

1 LISA A. TRAVIS (SBN 184793)
County Counsel
2 WILLIAM C. BURKE (SBN 213279)
Deputy County Counsel
3 COUNTY OF SACRAMENTO
700 H Street, Suite 2650
4 Sacramento, CA 95814
Telephone: (916) 874-5544
5 Facsimile: (916)874-8207
burkew@saccounty.gov

6 SOMACH SIMMONS & DUNN
A Professional Corporation
7 KELLEY M. TABER (SBN 184348)
8 LOUIDA V. LACEY (SBN 275888)
500 Capitol Mall, Suite 1000
9 Sacramento, CA 95814
Telephone: (916) 446-7979
10 Facsimile: (916) 446-8199
ktaber@somachlaw.com
11 llacey@somachlaw.com

12 Attorneys for Petitioners and Plaintiffs
County of Sacramento and Sacramento
13 County Water Agency

**EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103**

14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California
county, and SACRAMENTO COUNTY
17 WATER AGENCY, a California water
district,

18 Petitioners and Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF WATER
21 RESOURCES, a California state agency,

22 Respondent and Defendant,

23 DOES 1 through 50,

24 Real Parties in Interest,

25 AND RELATED ACTIONS.
26
27
28

Case No. 24WM000014

(Related to 24WM000006; 24WM000008;
24WM000009; 24WM000010; 24WM000011;
24WM000012; 24WM000017; 24WM000062)

**Assigned to Hon. Stephen P. Acquisto
Department 36**

CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA) CASE

**DECLARATION OF DANTE J.
NOMELLINI, JR. IN SUPPORT OF
COUNTY OF SACRAMENTO AND
SACRAMENTO COUNTY WATER
AGENCY'S MOTION FOR
PRELIMINARY INJUNCTION**

DATE: May 31, 2024

TIME: 1:30 p.m.

DEPT: 36

Petition Filed: January 22, 2024

Amended Petition Filed: February 16, 2024

1 I, Dante J. Nomellini, Jr., declare:

2 1. I am an attorney licensed to practice in the State of California (Bar No. 186072)
3 and an attorney of record for Petitioners South Delta Water Agency et al. in *South Delta Water*
4 *Agency et al. v. California Department of Water Resources*, Sacramento Superior Court Case No.
5 24WM000062 and an attorney of record for Petitioners Central Delta Water Agency in *County of*
6 *San Joaquin et al. v. California Department of Water Resources*, Sacramento Superior Court
7 Case No. 24WM000010. I make this declaration in support of County of Sacramento and
8 Sacramento County Water Agency’s Motion for Preliminary Injunction in Sacramento Superior
9 Court Case No. 24WM000014. I am aware that this declaration will be incorporated by reference
10 into motions for preliminary injunction filed by other parties in cases related to Sacramento
11 Superior Court Case No. 24WM000014 as well, and I do not object to such incorporation. I have
12 personal knowledge of the matters set forth in this declaration, and if called as a witness, I could
13 and would testify competently to such matters.

14 2. Attached hereto as Exhibit 1 is a true and correct copy of the email and its
15 attachment that my law office (Nomellini, Grilli & McDaniel Law Office) received on February
16 13, 2024, at 10:48 a.m., from Eileen Nichols Christin on behalf of Victoria Island LP. The
17 attachment is a fourteen (14) page letter from the California Department of Water Resources
18 addressed to Victoria Island LP, dated February 2, 2024, entitled “Subject: Request for
19 Temporary Entry Permit.”

20 I declare under penalty of perjury under the laws of the State of California that the facts
21 recited above are true and correct to the best of my personal knowledge. Executed this 3rd day of
22 May 2024 in Stockton, California.

23
24
25
26
27
28


Dante J. Nomellini, Jr.

Exhibit 1

ngmplcs@pacbell.net

From: eileen@victoriaisland.net
Sent: Tuesday, February 13, 2024 10:48 AM
To: 'Nomellini, Grilli & McDaniel PLCs'
Cc: jack@victoriaisland.net; jim@victoriaisland.net
Subject: DWR TEP Request
Attachments: 2024_02_13_10_44_34.pdf

Good morning Dante,

We received the attached document from DWR last week. How do you recommend that we proceed?

