

**Meeting of the Central Valley Flood Protection Board  
November 22, 2019**

**Staff Report – Resolution of Necessity to Acquire Property**

**Department of Water Resources**

**Lower Elkhorn Basin Levee Setback Project, Yolo County**

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**1.0 – REQUESTED ITEM**

Consider the adoption of the attached Resolution No. 2019-27 (Attachment A), authorizing an eminent domain action to acquire the fee simple interest of 0.930 +/- acres of land in the following property on Yolo County’s Assessor Parcel Number (APN) 042-340-003, (Property), for the Lower Elkhorn Basin Levee Setback (LEBLS) Project (“Project”).

The Resolution of Necessity provides that the public interest and necessity require the Project, the Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, the Property sought to be acquired is necessary for the Project, and the offer required by section 7267.2 of the Government Code has not been made to the owner or owners of record as they have been unable to be located through reasonable diligence. (CCP § 1245.230.) (The amount of compensation that is required to be paid to the owner(s) to acquire the Property is not at issue in this proceeding. The amount of compensation will be determined in a court trial following adoption of the Resolution of Necessity. (Cal. Const., art I, § 19.))

**2.0 – PROPERTY DESCRIPTION**

The proposed action involves the acquisition of the Property referenced above to support the flood risk reduction improvements and other project components that will be constructed for the Project. The Property is owned by the heirs or devisees of Joseph M. Phillips and is located off County Road 124 and adjacent to the Yolo Bypass in the Lower Elkhorn Basin. (A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification. CCP § 1245.230(b).) Acquisition of the Property is necessary for the setback levee portion of the Project and will include portions of the levee, borrow areas and other purposes of the Project.

The Property to be acquired consists of 0.930 acres zoned locally A-N (Agricultural

Intensive Zone).

### **3.0 – AUTHORITY OF THE BOARD**

Pursuant to Water Code sections 8590 and 8593, the Board may acquire by eminent domain in the name of the Sacramento and San Joaquin Drainage District any property necessary for the purposes set forth in Water Code section 8590, et seq. Pursuant to Code of Civil Procedure section 1245.210(b), the Board is the governing body for Resolutions of Necessity for the Sacramento and San Joaquin Drainage District.

Approval of the Resolution of Necessity authorizing an eminent domain action to acquire the Property is consistent with the Board's policy of improving flood risk management through implementation of the 2017 CVFPP Update.

### **4.0 – PROJECT LOCATION**

The Lower Elkhorn Basin is bounded by Interstate 5 (I-5) on the north, the Sacramento River on the east, the Sacramento Bypass on the south, and the Tule Canal on the west. The project would set back levees protecting the Lower Elkhorn Basin, including the Sacramento Bypass North Levee and a portion of the Yolo Bypass East Levee, in Yolo County.

The Project site is primarily used for agricultural production of row crops (e.g., tomatoes, sunflowers, safflowers); alfalfa; and nut-bearing orchards. The population is fewer than 100 people, and contains fewer than 100 structures including farm buildings, permanent and temporary residences, and commercial buildings. The Basin is subdivided by interior drainage canals forming three sub-basins identified as Reclamation Districts (RD): RD 537 (southeast quarter of the Basin), RD 785 (southwest quarter of the Basin), and RD 827 (northern part of Basin). The RDs each operate their own interior drainage canals and pump systems for crop irrigation and interior drainage. The topography of the Lower Elkhorn Basin area is relatively flat and slopes gently from northeast to southwest. The ground surface elevations range from about 10 to 25 feet (North American Datum of 1983 [NAD83]). The Yolo Bypass is oriented generally north to south. The Sacramento Bypass channel is oriented east to west.

### **5.0 – PROJECT DESCRIPTION**

Consistent with the 2012 Central Valley Flood Protection Plan (CVFPP), the LEBLS Project would expand the flood capacities of the Yolo and Sacramento Bypasses, which

are both critical flood risk reduction elements for major urban and agricultural areas in the lower Sacramento River watershed. The LEBLS Project would lower flood stages in the Sacramento River and upper Yolo Bypass, reducing flood risks to portions of the Cities of Sacramento, West Sacramento, and Woodland. Located in Yolo County, just west of the Sacramento River, the Project site extends along the Sacramento Bypass and continues north along the east side of the Yolo Bypass terminating just south of I-5. The LEBLS Project includes the design, engineering, permitting, real estate acquisition, and construction of the setback of the 1.7-mile levee north of the Sacramento Bypass and up to 6 miles of the east levee of the Yolo Bypass adjacent to the Lower Elkhorn Basin, partial or full old levee degradates, seepage berms, cutoff walls, relief wells, erosion protection, construction of a landside toe access road, and ecosystem enhancement through floodplain expansion and required project mitigation, consistent with the CVFPP.

## **6.0 – DISCUSSION**

### **The public interest and necessity require the proposed project. (CCP § 1245.230(c)(1).)**

The public interest and necessity require acquisition of the Property for the Project. The purpose of the Project is to reduce flood risk to the Cities of Sacramento, West Sacramento, and Woodland by improving the flood management system consistent with the State-approved 2012 CVFPP and 2017 Update. The acquisition of the Property is required and necessary for construction of the setback levee portion of the Project and will include the levee, road, borrow areas, utility relocation, mitigation and other purposes of the Project.

The Project is needed because of the high risk of flooding threatening life and public safety, property, critical infrastructure, and the environment throughout the areas protected by the Yolo and Sacramento Bypasses, including but not limited to portions of the Cities of Sacramento, West Sacramento, and Woodland. The Project improvements are designed to provide increased system resiliency to convey large flood events as outlined in the 2017 CVFPP for the Yolo Bypass upstream of I-5 (City of Woodland) and the Sacramento River at I Street Bridge (City of Sacramento); to address deficiencies in the existing Sacramento Bypass North Levee and portions of the Yolo Bypass East Levee, as evidenced by several slope failures, sloughing, boils, and slope cracking in early 2017; and other Project needs as discussed in the Final Environmental Impact Report (FEIR).

**The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. (CCP § 1245.230(c)(2).)**

The Project will be most compatible with the greatest public good and least private injury because it will provide maximum flood protection while simultaneously minimizing the amount of private land that will be acquired. The Project design incorporates community input and advice, technical and safety considerations, and multiple agency reviews.

