

Meeting of the Central Valley Flood Protection Board**January 26, 2012****Staff Report – Enforcement Hearing****Carol Miller, Yuba County****1.0 – ITEM**

Enforcement hearing requested by respondent concerning a notice of violation ordering the removal of a private fence located on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from December 2, 2011.

Consider Resolution No. 12-05 (Attachment A) to:

1. Authorize removal of private fences and miscellaneous obstructions on State land.
2. Grant license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Rescind the notices of violation subject to voluntary compliance with this resolution.

2.0 – RESPONDENT/PROPERTY OWNER

Ms. Carol Miller
5676 Riverside Drive
Olivehurst, California 90731

Assessor's Parcel Number (APN) 020-171-001

3.0 – LOCATION

Figures 1 & 2 below show the vicinity and an aerial view of the property at 5676 Riverside Dr., respectively.

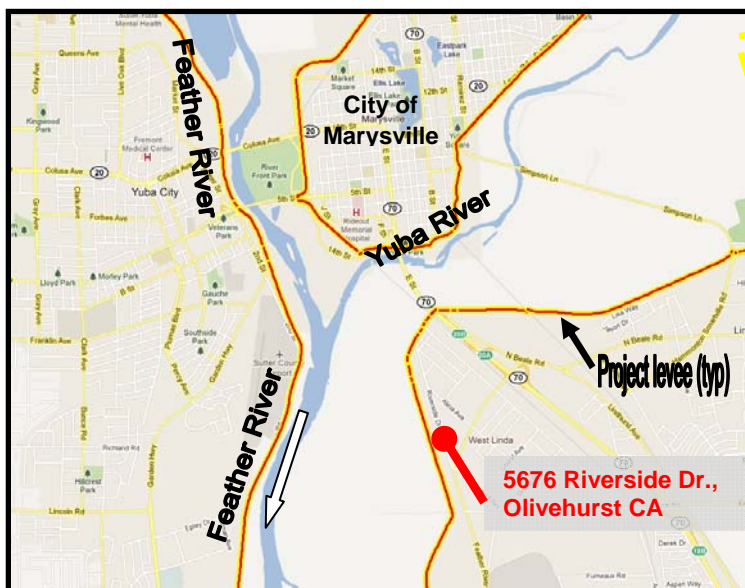


Figure 1- Vicinity Map of Property at 5676 Riverside Dr., West Linda CA (Source: Google Maps)



Figure 2- Aerial view of property at 5676 Riverside Dr. in West Linda CA (Source: Bing Maps)

4.0 – APPLICABLE LAWS AND REGULATIONS

4.1 – California Water Code

Pursuant to § 8534: The Board has the authority to enforce the “*erection, maintenance and protection of such levees, embankments and channel rectification as will, in its judgment, best serve the interests of the State*”.

Pursuant to § 8708: The Board has given assurances to the US Army Corps of Engineers (USACE) that the State will maintain and operate federal flood control works in accordance with federal law.

Pursuant to § 8709: Unauthorized encroachments that may interfere with or obstruct the operation or maintenance of the flood control works constitute a public nuisance and as such, if the respondent fails to remove such unauthorized encroachment, the Board may commence and maintain a suit in the name of the people of the State to abate the nuisance.

Pursuant to § 8710: The Board must approve any encroachment into an adopted plan of flood control, such as the Sacramento River Flood Control Project, which includes the Feather and Yuba Rivers.

4.2– California Code of Regulations, Title 23 (CCR 23)

Pursuant to § 6 (c): “*Every proposal or plan of work....located outside an area over which there is an adopted plan of flood control, must be submitted to the board for approval prior to commencement of work if it is foreseeable that the plan of work could be injurious to or interfere with the successful execution, functioning or operation of any facilities of an adopted plan of flood control...*”

Pursuant to § 19: “*No encroachment may be constructed or maintained upon lands owned in fee by the Sacramento and San Joaquin Drainage District, except when expressly permitted by a proper and revocable license, lease, easement, or agreement executed between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation therefor. This requirement is in addition to the need for a permit as required in section 6 of this article.*”

Pursuant to §20 (a): “*The General Manager [subsequently retitled as Executive Office] may institute an enforcement proceeding by serving a notice by certified mail, return receipt requested, to the landowner or person (referred to hereafter as the “respondent”) owning, undertaking or maintaining a work that is in violation of this division or threatens the successful execution, functioning or operation of an adopted plan of flood control.*”

5.0 – STAFF ANALYSIS

5.1 – Background

On December 2, 2011, the Central Valley Flood Protection Board (“Board”) held public hearings regarding the removal of unauthorized levee encroachments located on State-owned property in West Linda, CA. See Attachments B and C for copy of the official transcript and staff report, respectively. The Board determined by a majority vote that private encroachments exist on State owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. The Board also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor. The proposed real estate alternative is to issue revocable licenses to the adjoining property owners for use and maintenance of the portion of the State land not needed to create the 20 foot wide levee toe maintenance corridor. Private fences and miscellaneous encroachments within the corridor will be removed and a new fence will be constructed along the corridor edge in accordance with Board Permit No. 18690. Board Staff has determined the proposed alternative addresses the State’s enforcement requirements. The alternative discussed in this staff report is limited to the property owned by Carol Miller. The remaining properties are addressed in separate staff reports.

5.2 – Real Estate

During the December 2, 2011 hearing many documents were presented and discussed that revolved around the property boundary. Many of these documents were reviewed by CTA Engineering in the preparation of the Record of Survey (Survey). Board staff is confident that the Survey prepared by CTA Engineering has been prepared in accordance with professional guidelines. On January 11, 2012, the Survey prepared by CTA was recorded at the Yuba County’s recorder’s office (see Attachment I). Below is a chronological summary on record documents noting the transfer of the State parcel where the encroachments are located and documents used in the Survey:

- December 14, 1909 – Northern Electric Railway Company purchased property from Isaac G. Cohn, et. Al (Book 59, Page 441). See Attachment D.
- November 8, 1921 – Yuba Gardens survey map (Book 3 of Surveys 2). See Attachment E.
- June 14, 1939 – Yuba Gardens Subdivision map (Tract No. 8, Book 3 of Surveys Page 45). See Attachment F.
- April 27, 1956 – Interstate Commerce Commission decision to abandon portion track under the Sacramento Northern Railway (State-owned parcel adjacent to 51 private properties). See Attachment G.
- December 12, 1958 – Sacramento and San Joaquin Drainage District (SSJDD) purchased property from Sacramento Northern Railway (Deed 2475 recorded on Book 267 Page 509). See Attachment H and Exhibit A.

- January 11, 2012 – Record of Survey (2011-11) prepared by CTA recorded on Book 93 Page 36. See Attachment I.

5.3 – Proposed Alternative

The original proposal presented at the December 2, 2011 was to install the new fence at the State right-of-way. This option would provide more than the necessary 20-ft wide O&M corridor but required removal of private fences, vegetation and portion of 2 permanent structures within State land. Following the December 2, 2011 meeting and Board's direction, staff met with DWR and TRLIA representatives to develop an alternative that would meet the Board's directions. At Carol Miller's property, the existing fence is located approximately 16-18 ft inside State property. The required 20-ft wide corridor can be provided at Carol Miller's parcel, with some remaining land. The proposed real estate alternative is to install the new fence approximately 20-ft from the levee toe; issue revocable license to Carol Miller to use and maintain the remaining State land until needed for a public purpose. See Figure 3 and Section 5.4 for a legal analysis on the proposed alternative. On January 10, 2012, this alternative was presented to the residents at a community held in Olivehurst, California and this alternative was supported by the members in attendance.

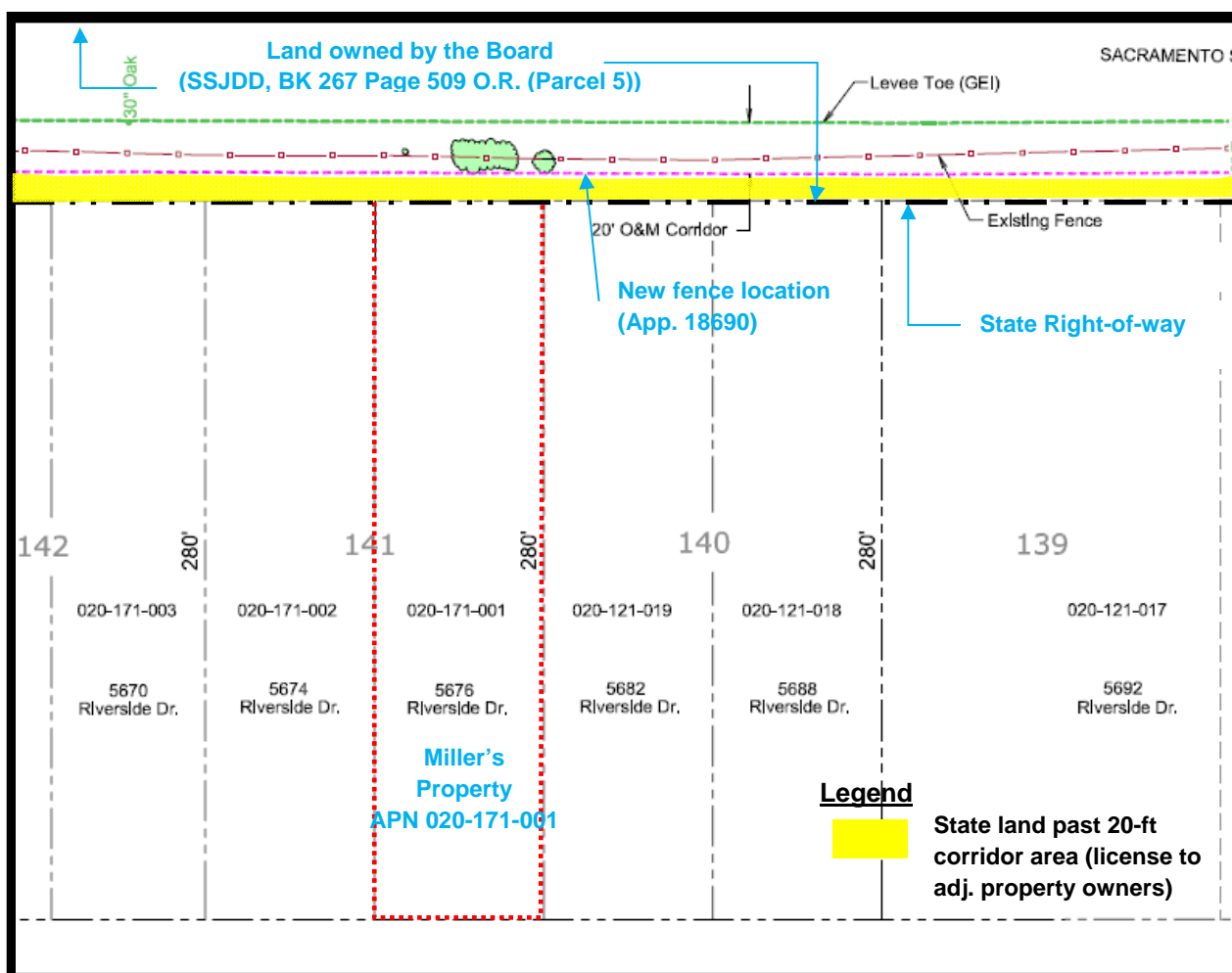


Figure 3- Source: CTA Levee Exhibit Map dated 11/18/2011, Sheet 1 of 2

5.4 – Legal Analysis of Proposed Alternative

The Department of Water Resources (DWR) office of the chief counsel informed Board staff they are continuing to work with TRLIA and the DWR Real Estate branch to ensure that granting licenses to the private property owners in this situation does not violate any State Laws.

6.0 – PROPOSED CEQA FINDINGS

The Board, acting as the CEQA lead agency, has determined the enforcement action is categorical exempt in accordance with CEQA Guidelines Section 15321 under Class 21 which covers actions of regulatory agencies to enforce standards and a Class 2 Categorical Exemption (CEQA Guidelines Section 15302) covering replacement or reconstruction of existing structures and facilities.

7.0 – STAFF RECOMMENDATION

The purpose of this enforcement action resolution is to protect the levee from illegal off road vehicles accessing the levee through private parcels and uncontrolled access points. Off-road vehicles have eroded the levee which weakens its slope stability. The corridor will provide sufficient space for two construction vehicles to pass each other during levee patrols and flood fight repairs. Staff's recommendation is for the Board to approve the proposed resolution that authorizes removal of the private fence and encroachments obstructing the 20 foot wide levee toe maintenance corridor and issue a revocable license to Carol Miller for use and maintenance of State land between the corridor and her property. For these reasons and those stated on this staff report, Board staff recommends the Board adopt Resolution No. 12-05 (Attachment A).

8.0 – LIST OF ATTACHMENTS

- A. Resolution No. 12-05
- B. December 2, 2011 Official Transcript for Agenda Items 10 A-D
- C. December 2, 2011 Staff Report without attachments for Agenda Item 10C
- D. Deed recorded on Book 59, Page 441 (December 14, 1909)
- E. Yuba Gardens survey map (Book 3 of Surveys 2, November 8, 1921)
- F. Yuba Gardens Subdivision Map (Tract No. 8, Book 3 of Surveys Page 45)
- G. Interstate Commerce Commission decision dated April 27, 1956
- H. Deed 2475 recorded on Book 267 Page 509 (December 12, 1958)
Exhibit A – SSJDD Acquisition Map dated January 7, 1958
- I. Record of Survey 2011-11 (Book 93 of Surveys Page 36, January 11, 2012)

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 12-05

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
CAROL MILLER, 5676 RIVERSIDE DRIVE, OLIVEHURST, CA
FEATHER RIVER, YUBA COUNTY

WHEREAS, Three Rivers Levee Improvement Authority (TRLIA) is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake; and

WHEREAS, as part of these improvements, TRLIA is required to provide a 20-ft landside Operations and Maintenance (O&M) corridor in accordance with the Department of Water Resources (DWR) Interim levee Design criteria; and

WHEREAS, vegetation, fences and other existing structures were located within the area required for the O&M corridor. Board records indicate that there are no permits for any of the structures, fences or private improvements within State property; and

WHEREAS, Water Codes Sections 8534, 8708, 8709 and 8710 were considered by staff in the analysis of the enforcement action; and

WHEREAS, California Code of Regulations, Title 23 Sections 6(a), 19 and 20(a) were also considered by staff in the analysis of the enforcement action; and

WHEREAS, on August 5, 2011 a total of 51 notices of violation (NOV) were issued to property owners adjacent to the Feather River East levee in West Linda, CA. This resolution only addresses the NOV 2011-272 issued to Carol Miller who owns Parcel 020-171-001 (5676 Riverside Drive, Olivehurst, CA); and

WHEREAS, on August 25, 2011, Board staff received a hearing request from respondent; and

WHEREAS, several community meetings were conducted by TRLIA to inform residents on the proposed project and need for removal of existing private encroachments; and

WHEREAS, on December 2, 2011, the Board conducted held public hearings regarding the removal of unauthorized levee encroachments located on State-owned property along the Feather River Levee in West Linda, CA; and

WHEREAS, the Board determined by a majority vote that private encroachments exist on State owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners.