Thank you,
Eileen

Eileen Nichols Christin
Victoria Island LP
209 / 465-5600 Office
209 / 481-3307 Cell



DEPARTMENT OF WATER RESOURCES

P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



February 2nd, 2024

VICTORIA ISLAND, LP
PO BOX 87
HOLT, CA 95234

Subject: Request for Temporary Entry Permit

To whom it may concern:

This letter is being sent to you by the Department of Water Resources (DWR) as our records indicate that you own property within the study area for the Delta Conveyance Project (Project) footprint. DWR is requesting a Temporary Entry Permit (TEP) to conduct various surveys/studies to continue its planning and design efforts prior to implementing and constructing a single tunnel water conveyance system in the Sacramento-San Joaquin River Delta.

Based on Governor Newsom's Executive Order and the recently certified Final Environmental Impact Report for the Project, DWR, with assistance from the Delta Conveyance Design and Construction Authority (DCA), which is a joint powers authority, will continue its planning and design efforts for the Project to modernize the State Water Project's current infrastructure in light of sea level rise and more extreme weather events due to climate change, and protect against earthquake risk.

As DWR, with the support of DCA, continues its planning efforts, it is important that we understand the geological makeup and potential alignment constraints of the Delta. This will aid in determining the best and least invasive approaches for all Delta inhabitants. To that end, we are requesting consideration of our request to perform a limited number of soil explorations and other ancillary surveys/studies on your property. Specific information in the TEP, maps of proposed geotechnical study locations, and geotechnical exploration fact(s) sheet are attached to this letter and will give you a better sense of what this work would entail.

DWR is offering you compensation, in the amount set forth in Paragraph 4 of Attachment 1, to perform the identified activities on your property. This compensation is only available if you voluntarily agree to sign the TEP.

We understand that you may have questions or require additional information on this matter. As such, if you have questions regarding the Project, please contact DWR representative, Kathryn Icelow (E: Kathryn.Icelow@water.ca.gov, T: (916) 699-8387). If you have questions regarding your TEP, please contact your Right of Way Agent Jennifer Mizrahi or Cathy Springford (T: 805-773-1459) to discuss next steps and address any concerns you might have. Please understand that the Parcel Exhibit attached to the TEP specific to your property shows proposed study locations, and that you will have an opportunity to discuss the potential of revising the location (soil exploration site) as you work with your Right of Way Agent.

Thank you for considering the proposed TEP to allow DWR and DCA access to your property to perform these essential studies/surveys. DWR and DCA are committed to working with you and other interested parties throughout the Delta to understand and respond to your concerns and to lead an honest and transparent process as we continue to undertake analysis that is necessary for the further planning and design of this Project. We hope that you will consider our request favorably, and we look forward to hearing from you.

Sincerely,



Allan Davis, Supervising Right of Way Agent

Attachments:

- Attachment 1 Temporary Entry Permit (TEP)
- Attachment 2 Landowner Parcel Exhibit
- Attachment 3 Fact Sheet(s)

Attachment 1

Temporary Entry Permit (TEP)

Owner:	VICTORIA ISLAND, LP	Project:	Delta Conveyance Design and Planning Studies
Address:	PO BOX 87 HOLT, CA 95234	DWR Parcel No(s):	SCJ-0314
County(s):	San Joaquin	APN(s):	129-190-290-000, 129-190-310-000

TEMPORARY ENTRY PERMIT

This Temporary Entry Permit ("Permit") is entered into by and between Victoria Island, LP ("OWNER") and the State of California through its Department of Water Resources ("DWR"), whereby OWNER grants permission to DWR, and its officers, employees, agents and contractors, including, but not limited to, the Delta Conveyance Design and Construction Joint Powers Authority ("DCA"), to enter with all necessary equipment onto OWNER's land located in the County of San Joaquin, State of California, identified as Assessor's Parcel No(s). 129-190-290-000, 129-190-310-000, and as depicted on the attached Landowner Parcel Exhibit ("Property"). This permission is granted for the purpose of conducting the activities described in Exhibit "A" attached hereto and made a part hereof, including field surveys, engineering, utilities, biological, geological, archaeological, cultural studies (including tribal representatives), and for other incidental purposes as may be required.

