple drilling seasons which could increase intrusion and
17 disruption to affected landowners. Phasing manageable numbers of entries
18 provides certainty to landowner as to when entries can commence and by when
19 they must be completed. Further, DWR represents to the court that these
20 geotechnical investigations proceed only when necessary based on data as
21 acquired.

22 3. Allowing DWR to submit their petitions in groups permits the court to issue
23 interim orders for which landowners can request modifications and then
24 challenge based on their own specific facts.

25
26 4. Respondents argue the add-on Entry Petitions burden the landowners with
27 duplicative and repetitive proceedings. In fact, with rare exception, each
28 landowner is new to the coordinated matter.

5. The ability to reject substantively similar cases to a coordinated matter is limited

(Ford Motor Warranty Cases vs. Sup. Ct. (2017) 11 Cal.App.5th 626, 639).

1 These entry petitions are similar in nature and purpose from those previously
2 coordinated. Respondents have not identified anything that distinguishes these
3 entry petitions from those previously coordinated.

4
5 **Ruling:** Accordingly, the court GRANTS the motion for coordination as to those
6 Petitions properly filed and served on respondent landowners.

7 **CONCLUSION**

8 **The Petition to Coordinate all cases listed on Attachment A is GRANTED.**

9 The court finds in accordance with Code of Civil Procedure section 404.4 and
10 California Rules of Court, Rule 3.521(a)(7) that:

11 (1) common questions of fact and law are predominating and significant to the
12 litigation;

13 (2) the disadvantages of duplicative and inconsistent rulings, orders or judgments
14 call for coordination;

15 (3) the convenience of parties, witnesses and counsel are not significant
16 problems in this case as the locales are reasonably close;

17 (4) the efficient utilization of judicial facilities and manpower support coordination
18 in these cases.

19 **OTHER MATTERS**

20 **Future Hearings:** Evidentiary hearings in this matter are set for October 24
21 through 26, at 9:00 am, in Stockton, courtroom to be determined. The parties are
22 ordered to meet and confer prior to commencement of the evidentiary hearings
23 regarding the testimony they believe they reasonably require.

24 **Discovery:** The parties will exchange discovery requests. DWR will seek the
25 identity of lessees on the properties subject to this coordination order. Respondents
26 intend to request documents from DWR. The parties will continue to meet and confer
27 regarding any discovery requests and responses.

1 **Notice to Owners of Subsurface Rights:** Consistent with previous orders in
2 these proceedings, DWR will be providing notice by publication (once a week in two
3 consecutive weeks) to mineral rights' holders and subsurface rights' holders, of DWR's
4 intent to enter and commence investigation on the properties subject to this coordination
5 proceeding.

6 **Time Estimate:** The parties estimate three (3) days will be required for the
7 evidentiary hearings and argument. In addition to DWR's witnesses, Respondents may
8 offer a witness.

9 **Service of this Order:** Counsel for the State of California by and through the
10 Department of Water Resources is ordered to serve a copy of this order and
11 attachment A on all parties to the within coordinated actions and on the Chair of the
12 Judicial Council and to file it in each of the above-entitled actions: *Rules of Court, Rule*
13 *3.529.*

14 So ordered.

15 Dated: October 2, 2023

16 
17 Lydia M. Villareal
18 Judge of the Superior Court
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JCGP.4594 – DEPARTMENT OF WATER RESOURCES – MOTION TO COORDINATE ADD'ON CASES
– HEARD ON SEPTEMBER 28, 2023 - 11 -

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EXHIBIT A
(LIST OF CASES COORDINATED ON OCTOBER 2, 2023)

1 EXHIBIT A TO OCTOBER 2, 2023 ORDER IN JCCP 4594

2 The following ten (10) cases are coordinated into JCCP 4594 Department of
3 Water Resources Cases (Entry Petitions) on October 2, 2023:
4

- 5 1. *State of California by and through Department of Water Resources v.*
6 *Cortopassi Partners, L.P., a California Limited Partnership, San Joaquin*
County Superior Court Case No.: STK-CV-UED-2023-0005922.
- 7 2. *State of California by and through Department of Water Resources v.*
8 *Ensher, Alexander & Barsoom, Inc., San Joaquin County Superior Court*
9 Case No.: STK-CV-UED-2023-0005984.
- 10 3. *State of California by and through Department of Water Resources v.*
11 *Patrick Kalei Estes Sacramento County Superior Court Case No.: 23 CV*
12 002758.
- 13 4. *State of California by and through Department of Water Resources v.*
14 *Jackson Land Holdings, LP., a California Limited Partnership, San*
Joaquin County Superior Court Case No.: STK-CV-UED-2023-0006101.
- 15 5. *State of California by and through Department of Water Resources v. Tim*
16 *Johnston, Susan M. Johnston and Kevin C. Johnston, Alameda County*
Superior Court Case No.: 23 CV 035622.
- 17 6. *State of California by and through Department of Water Resources v. LMT*
18 *Investments, LLC, a California Limited Liability Company, San Joaquin*
19 County Superior Court Case No.: STK-CV-UED-2023-0005834.
- 20 7. *State of California by and through Department of Water Resources v. Frank*
21 *A. Loretz, Trustee of the Frank Loretz Family Trust dated November 26, 2013,*
Sacramento County Superior Court Case No.: 23 CV 002765.
- 22 8. *State of California by and through Department of Water Resources v. Thomas*
23 *McCormack and Judith Hunt, Sacramento County Superior Court Case No.:*
23 CV 002820.
- 24 9. *State of California by and through Department of Water Resources v. Cynthia*
25 *Kay Seebeck, Trustee of Family Trust A, the William Garrett Seebeck Family*
Trust, Sacramento County Superior Court Case No.: 23 CV 002815.
- 26 10. *State of California by and through Department of Water Resources v.*
27 *Silverdale Farms, Inc., San Joaquin County Superior Court Case No.: STK-*
28 CV-UED-2023-0006106.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

**Coordination Proceeding Special Title
Rule 3.550**

**Case No.: JCCP No. 4594
(STK-CV-UED-2023-8476)**

**DEPARTMENT OF WATER RESOURCES
CASES**

**PROOF OF SERVICE OF ORDER
GRANTING PETITION FOR
COORDINATION, COORDINATING
ENTRY PETITIONS, AND SETTING
FURTHER HEARING**

I, the undersigned, declare that I am a deputy of the Clerk of the Superior Court of San Joaquin County, State of California, and not a party to the within action.

On October 3, 2023 I deposited in the United States Post Office at Stockton, California, true and correct copies of the Order Granting Petition for Coordination, Coordinating Entry Petitions, and Setting Further Hearing, a printed copy of which is attached and made a part hereof, one copy of which being addressed to each of the following named persons at the following named addresses:

See Attached Service List.

I further declare that each of said copies so mailed and addressed was enclosed in a separate envelope, sealed, with the postage thereon fully prepaid. I declare under penalty of perjury that the foregoing is true and correct. Executed at Stockton, California on the date above specified.