The Project has been designed so that the acquisition and use of the Property will not unreasonably interfere with or impair the use of any property currently in public use.

On September 8, 2016, U.S. Army Corps of Engineers (USACE) issued the Notice of Intent (NOI) to inform agencies and the general public that a joint EIS/EIR was being prepared for the project and invited comments on the scope and content of the document. The NOI was published in the Federal Register Vol. 81, No.174, on September 8, 2016. The NOI was also published on the USACE website. USACE posted the NOI on September 9, 2016, with an expiration date of October 7, 2016. Agencies and interested parties were given the opportunity to provide USACE with written comments on the proposed scope and content of the EIS/EIR until October 7, 2016 to align with the California Environmental Quality Act (CEQA) Notice of Preparation (NOP) time mandate.

On September 7, 2016, the Department of Water Resources (DWR) and the State Clearinghouse issued the NOP to inform agencies and the general public that a joint EIS/EIR was being prepared for the project and invited comments on the scope and content of the document. The NOP contained information on the location, date, and time of the scoping meeting. The NOP was also published on the DWR project website. Additionally, the NOP release and announcement of the joint EIS/EIR scoping meeting was published in the Sacramento Bee, the newspaper of greatest general circulation.

As mandated under CEQA, the NOP was circulated for a minimum 30-day public review period, beginning on September 7, 2016, and ending on October 7, 2016. Agencies and interested parties were given the opportunity to provide DWR with written comments on the proposed scope and content of the EIS/EIR until 5 p.m. on October 7, 2016.

USACE and DWR held a joint public scoping meeting on September 15, 2016, in West Sacramento. Written comments were received by USACE and/or DWR from the following Federal, State, and regional and local agencies, and nongovernmental

organizations: U.S. Environmental Protection Agency, California Department of Fish and Wildlife, Central Valley Regional Water Quality Control Board, Delta Stewardship Council, Native American Heritage Commission, County of Yolo, Lower Sacramento/Delta North Region, California Farm Bureau Federation, Pacific Gas and Electric Company, and Yolo Basin Foundation.

Upon request, DWR held and attended more than 30 meetings with interested parties, including National Marine Fisheries Service; U.S. Bureau of Reclamation; U.S. Fish and Wildlife Services; California Department of Fish and Wildlife; Yolo County; Sacramento Area Flood Control Agency; RDs 537, 785, and 827; and local landowners.

On September 22, 2017, the Board authorized the sending of the Section 408 Request Letter to the U.S. Army Corps of Engineers requesting permission to alter a portion of the Sacramento River Flood Control Project (SRFCP) levees through the LEBLS Project, based on 65% design submittal package and pursuant to U.S. Code Title 33, Section 408 (Section 408).

The DEIS/DEIR was circulated for a 45-day public review period from May 25, 2018 to July 9, 2018, and a joint public meeting on the DEIS/DEIR was conducted by USACE and DWR on Thursday, June 7, 2018 from 4 p.m. to 6 p.m. at West Sacramento City Hall, 1110 West Capitol Avenue, West Sacramento, California 95691.

The FEIR was prepared and circulated in accordance with CEQA requirements and includes responses to all comments received on the DEIS/DEIR. The Notice of Determination (NOD) was filed on March 18, 2019.

**The property described in the resolution is necessary for the proposed project. (CCP § 1245.230(c)(3).)**

The Property to be acquired is approximately 0.930 +/- acres of land. The Property is identified by the Yolo County's Assessor Parcel Number (APN) 042-340-003. The Property would be acquired in fee simple. As shown on the attached map, the new setback levee will cross the Property.

The Property would be acquired for the purposes of all stages of construction, operation, reconstruction, repair, and maintenance of improvements for present and future flood control, partial or full old levee degrades, seepage berms, cutoff walls, relief wells, erosion protection, construction of a landside toe access road, ecosystem enhancement through floodplain expansion and required project mitigation, and other uses in connection with the LEBLS Project. (CCP § 1245.230(a).)

**That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence. (CCP § 1245.230(c)(4).)**

DWR staff has complied with right-of-way acquisition guidelines and requirements. DWR researched and determined that the owner of record of the Property, Mr. Joseph M. Phillips, passed away in 1976 in Sacramento County. According to Yolo County records, the mailing address for Mr. Phillips was in Sacramento County. In 2016, DWR was informed by the residents at the mailing address listed for Mr. Phillips that they do not own, nor do they pay any taxes, on the subject property.

On March 11, 2019, DWR sent an official letter by certified mail to the last known address for Mr. Joseph M. Phillips, seeking an heir or devisee of his estate. The letter also advised that DWR desired to acquire the subject property for the implementation of setback levees to widen the Yolo Bypass and Sacramento Bypass. On April 11, 2019 the letter was returned to DWR because the residents at that address refused to receive and sign for the letter. DWR staff attempted to locate additional information including verifying with Yolo and Sacramento County that probate records were not available, contacting the last known address of decedent, and determining that Mr. Phillip's employer as listed on the death certificate was no longer in business.

On August 26, 2019, DWR requested the Office of the Attorney General (OAG) investigate to seek out the heirs or devisees of Mr. Joseph M. Phillips. The OAG's investigator has not been able to conclusively locate any heirs or devisees.

When the eminent domain action is commenced, DWR will request permission from the court to accomplish service by publication.

On November 1, 2019, the Board staff mailed the Notice of Intent to Adopt a Resolution of Necessity to the owner's last known address. The Notice stated that the owner has the right to be heard at the Board meeting to be held on November 22, 2019 to consider the adoption of a Resolution of Necessity to acquire the Property by eminent domain. The Notice of Intent was returned to the Board by the U.S. Postal Service as undeliverable and unable to forward to known address on November 9, 2019.

The resolution before the Board today would start the formal eminent domain process to acquire the Property. Staff recommends that the Board start the formal eminent domain process at this time to allow staff to meet the construction schedule for the Project.

Should an owner be located, DWR real estate staff will attempt to negotiate a settlement during the eminent domain process.

### **6.1. Consistency with the 2017 CVPPP Update**

As part of the CVFPP, Regional Flood Management Plans, the Sacramento Basin-Wide Feasibility Study (BWFS), and the Conservation Strategy (CS), this project has refined multi-benefit solutions for an integrated system-wide approach in the Central Valley consistent with California Water Action Plan (CWAP) objectives. This project is based on the CVFPP recommendations to improve flood system flexibility and resiliency by implementing system scale multi-benefit improvements. These system improvements will be designed and implemented to create a sustainable water-related resources management system that achieves a resilient, dynamic balance between the societal values of public health and safety, vital ecosystems, stable economies, and opportunities for enriching experiences.