Compensation for this permission is based on the field activities anticipated by DWR on OWNER's Property subject to the following conditions:

1. DWR will exercise reasonable precautions to avoid damages and to protect persons and Property. Soil exploration locations will be properly marked so that they do not pose a safety hazard for wildlife or people as applicable. DWR's surveys and investigation team members shall read and heed all signs posted as notification of underground pipelines and hazardous conditions or materials on the Property.

DWR agrees not to unreasonably interfere with operations on the Property. DCA will make reasonable efforts to remove temporary survey stakes upon completion of its activities unless prior agreement has been reached with the OWNER. DWR shall limit vehicular and pedestrian access to those routes reasonably identified by OWNER or his/her representative. If access is by dirt roads, every effort will be made by DWR to avoid producing excess dust and to avoid creating excessive rutting by using mud mats or tracked equipment where wet or muddy conditions exist.

DWR acknowledges that the Property may include, without limitation, the use of pesticides, herbicides, fertilizer or other chemical substances (collectively, "Substances"). DWR hereby agrees to accept and assume any and all risks of injury or damage arising from or relating to entry upon or use of the Property including, without

limitation, injury, or damage from exposure to Substances, except for such risks caused by the gross negligence or intentional tortious conduct of OWNER.

Owner shall notify DWR of any potentially hazardous activities on the Property at the planned time for entry including, but not limited to, the use of pesticides, herbicides, fertilizers, or other chemical substances.

2. DWR will only record information of the type indicated within the delineated area(s). DWR will not record or disclose any inadvertently observed information of significance, outside of the delineated area(s), including biological and/or cultural resource survey area(s), and scope of the specified survey activity unless otherwise required by law.

3. OWNER assumes no liability for loss of property, damage to property, or injuries to or deaths of agents, contractors, or employees of DWR due to the exercise of privileges given under this Permit.

4. DWR shall pay the amount of \$1,000, which represents an Acquisition Incentive Payment (AIP), to OWNER upon OWNER's execution of this Permit – provided the OWNER signs the Permit within forty-five (45) days of the date of the DWR's initial written offer to OWNER.

OWNER will receive a payment of \$7,500, which represents the maximum amount of compensation for the probable damages ("Probable Damages") resulting from DWR and/or its contractors' use of the OWNER's Property.

OWNER will receive a maximum total payment of \$8,500, which includes Probable Damages and the AIP, if applicable.

5. Nothing in this Permit precludes OWNER from filing a claim(s) for any loss or expense that OWNER or its tenant may suffer that is caused by DWR or that is due to exercise by DWR of the rights granted by this Permit if the actual damages and interference exceeds the amount paid by DWR pursuant to this Permit.

6. In addition to the payment made pursuant to Paragraph 4 of this Permit, DWR agrees to indemnify and hold OWNER harmless from any physical damage, including physical damage to the crops of OWNER or its tenant, proximately caused by the activities authorized by this Permit. DWR also agrees to either reimburse OWNER for any damage to OWNER's roads, fences, or other personal property occurring due to the exercise of rights granted herein, or to replace or restore said property.

7. DWR's access to the Property may occur between the hours of 7:00am and 7:00pm. Deviation from these work hours may only occur with written permission from the OWNER. DWR staff will require access to the Property for a minimum of one (1) day or up to sixty (60) nonconsecutive days. Prior to accessing OWNER's Property, DWR will give OWNER a minimum of fourteen (14) days verbal notification ("14-day verbal notification") to be followed by ten (10) days written notification ("10-day written

notification"). A seventy-two (72) -hour verbal notification ("72-hour verbal notification") will be given to OWNER prior to entry upon the Property. The 14-day verbal notification will include a description of the activities that will be conducted on the Property and, as much as possible, a description of the area where activities will take place. The 10-day written notification will confirm the 14-day verbal notification and will provide OWNER information pertaining to the purpose of the several types of studies to be conducted on the Property and the point of contact(s) for DWR. Prior to entry by DWR, OWNER may request that DWR shall only come onto the Property with a representative of OWNER and shall be escorted during DWR's entire visit. DWR will make reasonable efforts to cooperate with OWNER's request. OWNER understands that no compensation will be provided for any expenses related to escorting DWR staff on the Property.