Deputy Court Clerk

JCCP 4594 – DEPT. OF WATER RESOURCES TEMPORARY ENTRY CASES
COURT'S SERVICE LIST – OCTOBER 2023

Rob Bonta
Bruce D. McGagin
Christine E. Garske
Kelly T. Smith
Attorney General's Office
State of California
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Bruce.McGagin@doj.ca.gov
Christine.Garske@doj.ca.gov
Kelly.Smith@doj.ca.gov

**Attorneys for Petitioner State of
California by and through
Department of Water Resources**

**Respondent Parties
and counsel**

Dante John Nomellini (SBN 40992)
Dante John Nomellini, Jr. (SBN 186072)
Brett Baker (SBN 329731)
235 East Weber Avenue
Stockton, CA 95202
ngmplcs@pacbell.net;
dantejr@pacbell.net
brettgbaker@gmail.com

Thomas H. Keeling
Freeman Firm
A Professional Law Corporation
1818 Grand Canal Boulevard, Suite 4
Stockton, CA 95207
tkeeling@freemanfirm.com

Andy Pinasco
Attorney at Law
Neumiller & Beardslee
3121 W. March Lane, Suite 100
Stockton, CA 95219
apinasco@neumiller.com
*Counsel for Cortopassi Partners, L.P.,
A California Limited Partnership*

Attorneys for Respondents

Cortopassi Partners, L.P., a California
Limited Partnership, Cynthia Kay
Seebeck, Trustee of Family Trust A, The
William Garrett Seebeck Family Trust;
Ensher, Alexander & Barsoom, Inc.;
Frank A. Loretz, Trustee of the Frank
Loretz Family Trust dated November 26,
2013; Jackson Land Holdings, LP, a
California Limited Partnership; LMT
Investments, LLC, a California Limited
Liability Company; Patrick Kalei Estes;
Silverdale Farms, Inc, a California
Corporation; and Thomas McCormack
and Judith Hunt

Thomas Rector, General Counsel
O'Neill Vintners & Distillers
101 Larkspur Landing Cir, Suite 350
Larkspur, CA 94939-1749
tom.rector@oneillwine.com
*Counsel for O'Neill Beverages Co., LLC, a
Delaware limited liability company*

**JCCP 4594 – DEPT. OF WATER RESOURCES TEMPORARY ENTRY CASES
COURT'S SERVICE LIST – OCTOBER 2023**

Stratton Constantinides
Nixon Peabody, LLP
300 South Grand Avenue, Suite 4100
Los Angeles, CA 90071-3151
sconstantinides@nixonpeabody.com
*Counsel for Constellation Brands U.S.
Operations, Inc.*

**Tim Johnston, Susan M. Johnston,
and Kevin C. Johnston**
2288 Buena Vista Ave.
Livermore, CA 94550

Maureen G. Roffoni, Trustee of the
Maureen G. Roffoni Trust; Coleen
Edwards and Robert Hather, Co-
Trustees of the John A. Roffoni
Family Trust; John James Roffoni;
Dierdre I. Roffoni, Trustee of the Dierdre
I. Roffoni Separate Property Trust
Maureen G. Roffoni/Roffoni
Management, LLC
Agent for Service of Process:
Daniel K. Rutledge
820 Walnut Street
San Luis Obispo, CA 93401

Maureen G. Roffoni
c/o Roffoni Management LLC
P.O. Box 977
San Luis Obispo, CA 93406
(Via USPS MAIL)

Coleen Edwards and Robert Hather,
Trustees of the John A. Roffoni
Family Trust
3675 Sequoia Drive
San Luis Obispo, CA 93401

Coleen Edwards, Trustee
John A. Roffoni Family Trust
P.O. Box 2574
Orcutt, CA 93457-2574
(Via USPS MAIL)

Roffoni Family
c/o John James Roffoni and
Dierdre I. Roffoni
535 West Anapamu Street
Santa Barbara, CA 93101

Judicial Council

Judicial Council of California
Chief Justice
c/o Shawn Parsley
Administrative Coordinator
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3660

EXHIBIT A

County	APN	DGPN	Landowner	Geotech Activities	Environmental Activities	Probable Damages
Sacramento	146-0080-036-0000	SAC-0439A	Patrick Kalei Estes	1 CPT 1 CPTw	Cultural Survey	\$ 4,000.00
Sacramento	146-0080-010-0000 146-0040-044-0000 146-0080-047-0000	SAC-0173D	Frank A. Loretz, Trustee of The Frank Loretz Family Trust dated November 26, 2013	1 CPT 2 DH 1 DH (300 ft.) Hydraulic Conductivity PS Logging Pressuremeter Tests	Cultural Survey	\$ 6,500.00
Sacramento	146-0040-025-0000	SAC-0182B	Thomas McCormack and Judith Hunt	1 DH	Cultural Survey	\$ 3,500.00
Sacramento	119-0230-044-0000	SAC-0262	Cynthia Kay Seebeck, Trustee of Family Trust A, The William Garrett Seebeck Family Trust	1 CPT	Cultural Survey	\$ 3,500.00
San Joaquin	011-040-020-000 011-040-030-000 011-040-040-000 011-040-050-000	SJC-0061	Cortopassi Partners, L.P., A California Limited Partnership	1 DH (300 ft.) Hydraulic Conductivity PS Logging Pressuremeter Tests	Cultural Survey Biological Survey (Walking/Observation)	\$ 3,500.00
San Joaquin	129-200-070	SJC-0091	Ensher, Alexander & Barsoom, Inc.	1 CPT	Cultural Survey	\$ 3,500.00
San Joaquin	071-080-480-000 071-080-530-000 071-080-540-000	SJC-0139	Jackson Land Holdings, LP, a California Limited Partnership	1 CPT (300 ft.) 1 CPTw 1 DH (300 ft.) Hydraulic Conductivity PS Logging Pressuremeter Tests	Cultural Survey Biological Survey (Walking/Observation)	\$ 4,500.00
San Joaquin	129-200-420-000	SJC-0634	LMT Investments, LLC, A California Limited Liability Company	1 DH (300 ft.) Hydraulic Conductivity PS Logging Pressuremeter Tests	Cultural Survey	\$ 3,500.00
San Joaquin	001-050-070-000	SJC-0271	Silverdale Farms, Inc., a California corporation	1 CPT	N/A	\$ 3,500.00
Alameda	099B-7030-001-00	ALA-0143	Tim Johnston, Susan M. Johnston, and Kevin C. Johnston	1 DH	Cultural Survey Biological Survey (Walking/Observation, Vernal Pools & Special Status Amphibians)	\$ 3,500.00

EXHIBIT B

1 **ATTACHMENT "B" -- SCOPE OF WORK FOR ALL ACTIVITIES**

2 Pursuant to Code of Civil Procedure sections 1245.010 et seq., the State of
3 California, Department of Water Resources ("DWR") shall be permitted to conduct the
4 following activities:

5 **I. ENVIRONMENTAL ACTIVITIES**

6 **A. Botanical surveys**

7 1. Activities will consist of identifying existing plants and characterizing the
8 vegetation community; evaluating existing vegetation for its suitability as habitat for
9 special status species; visually characterizing the soil and the existing substrate; and
10 identifying wildlife for signs of certain special status species. Activities will include
11 walking the subject properties to assess the habitat and determine the presence or
12 absence of sensitive plant species; collecting samples of vegetation; recording locations
13 using handheld Global Positioning System (GPS) equipment; photographing landscape
14 and vegetation.

15 2. All surveys will be conducted during daylight hours during the months of
16 February through October. Between 2 and 6 personnel identified by DWR will require 1
17 to 12 days to survey each parcel.