### **7.0 – STAFF RECOMMENDATION**

Staff recommends that the Board adopt the Resolution of Necessity 2019-27 authorizing the use of eminent domain to acquire for the Lower Elkhorn Basin Levee Setback Project the following property: Parcel Owner: The heirs or devisees of Joseph M. Phillips, APN 042-340-003 (Yolo County).

**8.0 – LIST OF ATTACHMENTS**

- A. Resolution of Necessity No. 2019-27
- B. Project Location Map
- C. Subject Property Acquisition
  - C.1 - Map of the General Location of the Property
  - C.2 - Map of the Extent of the Subject Property to Be Taken
  - C.3 - Legal Description
- D. CEQA Notice of Determination
- E. Heirs or Devisees Letter
- F. Grant Deed (with attachments)
- G. Appraisal Map
- H. Appraisal
- I. Right-of-Way Agent Diary
- J. Notice of Intent to Adopt a Resolution of Necessity

Report by: Corey Lasso, P.E., Senior Engineer, Systemwide Multi-Benefit Initiatives  
Office, DWR

Reviewed by: Andrea Buckley, Chief, Environmental Services and Land Management  
Branch, Board Staff



**STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
RESOLUTION OF NECESSITY NO. 2019-27  
FOR ACQUISITION OF YOLO COUNTY'S ASSESSOR PARCEL NUMBER  
042-340-003**

**BACKGROUND:**

- A. WHEREAS**, the Central Valley Flood Protection Act of 2008 (2008 Act) directed that the Department of Water Resources (DWR) prepare a Central Valley Flood Protection Plan (CVFPP) to be adopted by the Central Valley Flood Protection Board (Board) by July 1, 2012 (CWC § 9612(b)); and
- B. WHEREAS**, the Board adopted the CVFPP, the State Plan of Flood Control Descriptive Document (DWR, 2010), and the Flood Control System Status Report (DWR, 2011) on June 29, 2012 through Resolution No. 2012-25; and
- C. WHEREAS**, the 2008 Act directs that the CVFPP be updated in subsequent years (CWC § 9612(e)), and the Board adopted the CVFPP 2017 Update on August 25, 2017 through Resolution No. 2017-10; and
- D. WHEREAS**, consistent with the 2012 CVFPP and the 2017 CVFPP Update, the Lower Elkhorn Basin Levee Setback Project would expand the flood capacities of the Yolo and Sacramento Bypasses, which are both critical flood risk reduction elements for major urban and agricultural areas in the lower Sacramento River watershed; and
- E. WHEREAS**, DWR prepared and circulated a Final Environmental Impact Report for the Project, in compliance with the California Environmental Quality Act, and filed the Notice of Determination on March 18, 2019; and
- F. WHEREAS**, the Board has the authority to acquire property through eminent domain on behalf of the Sacramento and San Joaquin Drainage District (CWC § 8590, 8593); and
- G. WHEREAS**, the Board is the governing body for adopting Resolutions of Necessity for the Sacramento and San Joaquin Drainage District (Code of Civil Procedure (CCP) § 1245.210(b)); and
- H. WHEREAS**, the property to be acquired in fee simple is identified as APN 042-340-003, Yolo County.

**NOW, THEREFORE THE BOARD FINDS:**

- I.** That the above recitals are true and correct; and
- J.** That the property to be acquired is necessary to reduce flood risk by improving the flood management system consistent with the State-approved 2017 CVFPP Update (CCP § 1245.230(a)); and
- K.** That the Board has found and determined that the public interest and necessity require the Project (CCP § 1240.030(a)); and
- L.** That the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury (CCP § 1240.030(b)); and
- M.** That the property sought to be acquired is necessary for the Project (CCP § 1240.030(c)); and
- N.** That the offer required by Section 7267.2 of the Government Code has not been made because the owner cannot be located with reasonable diligence (CCP § 1245.230(c)(4)); and
- O.** That timely notice was sent to the owners and a reasonable opportunity to appear and be heard on these matters was provided (CCP § 1245.235).

**NOW, THEREFORE, BE IT RESOLVED:**

- 1.** That the Lower Elkhorn Basin Levee Setback Project is consistent with the Board’s mission “[t]o reduce the risk of catastrophic flooding to people and property within the California Central Valley.”
- 2.** That the Lower Elkhorn Basin Levee Setback Project is consistent with the 2017 CVFPP Update’s primary goal to improve flood risk management, and the 2017 CVFPP Update’s supporting goals.
- 3.** The Board adopts this Resolution of Necessity and authorizes DWR to use the Board’s statutory authorities related to eminent domain to acquire for the Lower Elkhorn Basin Levee Setback Project the following property: Parcel Owner: The Heirs or Devisees of Joseph M. Phillips, APN 042-340-003 (Yolo County).

This resolution shall constitute the written decision of the Board in the matter of adopting this Resolution of Necessity.