The Board also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor; and

WHEREAS, following the December 2, 2011 Board meeting, staff met with TRLIA, DWR legal and Real Estate to develop an alternative plan that would meet the Board's direction; and

WHEREAS, on January 11, 2012, the Record of Survey (2011-11) prepared by CTA Engineering and Surveying has been recorded at the Yuba County recorder's office; and

WHEREAS, the proposed real estate alternative is to issue a revocable license to Carol Miller for use and maintenance of the portion of the State land not needed to create the 20 foot wide levee toe maintenance corridor; and

WHEREAS, the Department of Water Resources (DWR) office of the chief counsel informed Board staff they are continuing to work with TRLIA and the DWR Real Estate branch to ensure that granting licenses to the private property owners in this situation does not violate any State Laws; and

WHEREAS, existing private fence within the corridor will be removed and a new fence will be constructed along the corridor edge in accordance with Board Permit No. 18690; and

WHEREAS, on January 10, 2012, this alternative was presented to the residents at a community meeting in Olivehurst, CA and the residents supported the presented alternative; and

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing on the encroachments located in State land in Linda, CA and has reviewed the staff report, the documents and correspondence in its file, and given the applicant the right to testify and present evidence on their behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report, evidence presented at the hearing and any other documents in the Board's files.
2. The Board has reviewed all Attachments listed in the Staff Report.

CEQA Findings

3. The Board, acting as the CEQA lead agency, has determined the enforcement action is categorically exempt in accordance with CEQA Guidelines Section 15321 under Class 21 which covers actions of regulatory agencies to enforce standards and a Class 2 Categorical Exemption (CEQA Guidelines 15302) covering replacement or reconstruction of existing structures and facilities.
4. **Custodian of Record.** The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

Approval of Resolution No. 12-05

5. For the reasons stated on the staff report, staff recommends the Board adopt Resolution No. 12-05 to:
 - a. Authorize removal of private fences and miscellaneous obstructions on State land.
 - b. Grant license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
 - c. Rescind the notices of violation subject to voluntary compliance with this resolution.
 - d. Direct staff to file a Notice of Exemption with the State Clearinghouse.

PASSED AND ADOPTED by vote of the Board on _____, 2012.

Benjamin F. Carter
President

Francis "Butch" Hodgkins
Secretary

MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
ITEM 10A

THE RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 2, 2011
1:50 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

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AFTERNOON SESSION

(Thereupon the meeting reconvened
open session at 1:50 p.m.)

PRESIDENT CARTER: Good afternoon, ladies and gentlemen. If I could ask you to please take your seats. We'll go ahead and continue with our meeting. Apologize for being behind schedule. We're running about 45 minutes behind schedule.

At this time, we are going to start with Item 10A, which is in the hearings. We will see how the schedule goes. We'll work through the timed items on the hearings and then we will come back.

As you'll recall, we pulled two items from consent for hearings. And we also tabled the discussion on Item 9B pending the revision in the resolution. So those all will occur later on this afternoon. So with that, I'm going to call the hearing to order. This is hearing for Susan LaGrand, Enforcement Action No. 2011-287, regarding the notice of violation for removal of existing encroachments including a portion of a permanent structure located in the State of California, Sacramento/San Joaquin Drainage District property and right-of-way, on the landside of the Feather River levee in West Linda, California - Yuba County.

I'd like to just go through the process for those

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who have not been through it before.

The Board is acting as an independent and unbiased judge in this case. These are evidentiary hearings. The Board bases its decision based on the evidence presented today.

We have bifurcated our staff. The enforcement staff is bringing the action before the Board. We have other Board staff, that has no involvement with the enforcement staff, that is advising the Board on technical issues. As well as we have our own legal counsel; the enforcement staff has their own legal counsel. So we have essentially bifurcated our staff in this regard.

So we will hear testimony from the enforcement staff on their request. We will hear testimony from the respondent, and they will present evidence in support of their request. We will invite other interested parties from the audience if they wish to testify either in support or in opposition to the proposed action.

And then we will close public testimony and the Board will then discuss, deliberate, and decide.

So that's the process.

Any questions?

Very good.

Ms. Caliso, if you would proceed with the staff report.

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(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER CALISO: Good afternoon, President Carter, members of the Board. Angeles Caliso, Board staff.

Before I begin my presentation I'd like to acknowledge some of the other members in the audience that are also present and might be assisting me during the presentation.

That would be Mr. Paul Brunner with TRLIA; Max Steinheimer with Downey Brand; Steve Fordice with RD 784, the local maintaining agency for this area; Kevin Heeney with CTA Engineering and Surveying; and our legal counsel, Ward Tabor and Robin Brewer.

And the enforcement action before you this morning is for the respondent, being Ms. Susan LaGrand, who resides at 5578 Feather River Boulevard in Olivehurst, California.

--oOo--

STAFF ENGINEER CALISO: The action before you is to consider approval of Enforcement Order No. 2011-287, ordering the removal of existing unauthorized encroachments that are located within State-owned land. And those consist of a portion of a permanent structure and a fence.

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--o0o--

STAFF ENGINEER CALISO: On this screen you're seeing a map of the proposed location -- of the location of the encroachment. Marysville at the top of this screen, Feather River running to the east, and the Yuba River coming in from the -- I'm sorry -- Feather River coming from the west and the Yuba coming from the east.

The red line on the screen delineates the project levees that are out there. The location of the enforcement before you is identified in the red star on the screen.

--o0o--

STAFF ENGINEER CALISO: This is an aerial view of the location of the property.

The red line identifies approximate property boundaries, with Feather River Boulevard to the east and the levee to the west. The hash line identifies the approximate limits of the State-owned property that abuts the property -- the respondent's property.

The location of the unauthorized encroachments are identified in that red magenta line.

--o0o--

STAFF ENGINEER CALISO: And here's a photo of what those encroachments look like. So essentially it's a shop building. And there's a chain-link fence running

along the landside of the toe.

--o0o--

STAFF ENGINEER CALISO: This is a site plan of the respondent's property. This is taken from the survey that was prepared by CTA Engineering and Surveying. Their property is identified in the blue line, with the shade of brown -- light shade of brown at the top of the screen identifying the parcel that is owned by the State of California, the Board in this case. Was recorded on both 267, page 509, and were closely identified as parcel 5.

The existing location of the fence identified in the red line that you see running across the screen, it's clear that the existing fence is within State lands. And the location of it is approximately -- it ranges between 18 feet and 16 feet at this location.

The proposed location of the new fence where it's being proposed in Application 18690 would be at the landside-most location of the State-owned property.

The encroachments that are part of this enforcement order before you this afternoon are identified in the green shaded area. And here's a blowup of what that looks like. So, once again, the shaded area corresponds to State-owned land. The portion of the building that's encroaching on State land is encroaching about 4.7 feet. And then the existing fence within State

land is about 14.8 feet at this location.

--o0o--

STAFF ENGINEER CALISO: Some of the applicable codes and regulations pertinent to this enforcement action are California Water Code 8534, 8708, 8709, and 8710.

--o0o--

STAFF ENGINEER CALISO: Additional codes pertinent to this enforcement action are California Code of Regulations section 19, which I will read verbatim, states, quote, "No encroachment may be constructed or maintained upon lands owned in fee by the Sacramento and San Joaquin Drainage District, except when expressly permitted by a proper and revocable license, lease, easement, or agreement executed between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation therefor. This requirement is in addition to the need for a permit as required in section 6 of this article," end quote.

Some of the other sections in Title 23 that are pertinent includes section 6(a), requiring a need for a permit; and section 28, authorizing the Executive Officer to initiate an enforcement action against work that's being undertaken in violation of the Board's regulations.

Some of the background pertinent to this

enforcement action before you is -- starting with Three Rivers Levee Improvement Authority (TRLIA), was completing a project -- levee improvement project in the estimates of \$400 million to increase the level of protection for the cities of Linda, Arboga, Olivehurst, and Plumas Lake.

As part of these levee improvements a 20-foot wide maintenance corridor is required in accordance with DWR's interim levee design criteria.

TRLIA hired CTA Engineering and Surveying to perform a survey, and in the survey discovered that the area, for one, where the encroachments exist -- or many of the encroachments exist was owned by the State in fee. And it also covered some of area required for the 20-foot access corridor.

The existing fences were located, once again, within the State-owned land, and it required the 20-foot corridor.

On May 2011 Board staff began initiating a -- started an investigation on the encroachments located within State land, and discovered that none of the encroachments on State land had any prior Board approval permits.

--o0o--

STAFF ENGINEER CALISO: On July 29, 2011, TRLIA notified all the landowners affected by the proposed work

1 that they had encroachments located within State land and
2 their plan to remove existing encroachments on State land
3 and replace with -- put in a new fence at the proper State
4 right-of-way.

5 On August 5th, the State issued 51 Notices of
6 Violation to property owners where those unauthorized
7 encroachments existed, and this included the respondent.

8 On August 22nd, TRLIA held a community meeting in
9 Olivehurst, which was attended by many of the landowners,
10 Board staff, MBK Engineers, RD 784, and other local and
11 county representatives.

12 On August 27, Board staff received a request from
13 the respondent for a hearing. And on November 18th, the
14 respondent was provided a copy of the enforcement -- of
15 the agenda and the hearing and the enforcement procedures
16 and guidelines via a letter, an Email.

17 And then on November 22nd the respondent was
18 mailed a copy of the staff report via overnight mail.

19 --o0o--

20 STAFF ENGINEER CALISO: And I'd like to introduce
21 Max Steinheimer -- I apologize for chopping his name --
22 with Downey Brand, who will give you some of the legal
23 aspects related to this enforcement action.

24 MR. STEINHEIMER: President Carter, members of
25 the Board. Thank you.

1 Staff and counsel for the Board have asked that
2 we identify some of the legal issues that we've looked at
3 and that are in play and constitutes some of things that
4 the landowners have been concerned about, and tell you
5 what our conclusions and opinions have been.

6 The first is that the landowners are concerned
7 obviously because the fence has been there a long time.
8 And one way or another in various forms several of the
9 landowners have asked why it is that they can't have
10 prescriptive rights to this fence line. And the fence
11 should be allowed to stay where it is is their point.

12 And the basic answer is that, first, you can't
13 claim prescriptive rights against the State of California.
14 And you also can't claim prescriptive rights while there
15 is a rail -- an active railroad trackage permit in
16 existence. That doesn't mean the railroad has to be
17 operating. And I'll mention that in a minute.

18 But in both those situations, the railroad's
19 considered a public utility in that situation. And until
20 it's actually abandoned -- their trackage is abandoned,
21 it's not possible to acquire by prescriptive right land
22 that's owned by the railroad.

23 It might help just to give you very quickly a
24 timeline. This property was transferred in the early
25 1900's to the first of several railroad entities. In

1 1907 -- by 1907 it was in the hands of Northern Electric
2 Company. 1918 it was purchased out of bankruptcy by the
3 Sacramento Northern Railroad. By 1925 Western Pacific had
4 purchased that railroad, changed the name to Sacramento
5 Northern Railway, and was operating it as a subsidiary.

6 In the 1940's -- the subdivision map in this case
7 was recorded in 1939 with the properties that these
8 landowners have. And then through the -- from 1939
9 through the '40's and perhaps into the '50's those
10 properties were sold, developed. And the fence was built
11 during that time period.

12 The railway continued to own fee title to the
13 property. They weren't there via an easement. The
14 railway actually owned fee title. And their trackage
15 rights did not end until April 27th, 1956, when the
16 Interstate Commerce Commission by resolution declared that
17 the trackage rights then held by Sacramento Northern
18 Railroad -- Railway were abandoned. And then the property
19 was purchased August 20th, 1958, approximately, by
20 Sacramento and San Joaquin Drainage District.

21 So there was a period of time of approximately
22 two years between when the trackage had been abandoned and
23 the sale to the State. And that two years would not meet
24 any requirement for any prescriptive right. There's a
25 mandatory five years to acquire that.

1 --o0o--

2 MR. STEINHEIMER: The next thing that's mentioned
3 in some of the transmittals from the landowners is
4 something that's called the Agreed-Boundary Doctrine.
5 It's not characterized that way; but putting, you know,
6 some inference to what they're actually saying, that's
7 what the claim is. And the claim basically is that
8 there's an agreement between the railroad -- there was an
9 agreement between the railroad and property owners that
10 established that the fence at issue would be the property
11 line. And that doesn't fit within and is not -- the
12 Agreed-Boundary Doctrine is not applicable to this
13 situation.

14 In this case, there are deeds that fix the
15 boundary. In other words, there is a description of the
16 property, there are existing legal records that do provide
17 the basis for fixing the boundary. And the
18 Agreed-Boundary Doctrine only applies when there is
19 uncertainty. When there's not a document -- a legal
20 document, a deed, that establishes the property line
21 despite everybody's best efforts, that doctrine applies
22 when you can't tell where the property line is, and
23 because you can't tell and it's uncertain, you make an
24 agreement and declare that this is going to be the
25 property line.

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So it doesn't apply in this case.

The other thing that is mentioned by some of the landowners is that there -- "Well, there was just an agreement between the railroad and our predecessor interest, our parents, grandparents," et cetera. And in that situation, that could be done, but you would have to have a written agreement. You cannot have an agreement that affects the title and establishes that property line as a real estate matter without having an agreement in writing. And there isn't any evidence of an agreement, whether it be in writing or not.

So neither the Agreed-Boundary Doctrine nor just a claim that they agreed to put the fence there meets any legal requirement and establishes some basis as a defense to the encroachment.

--o0o--

MR. STEINHEIMER: Also, landowners have mentioned that, well, they've paid property taxes on this property. And, one, that's not the case. Second, I don't think it would matter. The State's ownership interest and the encroachment trumps almost virtually everything.