18 **B. Hydrologic Surveys**

19 1. Activities will consist of identification and characterization of drainage,
20 streams, and creeks, and delineation of wetlands; notation of observed conditions that
21 may impact water quality; and location of stormwater drains and notation of stormwater
22 flow patterns. Surveys by a permitted biologist will be conducted to obtain information
23 concerning the occurrence of threatened or endangered species at sites containing
24 potential habitat for the species or sites designated as critical habitat for the species.
25 Translocation surveys will be carried out to determine the presence or absence of

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species within critical habitat traversed by the future proposed alignments that are being studied.

2. Between two (2) and six (6) personnel identified by DWR will require one (1) to twelve (12) days to survey each parcel.

C. General Surveys

1. Activities will consist of surveys for sensitive bird species, and/or species habitat components required by sensitive species. Access for these surveys will be by motor vehicle, or where possible, by walking the properties to reach habitats. Species-specific surveys will be conducted primarily by walking transects through appropriate habitat. Between one (1) and two (2) personnel identified by DWR will be used for each survey. Equipment to be utilized will include motor vehicle, binocular/spotting scope, photography equipment, maps, GPS units, and laptop computer.

2. The days/hours required to complete the surveys will primarily be two days with a maximum of eight hours per day. Some properties in the study area may require as many as ten days per year, up to two hours per day, to complete the surveys.

Surveys are anticipated to be conducted from March through September, and in the month of December. Between two (2) and six (6) personnel identified by DWR will require one (1) to two (2) days to survey each parcel concurrently with hydrologic and botanical survey activities.

D. Habitat and species-specific surveys for reptiles and amphibians

1. Activities will consist of detecting presence for the following sensitive species of reptiles and amphibians that could be present on the properties: giant garter snake ("GGS"), western pond turtle ("WPT"), California red-legged frog ("CRF"), California Tiger Salamander ("CTS") and the species-specific suitability of aquatic habitat (e.g., irrigation ditches, stock ponds, vernal pools, emergent marsh, sloughs, creeks, rivers) and adjacent uplands (up to 1.3 miles away from certain aquatic habitats). Surveys for GGS will be accomplished through "visual encounter surveys" using binoculars in appropriate habitat. Surveys for WPT will require incidental observations.

1 Surveys for CRF will entail visual surveys using binoculars in appropriate habitat.

2 Surveys for CTS will require aquatic larval sampling using dipnets or seines in
3 appropriate habitat.

4 2. Habitat evaluations on each parcel will be conducted by 2 to 4 personnel
5 identified by petitioner. Equipment utilized will include one motor vehicle per crew for
6 access, binoculars, camera, field notebook and/or micro-recorder, GPS, flashlights and
7 headlamps. All habitat evaluations will be conducted during daylight hours and will likely
8 take no more than 5 days per parcel, per year, to complete. Surveys for GGS and WPT
9 will occur from April through September. Surveys for CTS and CRF will occur from
10 January through June. Surveys for CRF eggs, juveniles and adults will occur from
11 January through March and will consist of at least three surveys conducted by day (one
12 per month). Surveys for CTS and CRF larvae will occur between March and June, once
13 a month.

14 **E. Vernal Pool Surveys**

15 1. Activities will consist of office activities and activities on the subject properties.
16 In the office, aerial photograph interpretation with soil characterizations for likelihood of
17 vernal pool presence will be completed. In the field, the locations of vernal pools based
18 on vegetation, soil characteristics, ponding and the presence of invertebrates will be
19 determined. These field determinations will be made by drive-by observations, walking
20 surveys, or dip-netting of ponded pools. Digital photographs documenting the pools will
21 be taken. A handheld GPS unit will be used to document the approximate location of
22 each pool. Other equipment that may be used includes a thermometer, a depth
23 measuring tool, rubber boots, vials and binoculars. Prior to a survey season, the
24 USFWS will be contacted to provide the appropriate clearance to survey for listed
25 brachiopod species. Dip-netting in ponded pools will occur within 2 weeks following a
26 significant rain event and then every 2 weeks thereafter until the pools have completely
27 dried out for the season.

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1 2. All survey activities in a given day will occur between the hours of 7 a.m. and 7
2 p.m. and will be conducted by 2 to 6 personnel identified by petitioner. During the rainy
3 season, survey teams may visit one subject property up to every 2 weeks from October
4 to May. Note: the times herein are limited in Special Conditions.

5 **II. ARCHEAOLOGICAL SURVEY ACTIVITIES**

6 A. Activities will consist of investigation to determine whether the study area
7 contains any previously known cultural resources (such as archaeological sites, historic
8 structures, and sacred sites) and may identify the presence of any new resources. The
9 investigation will consist of a records review (information obtained from the California
10 Historical Resources Information System, the California Native American Heritage
11 Commission, knowledgeable local Native Americans, and local historical societies); a
12 site reconnaissance or site visit; and a written report. Activities will include walking on
13 the subject properties and taking notes with paper and pencil. One passenger vehicle
14 will be used for site access only. Equipment used will be cameras and handheld GPS
15 units to confirm surveys are being conducted within the proposed project area. Shallow
16 soil scraping will be necessary if ground surface visibility is poor or non-existent. Such
17 scrapings will be made with a small mason's trowel with a 3-inch blade, and will measure
18 1 square-foot in size and 1-3 inches deep; no soils will be removed or collected. All
19 disturbed soil will be returned to the scraped area to restore the scraping area to its
20 original condition as close as possible.

21 B. All survey activities in a given day will occur between the hours of 7 a.m. and 7
22 p.m. and will be conducted by 1 to 2 personnel identified by petitioner. See Special
23 Conditions.

24 **III. CULTURAL SURVEY ACTIVITIES**

25 Tribal representatives, up to two (2) persons and two (2) cars may investigate
26 parcels so designated and all parcels designated for geologic activities for up to two (2)
27 full days and two (2) half days.
28

1 **IV. GEOLOGICAL ACTIVITIES**

2 **A. Geological Activities**

3 1. Geological activities will consist of studies, surveys and tests conducted by
4 geologists, surveyors, engineers, environmental scientists and specialists and will
5 include one or more of the following: borings with auger and/or mud rotary drill or Cone
6 Penetrometer Testing (CPT), geophysical borings and surveys, pressuremeter tests,
7 hydraulic conductivity tests, PS logging tests and CPTw tests to obtain, study and
8 examine the soil. The geological activities are necessary to identify the suitability of the
9 geological conditions of each property being studied for various alternative alignment
10 locations for a Delta water conveyance project, including surface canal and underground
11 pipeline alternatives.

12 2. Under this order one day shall mean 7:00 a.m. to 7:00 p.m. on Monday through
13 Friday.

14 **3. Geological Activities per Property**

15 The number of boring, CPT and/or CPTw sites permitted for each property is as set
16 forth on Attachment A (DWR Exhibit 5 admitted October 24, 2023 and modified on
17 October 26, 2023). No boring permitted under this entry order shall exceed 200 feet in
18 depth, except as otherwise specified in Attachment A.