**PASSED AND ADOPTED** by vote of the Board on November 22, 2019.

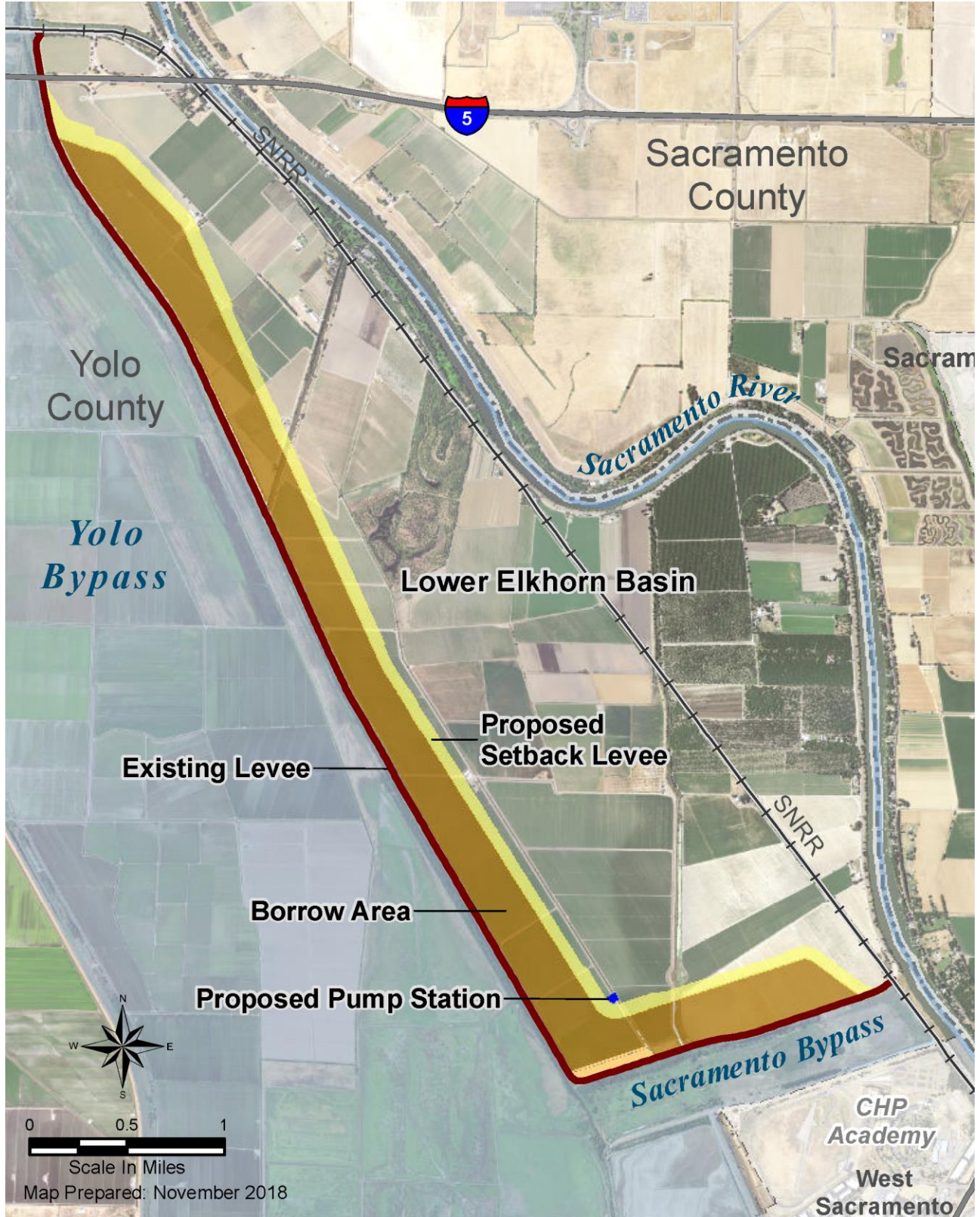
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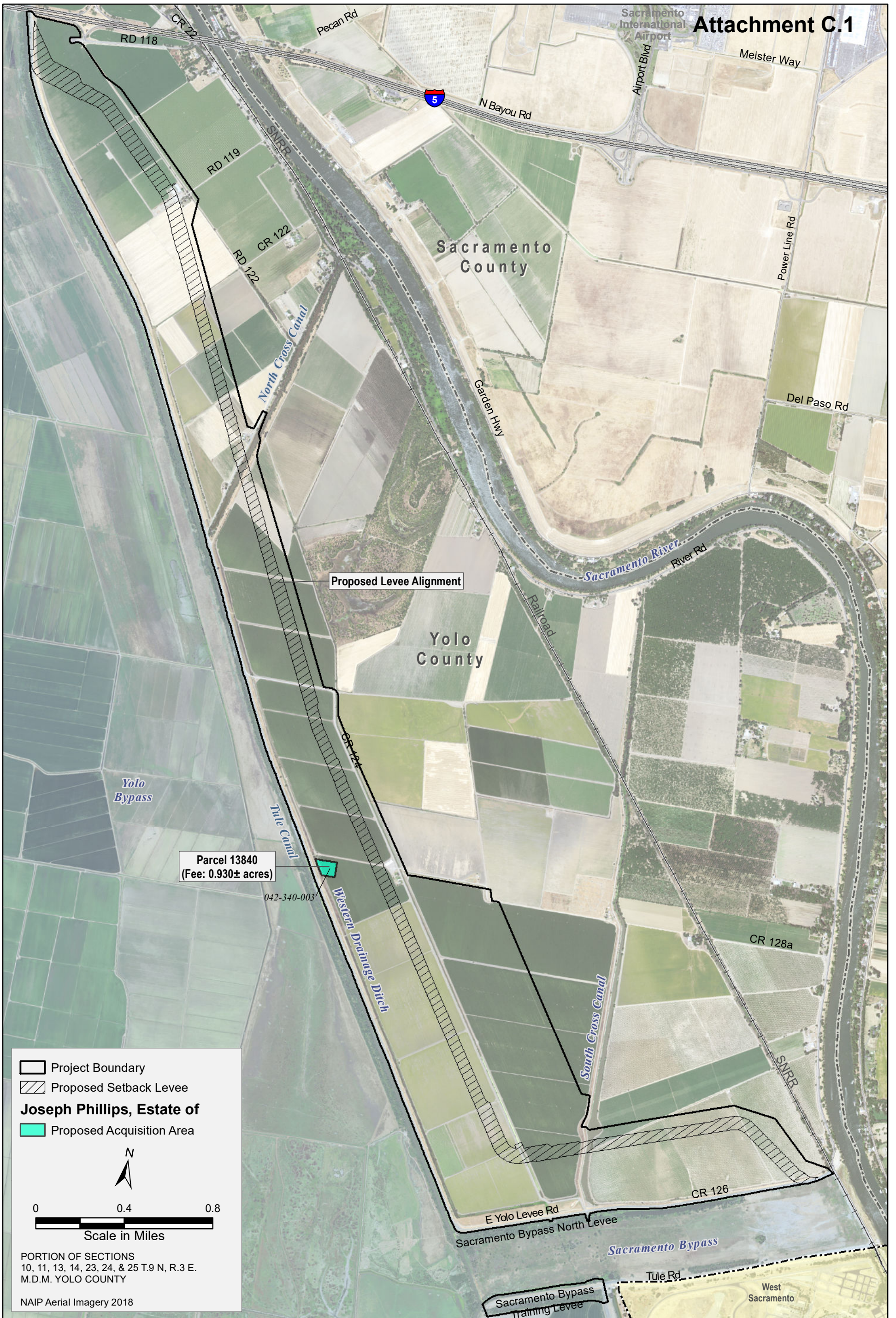
William H. Edgar, President