8. Following compilation of the data gathered and within one hundred fifty (150) days of OWNER's written request, DWR will provide OWNER with all data, including, but not limited to notes, surveys, reports, and photographs, obtained from any investigation on the Property.

9. This Permit expires on **January 31st, 2025**. DWR's access to the Property during that time period will be unlimited but in no instance shall exceed sixty (60) non-consecutive days unless extended pursuant to Paragraph 18.

10. OWNER does not waive any claim or right of legal action.

11. DWR will make its best effort to only drive vehicles and equipment on interior farm roads to avoid natural vegetation and cultivated areas. Revisions to drilling locations must be approved by OWNER and DWR.

12. Reasonable fire safety precautions will be undertaken by DWR during the fire season which includes, but is not limited to, not parking vehicles and equipment over dry areas that are subject to fire hazards.

13. After the notifications referenced in Paragraph 7 above, but before the commencement of Items 1 and 2 of Exhibit A, DWR and its contractors will perform preliminary site clearance assessments to identify sensitive resources such as listed species and habitat and avoid any impacts to these sensitive resources. To protect biological and cultural resources, DWR will follow environmental standards while conducting exploration operations (i.e., creation of test holes).

14. Gates will be left in the same condition as found at the time DWR enters the Property (i.e., locked, dummy locked, open).

15. The Field Activity Coordinator, a member of DWR's Field Coordination Team, will be introduced to the OWNER by a Right of Way Agent. The Field Activity Coordinator will be responsible for contacting and notifying OWNER when any field activities will occur on their Property and act as the liaison for all DWR activities on OWNER Property.

16. The undersigned granting this Permit hereby represents that they are OWNER of the Property or that they are authorized by OWNER to grant this Permit on behalf of OWNER of the Property and no additional approvals or signatures are required.

17. Subject to conditions listed in Civil Code section 1798.24, which governs the disclosure of personal information, DWR shall establish and implement appropriate and reasonable administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

18. This Permit can be extended for two (2) additional six (6) month periods by DWR with written notice to OWNER at least thirty (30) days prior to the expiration date, as identified in Paragraph 9 above, DWR shall pay OWNER the sum of \$500 for each additional six (6) month extension.

19. Cancellation Period. As both parties have negotiated in good faith, either party may cancel the Permit for any or no reason by providing the other party with a written request for cancellation within fourteen (14) days after the Permit has been executed. If OWNER is requesting cancellation, cancellation shall be effective upon DWR's receipt of a cashier's check for the amount paid to OWNER to date. If cancelled by DWR, the amount previously paid to OWNER shall be retained by OWNER.

20. Termination After 14 Days. After fourteen (14) days from execution, OWNER may terminate only for cause. DWR may terminate for any or no reason and any amount paid to the OWNER to date shall be retained by OWNER.

21. DCA Activities. As an agent and contractor of DWR, the DCA may undertake any and all activities permitted under this Permit on DWR's behalf.

OWNER's Name, Address

Special Condition(s)

Phone No.

Recommended for Approval

Name and Phone No. for person for
notification of entry

Name *Date*
Right of Way Agent

Email

DWR Representative Approval

OWNER's Signature

Allan Davis *Date*
Supervising Right of Way Agent

Date

CONSENT OF TENANT(S)

We, the Tenants of the Property described in this Temporary Entry Permit, occupy the subject Property pursuant to a lease with OWNER, and hereby consent to the execution of this Temporary Entry Permit. We also agree that all damages payable will be paid to OWNER as described above.

Signature

Date

(Mailing Address of Tenant if different
than above)

Phone No.