19 **4. Preliminary Identification of Geological Sites – Two Days per Parcel**

20 Before commencing geological activities, DWR may enter a parcel to identify the
21 exact locations of boring, CPT and CPTw sites. Activities permitted for this purpose
22 include on-site environmental and cultural surveys, consultation with environmental and
23 cultural scientists, report and consultation with the Underground Service Alert, and
24 identification of all known underground utilities. DWR shall notify the owner and relevant
25 Reclamation District of preliminary entries. Owners may meet with and accompany
26 DWR personnel regarding the location of geological sites on the property. DWR shall be
27 permitted to enter onto a parcel for up to two (2) days to conduct these preliminary
28 identification activities.

1 5. **CPT Activities – Two Days per CPT Site**

- 2 a. **Equipment for CPT and CPTw** will include a CPT truck, a support truck, a
3 geologist's truck, and an environmental scientist's vehicle.
4 b. **Personnel for CPT and CPTw** may include up to four personnel on site,
5 including a CPT operator, a CPT assistant, a geologist and an environmental
6 scientist. Limited, transitory access is permitted for regulatory personnel from
7 the California Department of Fish and Game and the United States Fish and
8 Wildlife service, as well as DWR personnel required to deliver supplies.
9 c. **Entry for CPT and CPTw** is permitted for not more than two (2) days per CPT
 and CPTw site.

10 6. **Soil Boring Activities – Eleven Days per Parcel**

- 11 a. **Equipment for each soil boring** will include a drilling rig, a support vehicle, a
12 geologist's truck, and environmental scientist's vehicle, a portable toilet, a
13 forklift (if necessary), 55-gallon drums for the removal of soils from the boring
14 holes. Borings will be made with a 6.5-inch to 8-inch diameter auger, or 3.7-
15 inch to 6-inch diameter bit on a mud rotary drill rig. Soil samples will be
16 obtained and removed for testing. The depth of each boring will vary between
17 5 feet to a maximum of 300 feet. The exploration drills used to make borings
18 are vehicle-mounted and powered by a commercial or industrial engine.
19 b. **Personnel for each soil boring** will include a 6-person crew, including a drill rig
20 operator, up to two drill rig assistants, up to two geologists and an
21 environmental scientist. Limited, transitory access is permitted for regulatory
22 personnel from the California Department of Fish and Game and the United
23 States Fish and Wildlife Service, as well as DWR personnel required to deliver
24 supplies and remove soils.
25 c. **Entry for soil borings** shall be permitted for up to eleven (11) days per parcel.
26 The drill rig, support truck and portable toilet may remain on each boring site
27 for the permitted duration of the geological activities, including nights,
28 weekends and holidays. For each parcel that requires one soil boring, one 6-
 person crew may enter for eleven (11) days with equipment necessary for
 each soil boring.

EXHIBIT C

1 **ATTACHMENT C -- GENERAL CONDITIONS REGARDING**
2 **ENVIRONMENTAL, CULTURAL AND GEOLOGICAL ACTIVITIES**

3 The following General Conditions Regarding Environmental, Cultural and
4 Geological Activities are incorporated into the Court's Order Permitting Entry and
5 Investigation of Real Property on Sixteen Properties.

- 6 1. **Exercise of Reasonable Care.** DWR will exercise reasonable precautions to
7 avoid damages and to protect persons and property. DWR shall read and heed
8 all signs posted as notification of potentially hazardous chemical substances used
9 on the Property. DWR agrees not to unreasonably interfere with operations on
10 the Property. DWR shall limit vehicular and pedestrian access to those routes
11 reasonably identified by OWNER or his/her representative, if possible. If access
12 is by dirt roads, every effort will be made by DWR to avoid producing excess dust
13 and to avoid access by vehicles where muddy conditions could cause rutting or
14 other damage to the roads.
- 15 2. **Assumption of Risk.** DWR acknowledges that the Property may include, without
16 limitation, the use of pesticides, herbicides, fertilizer or other chemical substances
17 (collectively "Substances"). DWR accepts and assumes any and all risks of injury
18 or damage to DWR arising from or relating to entry upon or use of the Property
19 including, without limitation, injury or damage from exposure to Substances,
20 except for such risks of injury or damage to DWR caused by the gross negligence
21 or intentional tortious conduct of OWNER. **(See Special Conditions.)**
- 22 3. **Confidentiality.** DWR will maintain the confidentiality of any information
23 gathered on OWNER's property in conducting the activities permitted by this
24 Order, except as required by law. Information regarding OWNER's Property,
25 operations, practices, and the Property's environmental data obtained by DWR
26 shall remain strictly confidential and shall not be disclosed or revealed to outside
27 sources or used for any purpose other than the stated purpose for DWR's entry,
28 except as required by law. Subject to conditions listed in Civil Code section
 1798.24, DWR shall establish and implement appropriate and reasonable

1 administrative, technical, and physical safeguards to ensure the security and
2 confidentiality of records, except as required by law.

3 4. **Limitation on Recordation of Information.** DWR will only record information of
4 the type allowed to be recorded within the areas permitted for entry, and DWR will
5 not record or disclose any inadvertently observed information of significance, such
6 as special status species or its location, outside of the areas permitted for entry
7 unless otherwise required by law.

8 5. **No Assumption of Liability by OWNER.** OWNER assumes no liability for loss
9 of property, damage to property, or injuries to or deaths of agents, contractors, or
10 employees of DWR by reason of the exercise of the rights of entry granted by this
11 Order.

12 6. **Indemnification.** DWR shall indemnify and hold OWNER harmless from any and
13 all claims, damages, injuries, demands, liability, costs, losses and expenses,
14 including without limitation court costs and reasonable attorneys' fees, arising out
15 of DWR's entry and activities conducted on the Property.

16 7. **Insurance.** DWR will ensure that prior to entering onto the property, all of DWR's
17 contractors have obtained the insurance policies and coverages that meet the
18 State's requirements.

19 8. **Transmittal of Gathered Information to OWNER.** Following compilation of the
20 data gathered, and within one hundred and fifty (150) days of OWNER's written
21 request, DWR will provide OWNER with the final results of:

22 (a) Environmental/Cultural: Any wetlands delineation or biological, cultural,
23 wetland and other surveys or reports of findings, as well as all data, including but
24 not limited to notes, surveys, reports, and photographs, obtained from any
25 investigation on the Property.

26 (b) Geological: Any geological or drilling, other surveys or reports of findings, as
27 well as all data, including but not limited to notes, surveys, reports and
28 photographs, obtained from any investigation on the Property.

DWR agrees not to prosecute any activities of the OWNER or prohibit OWNER'S future management of the Property based upon information acquired through the activities allowed by this Order, except as required by law.