But in this case - we've checked - the landowners are not taxed on any property other than what's contained within the recorded subdivision map. In other words, there's a recorded subdivision map with all of their lots

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laid out there. The assessor's map is identical to the recorded subdivision map. So the assessor's map has been used, and the people are being taxed on the size and the lot that is shown on the recorded subdivision map.

The property we're talking about, as you've seen from the map, is property that is to the west of the line for the recorded subdivision map. So the property owners have not paid property tax -- been charged property tax for those parcels.

And the question has been raised about improvements. But actually the two improvements that are preferred here in this case, one would be -- both of them, the one for Ms. LaGrand's property and the one for a later hearing, were both structures that were built after -- on State land after 1958 when the State took possession, and were built without permits. So there's no impact of property taxes on the issue of that first possession.

That's really the -- those are really the essential legal issues that we were asked to comment on. I'm counsel -- or I'm one of the counsel at Downey Brand that represent Three Rivers Levee Improvement Authority. And we're in a position where I guess we drew the straw that basically discovered this situation as we were going about the levee improvement work that we need to do. And we're obviously -- we're good with coming and assisting

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the Board, counsel, and staff in any way we can as you work through this.

And I'll be glad to answer any questions.

PRESIDENT CARTER: For now we'll hold questions until later.

STAFF ENGINEER CALISO: Thank you, Max.

Now I'd like to welcome Kevin Heeney with CTA Engineering and Survey, and he'll give you an overview on the survey -- the particular survey that was prepared that essentially established and determined -- we were able to use to determine what encroachments lied within State land.

MR. HEENEY: President Carter and members of the Board. Kevin Heeney with CTA Engineering and Surveying.

CTA has been involved with a lot of the mapping and surveying work throughout the TRLIA projects, and have been involved for over five years now.

Our initial work was to develop base maps for potential acquisitions and any other development plans that needed to go with the improvements to the levee. As we started looking at the access corridor issues, we discovered these encroachments that were identified as being on the State property.

In our initial base mapping work, we had looked at the subdivision map that these properties are part of.

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And it found that that map called for monuments within the subdivision that were originally set. We made a search for those monuments, and unfortunately none of the original monuments were found. But other monuments that marked lot corners and street right-of-way were found, and that was the basis for our analysis.

After we discovered these encroachments, we went back again to confirm that the block that these lots fall within was in fact - we had surveyed it - in its proper location and that that block itself fit within the subdivision properly.

There were other parcel maps and surveys that have been recorded. We reviewed all of those. And I believe out of the maps that we had, there was at least five that we found the monuments that those surveyors set. All of those still gave the same answer that we had.

We then took our analysis and went and met with the County Surveyor's Office and discussed the issue with them. We inquired about any unknown surveys or anything that their office may have. They didn't have anything.

They did provide us copies of some old railway right-of-way maps. And what that showed us was that the deed that the State had, the railroad right-of-way maps, and the common boundary of this subdivision all conformed with one another. They were a common boundary.

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1 To make one more check, this subdivision happens
2 to fall between two railways: The old Sacramento Northern
3 and the Western Pacific.

4 We made additional checks over onto the Western
5 Pacific Railway to verify once again that this block of
6 lots that we were talking about was properly located. And
7 we found that that was the case within acceptable
8 tolerances, the dimensions that we found were similar to
9 those on the recorded map. With that information, we went
10 back to the information, the data, the monuments we found
11 along the road right-of-way, used that as the basis for
12 determining this common boundary line, and set that line
13 at the exact same distance that the recorded map shows
14 that it is, 280 feet deep from that street right-of-way.

15 That's where we have set it. We've filed a
16 Record of Survey with the County Surveyor's Office. It
17 has been reviewed and it is awaiting recordation to those
18 facts.

19 The review of the County Surveyor's Office had no
20 change whatsoever to any of our analysis.

21 So that's kind of a background of how we
22 established it. And I'll also be available for questions.

23 PRESIDENT CARTER: Thank you.

24 STAFF ENGINEER CALISO: Now, we'll move on into
25 the agency comments.

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1 The Reclamation District 784, who is a local
2 maintaining agency for this area, supports Board's
3 enforcement action.

4 In addition, the Army Corps of Engineers 2011
5 periodic inspection has preliminarily rated this levee
6 unacceptable due to some of the legal off-roading that's
7 taking place from some of the private parcels. And this
8 rating could result if unchanged ineligibility for PL
9 84-99.

10 --o0o--

11 STAFF ENGINEER CALISO: So this is just a quick
12 view of what the reports show. This shows the location of
13 where the erosion was noted. So the parcels here on the
14 map, these are the ones that are part of this enforcement
15 action -- or the enforcements before you today -- this
16 afternoon.

17 --o0o--

18 STAFF ENGINEER CALISO: And once again, this is
19 just the picture showing the erosion that happens with
20 some of the vehicles off-roading, obtaining access from
21 the private lots.

22 --o0o--

23 STAFF ENGINEER CALISO: The CEQA analysis. The
24 Board staff's prepared the CEQA findings, and those are
25 covered under staff reports, section 7.0. And in the

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1 essence of time, I can skip through this section unless
2 you'd prefer me to go through it.

3 --o0o--

4 STAFF ENGINEER CALISO: And, in conclusion,
5 staff's recommendation is that -- staff has considered the
6 comments raised by the respondent regarding the
7 enforcement action. And staff has concluded that the
8 benefits of improving the levee patrol, maintenance
9 access, and protection of State property are the most
10 important. Allowing existing unauthorized encroachments
11 to remain within State land is prohibited by law and
12 regulation.

13 And therefore staff's recommending that the Board
14 determine that:

15 The existing encroachments are on State land or
16 the State right-of-way without prior authorization based
17 on the determinations from the staff report;

18 The encroachments constitute a public nuisance
19 because they interfere with the alignment of the proposed
20 new boundary intended to protect the levee;

21 The encroachment removal is exempt from CEQA; and

22 Approve Enforcement Order No. 2011-287, which is
23 Attachment A on the staff report, which authorizes the
24 removal of the encroachments within State land by Three
25 Rivers Levee Improvement Authority working on behalf of

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1 the State.

2 And this concludes my presentation. So I'll
3 answer any questions you may have.

4 PRESIDENT CARTER: Are there any quick questions
5 for staff?

6 Go ahead.

7 BOARD MEMBER SUAREZ: Thank you.

8 I want to go back to the slide where you
9 identified your authorities to proceed with this
10 enforcement action. And specifically there is a slide
11 that talked about section of our regs, 19.

12 STAFF ENGINEER CALISO: Sure.

13 BOARD MEMBER SUAREZ: And there was a whole
14 series similar to those. There was reference about
15 authority over any activity on lands owned in fee by the
16 State.

17 STAFF ENGINEER CALISO: Right. The first bullet
18 on the screen there, the section 19 of the regulations,
19 covers essentially -- it's quoted verbatim here on the
20 screen. And it's making note of lands owned by the State.

21 BOARD MEMBER SUAREZ: For the sake of argument,
22 let's assume that the land is not owned by the State. Do
23 you have other authorities through which to go and proceed
24 with an enforcement action?

25 STAFF ENGINEER CALISO: If my -- I would say that

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1 section 20(a) on our regulations gives the Executive
 2 Officer the authority to issue an enforcement order.
 3 BOARD MEMBER SUAREZ: No, no, that's to issue an
 4 enforcement order, not to institute an enforcement
 5 order -- institute an enforcement. Those are two
 6 different things.
 7 I mean he can issue an order, but it has to be
 8 based on some statutory -- some regulatory mechanism
 9 independent on that.
 10 STAFF ENGINEER CALISO: I'm not sure I'm
 11 understanding your question.
 12 BOARD MEMBER SUAREZ: Well, again, the assumption
 13 you're proceeding is that you own the land. So let's
 14 assume for the sake of argument that we don't.
 15 What other powers do you have under our
 16 regulations to proceed with an enforcement action that are
 17 not joined to the landownership issue?
 18 STAFF ENGINEER CALISO: I'm not sure if this is a
 19 question I'm qualified to answer.
 20 BOARD MEMBER SUAREZ: Well, you may need some
 21 legal help.
 22 STAFF ENGINEER CALISO: Maybe, yeah, I might call
 23 Legal.
 24 BOARD MEMBER SUAREZ: Let me just quickly, the
 25 issue of who owns the property is an issue. So let's --

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1 so what I'm trying to clarify is, do you have any other
 2 authorities via that based on property ownership?
 3 SUPERVISING ENGINEER TARAS: This is Curt Taras,
 4 Branch Chief for Enforcement.
 5 As you can see, the photo here shows the tire-rut
 6 damage that has occurred from an uncontrolled boundary on
 7 our levee. And so of course our code has provisions in
 8 our standards that no cuts or excavations can be made into
 9 a State levee. And it's the obligation of this Board to
 10 prevent that.
 11 I think Angeles Caliso correctly cited section 20
 12 of the regulations for the State to -- the Executive
 13 Officer may institute --
 14 BOARD MEMBER SUAREZ: No, she's not correctly
 15 citing that.
 16 That is -- that doesn't give her independent
 17 authority or give us independent authority to engage in
 18 enforcement action. It just says that the Executive
 19 Officer can issue an order if you have that authority.
 20 I can see this. But how is this related to the
 21 property owner? Do you have proof that it's a property
 22 owner that's doing that damage?
 23 SUPERVISING ENGINEER TARAS: The citation is not
 24 assigning any compensation claim to the -- or damage claim
 25 to the owner. It's simply to allow the State to take

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1 control of its boundary and protect the levee --
 2 BOARD MEMBER SUAREZ: But that's the issue.
 3 Assume that it doesn't belong to the State. That's my
 4 point. Assume it doesn't belong to the State, the
 5 property where the encroachment is -- the alleged
 6 encroachment is.
 7 I mean the whole enforcement action is based on
 8 ownership. I just need to know that, if that's the only
 9 angle we have.
 10 SUPERVISING ENGINEER TARAS: No, it's not. It's
 11 the main angle, but it's not the only angle, because, as
 12 you see, we cited section 20 here, which says if something
 13 threatens the --
 14 BOARD MEMBER SUAREZ: You keep -- section 20
 15 doesn't give you -- it doesn't get you there, section 20.
 16 So what other sections do you have?
 17 PRESIDENT CARTER: Why don't you both think about
 18 that.
 19 Are there any other questions?
 20 BOARD MEMBER MOFFATT: I did have a question.
 21 The ATV tracks going up on the levee, that's at a
 22 different part of the levee? That's not behind this
 23 particular property owner's property?
 24 SUPERVISING ENGINEER TARAS: That's correct. The
 25 whole area is -- the stretch of approximately a mile

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1 encompasses multiple parcels. And the justification for
 2 the fence is to provide an adequate patrol road and to
 3 address unauthorized access and off-roading.
 4 BOARD MEMBER MOFFATT: Thank you.
 5 PRESIDENT CARTER: Any other questions?
 6 We're going to try and get to your question, Ms.
 7 Suarez. But let them think about that.
 8 VICE-PRESIDENT RIE: Can I ask a quick question.
 9 How many patrol roads do we already have? Do we
 10 have one on the other side of the levee, on the waterside;
 11 do we have a patrol road there? And do we have one on the
 12 crown of the levee? So this would be a third patrol road.
 13 Is that what you're wanting to do?
 14 STAFF ENGINEER CALISO: I think what it's being
 15 called under the DWR's interim levee guidelines, it's a
 16 20-foot-wide access maintenance corridor. So, in essence,
 17 it's to provide enough space to do any flood fighting or
 18 maintenance on the levee.
 19 The crown is used or can be used as an access.
 20 But I think preferably -- I don't know if there's any
 21 patrol road on the waterside. I'd have to refer that to
 22 maybe the local maintaining agency or Paul Brunner, who
 23 might have more knowledge on what is the -- what is out
 24 there.
 25 PRESIDENT CARTER: What do our standards call

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1 for?

2 STAFF ENGINEER CALISO: Our standards

3 typically -- or our easements typically are limited to a

4 10-foot access, an access at the toe -- at the landside

5 toe. This situation is unique, because the property

6 provides not only the 10-foot access that would be

7 required under a standard -- under where -- on other

8 properties where we have an easement, but it provides more

9 than that room that is needed. And I think it's the -- a

10 practice that has been done is where it's not necessarily

11 a 10-foot-wide access that controls the Board's

12 jurisdiction, but it's either -- if we have an easement

13 that is 10 foot or whatever their property rights - and in

14 this case we have -- the Board has property rights over an

15 area that covers more than 10 foot on the landside toe.

16 VICE-PRESIDENT RIE: Just a follow-up on that

17 last question.

18 I didn't really understand your response about

19 the urban levee design criteria. I mean the first draft

20 just got released for public review, so those aren't

21 standards. And I think in terms of an enforcement action,

22 we need to rely on Title 23. So I'm not really sure how;

23 that's applicable here.

24 STAFF ENGINEER CALISO: The 20-foot-wide corridor

25 is required under the interim guidelines. Now, it's not

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1 being a standard at this point. What staff used was the

2 limits of the property that is in ownership by the Board.

3 So we looked at -- if we had a 10-foot easement in this

4 case, then we would be ensuring that the 10-foot easement

5 was provided and was present. In this situation, we have

6 property rights that extend the 10 foot. So we pursued it

7 under the section 19 of our regulations where the Board

8 owns the property.

9 PRESIDENT CARTER: Mr. Brown.

10 BOARD MEMBER BROWN: Wouldn't there be a road on

11 that 10-foot easement at the toe of the slope? Wouldn't

12 there be an inspection road?

13 STAFF ENGINEER CALISO: Yes, the plan under

14 Application 18690 will provide a driveable path. I

15 believe it's 14 feet that will be paved, and then the rest

16 will be graded to allow for vehicles to drive through the

17 20-foot area -- 20-foot zone.

18 PRESIDENT CARTER: Question.

19 DWR ASSISTANT CHIEF COUNSEL TABOR: I wanted to

20 address Ms. Suarez' question, if I might, the

21 jurisdictional basis for this enforcement action.

22 And, that is, in addition to the Board's property

23 ownership rights is the fact that your permit to Three

24 Rivers Levee Improvement Authority required them as part

25 of their permit to obtain 20 feet landward of the new

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1 levee toe.

2 All of these fences, the fence on this particular

3 property and the other fences that are the subject of the

4 other -- today are all blocking the ability to comply with

5 the Board's permit. So the handle is the Board's already

6 expressed exertion of its authority over the levee

7 extending out a minimum of 20 feet. And therefore these

8 fences prevent the applicant, the permittee, from

9 complying with the Board's order under its authority.