EXHIBIT A

For purposes of the Temporary Entry Permit, all survey-related activities will be conducted by qualified and trained Delta Conveyance Design and Construction Authority (DCA) personnel, California Department of Water Resources (DWR) personnel, and/or authorized representatives (contractors/consultants) under the direction of a DCA Project Manager and DWR authority. Property owners will be notified about timing and activities planned prior to all site visits. DWR or DWR's Contractors may conduct the following checked invasive (i.e. ground-disturbing) and non-invasive (i.e. pedestrian or walk-over) activities:

Invasive Studies

1) Soil and Groundwater Exploration

The soil exploration will include: Hollow-stem auger drilling or mud rotary drilling to collect soil samples using a combination of continuous soil coring and soil samplers.

The soil exploration activities can last from a few hours to several weeks (not including weather delays or equipment malfunction) and are described as follows:

- ☒ a) Drilling exploration will generally be performed using up to eight-inch diameter removable hollow-stem augers or up to five-inch diameter mud-rotary drilling techniques. Drilling equipment is usually mounted on a heavy-duty truck, although track-mounted drilling equipment may be utilized as required. The depth of drilling explorations will vary from approximately 15 feet to 200 ± feet. Soil samples will be collected from the soil borings for testing. Additional activities performed within the drill hole may include pressuremeter, PS logging, and/or hydraulic conductivity testing. Cuttings and excess drilling fluid will be contained in drums, large containers, or vacuum trucks, and disposed of offsite at an appropriate landfill. Drums may be stored on site for up to 4 weeks during environmental testing prior to removal and landfill disposal. Vehicles at each site during the exploration may include a drill rig; a water truck; a liftgate truck; a tractor-trailer lowboy truck; and up to 12 additional vehicles for the geotechnical consultant, traffic control, DWR and DCA engineers, geologists, surveyors, scientists, the biological and cultural resource team, and at least two regulatory agencies. The specific drill rig mobilized to the site will be dependent on site-specific access conditions and the purpose and depth of the soil boring. The drill rigs are powered by a 120 to 550 horsepower diesel engine. Track-mounted or rubber tire all-terrain drilling rigs will be used, if needed, to minimize access impacts over soft or uneven ground; these rigs will be hauled to the site by a lowboy tractor-trailer rig. While this complete list of vehicles may be used, not all of them would necessarily be on-site simultaneously. The soil boring activities can take between two (2) and eleven (11) working days to complete. Following completion of each soil exploration, the borehole will be sealed using cement-bentonite grout in accordance with State of California regulations and industry standards.
- ☒ b) Water sampling of an existing well allows DWR to evaluate groundwater quality within the Delta. No drilling or soil sampling will take place. DWR and DCA engineers or geologists will sample the groundwater at an existing well following

approved EPA sampling procedures. Sampling location and procedures to be agreed upon by DWR and OWNER. All groundwater quality measurements will remain confidential, and available to Owner, pursuant to Item 8 in Permit. Vehicles at the site during the sampling may include up to 3 vehicles for the geotechnical consultant and DWR and DCA geologists and scientists.

Non-Invasive Studies

✘ 2) Soil Exploration (Geophysical Surveys)

The non-invasive soil exploration will include Total Field Magnetometer geophysical surveys and are described as follows:

- a) A magnetometer and Global Positioning System (GPS) unit are hand-carried by a technician to measure the ambient magnetic field. The technician walks a line collecting readings. This process is repeated for the next line spaced approximately 10 feet to 15 feet away from the first. The total survey area at a given location is approximately 100 feet by 100 feet. The magnetometer survey will require up to 2 days per site. Typically, up to 5 vehicles will be at each site at any one time during the surveys. These vehicles may include support vehicles for the geotechnical team; DWR and DCA engineers; geophysicists; scientists; the biological and cultural resource team; and at least two regulatory agencies.

✘ Site Clearance

Several days to several weeks prior to all on-land soil explorations, up to 5 support vehicles for DWR and DCA geologists, surveyors, scientists, and the cultural resource team, which may include Tribal representatives, for reconnaissance will visit each site for up to 8 hours. These site inspections are needed to evaluate access to the exploration locations and identify the locations of underground utilities, potential cultural and archaeological resources, and potential biological resources.