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Jane Dolan, Vice President / Secretary

# LOWER ELKHORN BASIN LEVEL SETBACK PROJECT





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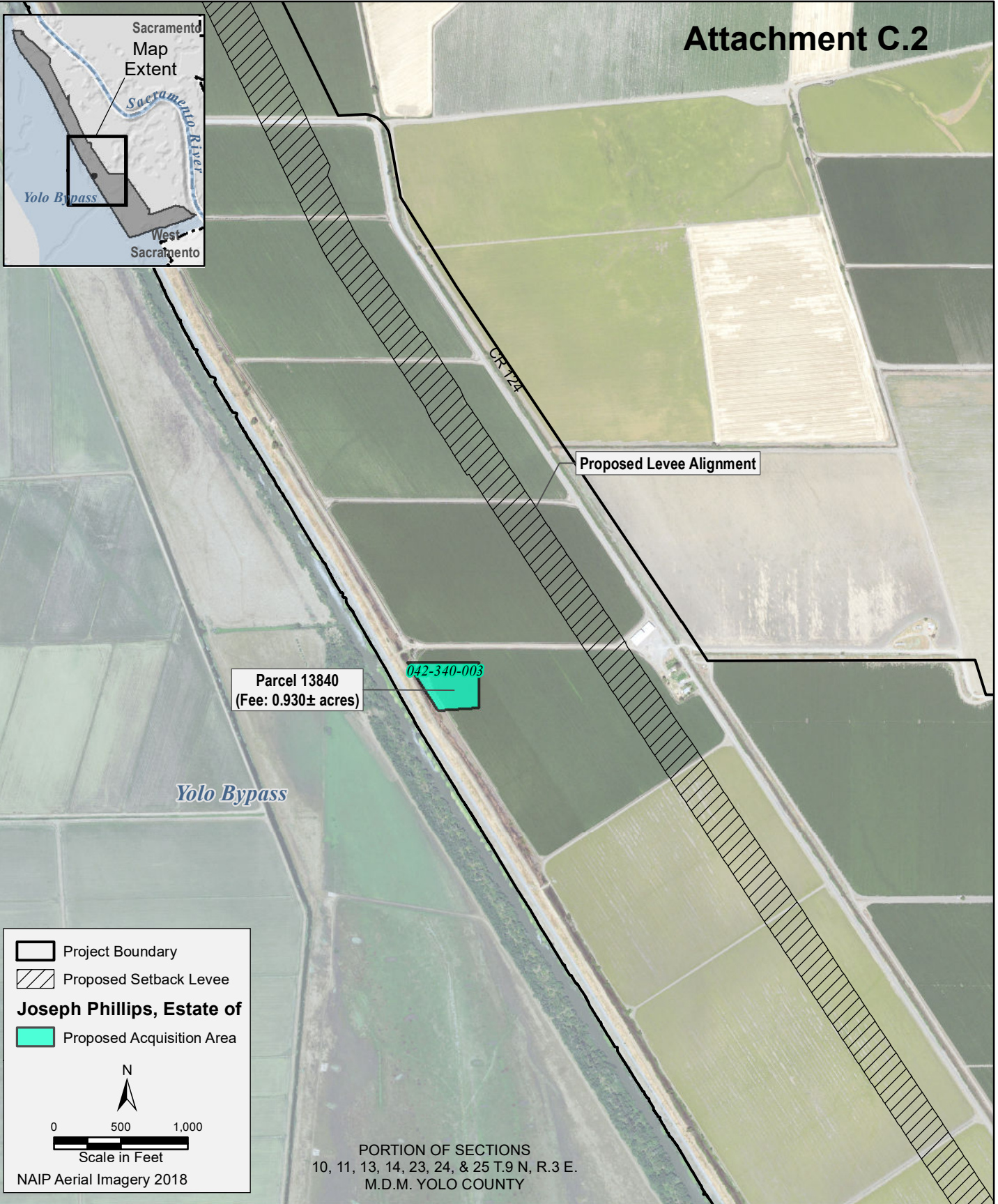


**Division of Multibenefit Initiatives**  
**Lower Elkhorn Basin Levee Setback**  
**Proposed Acquisition Exhibit**

**Figure 1**

By: M Jacobson  
 October 2019

# Attachment C.2



Parcel 13840  
(Fee: 0.930± acres)

042-340-003

**Legend**

- Project Boundary
- Proposed Setback Levee
- Joseph Phillips, Estate of**
- Proposed Acquisition Area

Scale in Feet  
0 500 1,000  
NAIP Aerial Imagery 2018

PORTION OF SECTIONS  
10, 11, 13, 14, 23, 24, & 25 T.9 N, R.3 E.  
M.D.M. YOLO COUNTY

X:\CVFPOData\GIS Projects\YoloBP\_Implementation\LEBLS\2019\201909\Parcel Acquisition Owners\_20190911\_8x11\_title.mxd



Division of Multibenefit Initiatives

Lower Elkhorn Basin Levee Setback  
Proposed Acquisition Exhibit

Figure: 2

By: M Jacobson  
Date: October 2019

EXHIBIT "A"

All that real property situated in the unincorporated area of the County of Yolo, State of California, described as follows:

**PARCEL 13840**

BEGINNING at a point on the south line of Swamp Land Survey No. 497 as shown on that map of River Gardens recorded in Book 2 of Maps, Page 30 Yolo County Records and being the Northeast corner of land conveyed by T.T. C. Gregory and Gertrude M. Gregory, on December 7, 1921, to George Swanston in 102 of Deeds 392 Yolo County Records;

Thence along said south line S89°57'49"E 436.69 feet to a ½ inch rebar capped "MHM LS 5912" as shown on that Record of Survey recorded in Book 2015 Maps & Surveys, Page 35;

Thence leaving said south line S00°02'02"W 100.00 feet to a ½ inch rebar capped "MHM LS 5912" as shown on said Record of Survey;

Thence N89°57'58"W 373.85 feet the easterly line of said 102 Deeds 392;

Thence along said easterly line to the POINT OF BEGINNING.

Containing 0.930 acres, more or less.