9. **No Waiver of OWNER's Rights.** OWNER does not waive any claim or right of legal action.
10. **Limitation of Activities.** Surveys and studies to be conducted by DWR on the Property are limited to the specific surveys and studies allowed herein.
11. **Soil Disturbances.** In the event that DWR's activities on the PROPERTY include any borings or other disturbances of soil, DWR shall restore the soil to a condition substantially similar to its "before" condition promptly upon completion of the activity for which the soil disturbance was made.
12. **Vehicles and Large Equipment.** DWR shall restrict its use of vehicles and large equipment to existing roadways; no vehicles or large equipment will be allowed in planted fields or orchards, except as necessary for drilling purposes.
13. **Damage to Roadways and Trails.** DWR shall repair and, to the extent possible, restore to their "before" condition, any roadways and trails on the Property that are damaged as a result of DWR's activities conducted on the Property under this Order.
14. **Placement of Markers and Other Objects.** In placing markers and other objects on the Property, DWR shall avoid placing such markers and objects in planted fields and, instead, place them in non-planted areas of the Property and/or on the shoulders of roads.
15. **Cattle and Livestock.** To prevent a choking hazard to cattle and livestock, no flagging of any type on stakes shall be used on lands accessible by cattle or other livestock. OWNER shall advise DWR of such lands and shall identify such on a map within 30 days of this order. In lieu of flagging, non-toxic paint, or other methods to enhance the visibility of stakes, etc., that do not present a choking or digestion hazard to cattle or livestock, may be utilized. DWR shall take all reasonable and feasible precautions necessary to ensure that any traps, netting or other equipment or materials installed or otherwise placed on lands accessible

1 by cattle or livestock do not present and unreasonable risk of harm to the cattle or
2 livestock.

- 3 16. **Notification of Completion of Activities.** Within 30 days following completion of
4 all activities, or the termination or abandonment of any further activities on the
5 Property, DWR shall mail a notice to the OWNER indicating that no further
6 activities will be performed on the Property.

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END OF GENERAL CONDITIONS

EXHIBIT D

**ATTACHMENT D -- SPECIAL CONDITIONS
FOR ENVIRONMENTAL AND CULTURAL (TRIBAL) ENTRIES**

- a) *Time and Date.* To make the order the least oppressive on the owners, the court limits the entries to 10 and one-half hour days between 7 a.m. and 7 p.m., Monday through Friday, with no entries or inspections between Wednesday and Sunday of Thanksgiving week and December 23 and January 1, or on the 4th of July, Labor Day or the Memorial Day holidays. Only five entries would be allowed at night (i.e. 7 p.m. to 7 a.m.). On vineyards and other planted land, there shall be no entries or inspections between September 1 and October 15.
- b) *Hunting Lands:* The owners of land primarily used for hunting shall identify such areas on a map with specificity and deliver it to Petitioner within 30 days from the date of entry of this Order. Between October 1 and February 25, there would be no entries or inspections on such land.
- c) *Safety Measures for Lands where Pesticides are Applied:* The California Department of Pesticide Regulation requires pesticide users to notify all personnel known to be or likely to enter a treated area on the date a pesticide application was made, or while a particular restricted entry interval is in effect, to give adequate notice of the identity of the pesticide by brand or common chemical name, and to give adequate notice of the precautions associated with that particular chemical. This information must be posted in a central location, and all employees and visitors that are within one-quarter of a mile of a treated area are required to first report to the central location. Department of Water Resources ("DWR"), its Contractors, and/or Representatives shall provide appropriate verification that its employees and representatives are fully trained, pursuant to the requirements of the California Department of Pesticide Regulations, on the application of and appropriate precautions associated with the application of pesticides utilized on the Subject Property. In addition, DWR, its contractors, and/or representatives, will adhere to all access restrictions related to pesticides in use on the Subject Property.

- 1 d) *Entry by Agreement*: Any owner and DWR could by written agreement allow
2 entry and inspections on such owner's property on any day or time in lieu of the
3 time or dates allowed by the Order.
- 4 e) *Notice of Entry*: DWR shall give 72-hour notice by telephone and email to the
5 owner's designated representative or if none, to the owner. Each owner shall
6 within 7 days of the issuance of this Order designate someone for such purpose
7 and give a telephone number and email address. Nighttime entries would require
8 5 days' notice. DWR shall designate the persons, their specialties, any
9 conveyances, and the general area of the property they would be working on for
10 each entry. DWR should make all reasonable efforts to accommodate reasonable
11 requests to alter the dates based on the owner's necessary use of the property.
- 12 f) *Maximum Days and Personnel per Property*: The court approves the
13 Environmental and Cultural activities set out in Attachment B -- Scope of Work for
14 All Entries and determines that giving a fixed budget of days which can be used
15 for any listed activity results in the fewest days of intrusion on the property owner.

16 The Court sets out the following table:

17 Acreage	18 Days	19 Personnel
100 acres or fewer	12 days	up to 6 people per entry
101 to 1000	16 days	up to 6 people per entry
1001 to 2000	22 days	up to 6 people per entry
2001 to 3500	28 days	up to 8 people per entry
3501 to 8500	33 days	up to 8 people per entry.

- 20 g) *Dwellings and Closed Structures*. There shall be no inspection or entry within 100
21 feet of an inhabited dwelling house. There will be no right to enter closed
22 structures on the property, including, specifically, office buildings, garages, fully
23 enclosed sheds, and buildings not considered open to the public.
- 24 h) *Levees and Reclamation Facilities*. There shall be no digging, hand auger or
25 drilling on or within 100 feet of the base of a levee. DWR shall comply with any
26 general rules or regulations of a reclamation district applicable also to the
27 underlying property owner regarding use or weight of vehicles on its easement
28 area, or restricted access to pumping stations, digging near levees, and the like.

- 1 i) *Conservation Areas.* DWR shall coordinate with Fish and Game regarding entry
2 to all areas covered by a conservation easement or grant. DWR shall obtain and
3 comply with all necessary permits as required by law. DWR shall not trap any
4 wildlife in a conservation easement without specific approval or permit of US Fish
5 & Wildlife Service, National Marine Fisheries Service or California Department of
6 Fish and Game, as appropriate. DWR shall limit activities in a conservation zone
7 to avoid injuring protected species.
- 8 j) *Identification.* DWR personnel and its contractors shall have identity cards and be
9 prepared to show them to any owner who requests to see such. DWR personnel
10 shall use their best efforts not to needlessly block or impede any activity by the
11 owner or his or her agents on the property.
- 12 k) *Railroad Rights of Way.* DWR shall contact railways prior to entry and shall
13 comply with reasonable conditions of special visible clothing near the railroad
14 tracks and shall cross the railroad tracks with vehicles only at designated public
15 crossings or in consultation with railroad personnel. DWR personnel should not
16 linger or loiter or perform work within 25 feet of the railway tracks. DWR shall use
17 designated crossing points for pedestrian crossing where reasonably available
18 and shall cross only when no trains are observable.
- 19 l) *Owners' Access:* Nothing in this Order contemplates or authorizes DWR to fence
20 any area of property or to prevent access of the owners to their properties, except
21 when DWR personnel are actually utilizing that specific area of the property.
- 22 m) *DWR to Consult:* DWR shall consult with property owners about any special
23 conditions on property, including very high water table, and shall consider such in
24 doing any testing, including digging.
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EXHIBITE

**ATTACHMENT E -- SPECIAL CONDITIONS TO
ENTRY ORDERS FOR GEOLOGIC AND DRILLING ACTIVITIES**

- a) *Time and Date.* To make the order the least oppressive on the owners, the court limits the entries to 10 and one-half hour days between 7 a.m. and 7 p.m., Monday through Friday, with no entries or inspections between Wednesday and Sunday of Thanksgiving week and December 23 and January 1, or on the 4th of July, Labor Day or the Memorial Day holidays.
- On vineyards and other planted land, DWR shall try to avoid entries or inspections between September 1 and October 15.
- b) *Hunting Lands:* The owners of land primarily used for hunting shall identify such areas on a map with specificity and deliver it to Petitioner within 30 days from the date of entry of this Order. Between October 1 and February 25, DWR shall avoid entries or drilling on such land.
- c) *Safety Measures for Lands where Pesticides Are Applied:* The California Department of Pesticide Regulation requires pesticide users to notify all personnel known to be or likely to enter a treated area on the date a pesticide application was made, or while a particular restricted entry interval is in effect, to give adequate notice of the identity of the pesticide by brand or common chemical name, and to give adequate notice of the precautions associated with that particular chemical. This information must be posted in a central location, and all employees and visitors that are within one-quarter of a mile of a treated area are required to first report to the central location. Department of Water Resources ("DWR"), its Contractors, and/or Representatives shall provide appropriate verification that its employees and representatives are fully trained, pursuant to the requirements of the California Department of Pesticide Regulations, on the application of and appropriate precautions associated with the application of pesticides utilized on the Subject Property. In addition, DWR, its contractors, and/or representatives, will adhere to all access restrictions related to pesticides in use on the Subject Property.