- a) Inventory of existing utilities, such as wells, septic systems and fuel tanks, will consist of a review of public records and a walking survey of the proposed affected area as defined in the attached Landowner Exhibit. Records review and walking survey are completed in compliance with best practices as outlined by the California Public Utilities Commission. Site reconnaissance consists of ground surveys with minimal ground disturbance which may require shallow scraping of surface soils, one to three inches deep, in small localized areas at the proposed affected area. Regardless of the surveys to be conducted, DCA will restore the Property, as near as possible, to its original condition.
- b) Inventory of cultural resources will consist of a review of records and a walking survey (may include tribal representatives) of the proposed affected area as defined in the attached Landowner Exhibit. The California Historical Resources Information System will be reviewed to determine if any known cultural resources are present at the affected area. Consultation with California Native American Tribes may occur as well. Archaeological surveys involve walking the exploration location and recording any archaeological resources that are observed on the ground surface. Surveyors may remove minimal vegetation if the ground surface is not visible. Photographs, and GPS location readings will be taken to record archaeological resources.

- c) Biological resources site investigations primarily consist of observations made by environmental specialists within the proposed affected area as defined in the attached Landowner Exhibit. The general purposes of the biological site investigations are to:
- a. Characterize and map biological communities at the affected area;
 - b. Determine whether suitable habitat is present for special-status plant and wildlife species that have the potential to occur in the vicinity of the affected area;
 - c. Conduct general surveys for special-status plant and wildlife species at the affected area; and
 - d. Identify potential waters of the United States and waters of the State (including wetlands) at the affected area. Wetland activities may include digging a small shallow test pit to determine soil composition.

✘ 3) Cultural Resources Surveys

Inventory of cultural resources will consist of a review of records and a walking survey (may include tribal representatives). The California Historical Resources Information System will be reviewed to determine if any known cultural resources are present at the affected area. Consultation with California Native American Tribes may occur as well. Archaeological and Tribal surveys involve walking the location of interest and recording any archaeological resources that are observed on the ground surface, the duration of the survey would be dependent on the size of the area being surveyed. If the ground surface is not visible, surveyors may scrape minimal vegetation (up to 1 square foot in size) with a small shovel or hand trowel. Photographs, and GPS location readings will be taken to record cultural and archaeological resources, taking care not to take pictures through windows into the inside of structures. Survey teams will consist of approximately 2 people and 2 vehicles.

✘ 4) Geodetic Mapping

Geodetic mapping involves measuring parcel boundaries within the project area using the exact position of geographical points as a reference. The geodetic mapping activities will require the installation of targets on the Property and then using a small aircraft to take photographs while flying over the Property. All flights will occur during daylight hours and two (2) flights will be required. Those flights will be spaced several weeks apart. Mapping will require from one (1) to three (3) site visits. Site visits may last up to eight (8) hours in duration and will require two (2) persons on the first and any subsequent site visits.

In addition to the small aircraft, equipment used to complete the mapping activity will include standard survey trucks and, if the Property is muddy, all-terrain vehicles for property access. A tripod, a hand-held receiver, antenna and data collector unit will also be used. The targets will set by using a sledgehammer to drive iron pipe flush with the ground surface. The iron pipes will be placed at the center of an aerial ground target. GPS surveying equipment will then be used to determine the exact location of the target. If livestock is present, chicken wire (or a similar type of fence fabric) will be installed around the target marker by using a hand-held staple gun and hammer. Staff will return with GPS equipment to resurvey, check, clean, and repair