 8/28/19  
KRISTOPHER KLIMA, PLS



Notice of Determination

Appendix D

To:

Office of Planning and Research
For U.S. Mail: P.O. Box 3044 Sacramento, CA 95812-3044
Street Address: 1400 Tenth St. Sacramento, CA 95814

County Clerk
County of:
Address:

From:

Public Agency: CA Department of Water Resources
Address: 3464 El Camino Avenue Suite 150 Sacramento, CA 95821
Contact: Erin Brehmer
Phone: (916) 574-2313

Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2016092015

Project Title: Lower Elkhorn Basin Levee Setback Project

Project Location (include county): Sacramento

Project Description:

The Lower Elkhorn Basin Levee Setback Project would entail the following flood-risk reduction elements (1) widening the Yolo Bypass by constructing a setback levee approx. 1,500 feet east of the Tule Canal in the Lower Elkhorn Basin (between I-5 and the Sacramento Bypass), (2) widening the Sacramento Bypass by constructing a setback levee approx. 1,500 feet north of the existing levee (3) potential degrading of all or portions of existing levees; and (4) implementing ecosystem improvements in the lower Elkhorn Basin to mitigate project impacts.

This is to advise that the California Department of Water Resources has approved the above described project on March 18, 2019 and has made the following determinations regarding the above described project:
(Lead Agency or Responsible Agency)

- 1. The project [X] will [ ] will not have a significant effect on the environment.
2. [X] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [ ] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [ ] were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [ ] was not adopted for this project.
5. A statement of Overriding Considerations [X] was [ ] was not adopted for this project.
6. Findings [X] were [ ] were not made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at: 3464 El Camino Avenue Suite 150

Signature (Public Agency) Title

Date 3/18/19 Date Received for filing at OPR



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Avenue, Room 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 579-0682  
Permits: (916) 574-0685 FAX: (916) 574-0682



MAR 11 2019

Heirs or Devisees of Mr. Joseph M. Phillips  
5541 Dorset Way  
Sacramento, CA 95822

To Whom It May Concern:

This letter is being sent to the last known address of Mr. Joseph M. Phillips. We are seeking any heir or devisee to Mr. Joseph M. Phillips, as he is the last known owner of a certain property situated in Yolo County, identified as Assessor's Parcel No. 042-340-003-000, and shown on the enclosed exhibit. The Sacramento and San Joaquin Drainage District, acting by and through the Central Valley Flood Protection Board of the State of California, proposes to purchase this property to accomplish the goals of the Lower Elkhorn Basin Levee Setback Project.

If you, or anyone you know, is an heir or devisee of Mr. Joseph M. Phillips, please notify me by telephone directly at (916) 653-5185, toll free at (800) 600-4397, or via email at [Patrick.Nolan@water.ca.gov](mailto:Patrick.Nolan@water.ca.gov).

Thank you for your attention to this matter.

Sincerely,

Patrick J. Nolan  
Associate Right of Way Agent

Enclosure



RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

**DEPARTMENT OF WATER RESOURCES**

Division of Engineering  
Real Estate Branch  
1416 9<sup>th</sup> Street, Room 425  
Sacramento, CA 95814

SPACE ABOVE THE LINE FOR RECORDER'S USE

042-340-03

**GRANT DEED**

LOWER ELKHORN BASIN LEVEE SETBACK  
Project YOLO BYPASS

Parcel No. 13840  
57-1760-A03

**THE HEIRS OR DEVISEES OF JOSEPH M. PHILLIPS, DECEASED, SUBJECT TO THE ADMINISTRATION OF THE DECEDENT'S ESTATE**, organized and existing under and by virtue of the laws of the State of California does hereby GRANT to the SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through THE CENTRAL VALLEY FLOOD PROTECTION BOARD of the STATE OF CALIFORNIA, a public agency, herein after called "GRANTEE", all that real property in the County of Yolo, State of California, described as follows:

See Exhibit "A" attached hereto and made a part hereof

(In the event of any discrepancy between the above identification and the real property described herein, the real property described will control.)

EXHIBIT "A"

All that real property situated in the unincorporated area of the County of Yolo, State of California, described as follows:

**PARCEL 13840**

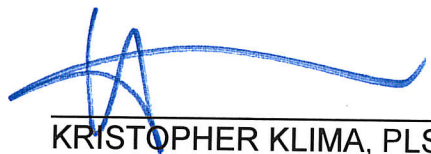
BEGINNING at a point on the south line of Swamp Land Survey No. 497 as shown on that map of River Gardens recorded in Book 2 of Maps, Page 30 Yolo County Records and being the Northeast corner of land conveyed by T.T. C. Gregory and Gertrude M. Gregory, on December 7, 1921, to George Swanston in 102 of Deeds 392 Yolo County Records;

Thence along said south line S89°57'49"E 436.69 feet to a ½ inch rebar capped "MHM LS 5912" as shown on that Record of Survey recorded in Book 2015 Maps & Surveys, Page 35;

Thence leaving said south line S00°02'02"W 100.00 feet to a ½ inch rebar capped "MHM LS 5912" as shown on said Record of Survey;

Thence N89°57'58"W 373.85 feet the easterly line of said 102 Deeds 392;  
Thence along said easterly line to the POINT OF BEGINNING.

Containing 0.930 acres, more or less.

 8/20/19  
KRISTOPHER KLIMA, PLS



Parcel No.13840

State of California  
The Resources Agency  
Department of Water Resources  
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

Grantor, for himself, his successors and assigns, hereby waives any claims for any and all damages which will accrue to the remaining property of grantor by reason of its severance from that portion granted herein and the construction of the improvement in the manner presently proposed.

Executed on \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GRANTOR(S)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

SS

County of \_\_\_\_\_

On \_\_\_\_\_, 20 \_\_\_\_ , before me, \_\_\_\_\_

personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA

(CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE, SECTION 27281)

This is To Certify, That the real property or interests therein described in the within deed to the SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through The Central Valley Flood Protection Board of the State of California, a public agency, is hereby accepted on behalf of the grantee.

Dated \_\_\_\_\_, 20 \_\_\_\_ .