10 BOARD MEMBER SUAREZ: Mr. Tabor, is that because

11 we assume that the time that we entered into agreement

12 with TRLIA that we owned that property and that we could

13 go ahead and have those 20 feet?

14 DWR ASSISTANT CHIEF COUNSEL TABOR: I don't think

15 there was any consideration as to what the Board owned.

16 Because as I understand it - perhaps Mr. Brunner could

17 clarify - what the Board owns in any existing levee

18 situation may vary. Traditionally it is 10 feet. This is

19 a unique area because the Board acquired the railroad

20 right-of-way, which was more than we actually needed for

21 the levee itself. But it was available on the market. We

22 acquired it.

23 BOARD MEMBER SUAREZ: So, again, we just -- it

24 all goes back to the ownership of that piece of land; and

25 if it's established that we don't own the piece of land,

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1 then we might have a difficulty with enforcement?

2 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.

3 BOARD MEMBER SUAREZ: Thank you. That's all I

4 needed to know.

5 BOARD MEMBER MOFFATT: I had a question.

6 If the permit requires 20 feet from the toe - and

7 it looks like the fence and the building go about 14 --

8 what is it, 14 feet 8 inches beyond what we believe the

9 property boundary to be? But how far into what exists

10 right now -- if you went 20 feet from the toe of the

11 levee, how far in is that line? Does that -- based on

12 your previous statements, I assume that going to what we

13 believe to be the property line is greater than 20 feet,

14 correct?

15 STAFF ENGINEER CALISO: You're correct. I did

16 identify here -- and that's my apologies for not doing

17 that. But this dash line here on the back of the -- on

18 the screen, this slide up here, that's delineating the

19 approximate location of the levee toe on the landside.

20 So this is where the levee toe is currently. I

21 wish I had -- that's based on the map that we have.

22 That's what it was identified. So I'll go back.

23 BOARD MEMBER MOFFATT: Okay. So that's the levee

24 toe.

25 STAFF ENGINEER CALISO: See, this blowup area

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1 shows the levee toe being identified as this -- so the
2 levee toe on this plan shows it being just a few feet
3 further inside into State land from where the current
4 fence is at.

5 Now, you were saying where is the 20-foot setback
6 in relationship to the toe?

7 BOARD MEMBER MOFFATT: Yeah, I mean I guess put
8 simply, if we go 20 feet from the levee toe, are we
9 actually not asking these folks to give up 14.8 feet into
10 their -- into what exists right now to what we think is
11 the property boundary? And if not, what's the difference?
12 Because the fence is -- you know, it looks like -- you
13 know, from the fence is 10 feet to the building, and then
14 the building is about 4 feet 8 inches to where we believe
15 the property line is. So what's 20 feet in from the toe
16 of the levee?

17 STAFF ENGINEER CALISO: I wish I had those other
18 graphics that show that.

19 So in this location the 20-foot access corridor
20 would be within the State land, and it would --

21 BOARD MEMBER MOFFATT: Understood, granted,
22 stipulated. You said that earlier.

23 But what I'm wondering is what's the difference
24 between 20 feet in from the toe and where we believe the
25 property line is? The legal property line.

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1 STAFF ENGINEER CALISO: I don't know that off the
2 top of my head. Maybe I can refer that --

3 MR. BRUNNER: Angeles, can I speak?

4 STAFF ENGINEER CALISO: Sure. Maybe Paul will
5 try to answer that.

6 BOARD MEMBER BROWN: The legal property line
7 would be 20 feet in, wouldn't it?

8 BOARD MEMBER MOFFATT: No. But I'm asking for
9 the -- I'm asking for 20 feet in from the toe, which is
10 what the permit requires.

11 MR. BRUNNER: I'm Paul Brunner, the Executive
12 Director for Three Rivers. And I've listened to several
13 of the questions that have come and I'd like to respond to
14 them and work with you on this.

15 There was one question I'll start with, is how
16 many patrol roads we got on it, that we never really truly
17 answered so far, is that we do have a patrol road on top
18 of the levee that was constructed. It was built.

19 During flood fights we're required to have a
20 levee toe access corridor that we're trying to create here
21 for this project. Our State encroachment permit requires
22 us to have that. Our current encroachment permit from the
23 State requires that levee toe access corridor to be 10
24 feet, not 20 feet. It's 10 feet under a permit.

25 What has prompted us to go to the 20-foot

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1 criteria is the State interim criteria that was published.
2 Version 4 of that interim criteria came out in December of
3 last year, of which we then went to move forward as we try
4 to achieve 200-year compliance for our flood control
5 system.

6 The most current draft version that came out
7 recently that was referenced also calls for 20 feet
8 wherever practical to do on it. And we went forward to do
9 that on our project, to accomplish that.

10 As we went through to do the project, as Kevin
11 Heeney was taking about, what did transpire was we
12 uncovered, unbeknownst to anyone, that the State owned the
13 property on it, which then made us step back and start to
14 work through it with the people on it.

15 Now, in regards to the questions that you were
16 raising: The levee toe -- do we have a -- okay.

17 The levee toe is shown here. The existing fence
18 is this line here that is going along. And the property
19 line for the State as we know it would be this dark black
20 line that's shown right here. So -- and the encroachment
21 is here. The 20-foot distance from the levee toe would
22 come just to the edge of the building, about a foot off
23 this corner right here. So from 20 foot off the levee toe
24 to here, about 21 feet to here.

25 BOARD MEMBER MOFFATT: So --

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1 MR. BRUNNER: This encroaches about four or five
2 feet into the State-owned land.

3 The fence that was -- so the existing fence is
4 beyond -- is unto the State property.

5 BOARD MEMBER MOFFATT: So just to be clear.
6 Twenty feet from the toe would be a foot beyond the
7 existing structure, but nine feet with -- the structure
8 being the building.

9 MR. BRUNNER: It would be a foot short of the
10 building.

11 BOARD MEMBER MOFFATT: Right, towards the levee.
12 So the building would be here, and then a foot later would
13 be 20 feet, which would be approximately 9 feet inside
14 where the fence is currently. Is that accurate?

15 I'm seeing some nods from attorneys out in the
16 audience.

17 MR. BRUNNER: You're relating to an existing
18 fence. And I'd have to go back and work through the
19 fencing and fences.

20 BOARD MEMBER MOFFATT: Well, I thought somebody
21 said -- yeah, I mean I'm --

22 MR. BRUNNER: Kevin, as to surveying, do you have
23 that as to where the -- the distances for the fences?

24 PRESIDENT CARTER: Let's clear up this question.
25 And then we're going to close off any more Q and A and

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1 we're going to proceed with the testimony. And then we'll
2 ask questions. Once we have everybody's testimony, I
3 think we'll understand the gaps once we do that. Okay?

4 So go ahead and proceed and clear up exactly what
5 the dimensions are between the levee toe, the existing
6 fence, the proposed fence, and the building.

7 MR. HEENEY: I don't know --

8 BOARD MEMBER MOFFATT: Mr. PRESIDENT, maybe can
9 I --

10 MR. HEENEY: I'm not sure I have enough --

11 PRESIDENT CARTER: If you can't do that, then
12 we're moving on.

13 BOARD MEMBER MOFFATT: Can I suggest you go
14 figure out how to answer that and we move on with the
15 respondent --

16 PRESIDENT CARTER: Okay.

17 BOARD MEMBER MOFFATT: -- and answer it after?

18 Is that --

19 PRESIDENT CARTER: Okay. Let's do that.

20 Ms. Caliso, do you have anything more from the
21 staff?

22 STAFF ENGINEER CALISO: No, I don't, Mr.

23 PRESIDENT.

24 PRESIDENT CARTER: Okay. Thank you very much.

25 I'd like to invite the respondent up to offer

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1 testimony.

2 MS. LaGRAND: Hi.

3 First, what's she's giving you is the permit for
4 the building that the attorney here said that I did not
5 have.

6 The permit was taken out in 1984 by my
7 stepfather, who owned the land at that time. The permit,
8 if you look on page 3, is clearly marked that no
9 encroachment permit is necessary.

10 I'm just going to give you some background. My
11 family purchased this property 5578 and 5580 in 1946. It
12 was purchased by my maternal grandparents. They came here
13 from Missouri and built their home there. There was no
14 fence when they purchased the property. It had nothing.

15 The railroad came along, they put a fence up that
16 was basically wooden posts, barbed wire and pretty much
17 chicken wire. They told the residents - they didn't put
18 it in writing - they just told the residents, "This is
19 separating our property from yours." Everyone took that
20 to be what the property was.

21 A few properties on Riverside actually still have
22 these fences. They're in disrepair but they do still have
23 them. Just a second.

24 I'm a little nervous. You have to forgive me.

25 PRESIDENT CARTER: Please take your time.

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1 MS. LaGRAND: In 1951, a flood washed away the
2 railroad tracks. It was completely gone. My mother told
3 me about this numerous times, because it was the year that
4 she graduated from high school. And she said they came
5 out that summer, tore the tracks up, and they were never
6 seen again.

7 So, that's the timeline I have for when -- they
8 may not have filed abandonment, but that's when we know
9 that the track was gone.

10 My family have cared for this land all these
11 years. And we do take care of our lot. It is watered,
12 mowed, everything is taken care of.

13 Now, in the 1980's my mother and my stepfather,
14 Steve Moricz Sr., purchased the property from my
15 grandparents. My stepfather put in a new fence. He put
16 it all in in concrete at the same exact spot where the
17 railroad fence was. You know, he of course figured that's
18 where it belonged because that's where the railroad put
19 the fence.

20 So in 1984 he built the shop. And there is ten
21 and a half feet between the shop and the fence back behind
22 it. And there is probably about ten feet between the
23 bottom of what they are calling the railroad -- or the toe
24 of the levee. That is not the toe. That is part of the
25 road where the tracks used to run. By their own admission

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1 when they held that picnic in August, TRLIA told us that
2 they truly did not know where the toe was because it has
3 been long buried.

4 That road is part -- and it's partially buried as
5 well -- that they can drive their cars along is part of
6 where the railroad tracks used to be. That is not the
7 levee toe.

8 And, let's see, the shop -- of course you've got
9 the permit. This shop in 1984 cost over \$28,000. Today
10 that would be a lot more.

11 My stepfather -- I'm sorry -- he was an immigrant
12 from Hungary, who came to this place trying to build
13 something nice, and that building was his pride and joy.
14 He loved it. That was what he came to this country to do,
15 was to make something of himself.

16 Now, in 2008 I inherited the property from my
17 mother when she passed away. I am now the third
18 generation owner of this lot.

19 Now, in 2011, 27 years later, suddenly this shop
20 is in someone's way. I have to admit that I, with
21 somewhat of amusement, had to laugh when they declared it
22 a public nuisance. I don't know if it's screaming at
23 people as they run down the levee or what it's doing, but
24 evidently it's a public nuisance.

25 I have been given a letter telling me to demolish

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1 the building. I got this letter from TRLIA. It was very
 2 upsetting to me. But now I'm actually starting to become
 3 angry because I can hear all the different stories that
 4 they're telling, the lies they're telling. And what is
 5 really driving this is not them wanting to protect us as a
 6 people. They couldn't care less about us. What they care
 7 about is their multi-million dollar grant that they'll get
 8 from the Army Corps of Engineers. That's what's driving
 9 this completely.

10 And they just are trying to find a way to not
 11 have to compensate people who have lived there for years
 12 and years and years for their land.

13 They -- let's see. I have -- you can see at the
 14 last page, I believe it is, where I got an estimate from a
 15 contractor. And this is just to shorten the building,
 16 just shortening it. It will cost almost \$9,000.

17 It is not a building from the Home Depot that was
 18 thrown up on a weekend by my father and his best friend.
 19 This is a building that took almost two months to build.
 20 It has electricity, running water, a solid foundation.
 21 It's bolted to that foundation.

22 One thing that I found also is -- that the
 23 contractor didn't see, is that the large shelving units my
 24 stepfather put in the building are also bolted to the
 25 concrete foundation.

1 Shortening this building will be astronomical to
 2 me. Not only for the contractor. I will have to get a
 3 garbage bin that will cost -- from per Recology
 4 Yuba-Sutter will cost \$540. I will have to hire at least
 5 two people to help me to move all the stuff out of there,
 6 get everything out, move things along. And I figure maybe
 7 \$10 a day for eight hours for two days at least, while the
 8 back of the building is hanging open to the levee. And
 9 if -- you guys don't know our neighborhood, I'm sure. But
 10 there are people wondering up and down that levee
 11 constantly all hours of the day and night. I'm going to
 12 have to hire someone to guard it as well so that
 13 everything in it doesn't get stolen.

14 I'm looking at well over \$10,000 to do this
 15 project. This is something I cannot afford. I don't have
 16 this kind of money. You might as well be asking me for
 17 the millions of dollars they want to their levee project,
 18 because they can get that from me about as much as they
 19 can get this 10,000. I will have to go into debt. I'm
 20 already far enough in debt. And I'm really not sure I can
 21 make another payment. But that sad thing is that TRLIA
 22 doesn't care.

23 And this has caused me incredible stress. This
 24 has kept me awake at night. This causes me worry. This
 25 has caused me all kinds of things. I have a hard time

1 concentrating at my job. And I could just go on and on.

2 But another thing too is that truthfully when I
 3 was reading through the letter that I got in overnight
 4 mail from California Board of Water Resources, it sounds
 5 like everybody's mind is already made up. This is just a
 6 formality. We're being heard just to get it over with. I
 7 find that sad also.

8 I think it's also interesting that they said if I
 9 was allowed to keep the building, that I'll have to pay
 10 rent on my own building. That's another thing I find very
 11 interesting.

12 Another thing is TRLIA is talking about levee
 13 upkeep. They're telling us and everyone else that "We're
 14 doing this for you. We want to upkeep the levee. We want
 15 to keep it safe. We want to keep you safe."

16 The levee has had such poor repair. If TRLIA is
 17 so worried, why have they never been out there? Why
 18 haven't they been doing anything? In 1997, after there
 19 was a flood this levee was seeping underneath it right
 20 behind our house. No one showed up. No one came with a
 21 sandbag. No one came to check on it. The only people
 22 that checked it were private citizen patrols.

23 And after that, they came out and they installed
 24 a slurry wall in the levee. And not one person said to my
 25 mother or I, "Gosh, lady, my job sure would be easier if

1 your fence and your shop weren't in my way." None of them
 2 said that to us. We actually gave them drinks and stuff
 3 because it was in the heat of summer. And a lot of them
 4 actually complimented the building. They said how nice it
 5 was and so on and so forth.