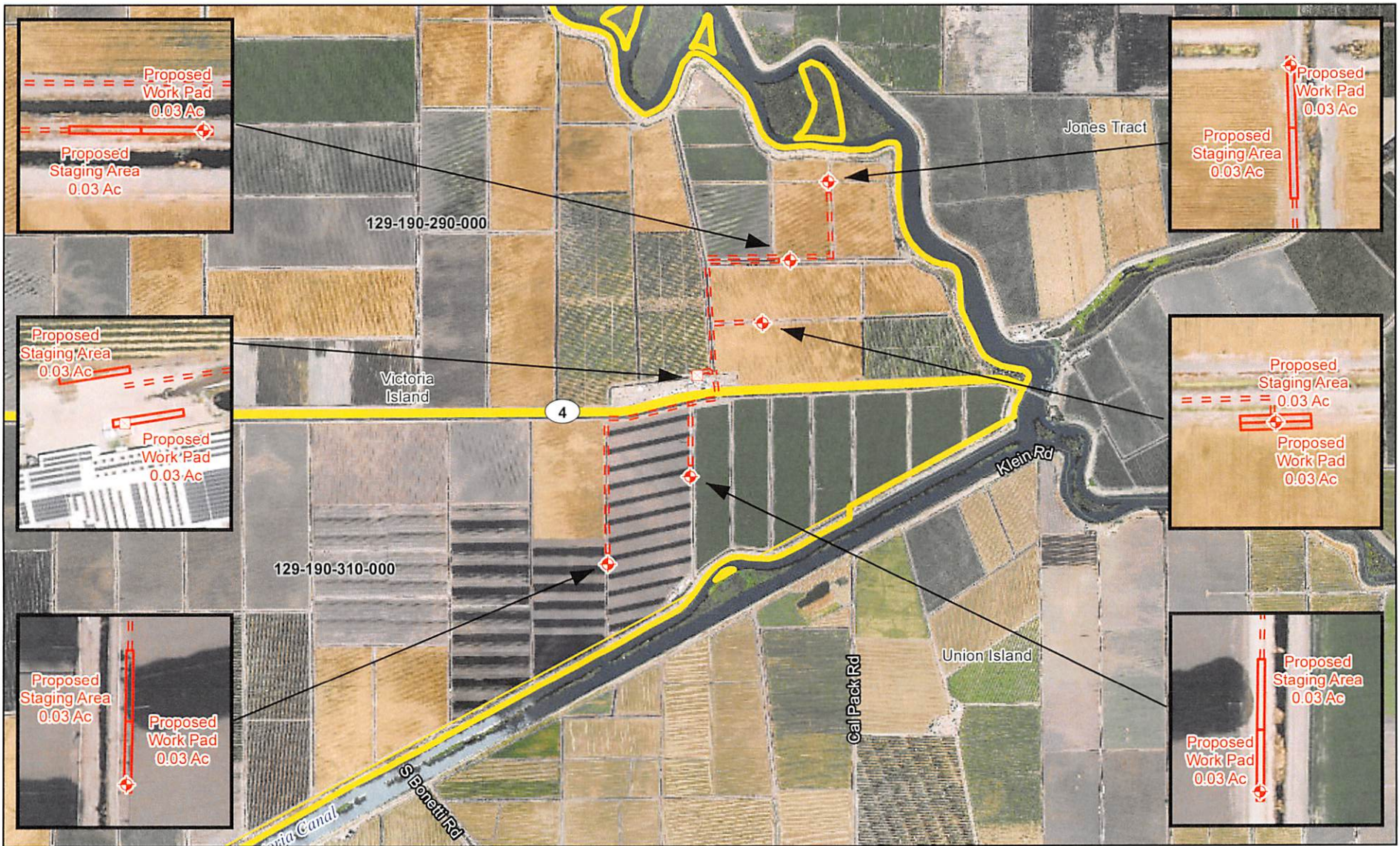
the target when necessary. After the second aerial flight has been completed, staff will return to remove target material from the ground surface. Property owners may elect to retain the iron pipes installed on the Property for future use.

Surveying activities will use two (2) by two (2) inch wood lath-stakes with flagging attached to the stakes and they will be placed in the ground following a lineal progression that may traverse the Property. Survey crews consisting of three (3) to five (5) individuals will be on site during daylight hours. Site visits may occur on non-consecutive days and may take from six (6) to sixteen (16) hours to complete. Survey crews will use vehicles and hand-held field surveying equipment to complete field surveys.

Attachment 2

Landowner Exhibit

T:\WG1-38\GIS_33_00\GISRequest_11\FDeliverable_10\FIGEO096_19\SJC-0314.mxd 2024130



◆ Boring
 □ Well Use
 = = Proposed Existing Access Route
 Proposed Work Pad
 Delta Conveyance Parcel
 Assessor Parcel Boundary



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



DELTA CONVEYANCE PARCEL EXHIBIT San Joaquin County SJC-0314