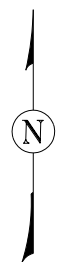
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

By \_\_\_\_\_

\_\_\_\_\_  
(Title)  
DEPARTMENT OF WATER RESOURCES

PARCEL NO.	OWNER	PROJECT			EXCESS
		FEE	PERM ESMT	TEMP ESMT	
13840	PHILLIPS	0.930 AC			

PARCEL 2  
2015 M&S 35



N30°41'45"W 2463.20'

**YOLO**

PHILLIPS  
PARCEL 13840  
103 DEEDS 233

**BY-PASS**

10A

P.T. & T.  
20' WIDE CABLE ESMT  
PER 948 O.R. 265

34  
REC DIST 785  
45' WIDE DRAINAGE & IRR  
ESMT PER 24 O.R. 10

CO. RD. NO. 124

FND 1/2" REBAR  
CAPPED MHM LS  
5912 PER 2015MS35  
N:1988459.909  
E:6673985.847

FND 1/2" REBAR  
CAPPED MHM LS 5912  
PER 2015MS35  
N:1988559.911  
E:6673985.906

REC DIST 785  
ESMT PER 24 O.R. 397

SWC  
SLS 497

180.21' 436.69'

1988.42' (1988.80')

P.G.&E. POLE LINE  
ESMT PER 14 O.R. 80

N89°57'58"W 373.85'  
(N89°41'36"W 377.52')

S00°02'02"W 100.00'  
(S00°18'24"W)

SSJDD  
DEED NO. 230  
ESMT 24 O.R. 282

REC DIST 785  
DRAINAGE ESMT  
PER 24 O.R. 393

REC DIST 785  
400' WIDE ESMT PER  
71 DEEDS 236

REC DIST 785  
55' WIDE "WEST DITCH" DRAINAGE  
ESMT PER 24 O.R. 390

N31°57'50"W 4917.33'

1" = 400'



PORTION OF PROJECTED SECTION 14, T. 9 N., R. 3 E., M.D.M.  
YOLO COUNTY

COORDINATES, BEARINGS AND DISTANCES ARE BASED ON  
THE CALIFORNIA COORDINATE SYSTEM 1983(CCS83),  
EPOCH 2010.00(2011), ZONE 2, US SURVEY FEET.  
DISTANCES SHOWN HEREON ARE GRID, TO CONVERT TO  
GROUND MULTIPLY BY 1.0000465 (PROJECT C.S.F.)

10/24/18  
57-1760-A04

LOWER ELKHORN BASIN LEVEE SETBACK PROJECT  
**EXHIBIT B**  
YOLO BYPASS EXPANSION

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
DIVISION OF ENGINEERING - GEODETIC BRANCH



**SUPPLEMENT TO STAFF REPORT: NEGOTIATION FACT SHEET**  
**PROPOSED ACTION IN EMINENT DOMAIN**  
 Central Valley Flood Protection Board (CVFPB)  
 November 22, 2019

**Project:** Lower Elkhorn Basin Levee Setback Project (LEBLS)  
**APN:** 042-340-003 (Yolo County)  
**CVFPB #:** 13840  
**Owner:** Estate of Joseph M. Phillips (Phillips)

**Property Rights to be Acquired**

<u>CVFPB Parcel No.</u>	<u>Area</u>	<u>Rights</u>
13840	0.930 acres	FEE

**Parcel Information**

**Current Use:** Irrigated row and field crops  
**Zoning:** A-N (Agriculture Intensive Zone)  
**Date of First Written Offer:** N/A (California Government Code 7267.2)  
**Amount of Fair Market Value:** **\$3,000**

**Negotiations**

- DWR determined that the Phillips property owner, Mr. Joseph M. Phillips passed away in 1976 with the discovery of a Death Certificate from Sacramento County. At the time of his death, his wife Dana Phillips was the successor, however, DWR has proven by the Social Security Administration that she is also deceased. Currently, there are no heirs or successors that we know of.
- E-mailed State Controller's Office (SCO) on December 12, 2018 to look into a Conveyance Document dated 1973 which appears to transfer the Phillips property to STATE ownership due to nonpayment of taxes. The document has a SCO stamp at the bottom, however, the stamp lines are not filled out and the document was not recorded.
- Received e-mail from SCO on December 27, 2018 explaining that the Phillips property was not accepted by the STATE and returned to ownership of Mr. Phillips with an "Order to Cancel Tax Deed" dated 1974.
- DWR mailed a certified letter on March 11, 2019 to the last known address for the Phillips property, according to Yolo County, seeking heirs or devisees of Mr. Joseph M. Phillips and informing the recipient of the LEBLS project and the need of DWR to acquire the Phillips property.
- Spoke on March 18, 2019 with the Sacramento County's Probate Department who stated that they do not have anything on record for Mr. Joseph M. Phillips. I spoke with Sacramento County because Mr. Phillips lived and died in Sacramento County.
- Spoke on March 22, 2019 with Yolo County assessor's office who was not able to find any information regarding the Phillips property after the death of Mr. Phillips in 1976.
- On April 11, 2019 DWR received a "Return to Sender" notification attached to the DWR letter mailed on March 11, 2019.
- Appraisal Report completed on May 1, 2019. Fair Market Value concluded to be \$3,000.
- DWR requested the Office of the Attorney General (OAG) investigate the Phillips property and to seek out any heirs or devisees of Mr. Joseph M. Phillips.

**Area of Impasse between Phillips and DWR**

Currently, DWR cannot find any heirs or devisees to negotiate with.

**Why Necessary to Initiate Eminent Domain Action**

DWR, acting by and through CVFPB, has been unable to reach an agreement to acquire the necessary property rights through negotiation. DWR must initiate eminent domain action in order to ensure that CVFPB meets its project schedule.



## Attachment I

**Central Valley Flood Protection Board****Parcel:** 13840 PHILLIPS**Agent:** Patrick Nolan

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**Project:** Yolo Bypass**Subproject:** Lower Elkhorn Basin Levee Setback**County:** Yolo**Location:** Yolo Bypass

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**Diary**

10/16/2018 (PN) Previous Agent, Surrinder Tumber, determined that the Phillips property owner, Mr. Joseph M. Phillips passed away in 1976. (Death Certificate proof) At the time of his death, his wife Dana Phillips was the successor, but it has been proven by the Social Security Administration that his wife also is deceased. There are no currently no heirs or successors that we know of.

12/12/2018 (PN) E-mailed State Controller's Office (SCO) to look into the conveyance document dated 1973 which appears to transfer the Phillips property to STATE ownership due to nonpayment of taxes. The document has a SCO stamp at the bottom, however, the stamp lines are not filled out and the document is not recorded.