- 1 d) *Entry by Agreement:* Any owner and DWR could by written agreement allow
2 entry and drilling or geological activities on such owner's property on any day or
3 time in lieu of the time or dates allowed by the Order.
- 4 e) *Notice of Entry:* DWR shall give 14 days' notice of intended date to drill or CPT
5 test by telephone and email to the owner's designated representative or if none,
6 to the owner. Each owner shall within 7 days of the issuance of this Order
7 designate someone for such purpose and give a telephone number and email
8 address. DWR shall designate the persons, their specialties, any conveyances,
9 and the general area of the property they would be working on for each entry.
10 DWR should make all reasonable efforts to accommodate reasonable requests to
11 alter the dates based on the owner's necessary use of the property.
- 12 f) *Dwellings and Closed Structures.* There shall be no inspection or entry within 100
13 feet of an inhabited dwelling house. There will be no right to enter closed
14 structures on the property, including, specifically, office buildings, garages, fully
15 enclosed sheds, and buildings not considered open to the public.
- 16 g) *Levees and Reclamation Facilities.*
- 17 (1) Within fourteen (14) days from the date of entry of this Order, DWR shall
18 mail a copy of this Order to all reclamation districts within whose boundaries
19 DWR shall be entering pursuant to this Order. DWR shall promptly file a proof
20 of service of such mailing with the court and serve it on all parties.
- 21 (2) DWR vehicles or equipment shall not unreasonably block access by other
22 vehicles on levee roads or other reclamation district-operated roadways.
- 23 (3) DWR shall not perform any borings or CPT holes within three hundred
24 (300) feet of a landside levee toe, without first giving ten (10) days' notice of
25 the change of site plan and proposed work to both the affected reclamation
26 district and the landowner. The reclamation district, the landowner, or both,
27 may seek *ex parte* relief under paragraph 9 of the Order.
- 28 (4) DWR shall not perform any borings or CPT holes during the "wet/high
water season" from December 1st through April 30.
- h) *Conservation Areas.* DWR shall coordinate with Fish and Game regarding entry to
all areas covered by a conservation easement or grant. DWR shall obtain and
comply with all necessary permits as required by law. DWR shall not trap any

1 wildlife in a conservation easement without specific approval or permit of US Fish
2 & Wildlife Service, National Marine Fisheries Service or California Department of
3 Fish and Game, as appropriate. DWR shall limit activities in a conservation zone
4 to avoid injuring protected species.

- 5 i) *Identification*. DWR personnel and its contractors shall have identity cards and be
6 prepared to show them to any owner who requests to see such. DWR personnel
7 shall use their best efforts not to needlessly block or impede any activity by the
8 owner or his or her agents on the property.
- 9 j) *Railroad Rights of Way*. DWR shall contact railways prior to entry and shall
10 comply with reasonable conditions of special visible clothing near the railroad
11 tracks and shall cross the railroad tracks with vehicles only at designated public
12 crossings or in consultation with railroad personnel. DWR personnel should not
13 linger or loiter or perform work within 25 feet of the railway tracks. DWR shall use
14 designated crossing points for pedestrian crossing where reasonably available
15 and shall cross only when no trains are observable.
- 16 k) DWR shall confer with property owners if it necessary or appropriate to fence any
17 area of property or prevent access of the owners to their properties, and only
18 when DWR personnel are actually utilizing that specific area of the property for
19 equipment or property.
- 20 l) DWR shall consult with property owners about any special conditions on property,
21 including very high water table, and shall consider such in doing any testing,
22 including digging.
- 23 m) Tribal representatives (2) and DWR (up to 4) are granted two (2) additional full
24 days and two (2) half days to do pre-drilling site clearances prior to the
25 commencement of drilling activities.
- 26 n) DWR shall follow the guidelines in its Bulletin 74-90 with respect to the method by
27 which the exploratory boring will be sealed.
- 28 o) Upon request by an owner, DWR shall promptly provide a copy of the Delta
Conveyance Authority's "Field Work Manual" that DWR is using for the geologic
and drilling activities.

END OF SPECIAL CONDITIONS -- GEOLOGICAL

EXHIBIT 2

1 ROB BONTA
2 Attorney General of California
3 CHRISTINE E. GARSKE
4 Supervising Deputy Attorney General
5 KELLY T. SMITH
6 Deputy Attorney General
7 State Bar No. 196821
8 1300 I Street, Suite 125
9 P.O. Box 944255
10 Sacramento, CA 94244-2550
11 Telephone: (916) 210-6465
12 Fax: (916) 322-8288
13 E-mail: Kelly.Smith@doj.ca.gov
14 *Attorneys for Petitioner State of California, by and*
15 *through the Department of Water Resources*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 SAN JOAQUIN

13
14 **Coordination Proceeding Special Title**
15 **(Rule 3.550)**

16 **DEPARTMENT OF WATER**
17 **RESOURCES CASES**

*Exempt from filing fees per Government Code
section 6103*

Case No.: STK-CV-UED-2023-0008476
(JCCP 4594)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION TO COORDINATE ADD-ON
CASES**

(Code Civ. Proc., § 404.4)

Date: [DATE], 2024

Time: [TIME] a.m.

Dept.: Zoom

Judge: Hon. Lydia M. Villarreal

23 **INTRODUCTION**

24 Petitioner State of California, by and through the Department of Water Resources, (DWR)
25 seeks to add several cases to Judicial Council Coordinated Proceeding (JCCP) No. 4594 because
26 the cases have no meaningful differences from the cases already coordinated. Specifically, the
27 new cases similarly seek pre-condemnation entry orders to perform geotechnical activities and
28 tests, as well as environmental surveys. The matters are substantively alike, include common

1 questions of law and fact which predominate, will result in an efficient use of judicial resources,
2 and will eliminate duplicative and inconsistent rulings. Therefore, adding the newly filed cases to
3 the existing coordinated proceedings is appropriate.

4 **PROCEDURAL AND FACTUAL BACKGROUND**

5 In March 2009, the Judicial Council, pursuant to Code of Civil Procedure section 404 et
6 seq., issued an order judicially coordinating numerous petitions filed by DWR various counties,
7 including Sacramento, San Joaquin, Solano, Yolo, and Contra Costa Counties for pre-
8 condemnation entry to conduct feasibility studies for a state water conveyance project in the
9 Sacramento-San Joaquin Delta (Delta). The coordinated matter is venued in San Joaquin
10 County Superior Court, and entitled Department of Water Resources Cases, JCCP No. 4594.