6 But since that project in '97, no one has come
 7 out to that levee. The only upkeep that we have seen are
 8 goats. The goats come out I think maybe once or twice a
 9 year, they eat the weeds, and then they're gone. The tall
 10 weeds that grow up behind our fence used to be kept up by
 11 my brother. He used to climb over the fence, clear them
 12 out, everything. But he became ill. He had a ruptured
 13 aortic aneurysm and could no longer do that.

14 When I called RD 784 about the weeds, I was told
 15 that they don't do that, it's not their problem.

16 Now, I have been flooded -- I'm all for flood
 17 control. Believe me, I have nothing against flood
 18 control. I have been flooded. It's horrible. I don't
 19 know if any of you have ever had that happen to you. It
 20 is the most awful thing, next to maybe your house burning
 21 down, that can happen to it.

22 To this day, even though that house was stripped
 23 down and rebuilt, it still has some problems from that
 24 1986 flood.

25 And I know that a lot of you think -- you don't

40

1 know our neighborhood. The town is actually not
 2 Olivehurst. It's Linda. Linda is an area of mostly lower
 3 income. We are pretty much considered -- the people in
 4 Marysville and Yuba City truthfully consider us the low
 5 lifes. They consider us the people that are unimportant.
 6 And I will tell you right now, that if that levee were
 7 made of 20-inch steel and Marysville was protected by
 8 nothing but sand, our levee would break, because they
 9 would not let Yuba City or Marysville flood. So all of
 10 this talk of protecting us I just really find amusing.

11 The other thing that I want to bring up is that
 12 my neighbor, Carol Miller, has done extensive research.
 13 She has found maps that are incredibly old. And a lot of
 14 those maps refute the survey that has been has been done.
 15 A lot of the things they are considering markers were just
 16 simply posts they put in where each little house was going
 17 to go. It wasn't a marker of, you know, this is where
 18 your property ends. You know, it was just a marker of
 19 this where it's going to go. And I'll let her talk more
 20 on that because she has more information than I do.

21 And one of the markers that they actually claim
 22 that they found, from the map that Carol found, we believe
 23 are actually remnants of an old floodgate. And so that is
 24 not a correct marker.

25 Anyway, that's pretty much all I have to say.

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1 The property may be over somewhat. I don't know. No one
 2 ever told us that we were doing anything wrong. People
 3 all up and down that street all put their new fences up in
 4 the same spot. People built things. You can tell by my
 5 permit -- or my stepfather's permit that it says that we
 6 weren't encroaching on anything or no encroachments were
 7 needed.

8 Someone should have been responsible years ago.
 9 So if this truly belonged to the State, we as property
 10 owners should have been told years ago that this was not
 11 ours, so that we wouldn't have progressed and built on
 12 this property, took care of this property, whatever.

13 Anyway, that's all I have to say, and thank you
 14 for listening to me.

15 PRESIDENT CARTER: Thank you.

16 Are there any agencies, either the Corps of
 17 Engineers, the local maintaining agency, others that would
 18 like to testify and present evidence to the Board?

19 MR. FORDICE: Chairman Carter, members of the
 20 Board. My name is Steve Fordice. I'm the General Manager
 21 of Reclamation District 784.

22 Let me first state that I have no knowledge of
 23 any phone call made to my agency requesting us to go in
 24 and do weeds behind the LaGrand property. I can assure
 25 you that we do indeed patrol that area. We do put the

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1 goats through. We also spray the top of the levee.

2 To answer your question, do we patrol on the
 3 landside patrol road? The answer's no. It's inadequate,
 4 it's dangerous.

5 Coming in from the south side from Island Road it
 6 is not something I'd want to put a pickup on at this
 7 particular point in time. It has a one-to-one drop-off at
 8 the south end of a couple of feet. I have some pictures
 9 that I can show you of the area.

10 At the north end you can get through. There is a
 11 Ramp there.

12 This particular area is a very difficult place to
 13 contend with. We have had numerous incursions. We have
 14 people tearing the levee up with four-wheel-drive
 15 vehicles, with motorcycles, with --

16 MS. LaGRAND: May I answer that? I'm sorry.

17 PRESIDENT CARTER: No, not -- you'll be given an
 18 opportunity. I'm sorry, Ms. LaGrand.

19 MS. LaGRAND: That's not us.

20 MR. FORDICE: This particular photograph is an
 21 area landside at Highway 70. This is actually in Unit No.
 22 1, which is in the southernmost portion of our Unit 1 and
 23 the northernmost portion of Unit 2, which is right at
 24 Riverside. This area is being utilized by folks on
 25 unauthorized motor vehicles to ride along the side of the

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1 railroad up over the top and then continues.

2 --o0o--

3 MR. FORDICE: This is a waterside photograph,
 4 again right at the nexus -- or at the intersection between
 5 Unit 1 and Unit No. 2. The road on the side here is not
 6 an actual ramp. This has been one that has been created
 7 by unauthorized motor vehicles. And we've been unable to
 8 stop them.

9

10 --o0o--

11 MR. FORDICE: This particular area is north of
 12 the LaGrand property. It's on the north end of this area.
 13 The site that I want to show you here is -- both the area
 14 that's in the green at the very bottom of the photograph,
 15 that's the patrol road, and off on the right side is the
 16 road that's running through that property up onto the
 17 patrol road and on towards the levee itself. This is one
 18 of the areas that I believe was cited during the Corps of
 19 Engineers inspection as being a problem area. What you're
 20 seeing here is where the levee has been degraded by
 21 unauthorized motor vehicles. We've been unable to stop
 22 traffic in this area.

23 BOARD MEMBER BROWN: Is this the waterside still?

24 MR. FORDICE: This is landside, sir.

25 --o0o--

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1 MR. FORDICE: This is another area. You'll
2 notice there's a gate there. The landowner was helpful in
3 installing the gate. Unfortunately it's not been kept
4 closed all the time. You'll see that there's actually
5 tracks running up to the side of the levee and degrading
6 landside.

7 --o0o--

8 MR. FORDICE: This is another property again
9 north of the LaGrand property. This area, as you can see,
10 is not gated. We really do need to have the ability to
11 stop motor vehicles from coming up through. Directly in
12 the center of this photo you have people driving out that
13 gate and directly up the side of the levee.

14 You'll also notice that there's tracks leading to
15 the right along the patrol road. And this is the site if
16 you're looking from that gate upwards where they're
17 driving up over the top.

18 --o0o--

19 MR. FORDICE: This particular photograph shows
20 you where they're coming from that particular road driving
21 to the right, then up and over the top of the levee
22 itself.

23 --o0o--

24 MR. FORDICE: This is actually one of our
25 successful areas of -- the allegations we've done nothing

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1 to try to deal with this levee. You'll see that the --
2 there's the white vehicle that's parked in the back of
3 this particular lot. This is new owners, have been in
4 here. The folks that previously owned this were driving
5 up between the posts with the white on it. And the post
6 to the left, that's been reinstalled. They actually had a
7 road leading up to the top of this. One weekend they tore
8 a hole during the winter -- last winter. It cost us about
9 12 hundred dollars to go in. We repacked the area with
10 soil that's consistent with what we're required to build
11 the levees with. We then seeded it. We then placed
12 anti-erosion matting over the top, and then we also placed
13 straw over that and then guarded it. And as you can see,
14 there's been a resurgence of grass.

15 If you take a close look at this photograph, we
16 have people that are again starting to drive along that
17 levee toe from the north from the properties and up over
18 the top, tearing up the levee.

19 This is actually a shot looking to the south,
20 just to the south of the LaGrand property. And I will
21 indicate that their property is well fenced and there are
22 no incursions coming from that property. There was an
23 earlier question.

24 You'll see on this particular slide there is a --
25 basically a yellow tape measure there. This particular

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1 area I believe is about 10 feet to 11 feet wide. It's
2 inadequate in order to bring a flood fight, either a
3 Caterpillar with a blade. It's steep enough in this area,
4 you'd have to avoid that tree by possibly digging into the
5 levee in order to negotiate by it.

6 --o0o--

7 MR. FORDICE: And then this is another view, also
8 south from the LaGrand property, that it's approximately
9 10 to 11 feet here. And on the left side you'll see that
10 there is a one-to-one drop-off.

11 You'll also notice that there are some tire
12 tracks going through there. That's when we were moving
13 some machinery through that area. It was very tenuous.
14 We do have a backhoe. We do move it occasionally as we
15 need to deal with things.

16 I can assure this Board that we are very
17 interested in maintaining that levee. We've invested
18 thousands of dollars and man-hours trying to keep people
19 off the levee, trying to maintain that levee, trying to
20 make sure that we did indeed pass both our Corps of
21 Engineers periodic inspection and our DWR inspections.
22 We're out there a lot. We do take care of it.

23 One of the things that we have had a difficult
24 time with, however, is that we did not know the extent of
25 the property ownership; and so we were operating with the

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1 idea that we only had 10 foot, and so we tried to maintain
2 the area there and guard as best we could and fulfill our
3 responsibility both to this Board, to the DWR, and to our
4 community.

5 So as I say, if there was a telephone call to
6 come and take care of weeds, we'd take care of anything
7 that was within our area, within our responsibility as we
8 saw it.

9 So I'm not denying that there may have been a
10 phone call. I don't know if that occurred before my
11 tenure. I've only been here a little over three years.
12 So I'm not calling anyone a liar. But I am saying that we
13 do spend time dealing with maintaining this levee.

14 I'd entertain any questions.

15 PRESIDENT CARTER: Thank you, Mr. Fordice.

16 MR. FORDICE: Thank you.

17 PRESIDENT CARTER: Mr. Brunner.

18 MR. BRUNNER: Thank you.

19 Yeah, I wanted to use this particular graphic
20 here, because it speaks to the distances that we were
21 talking about. And we did do the math in the meantime.

22 The first, before I get to the distances, the
23 levee toe that's shown there, the levee toe is somewhat
24 hidden from where it's -- you just can't walk out there
25 and say, "There's the levee toe," because of the various

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1 railroad embankment that was talked about.
 2 But what we did use for this graphic and what
 3 we've used in our study is the levee toe that we used for
 4 our certification efforts. We went through and asked GEI.
 5 Last year we did certification to establish levee toe
 6 based upon where it was within the existing railroad
 7 embankment, that we could then go forward with and do our
 8 design and make our justification to FEMA.
 9 So that's how we established levee toe.
 10 From the levee toe to the fence line, the
 11 property line, that we believe is the property line, is
 12 26.8 feet. The --
 13 PRESIDENT CARTER: You're talking about the
 14 existing fence or are you talking about the proposed
 15 fence?
 16 MR. BRUNNER: From here the levee toe to the
 17 property line here.
 18 BOARD MEMBER BROWN: The property line, not
 19 necessarily the fence?
 20 MR. BRUNNER: From the proposed -- from the levee
 21 toe to the proposed fence line.
 22 BOARD MEMBER BROWN: Which will be on property
 23 line?
 24 MR. BRUNNER: Correct.
 25 BOARD MEMBER BROWN: So that is the property

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1 line. From the toe to the property line is what?
 2 MR. BRUNNER: It's 26.8 feet.
 3 The 20-foot corridor is shown here. The distance
 4 from the toe to the existing fence as it's out there is
 5 approximately 12 feet. That's the distance from here to
 6 here at this location here.
 7 And there was a question, is the -- from the toe
 8 to the building corner is 21.3 feet. That's from here to
 9 this corner here.
 10 BOARD MEMBER BROWN: Say again, Paul.
 11 BOARD MEMBER BROWN: Is 21.3 feet.
 12 BOARD MEMBER BROWN: What is it?
 13 BOARD MEMBER BROWN: That's the distance from the
 14 levee toe to this corner of the building.
 15 BOARD MEMBER BROWN: To the building is what?
 16 MR. BRUNNER: Is 21.3 feet.
 17 And then there was a question from the property
 18 line to the fence going in the other direction, which was
 19 the confusing point, which is from here back this way to
 20 the fence line. Existing fence is approximately 14.8
 21 feet.
 22 So hopefully that clarifies the dimensions on the
 23 drawing.
 24 PRESIDENT CARTER: Mr. Brunner, I apologize. I
 25 was a little bit slow.

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1 MR. BRUNNER: Okay.
 2 PRESIDENT CARTER: Would you mind just going
 3 through all those figures again.
 4 The toe to the property line and proposed fence
 5 was 26. --
 6 BOARD MEMBER BROWN: -- 8.
 7 MR. BRUNNER: -- 26.8
 8 PRESIDENT CARTER: -- 8.
 9 The levee toe to the corner of the building was
 10 21.3?
 11 MR. BRUNNER: Correct.
 12 PRESIDENT CARTER: The distance from the levee
 13 toe to the existing fence --
 14 MR. BRUNNER: -- is approximately 12 feet.
 15 PRESIDENT CARTER: 12 feet.
 16 And what is that dotted red line that's between
 17 the building and the existing fence?
 18 MR. BRUNNER: This one right in through here?
 19 PRESIDENT CARTER: No, the one right above that.
 20 The short dots.
 21 That one.
 22 MR. BRUNNER: The Short dot is the 20-foot
 23 line -- 20 foot to the levee toe.
 24 PRESIDENT CARTER: Twenty feet from the levee
 25 toe. Got it.

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1 Thank you.
 2 BOARD MEMBER BROWN: Well, if you wanted 20 feet
 3 from the levee toe for your road, then the building is a
 4 foot -- is 1.3 feet outside where the new fence would be.
 5 MR. BRUNNER: It's 1.3 feet away from the corner
 6 of the building. And it would only be that way is if we
 7 kinked the fence off the proposed property line -- or
 8 where we think the property line is.
 9 So if you -- the fence that we are installing or
 10 we plan to put down would go along the property line all
 11 through here. If the structure wasn't there, we'd
 12 continue on. If not, then it'd have to go around the
 13 structure and that structure was allowed to be there in
 14 some fashion.
 15 BOARD MEMBER BROWN: We have 5.5 feet of the
 16 building inside the property line?
 17 MR. BRUNNER: Approximately, yes.
 18 BOARD MEMBER BROWN: But the building is 1.3 feet
 19 away from the 20 feet that you need for a road?
 20 MR. BRUNNER: For the levee toe access corridor.
 21 And not necessarily for a road but for the corridor, yes.
 22 The issue that we've been talking through here
 23 has not been necessarily the corridor issue. It's really,
 24 as stated earlier, was the property rights, who owns the
 25 property. And in this particular case, it's -- we found

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1 that it was State property.