12/27/2018 (PN) Received e-mail from SCO explaining that the Phillips property was not accepted by the STATE and returned to ownership of Phillips with the "Order to Cancel Tax Deed" from 1974.

3/11/2019 (PN) Today, DWR mailed a certified letter to the last known address for Joseph M. Phillips seeking heirs or devisees and informing the recipient of the LEBLS project and the need of DWR to acquire the Phillips property.

3/18/2019 (PN) Spoke today with the Sacramento County's Probate Department. They do not have anything on record for Mr. Joseph M. Phillips. I called Sacramento County because Mr. Phillips lived and died in Sacramento County and so any probate information should be in Sacramento County.

3/22/2019 (PN) Spoke today with Yolo County and the person was not able to find any information regarding the Phillips property after the death of Mr. Phillips in 1976.

4/11/2019 (PN) Today we received a "Return to Sender" notification attached to the letter mailed March 11, 2019 because the current property owners at the address would not accept the letter.

5/1/2019 (PN) Appraisal Report completed today. Fair Market Value concluded to be \$3,000.

8/26/2019 (PN) DWR requested the Office of the Attorney General (OAG) investigate the Phillips property and to seek out any heirs or devisees of Mr. Joseph M. Phillips.

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Ste. 170  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682



November 1, 2019

Heirs or Devisees of Joseph M. Phillips  
5541 Dorset Way  
Sacramento, CA 95822

Subject: APN # 042-340-003 (off County Road 124 and adjacent to the Yolo Bypass)  
Notice of Intent to Adopt Resolution of Necessity to Acquire Certain Real Property or  
Interest in Real Property by Eminent Domain

To Whom It May Concern:

This letter serves as notice that the Central Valley Flood Protection Board (Board) at its November 22, 2019 Board Meeting will consider adopting a Resolution of Necessity (Resolution) to acquire the above – referenced property by eminent domain. You are being notified as the owner of this property, or an interest therein, pursuant to the California Code of Civil Procedure (CCP) Section 1245.235. You and/or your representative are invited to attend the Board meeting and present testimony to the Board on this matter.

The CCP provides procedures for public agencies to acquire private property for public use. It requires that every agency, which intends to condemn property, notify the owners of its intention to condemn. Section 1240.030 of the CCP provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

- (1) The public interest and necessity require the proposed project;
- (2) The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and
- (3) This property is necessary for the project.

Section 1245.230 of the CCP further requires that the offer required by Government Code Section 7267.2 has been made to the owner of record.

The Board, at its November 22, 2019 meeting, will consider if the above conditions concerning your property have been met and, if so, decide whether to adopt a Resolution. The Board Meeting is scheduled to take place as follows:

**Central Valley Flood Protection Board November 2019 Meeting**

Date: November 22, 2019  
Time: 9:00 a.m.  
Location: Sacramento City Hall Building  
1<sup>st</sup> Floor Council Chambers  
915 I Street  
Sacramento, California 95814

A Resolution, if adopted, will constitute official authorization for the Department of Water Resources (DWR), on behalf of the Board, to acquire the property, or property interest therein, by exercise of the power of eminent domain. All issues related to the compensation to be awarded for the acquisition of the subject property will be resolved in the eminent domain proceeding.

A description of the required property that is the subject of this Resolution is attached to this Notice and is marked Exhibit A.

The State proposes to acquire Board Parcel No. 13840 (Yolo County Assessor's Parcel Number 042-340-003) through the exercise of the power of eminent domain for the Lower Elkhorn Basin Levee Setback Project.

The property rights to be acquired are:

Fee: 0.930 acres

You are invited to appear before the Board to comment on the findings necessary for the proposed Resolution of Necessity. If you wish to appear in person at the Board Meeting, you must notice the Board in writing of your intent to do so within 15 days from the mailing of this Notice. Your written request to appear should include a statement indicating which of the three conditions listed in the first paragraph above you contend have not been met.

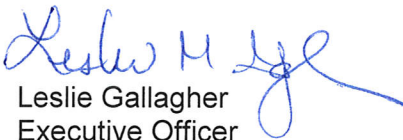
In lieu of personally appearing before the Board at its November 22, 2019 meeting, the Board will consider any written comments you may wish to submit pursuant to this notice. The Board will consider written objections so long as they are filed within the 15-day period to respond set forth above. All written objections filed with the Board within the 15-day period will become part of the official record of the November 22, 2019 meeting.

Please send any written comments or requests to:

Andrea Buckley  
Central Valley Flood Protection Board  
3310 El Camino Ave., Suite 170  
Sacramento, CA 95821

If you have any questions regarding this matter, please call Matt DeGroot, Senior Right of Way Agent, Division of Engineering, DWR, at (916) 653-9906.

Sincerely,

  
Leslie Gallagher  
Executive Officer

Enclosures

cc: Matt DeGroot, Senior Right of Way Agent  
Department of Water Resources  
Division of Engineering, Real Estate Branch

**EXHIBIT "A"**

All that real property situated in the unincorporated area of the County of Yolo, State of California, described as follows:

**PARCEL 13840**

BEGINNING at a point on the south line of Swamp Land Survey No. 497 as shown on that map of River Gardens recorded in Book 2 of Maps, Page 30 Yolo County Records and being the Northeast corner of land conveyed by T.T. C. Gregory and Gertrude M. Gregory, on December 7, 1921, to George Swanston in 102 of Deeds 392 Yolo County Records;

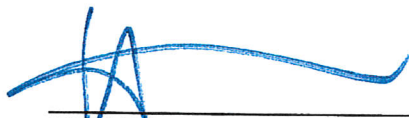
Thence along said south line S89°57'49"E 436.69 feet to a ½ inch rebar capped "MHM LS 5912" as shown on that Record of Survey recorded in Book 2015 Maps & Surveys, Page 35;

Thence leaving said south line S00°02'02"W 100.00 feet to a ½ inch rebar capped "MHM LS 5912" as shown on said Record of Survey;

Thence N89°57'58"W 373.85 feet the easterly line of said 102 Deeds 392;

Thence along said easterly line to the POINT OF BEGINNING.

Containing 0.930 acres, more or less.

 8/28/19  
KRISTOPHER KLIMA, PLS