11 On June 16, 2017, the coordinated court issued an Order Permitting Entry and
12 Investigation of Real Property for Geological and Drilling Purposes. On February 22, 2011, the
13 court signed an Order Permitting Entry and Investigation of Real Property (Other Than
14 Geologic and Drilling), signed, and reissued by order of April 21, 2017.

15 On February 12, 2019, Governor Newsom issued Executive Order N-10-19 introducing a
16 new approach to modernize Delta water conveyance. To inform this future process, DWR is
17 continuing to conduct soil investigations to gather data on the physical properties of the soils and
18 other typical geologic and geotechnical parameters that will be used to inform and evaluate future
19 water conveyance alternatives.

20 On September 30, 2021, and again on January 27, 2023 and October 2, 2023, pursuant to
21 Code of Civil Procedure section 404.1, the court in JCCP No. 4594 granted DWR's petitions to
22 add pre-condemnation entry petitions filed in San Joaquin, Sacramento, Contra Costa, and Yolo
23 County Superior Courts. (Declaration of Deputy Attorney General Kelly T. Smith (Decl. Smith),
24 ¶ 5, Exh. C, Attachment 2.) In the petitions for entry granted on November 21, 2023, DWR had
25 stated that it may request to add, at a later date, additional petitions to the coordinated matter,
26 which may be identified. (*Ibid.*)

27 Petitioners now seek to perform on additional parcels the geotechnical activities and
28 environmental surveys, as previously authorized by the court's previous entry orders.

1 Accordingly, DWR seeks to add further pre-condemnation entry petitions filed in San
2 Joaquin, Contra Costa and Alameda County Superior Courts. (Decl. Smith, ¶ 2, Exh. A.) The
3 pre-condemnation entries sought are to perform geotechnical activities, consisting of soil
4 borings, Cone Penetrometer Tests (CPTs) and groundwater sampling using existing wells, as
5 well as cultural, environmental and biological surveys, that vary between the petitions. (*Id.* at ¶ 3,
6 Exh. B.) DWR seeks the same or similar entry terms and conditions as those in the Order
7 Permitting Entry, November 21, 2023.

8 ARGUMENT

9 In the Order Permitting Entry dated November 21, 2023, the court cited multiple
10 hearings, opposition papers and Supreme Court and Court of Appeal decisions including
11 *Property Reserve Inc. vs. Superior Court* (2016) 1 Cal.5th 151 as the bases for granting DWR's
12 prior pre-condemnation entries. (Decl. Smith, Exh. C.) In the November 21, 2023 Order
13 Permitting Entry, the court found DWR had authority under Code of Civil Procedure section
14 1245.010 and Water Code section 11580 to investigate for the purpose of developing water
15 conveyance systems in the Delta. (*Id.* at Exh. C, p. 2.)

16 DWR's new petitions comprise locations where additional data is needed for continued
17 feasibility analysis of design and construction for a Delta conveyance project. Subsurface
18 information collected will assist design, siting and construction for the proposed Delta
19 conveyance development, and will help identify and address future data gaps.

20 I. AUTHORITY TO INITIATE PETITIONS

21 Code of Civil Procedure section 1245.010 provides that "any person authorized to acquire
22 property for a particular use by eminent domain may enter upon property to make photographs,
23 studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage
24 in similar activities reasonably related to acquisition or use of the property for that use." (Code
25 Civ. Proc., § 1245.010.) Pursuant to Water Code sections 22, 250, 11577 and 11580, DWR is
26 authorized to acquire property for a particular use by eminent domain. In particular, Water Code
27 section 250 provides in pertinent part, "[i]n the name of the people of the State of California, the
28 department may acquire by eminent domain any property necessary for state water and dam

1 purposes.” Water Code section 22 defines “the department” as “the Department of Water
2 Resources.” Additionally, Water Code sections 11577 and 11580 further codify DWR’s
3 authority to exercise the power of eminent domain in that these sections prohibit the
4 interference with or abridgment of DWR’s right to acquire property through eminent domain,
5 and allows DWR to acquire through eminent domain property that cannot be acquired by
6 voluntary means, respectively. Thus, both singularly and collectively, the Water Code sections
7 cited above evidence DWR’s authority to acquire property through eminent domain.

8 In granting the prior round of entry orders, the court declined to read Water Code sections
9 250 and 11580 as requiring funding and authorization for the Delta Conveyance Project or that
10 the investigation stage of a proposed, but unauthorized, project also required proof of funding
11 and authorization. The court concluded:

12 “Nowhere do the pre-condemnation entry statutes require a project, authorization or
13 funding beyond what is necessary to satisfy an owner’s quantum of damages if, in pursuing and
14 completing the court-ordered entries, DWR becomes liable for such damages.” (Decl. Smith, ¶
15 5, Exh. C, Attachment 1 at p. 14:17-20.)

16 **II. COORDINATION REQUIREMENTS OF CODE OF CIVIL PROCEDURE 404.1 ARE PRESENT**

17 Code of Civil Procedure section 404.4 and California Rules of Court, rule 3.521(a)(7),
18 provide that a party’s petition to coordinate a proceeding must show it meets the standards
19 contained within Code of Civil Procedure section 404.1. Of the factors set forth in Code of Civil
20 Procedure section 404.1, the following are applicable here: (1) common questions of fact or law
21 are predominating and significant to the litigation; (2) the disadvantages of duplicative and
22 inconsistent rulings, orders, or judgments; (3) the convenience of parties, witnesses, and
23 counsel; and (4) the efficient utilization of judicial facilities and manpower.

24 Additionally, the coordination trial judge has broad case management powers to ensure
25 effective coordination of cases. (*McGhan Medical Group v. Superior Court* (1992) 11
26 Cal.App.4th 804, 812 [“Generally, we are satisfied that it is the intent of the Judicial Council to
27 vest in the coordinating judge whatever great breadth of discretion may be necessary and
28 appropriate to ease the transition through the judicial system of the logjam of cases which gives

1 rise to coordination.”].) Because of this broad power and the four criteria from Code of Civil
2 Procedure section 404.1 are met, the adding of the new petitions seeking pre-condemnation
3 entry orders to JCCP 4594 is appropriate.

4 **A. Common questions of fact and law predominate and are significant in the new**
5 **petitions seeking pre-condemnation entry orders.**

6 Common questions of law exist relative to the new petitions seeking pre-condemnation
7 entry orders DWR seeks to add with the prior entry orders issued in these coordinated
8 proceedings. (Decl. Smith, ¶ 4, Exh. C.) Code of Civil Procedure section 1245.010 et seq., and
9 the cases interpreting it, allow public entities to obtain court orders to enter private property to
10 conduct investigations to determine whether the private property is needed for a public project.
11 Code of Civil Procedure section 1245.030 provides where a petitioner seeking a court order for
12 entry must first notify the landowner. The court will then determine the purpose and scope of
13 the entry and the probable amount of compensation to be paid to the owner for any damage or
14 interference with the property. (*Ibid.*)

15 The court’s November 21, 2023 entry order previously found that coordination met the
16 criteria under Code of Civil Procedure section 404.4 and California Rules of Court, Rule 3.521,
17 subdivision (a)(7). (Decl. Smith, Exh. C, at p. 10, Conclusions.)