2 And that was a question that came up. This is
3 not a TRLIA enforcement action in where we are. This is a
4 State enforcement action.

5 We could accomplish our mission of doing the
6 20-foot corridor and miss the building, as this diagram
7 shows as to where we are. But the building is on State
8 property, the fences are on State property. And I think
9 that's the crux of the hearing that where we are here.

10 A couple other corrections that I would like to
11 offer from the testimony that's been given from Ms.
12 LaGrand, is the TRLIA has not received any money free the
13 Corps, we don't have any pending applications to the Corps
14 for funding for this. TRLIA has been out there working on
15 this levee for, we call it, segment 3 for -- gee, for
16 several years now, improving it, putting improvements in,
17 bringing it up to 200-year protection. So we have been
18 there. This levee's been under maintenance and care of RD
19 784.

20 TRLIA was formed in 2004. We weren't there right
21 after the '97 flood, in that time period.

22 So we do care. We've been trying to work and
23 work with the residents to make it as easy or acceptable
24 for them as we work through, understand that this an issue
25 for the folks and we're here to try to work with them.

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1 And if the structure was somewhat allowed to be there, we
2 could work through this process with them on -- or to
3 build their 20-foot corridor.

4 And with that, those are my comments.

5 PRESIDENT CARTER: Thank you.

6 VICE-PRESIDENT RIE: Mr. Brunner, I have a
7 question for you.

8 PRESIDENT CARTER: Let's hold the questions.

9 VICE-PRESIDENT RIE: Okay.

10 PRESIDENT CARTER: Just write it down and we'll
11 get to them.

12 VICE-PRESIDENT RIE: All right.

13 MR. SHAPIRO: Good afternoon, President Carter,
14 members of the Board. Scott Shapiro, General Counsel for
15 Three Rivers.

16 I think Paul really covered Three River's
17 position well. I just wanted to supplement very briefly
18 on two issues.

19 Some of you may remember when Three Rivers came
20 before you for the permit which is actually causing us to
21 have to provide the corridor. And the original staff
22 recommendation had been 50 feet. And at the time we had
23 said there are homes through here, there are structures,
24 and we don't really want to take out those structures. We
25 don't think it's necessary. And that's where the lower

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1 number came from.

2 So as Paul said, we can live with whatever is
3 necessary from RD 784 having its O&M ability. It's not
4 our enforcement action. We're here to accommodate
5 everybody else as best we can.

6 And I did just want to clarify that Three Rivers
7 has never sent a letter to the LaGrand's saying the
8 building should be demolished. We have sent a letter
9 providing that the Board had sent a letter or was going to
10 send a letter saying the structure in the encroachment had
11 to be removed. Our board has never taken a position to
12 remove the structure and that's not our board's position.

13 Thank you.

14 PRESIDENT CARTER: Very good.

15 Ms. Nagy.

16 MS. NAGY: Good afternoon. Meegan Nagy, Army
17 Corps of Engineers. I just want to hit on a couple of the
18 questions and comments that I've heard today during this.

19 First of all, from the Corps' perspective, it
20 does appear that these structures are within the
21 right-of-way or fee-owned land from the State. And so at
22 a minimum an encroachment permit would need to be reviewed
23 by the Corps to make a determination on any and all of
24 this space. So regardless of what decisions are made
25 today, that is one thing that I want to make sure you

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1 understand from the Corps' perspective.

2 The 20-foot urban levee design criteria. The
3 Corps also supports the 20 feet. A technical SOP in urban
4 areas requires a 20-foot O&M corridor for urban areas.
5 And so that matches this. And, frankly, in most of the
6 rest of the system we don't have that luxury. We have
7 less -- the Board usually has a smaller easement or
8 smaller fee-owned area. And we don't previously have that
9 sort of area. So this is kind of a unique situation. And
10 I think when you do have it, it's important to maintain
11 it. Because the minute you give up that ability, we lose
12 our flexibility to operate and maintain properly well, as
13 well as accommodate future expansions of the project as
14 necessary as we see over the years.

15 So having that ability to have that maintenance
16 corridor is critical.

17 I wanted to comment too on RD 784's maintenance
18 practices. As I said earlier today, and Mr. Fordice
19 mentioned, we completed -- recently completed a periodic
20 inspection for RD 784. One of the most widespread issues
21 we've seen around the state, frankly, has been animal
22 control. RD 784 had an immaculate animal control program.
23 We haven't seen anything like it. So to say that they
24 aren't maintaining the levee, we've seen from our own
25 inspection that that's not necessarily true.

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1 Yes, they have some isolated instances and Steve
2 showed you some problems that they're addressing. They've
3 been extremely proactive. Ms. Fordice is the only LMA
4 that has participated with us on all but one day of the
5 periodic inspection. And I don't know exactly how many
6 days that inspection lasted, but I'm sure it was long
7 because of how big that system is.

8 We just don't have that level of commitment from
9 a lot of the other LMAs. So I can attest that they are
10 active, they are doing a good job. They've been very
11 proactive in repairing the things that have been brought
12 to their attention from our inspection.

13 And one of the things we did notice on the
14 inspection is where they do have access, where they can
15 get on and they can control unauthorized access to the
16 levee, it's in very good shape. So if they can have
17 access and they can maintain that access and control
18 others from entering that area, they have proven that they
19 can maintain that levee well, and I would hate to take
20 that away from them, because they are very good when
21 it's -- in that case.

22 So I just wanted to make sure that you understand
23 my perspective from the Corps of Engineers.

24 Thank you.

25 PRESIDENT CARTER: Thank you.

1 MR. STEINHEIMER: Mr. PRESIDENT, Max Steinheimer
2 again.

3 PRESIDENT CARTER: Can you hold off for just a
4 moment, Mr. Steinheimer?

5 MR. STEINHEIMER: Oh, sure.

6 PRESIDENT CARTER: Ms. LaGrand, you said that you
7 had a neighbor by the name of Carol that had maps refuting
8 the survey results. Are we prepared to present that
9 evidence?

10 MS. LaGRAND: Yeah.

11 PRESIDENT CARTER: If you would please share that
12 with us as quickly as you can.

13 MS. MILLER: Okay. The first map is the original
14 map

15 PRESIDENT CARTER: Could you introduce yourself
16 for the record please.

17 MS. MILLER: Oh. My name is Carol Miller, and
18 I'm the property owner -- my brother and I are the
19 property owner of 5676 Riverside Boulevard, Lot No. 141.

20 PRESIDENT CARTER: Thank you.

21 MS. MILLER: Okay. Now, this map here is the
22 original survey map for the Sacramento Northern in 1928
23 when they purchased. The deed was finalized in 1928
24 between the Northern Electric and the Sacramento Northern.

25 And this is the actual railroad track running

1 down here parallel to old Sacramento Road. This track was
2 surveyed from the west side of the old Sacramento Road to
3 the centerline of the railway. And now the centerline of
4 the railway, there was only one levee there. We have two
5 actual levees there, not just one.

6 VICE-PRESIDENT RIE: Excuse me for a second.

7 Can somebody help per blow that up so we can see
8 it.

9 STAFF ENGINEER CALISO: I'll make this real
10 quick -- Angeles Caliso, Board staff.

11 This evidence that Ms. Miller is presenting also
12 should have been in your packets this morning she
13 submitted as part of her Agenda Item 10C --

14 MS. MILLER: No, this is in nobody's packet.

15 STAFF ENGINEER CALISO: No, I provided copies
16 that you sent them to me -- you Emailed them to me.

17 MS. MILLER: This one?

18 STAFF ENGINEER CALISO: Uh-huh, yeah.

19 MS. MILLER: Well, I'm not sure.

20 STAFF ENGINEER CALISO: Okay. Well, there was --
21 so submitted a packet for Item 10C that was in your Board
22 packet. So there may be some duplication of documents.

23 PRESIDENT CARTER: Is this -- the top is an Email
24 from zero.com to you, is that -- let me add, there's a
25 letter from Ms. --

1 STAFF ENGINEER CALISO: If I may. She's
2 providing -- I guess she's got additional documents that
3 were not part of the packet submitted. So --

4 BOARD MEMBER BROWN: Why don't you just let her
5 go ahead.

6 PRESIDENT CARTER: Go ahead. Please proceed.

7 MS. MILLER: Now, all the surveys were taken from
8 the west side at that time in 1928.

9 Now, I need that one there.

10 Okay. Now, this is the 1940 map of the Yuba
11 Gardens area, which is our Riverside Avenue and Feather
12 River Boulevard. Feather River at that time -- in 1940
13 they went this way and then Feather River continued on
14 around the orchards to Highway, I believe it was, 99E at
15 that time. I'm not sure.

16 But, anyway, it went through the orchards. And
17 this clearly shows that it's 40 feet on one side and 40
18 feet on the other. And that's from the centerline of the
19 one levee, not the two levees.

20 VICE-PRESIDENT RIE: Can you bring that one back.
21 And I wasn't quite sure where the levee was in that
22 picture.

23 MS. MILLER: Okay. Where it says Sacramento
24 Northern, that is the railroad itself.

25 VICE-PRESIDENT RIE: And that's where the levee

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1 is now?

2 MS. MILLER: Yes. But in the original official
3 documents it states 40 feet on one side and 40 feet on the
4 other side, from the survey of the west side of the old
5 Sacramento Road, which is this one of the original
6 documents.

7 Did you want to talk?

8 MR. MILLER: My name's Phillip Miller. I'm her
9 brother and I'm part owner of the property in that area.

10 A little bit of history. I'm sorry we don't have
11 as good a presentation as they had.

12 Let's go back to the 1900's. It was passed over
13 a little bit. 1900's this was -- what you see up here on
14 the monitors was all farmland. That was owned by
15 everybody and anybody. It was -- it was -- yeah, I'll do
16 it. It was, as I said, owned by farmland.

17 Okay. The railroad right here at this point came
18 through, because they needed to move their produce. Okay.
19 They built the levee. Produce started getting cheap.
20 Land started getting valuable. So the farmers decided to
21 subdivide. That's where we come in to this area. They
22 still have farmland down there. And these railroads --
23 there was three of them at this time. These railroads
24 were hauling produce back and forth from Sacramento, San
25 Francisco, Chico, all over the place.

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1 Now, they decided it wasn't worth their time
2 because trucking became the thing. So when they had this,
3 the railroads, they had 40 feet from the centerline of
4 that railroad out when they surveyed. When they got the
5 property for their railroads, it was a straight line a
6 thousand-some feet, 40 feet on each side from the
7 centerline.

8 Now, if you measure this, railroads -- and here's
9 the documents that says that. If you measure those
10 railroads out, you will find that the fence line that is
11 there now is where it should be. The railroad came
12 through -- as Mrs. LaGrand said, the railroad came
13 through. They put up a barbed-wire fence, three strands,
14 on railroad ties. They indicated that that was their
15 property. This was in the forties. They indicated that
16 was the property line for both properties.

17 And if you go -- like I said before, if you go
18 out and measure it -- if you can find the centerline.

19 Now, Three Rivers says, "Well, we measure it from
20 the toe." You don't measure from the toe. You measure
21 from the centerline of the railroad, which would put it
22 back about, I'd say, a good eight, nine feet.

23 So once you measure from that centerline -- if
24 you measure from the toe -- yeah, he's right, he's
25 absolutely right, if you measure from the toe of that

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1 levee. But you don't measure from the toe, ladies and
2 gentlemen. You measure from the centerline.

3 All the railroads when they were built, the
4 Government gave them in grants and deeds a straight line
5 with so much property on each side, and that was so many
6 feet wide.

7 So if you go through and look at the
8 history -- and that's the important thing, the history of
9 this area -- you will find that what they are doing, Three
10 Rivers did, they came in and surveyed it, but it's really
11 not a straight survey this way. If you survey around that
12 levee, the centerline of the railroad around that levee,
13 you will find that those property lines are different than
14 what they get when you survey a property line.

15 They talk about Riverside Avenue, coming in from
16 Riverside Avenue to the front. Well, Riverside Avenue at
17 one time was the main road from Sacramento into
18 Marysville. It has been laid over, flooded over three
19 times that I'm aware of in my lifetime -- three or four.
20 So that road -- centerline on that road has moved one way
21 or the other. When they came out and repaved it after
22 each flood or when they repaved it, it moved. So now,
23 your property line in the front isn't quite exact.

24 The same way with the property line in the back.
25 Everything moves.

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1 Now, 784 came in. They put dirt on top of their
2 levee. As they stacked that dirt on top of the levee, it
3 went this way, and it covered up that centerline of
4 railroad. And in the process of covering up that
5 centerline on the railroad, they've covered up the
6 measurement that they need to show where the property
7 lines are.

8 Now, the question comes down, do they own the
9 back of that property? I say, no, they don't. The
10 property owners own it, because they cannot show where
11 that property line is because it wasn't measured. They
12 came in, they did a survey. They found a point to survey
13 from. You can't find a point to survey from.

14 He even said, "We found a point to survey from."
15 Is that not correct?

16 MR. HEENEY: We found several.

17 MR. MILLER: I'm sorry?

18 PRESIDENT CARTER: I'm sorry. You can't have a
19 dialogue --

20 MR. MILLER: I'm sorry. Yes, yes. I'm sorry. I
21 apologize. I know that.

22 So they can't -- they can't show you where what
23 is, it's been so many years. It's been since the 1800's,
24 the 1900's, 1950's. That property belongs to the
25 homeowners.

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ATTACHMENT B

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And I will answer any questions.

PRESIDENT CARTER: Thank you very much.

MR. MILLER: That young lady looks puzzled over here.

PRESIDENT CARTER: I have one other party.

Mr. King, did you want to address the Board on this?

MR. KING: Yes, sir, if I may.

I'd like to refer you to Item 10B --

PRESIDENT CARTER: If you could please just introduce yourself for the record.

MR. KING: My name is Michael King. I own property at 5722 Riverside Drive in Olivehurst, Linda and Marysville.

I'd like to refer you to Attachment B of Item 10B. It shows two pictures. And that's my property.

The house -- on the top picture it shows you where the existent fence is. And the new fence would go right up against that building that's in the center of the picture.

And then on the lower photo it shows you a house that has a little baby pool behind it. That house is actually 2.7 feet onto the State's --

PRESIDENT CARTER: Mr. King, I'm still trying to find your pictures in Attachment B.

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MR. KING: Does that help? Because that's the picture I'm referring to --

PRESIDENT CARTER: Okay. And if you --

MR. KING: -- referred to as Item 10B of Attachment B -- for Agenda Item 10B.