18 DWR’s new petitions seeking pre-condemnation entries are also based upon the
19 statutory framework contained at Code of Civil Procedure section 1245.010 et seq., and used to
20 grant the DWR’s prior requests for entry orders. Thus, the issues of law will be the same.

21 Similarly, common questions of fact exist. On October 24 and 26, 2023, the
22 coordination court conducted hearings and subsequently issued the Order Permitting Entry,
23 November 21, 2023. (Decl. Smith, Exh. C.) Attachment B to that order provided the scope of
24 work for all activities; Attachment C provided “General Conditions Regarding Environmental,
25 Cultural and Geological Activities”; Attachment D provided “Special Conditions for
26 Environmental and Cultural (Tribal) Activities; Attachment E provided “Special Conditions to
27 Entry Orders for Geologic and Drilling Activities.”

28 ///

1 The Order Permitting Entry, November 21, 2023, also allowed DWR to enter the
2 properties to conduct various surveys including environmental, wildlife and cultural surveys, as
3 well as to conduct geotechnical drilling and testing to determine the appropriateness of the
4 properties for a statewide water conveyance system. (Decl. Smith, Exh. C.)

5 Since that time, DWR identified additional properties where it seeks entry to conduct
6 environmental surveys or geotechnical studies. The pre-condemnation activities for which
7 DWR currently seeks entry are substantially identical to DWR's prior requests. As stated in
8 paragraph 8 of the new petition for entry:

9 "Petitioner seeks limited and temporary access by way of rights of entry onto the
10 subject property for the general purpose of investigating the feasibility of new and future
11 water conversion and conveyance facilities in the Sacramento-San Joaquin Delta (Delta)
12 necessary to restore and protect reliable water deliveries and supplies for fisheries,
13 habitat and other water users in California."

14 (Decl. Smith, ¶ 6, Exh. D.)

15 The purpose of the new petitions, therefore, is substantially identical to that in the prior
16 entry orders. The new petitions seek to incorporate the same conditions incorporated in the
17 previous entry orders. (Decl. Smith, Exhs. C and D.) The activities for which entry is presently
18 sought are, with one exception, the same environmental and geotechnical studies authorized in
19 the coordination court's prior entry orders.

20 As detailed above, the new petitions and the previously issued entry orders are based
21 upon common questions of law and fact that predominate.

22 **B. Coordination will prevent duplicative, inconsistent rulings, orders, or judgments.**

23 Coordination of DWR's new petitions for pre-condemnation entry will prevent
24 duplicative or inconsistent rulings or orders. (Decl. Smith, ¶ 9.) In granting the previous entry
25 orders, the court weighed multiple considerations before issuing each order. In granting the
26 November 21, 2023 entry order, the court found coordination was necessary to avoid the
27 duplicative and inconsistent rulings, orders or judgments." (*Id.* at Exh. C, p. 10, Conclusions.)

28 ///

1 The new petitions seek to conduct the same environmental and geotechnical studies in
2 the same manner as the previous entry orders granted by the court. Thus, essentially the same
3 general conditions considered in prior hearings will be applied to such details as the timing of
4 entries, notice to owners of the entries, assumption of risk, indemnity, hunting land
5 considerations, recordings and similar details, as found in the Order Permitting Entry,
6 November 21, 2023, General Conditions (Attachments B and C) and Special Conditions
7 (Attachments D and E). (Dec. Smith, Exh. C.) Different courts may strike a different balance
8 between the needs of DWR and the various property owners that would result in a patchwork of
9 conflicting compliance issues.

10 Specifically, implementing different conditions will create confusion between owners
11 and impose greater difficulty for DWR to comply with inconsistent requirements creating
12 numerous contracting and scheduling challenges to conduct the environmental and geotechnical
13 work timely. For instance, the timing of environmental surveys are scheduled according to
14 seasonal and other natural circumstances, which are in themselves complex and exacting for
15 contractors and specialists. Without the coordination of such activities, the difficulties of
16 meeting short windows of access and conduct of the surveys will jeopardize the success of the
17 efforts.

18 **C. Coordination will efficiently utilize judicial facilities and manpower and lessen**
19 **burdens on the calendars of the courts.**

20
21 Judicial facilities and resources will be more efficiently utilized if the cases are added to
22 and coordinated with JCCP No. 4594, and then decided by one judge. Further, the broad powers
23 provided coordination judges enables the court to require all potentially impacted owners and
24 interests from the multiple counties to appear and provide their input on any issues. (Decl.
25 Smith, ¶ 7.)

26 The coordinated court has already heard extensive testimony regarding the need for
27 previously issued orders. For another court to commence similar evidentiary proceedings would
28 be wholly inefficient. Reviewing the transcripts of the previous coordination proceedings would

1 be time consuming. Coordination lessens these burdens on the multiple judges in whose
2 courtrooms the other petitions are currently assigned, and weigh in favor of coordination.
3 Petitions requiring hearings in multiple counties would also be highly inefficient. The docketing
4 and setting of multiple hearings, including any preliminary law and motion, would be
5 unnecessary with a coordinated proceeding, where such matters can be, and have been, resolved
6 in a single hearing.

7 Similarly, having one court make a determination on these issues limits duplicate
8 appellate proceedings, since cases originating in Alameda and Contra Costa Counties would be
9 heard by the First District Court of Appeal, and San Joaquin County cases would be heard by
10 the Third District Court of Appeal. Disparate appellate holdings would likely necessitate review
11 by the Supreme Court. As such, judicial facilities and resources will be preserved by not having
12 the same process repeated multiple times.

13 As is demonstrated above, coordination avoids this unnecessary waste of judicial
14 resources.

15 **D. Coordination serves the convenience of the parties, witnesses, and counsel.**

16 The convenience of the parties, witnesses and counsel will also be served by the
17 coordination of briefings and hearings on the further petitions for entry. (Decl. Smith, ¶ 7, 8 &
18 9.)

19 Hearings before the coordination court will eliminate the inconvenience for the parties,
20 witnesses and counsel of multiple proceedings with competing hearing dates. Coordination
21 would eliminate duplicative counsel filings. Having one proceeding enables all interested parties
22 to appear at one location and address their concerns in one proceeding. Coordination also
23 prevents DWR from having to appear in multiple counties and present different sets of pleadings
24 under varying deadlines. Because the facts and legal issues are the same or similar in the cases
25 DWR seeks to add, coordination of briefings and hearings on the petitions for pre-condemnation
26 entry will avoid duplicative proceedings and will save significant expense for all parties. As
27 such, coordination is appropriate.

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CONCLUSION

As detailed above, coordination of the cases described in exhibit A to the Declaration of Deputy Attorney General Kelly T. Smith is appropriate. The recently filed pre-condemnation entry petitions demonstrate the existence of common questions of law and fact. Coordinated management of the pre-condemnation entry petitions will minimize the disadvantages of duplicative and inconsistent rulings, and will promote the efficient utilization of judicial facilities and manpower. Therefore, DWR respectfully requests its petition for coordination be granted.

Dated: [DATE], 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
CHRISTINE E. GARSKE
Supervising Deputy Attorney General

KELLY T. SMITH
Deputy Attorney General
*Attorneys for Petitioner State of California,
by and through the Department of Water
Resources*

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