PRESIDENT CARTER: Oh, Item 10B.

MR. KING: That's Mr. King, yeah. It's me.

PRESIDENT CARTER: Okay. Is this -- are you speaking to the LaGrand's issue or are you speaking to your issue?

MR. KING: My own -- 10B, yeah. Mn own, yeah.

PRESIDENT CARTER: My notes indicated that you wanted to speak to 10A.

Do you want to speak to 10A?

MR. KING: No, sir.

PRESIDENT CARTER: Thank you very much.

We'll address yours next.

MR. KING: Okay.

PRESIDENT CARTER: I apologize.

Are there any other members of the public that wish to address the Board that have not spoken yet?

Okay. Ladies and gentlemen, we're going to take a ten-minute recess. After the recess, we're going to give those that want to five minutes to rebut anything that they wish to rebut respective to their position.

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Okay?

Give five minutes, no more. So that includes staff and that's all the parties.

So we will recess for ten minutes and then we will be back.

Mr. King, did you have a question?

MR. KING: I just wanted to say I had surgery a few days ago. I'd like to go -- I can't stay much longer. If I could get my -- I'm not going to say much because I don't have anything to dispute. I just wanted to show the Board that I was here and --

PRESIDENT CARTER: Let me consider that during the recess.

Thank you

(Thereupon a recess was taken.)

PRESIDENT CARTER: Ladies and gentlemen, if you could take your seats please.

Ladies and gentlemen, during the break I went through the public testimony. I am -- and this is just a statement. I'm at a little bit of a loss as to why we are really here. It appears that the LMA and the State can have the 20 feet of access along the levee toe without potentially removing or causing to move the structure in this case, in Ms. LaGrand's case. And so I'm wondering why we could not come to some sort of an agreement where

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the State -- and this is not withstanding the dispute in terms of where the property lines are -- but the State authorizes TRLIA to go ahead and build a fence at the 20-foot line that avoids the building, and then resolve the issues on the property lines and exactly where they are. And if there are encroachments that are outside of the fence but on State property, that we enter into an agreement or negotiations to quitclaim those properties to the owners of the adjacent parcels, and we dispense with virtually all of these enforcement actions that are along here.

If we can accomplish the mission of operating and maintaining the levee and we can, you know, accomplish the mission of having a 20-foot access at the levee toe on the landside, wouldn't this be a more reasonable approach to this whole problem?

So I'm looking for some guidance from staff.

BOARD MEMBER MOFFATT: And, Mr. PRESIDENT, can I ask as staff is addressing this: We already have the numbers on the structure, not the fence but Ms. LaGrand's shop. I'm curious about Mr. Miller's house as well as -- you know, looking through the other enforcement orders, it looks like we've got 48 fences, 2 barbecue areas, a playground, 4 non-permanent structures, and a trailer.

Other than fences, are there any other

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1 permanent-type structures like the shop, like a house,
2 that would be within the 20 feet? So if we were to set a
3 line at 20 feet from the toe, would that still require
4 getting into a permanent structure like a house or a shop
5 or something like that?

6 So as you're addressing the President's issue, if
7 there's someone that can answer that question.

8 STAFF ENGINEER CALISO: I can answer that
9 question. Angeles Caliso, Board staff.

10 The only two permanent structures within this
11 area is the property owned by Ms. LaGrand and then the
12 property owned by Mr. Miller. Mr. Miller's property
13 encroaches onto State land about 1.5 feet or in that
14 magnitude. So it's much less than Ms. LaGrand's.

15 Aside from that, the rest of the structures are
16 non-permanent, barbecue pits and --

17 BOARD MEMBER SUAREZ: That's not the question.

18 BOARD MEMBER MOFFATT: But I think she answered
19 it in a roundabout way though. Because if we've got 1.3
20 difference between 20 feet and Ms. LaGrand's structure,
21 that means we've got about -- add 3 -- 4.3 feet between 20
22 feet and Mr. Miller's house. So I think you've -- if
23 that's accurate, you answered.

24 PRESIDENT CARTER: Yeah. It appears that we have
25 clearance to establish a 20-foot maintenance

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1 right-of-way -- or maintenance access on the landward side
2 toe.

3 So what do you guys think about my proposal?

4 EXECUTIVE OFFICER PUNIA: We have conferred with
5 the counsel. And I think our proposal is we'll go back
6 and come in January. And the main issue is the
7 encroachment on the State property. We will discuss that
8 subject with our legal counsel and then come back next
9 month, you know, with a proposal that -- with the staff
10 recommendation how to deal with it.

11 Maybe counsel can address that.

12 DWR STAFF COUNSEL BREWER: Yeah, let me just
13 elaborate on that.

14 We think -- we agree with you -- I'm sorry.
15 Robin Brewer, staff counsel -- staff legal counsel to the
16 Board staff.

17 We agree with you, President Carter, that this
18 can be resolved without potentially moving the building.
19 However, we do believe that there was evidence presented
20 here today, very clear evidence, that these buildings do
21 encroach on State property. Therefore, we would like the
22 Board to find that these two buildings are encroaching but
23 direct staff to go back and work out these issues.

24 Now, there are some very real real estate and
25 legal issues here. One is gift of state property. We

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1 can't just allow these -- we cannot quitclaim this back to
2 these people. That would be a gift of state property. We
3 cannot do that.

4 The Corps has brought forth whether or not they
5 are going to need to issue an encroachment permit here.
6 So that's another, that Ms. Nagy testified to.

7 And then at the end of the day, there would be
8 other permits that may or may not be required by this
9 Board.

10 So that's kind of where we at. We agree that
11 there's a way to resolve this absent moving the buildings,
12 tearing them down, whatnot. But there are some legal and
13 real estate issues that need to be resolved.

14 And this is clearly State property.

15 PRESIDENT CARTER: Yeah, I would -- with respect
16 to the Corps, I mean their standard is lower than 20 feet.
17 We own property all over the State that is in and outside
18 of Corps' jurisdiction. And as long as we're meeting
19 their minimum standard, I don't see how they could object.
20 And 20 feet exceeds their minimum standard. So I
21 personally am not too worried about that issue.

22 DWR STAFF COUNSEL BREWER: Okay.

23 PRESIDENT CARTER: Unless they make an issue of
24 it, which we can discuss at a future date.

25 DWR STAFF COUNSEL BREWER: Correct, that's not

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1 our issue.

2 PRESIDENT CARTER: But the gift of state
3 property, we have to work through. And that would be a
4 subject of negotiations between Board staff and the
5 respondents.

6 And certainly this solution would eliminate a lot
7 of the issues and the concerns we have with these
8 enforcement hearings that are before us today, and would
9 certainly save everybody a lot of time and heartache, I
10 think.

11 Mr. Hodgkins.

12 SECRETARY HODGKINS: Ms. Givens?

13 PRESIDENT CARTER: Ms. Brewer.

14 DWR STAFF COUNSEL BREWER: Brewer.

15 SECRETARY HODGKINS: I'm sorry. Brewer.

16 DWR STAFF COUNSEL BREWER: That's okay. I was
17 looking.

18 (Laughter.)

19 SECRETARY HODGKINS: That's my second Perry
20 moment for the day.

21 DWR STAFF COUNSEL BREWER: You can call me
22 whatever you want, sir.

23 SECRETARY HODGKINS: You know, you're asking for
24 a finding that these are on State property. But when you
25 start throwing up those original railroad maps, I'd be

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1 reluctant about the surveyor telling me that he carefully
2 looked at those maps and compared those. And I know that
3 there are legal definitions that come with surveying where
4 lines get moved over time just because everybody agrees
5 that they've been moved.

6 But I think if you think about that issue, as
7 well as the potential cost of trying to resolve these
8 issues through enforcement proceedings, that the idea of
9 finding a resolution here that involves quitclaiming --
10 and I think that quitclaiming should be done in a way that
11 we don't end up with a sliver of no man's land in there,
12 because that's a headache at some point in the future when
13 somebody says weed abatement or mosquito abatement, or
14 lord knows what it is -- give it to the property owners
15 and just try and get on with this and not burn a lot of
16 staff resources on anything except trying to find a way we
17 can get our 20 feet. I'd like a straight fence. I guess
18 it doesn't have to be. And I'd like to let TRLIA do the
19 bulk of trying to work this out, because they're up there
20 with the property owners, and let them come back to the
21 Board with a proposal if we can get you to say it's okay.

22 DWR STAFF COUNSEL BREWER: Okay.

23 SECRETARY HODGKINS: Okay? So you're going to
24 come back and tell us whether it's okay or not in January?

25 DWR STAFF COUNSEL BREWER: We're going to try to

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1 work through some of these issues. I'm going to let Mr.
2 Shapiro talk to that. But we are going to try to work
3 through some of these legal issues, correct.

4 PRESIDENT CARTER: Thank you.

5 Mr. Shapiro.

6 MR. SHAPIRO: Thank you, President Carter, for
7 your patience today.

8 Just a few things. First of all, we do have the
9 surveyor here. And the surveyor has reviewed all the
10 railroad maps, Mr. Hodgkins. And he actually was prepared
11 during the five-minute allocation that President Carter
12 indicated to come up and specifically address them. And
13 he has reviewed it. We do firmly believe, and have
14 invested a lot of time and money into determining this,
15 that there is an encroachment on the State property.

16 I agree with Ms. Brewer that a finding of an
17 encroachment is appropriate. The Board of course can
18 decline to do that.

19 The thing that I will point out from the
20 improvement agency perspective is until there's some sort
21 of a finding -- Ms. LaGrand has an argument that we can't
22 go in and put a fence and regrade that because it's her
23 property. We don't have a determination by any sort of
24 adjudicatory body on that issue. Now, it may be that Ms.
25 LaGrand and Three Rivers hearing the tenor of the Board,

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1 we can go back and can resolve it and they might agree.
2 But there is no final determination as to where that
3 property line exists right now. There's simply a dispute.

4 Again, we can live within the 20 feet. We will
5 build the fence. We have the funds for it. We will
6 regrade. We have the funds for it. And we're prepared to
7 go do that.

8 The State land issues are an issue. And if you
9 care to finish the hearing, the surveyor's prepared to
10 address it.

11 PRESIDENT CARTER: Thank you.

12 VICE-PRESIDENT RIE: Can I ask a question?

13 PRESIDENT CARTER: Just a second.

14 VICE-PRESIDENT RIE: Okay.

15 PRESIDENT CARTER: I want to get the respondents.

16 Ms. LaGrand, if you wouldn't mind just -- I
17 wanted to see if you had any reaction to this new
18 proposal.

19 MS. LaGRAND: Well, you know, I think I could go
20 along with that. The one thing I do want, however -- my
21 fence is not the type of fence they want to put up. My
22 fence is chain-link, but it is set in concrete. It's
23 going to have to be very carefully removed in order to not
24 damage my driveway. And I want it set back in concrete
25 like it was before so that it won't fall apart in five

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1 years. You know, that's only thing I ask.

2 And I think, Mr. Brunner, you may remember, at
3 that picnic I made this offer to them. I said, "If you
4 move my fence up to the back of my shop, that gives you
5 ten and a half extra feet. You can get a Mack truck
6 through there." And he said, Huh."

7 You remember me telling you that?

8 PRESIDENT CARTER: Well, okay.

9 MS. LaGRAND: I'm sorry. I apologize.

10 But, anyway, I did offer that to them once
11 before.

12 But I'm in agreement with it if they will repair
13 the fence in the correct manner of which it is now.

14 PRESIDENT CARTER: So we'll allow you and Mr.
15 Brunner to discuss that and hopefully come to some sort of
16 an agreement.

17 MS. LaGRAND: Okay. Thank you.

18 SECRETARY HODGKINS: Let me ask Mr. Brunner.

19 Are you better able to carry on these discussions
20 with or without a Board finding that there is an
21 encroachment onto State property? I'm asking you -- you
22 know the folks. If we make that finding, is that going to
23 make it harder for you to get people to agree to a
24 compromise?

25 MR. BRUNNER: I don't think it makes it harder

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1 for us. I think it would make it perhaps even easier for
2 us to move forward because we'd have clarity on the
3 decision as to where we are on it.

4 SECRETARY HODGKINS: Okay.

5 MR. BRUNNER: Three Rivers has been willing to
6 try to work through this issue with the people. As Ms.
7 LaGrand mentioned the comment just a minute ago, I think
8 my response at that time during that community luncheon
9 was that we'd work with her there too on the fence to do
10 that.

11 And the issue has always been - not the corridor,
12 not what we were trying to do - is really where the
13 property line was. And it turned out to be on State
14 property as to where it was and it impacts some permanent
15 structures, of which is really the key issue here today.
16 It's we have permanent structures on State land. We can
17 accomplish our mission and RD 784's mission and even the
18 State's mission to put that 20-foot corridor in there.
19 And we'd like to do that and move forward.

20 But I think it would help to have the finding.

21 PRESIDENT CARTER: Okay. Ms. Rie.

22 VICE-PRESIDENT RIE: I think I would have a
23 difficult time making a finding that there's encroachments
24 onto State land, because based on the testimony we heard
25 today, by TRLIA's own admission, they had difficulty

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1 finding monuments, there were no monuments in the
2 subdivision. The original railroad tracks are buried
3 under the levee. And usually railroads put up the fences
4 on the property line. And, you know, it -- maybe there
5 was an error in one of these legal descriptions going back
6 to the 1800's. You know, we just don't know. And, you
7 know, maybe that property line is where the fence is.
8 And, you know, I don't think that it's clear. I heard a
9 few times that it -- you know, "we assume" or "we've
10 determined that it's clear where the property line is."

11 I don't think I'm clear. And, you know, I
12 wouldn't be willing to make a finding that there's an
13 encroachment at this point.

14 But I do think that you guys should all work
15 together and, you know, try to find a place where you can
16 put the fence that is a win-win for everyone. And, you
17 know, I find it very interesting that we haven't seen the
18 State of California's right-of-way maps. The State has
19 right-of-way maps. Those haven't been presented. The
20 State didn't know that they owned this property. The
21 property owners didn't know. TRLIA didn't know. No one
22 knew. And then we find out in 2011 that the State owns
23 property that we had no knowledge of.

24 So, you know, I think that it's in your best
25 interests, our best interests to come together on a

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1 compromise. Because I think if we want to determine where
2 the property line really is, it's going to be a very
3 expensive, long process.

4 PRESIDENT CARTER: Mr. Moffatt.

5 BOARD MEMBER MOFFATT: From my perspective on
6 this issue, I think the process that President Carter's
7 outlined is a pretty reasonable one to try and move
8 forward. But I think it has to -- there has to be some
9 foundation of knowledge here to move -- to be able for Mr.
10 Brunner and TRLIA and DWR and the property owners to move
11 forward.

12 I understand the argument about the railroad
13 maps. But I mean going back to history, I mean at that
14 point in time the railroads pretty much ran things in this
15 state. They could put a damn line wherever they wanted.
16 You know, the railroads are the reasons why we have the
17 initiative and referendum process in this State, and look
18 what that's doing today.

19 So I mean for me, I think that the -- you know,
20 and I add on top of that the fact that two of the
21 landowners have come up here today and talked about floods
22 on their properties. One talked about seepage in recent
23 history. And so part of me says, you know, we need to
24 provide a foundation to move forward in a way that
25 preserves permanent structures, which are -- I think are

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1 the biggest costs, you know, for these landowners; allows
2 the local maintaining agency to do what they need to do to
3 protect the integrity of the levee, and that includes
4 putting up a fence; and then also -- and being able to put
5 the fence in a spot that corresponds with the permit
6 that's already been issued by this Board which requires 20
7 feet from the toe of the levee.

8 So I would be prepared today to vote to provide
9 the foundation for all those discussions. Because I think
10 if this question goes unanswered, I'm not sure how
11 fruitful those discussions will be. I'm prepared to vote
12 today to say that there is an encroachment on State
13 property and that the parties should move forward to try
14 and solve this in a way that President Carter outlined.

15 BOARD MEMBER SUAREZ: Sounds like a motion.

16 PRESIDENT CARTER: Before we do have a motion I
17 want to invite Mr. Miller to address - you got two
18 minutes - and Mr. King to address as well, two of the
19 other property owners that came today.

20 And then we will hear from the surveyor. And
21 he's got his five minutes to make his case on where the
22 property line is. And then we're going to close public
23 testimony.

24 Everybody understand?

25 Mr. King, do you want to go first?

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ATTACHMENT B

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MR. KING: Yes, sir. Thank you.

PRESIDENT CARTER: Okay. Please reintroduce yourself. And if you would, speak into the mike so that it goes on the record.

The mike is over there to the left of the computer.

MR. KING: Thank you.

My name is Michael King. I own the property at 5722 Riverside.

I'm probably one of the more dramatically affected by this proposal. As you see in the picture there, the house at the bottom with the little baby pool, is 2.7 feet on to what has been established as California land. I cannot move the house. It would effectively have to be destroyed. It's insured for a value of \$80,000. This is a low income neighborhood. I rent it for 700 a month for a 3 bedroom, 1 bath.

If I lose that income, probably I will have to have it -- it'll go back to the lender and be foreclosed, because it's -- I can't just dispense with that income and maintain my bills.

So if there's some accommodation that can be met for my 2.7 feet, I hope the Board will help me in that.

Thank you very much.

PRESIDENT CARTER: It's my understanding, Mr.

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King, that your home is well outside the 20-foot distance from the toe.

MR. KING: Yes.

PRESIDENT CARTER: And so the proposal that we're considering right now would not require you to move your home.

MR. KING: Right, your proposal would fix my problem.

PRESIDENT CARTER: Okay. So are you comfortable with that proposal and proceeding?

MR. KING: Yes, sir. That would be wonderful.

PRESIDENT CARTER: And you will --

MR. KING: It will still reduce the value of my property because it would move the fence so much closer to my house. But that's okay. I understand the need for levee improvements and I want to be a good community member.

PRESIDENT CARTER: So we would appreciate if you would work with TRLIA and the staff to try and come to some sort of a compromise here.

MR. KING: Thank you very much.

PRESIDENT CARTER: Thank you.

Mr. Miller.

MR. MILLER: Okay. Let me understand. You're going to make a motion that it goes back to -- well, from

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what I'm hearing, it would go back to TRLIA and the homeowners and we make the final decision and bring it before this Board, is that what you're saying?

PRESIDENT CARTER: Decision with respect to what?

MR. MILLER: The encroachment, property line, the whole situation.

PRESIDENT CARTER: No, we're going to hear from the surveyor this afternoon right after you. And we'll find out if the Board is able to make a decision on whether or not there are encroachments on State property.

MR. MILLER: Okay. I'm not going to admit there is and I don't think there is. But I think if you let it go back to TRLIA and the property owners and let them make a decision locally, because we know what's going on, we live there. And I'm not saying you guys don't know what's going on, but we have more vested interest in that area. And I think if you'd just let us decide what to do, bring it up and get the okay up here at this point.

PRESIDENT CARTER: Appreciate your comments.

Thank you.

So, Mr. Heeney --

MR. HEENEY: Yes.

PRESIDENT CARTER: -- you are --

MR. HEENEY: Let me address a couple of the issues the Miller's brought up.

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First off, the maps -- the old maps. I reviewed those maps. I looked at all the maps that were available with county records. As I mentioned earlier, I met with the county survey staff and inquired of any additional maps and reviewed the right-of-way -- railroad right-of-way maps that they provided me as well.

Mr. Miller made the comment about the right-of-way was 40 feet on either side of the centerline of the track. He is correct south of Island Avenue. But the deed that was given to the State describes the section adjacent to this subdivision as being 60 feet on the east side of the center line and 90 feet on the west side.

So from Island Avenue north, where all of these properties are, the right-of-way is actually 20 feet wider on the east side than the portion south of Island Avenue.

He also commented about you can't survey from one point. Well, with GPS today you can. But we didn't. And if you look at the slide that I have on here, it may be hard to see, but you'll notice dark little circles along Riverside Avenue on both sides. Those are the monuments we found. Those are monuments set by other surveyors. We agreed with where they were within inches and, in my opinion, in acceptable limits of difference. A lot of these were set in the fifties and sixties, before GPS and the modern technology that we use, and it's typical to

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1 find those discrepancies.
 2 There's even one survey that actually set a
 3 monument on the rear property line that we are talking
 4 about that's at issue, and we agree with the location of
 5 that monument. It was the only one we found on that back
 6 line. But it was a survey done in 2004 by another local
 7 surveyor.
 8 So the issue of whether this is the correct
 9 property line, in my opinion, we have -- we've done the
 10 research. We've identified that the deed matches the
 11 railroad map, matches the subdivision map. And our
 12 measurements have indicated that it is within the record
 13 maps everything we found.
 14 PRESIDENT CARTER: Okay.
 15 SECRETARY HODGKINS: Quick question.
 16 MR. HEENEY: Sure.
 17 SECRETARY HODGKINS: You're a licensed surveyor?
 18 MR. HEENEY: Yes, sir.
 19 SECRETARY HODGKINS: And how long have you been
 20 practicing?
 21 MR. HEENEY: Twenty-three years.
 22 SECRETARY HODGKINS: Okay. So it's your
 23 professional opinion that the map you've prepared is the
 24 property line -- is the correct property line?
 25 MR. HEENEY: That's correct. And as I said

1 earlier, it has been reviewed by the County Surveyor's
 2 Office as well.
 3 SECRETARY HODGKINS: And they concur?
 4 MR. HEENEY: And they made no comments as to the
 5 location of where we put this.
 6 SECRETARY HODGKINS: Thank you.
 7 PRESIDENT CARTER: Any other questions for Mr.
 8 Heeney.
 9 VICE-PRESIDENT RIE: Yes, I have a question.
 10 When you looked at the San Joaquin Drainage
 11 District's maps, what did they show? Because the State
 12 wasn't aware that they own this property. Were the
 13 property lines in a different location?
 14 MR. HEENEY: Didn't look at San Joaquin County
 15 drainage maps. We looked --
 16 VICE-PRESIDENT RIE: No, no, no. The San Joaquin
 17 Drainage District.
 18 MR. HEENEY: We didn't look at their maps. We
 19 looked at the maps of record in the County Recorder's
 20 Office.
 21 VICE-PRESIDENT RIE: So you did not look at our
 22 maps -- our Board's maps?
 23 MR. HEENEY: No. I had the deed.
 24 PRESIDENT CARTER: Are the deeds the governing
 25 documents?

1 MS. ARENA: In most real estate transactions, in
 2 my opinion, yes.
 3 PRESIDENT CARTER: Any other questions?
 4 Very good.
 5 Thank you very much, Mr. Heeney.
 6 So at this point, I'm going to close the public
 7 testimony portion of this hearing. And we'll move onto
 8 discussion and deliberations.
 9 We have a request from staff to make a
 10 determination on the encroachment question. We've heard
 11 testimony from both sides as to where the property line
 12 is.
 13 What's the Board's pleasure here?
 14 BOARD MEMBER SUAREZ: Mr. PRESIDENT, I would like
 15 to second Mr. Moffatt's proposal/motion of earlier.
 16 Maybe we can have a discussion based around that
 17 proposal.
 18 PRESIDENT CARTER: Okay. So, Mr. Moffatt, would
 19 you please restate your motion.
 20 BOARD MEMBER MOFFATT: I think the motion was to
 21 make a determination that these are encroachments on State
 22 property; and that TRLIA, DWR, our staff, and the LMA work
 23 with the property owners to solve each of these issues --
 24 each of the encroachment issues in a manner that maintains
 25 a 20-foot from the toe of the levee area for maintenance

1 purposes and allows them to put up a fence to protect the
 2 levee and, you know -- I'm just talking now.
 3 (Laughter.)
 4 BOARD MEMBER MOFFATT: I should have put a
 5 sentence a couple words ago -- or a period at a couple
 6 words ago.
 7 I mean, you know, consistent with what President
 8 Carter outlined earlier.
 9 PRESIDENT CARTER: Okay. So the motion, as I
 10 understand it, is to make a determination that the
 11 encroachments are on State property and to direct staff to
 12 work with TRLIA and the property owners to resolve the
 13 disposition of the property and the encroachments on the
 14 State property. So somehow resolve the ownership, whether
 15 it's through a quitclaim process or a sale of the
 16 property, whatever.
 17 BOARD MEMBER MOFFATT: Right, consistent with
 18 existing law.
 19 PRESIDENT CARTER: But come to some sort of an
 20 agreement. Okay?
 21 LEGAL COUNSEL SMITH: I would suggest just as a
 22 technical matter that you stay the enforcement order
 23 pending resolution of those negotiations. And maybe -- do
 24 you want to put a time frame on it? That's up to you.
 25 BOARD MEMBER SUAREZ: You know, I think we need

ATTACHMENT B

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1 stay all enforcement orders, not just this one. And --
2 PRESIDENT CARTER: When you say all enforcement
3 orders, you are speaking to items 10A, B, C and D, is that
4 correct, on the agenda for today?
5 BOARD MEMBER SUAREZ: Right.
6 DWR STAFF COUNSEL BREWER: President Carter?
7 PRESIDENT CARTER: Well, Just a second.
8 DWR STAFF COUNSEL BREWER: Oh, I'm sorry. Okay.
9 PRESIDENT CARTER: So are you okay with those
10 proposals from counsel?
11 So stay the -- how many are there, 51? Is that
12 correct, Ms. Caliso? Are we talking about 51?
13 STAFF ENGINEER CALISO: That's correct, there's a
14 total of 51.
15 PRESIDENT CARTER: All 51 --
16 STAFF ENGINEER CALISO: Yes.
17 PRESIDENT CARTER: -- enforcement orders.
18 Okay. And a timeline? She suggested a timeline.
19 January?
20 BOARD MEMBER MOFFATT: I think this all needs to
21 be done and settled as best we can by the next meeting of
22 the Board.
23 PRESIDENT CARTER: Okay. So are -- that's
24 through the holidays.
25 BOARD MEMBER SUAREZ: But it's closer to two

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1 months since we don't meet again till the 27th.
2 PRESIDENT CARTER: Right. It's almost two
3 months. Seven weeks.
4 Okay. So that's your motion.
5 Do we have a second.
6 BOARD MEMBER SUAREZ: Yes, second.
7 PRESIDENT CARTER: Second. Okay.
8 Now we can have discussion.
9 Ms. Brewer, did you --
10 DWR STAFF COUNSEL BREWER: Just really quick.
11 It would also be helpful, Mr. Carter, if the
12 Board could direct their staff to work with DWR Real
13 Estate and Right-of-Way on this issue, if we could get
14 some assistance from them.
15 PRESIDENT CARTER: Is the motioner --
16 BOARD MEMBER MOFFATT: Amendment accepted. I
17 think it was implied, but --
18 PRESIDENT CARTER: It was direct staff -- yeah,
19 okay.
20 DWR STAFF COUNSEL BREWER: So there are no
21 payment issues.
22 PRESIDENT CARTER: We're in agreement with that,
23 I think.
24 Seconder's okay with that?
25 BOARD MEMBER SUAREZ: Yes.

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1 PRESIDENT CARTER: Okay.
2 BOARD MEMBER BROWN: I have one.
3 PRESIDENT CARTER: Okay. So discussion.
4 Mr. Brown.
5 BOARD MEMBER BROWN: I'd inform the other
6 resident owners of the results of the Board decision
7 today, the stay. And then that would relieve their
8 concerns considerably, I'm sure.
9 PRESIDENT CARTER: Okay. Any other comments,
10 questions?
11 VICE-PRESIDENT RIE: I have a few questions for
12 Ms. Brewer.
13 PRESIDENT CARTER: Go ahead.
14 DWR STAFF COUNSEL BREWER: Yes.
15 VICE-PRESIDENT RIE: Just to follow up on your
16 last recommendation to get DWR's Real Estate Branch
17 involved. Have they not been involved? Have they not
18 looked at this already?
19 DWR STAFF COUNSEL BREWER: They have provided us
20 with the documents that they had in their file. It's my
21 understanding that they haven't gone out and looked at the
22 property lines. Is that -- okay.
23 VICE-PRESIDENT RIE: So the Real Estate staff
24 hasn't looked at this survey map that TRLIA provided?
25 STAFF ENGINEER CALISO: Angeles Caliso, the Board

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1 staff.
2 Real Estate did quickly do a review of the survey
3 map that was submitted. And their response, they felt
4 that based on that initial review, the map was done in
5 accordance with the professional standards. And then they
6 were -- and unless the Board's directed Real Estate to do
7 a complete review of all the documents, they would not
8 initiate a review of all the record documents that were
9 associated with this Record of Survey that was made and
10 prepared by a third party.
11 VICE-PRESIDENT RIE: Okay. And then the next
12 question is, if we make a finding that these structures
13 are encroaching on State property -- you had said earlier
14 that we wouldn't be able to quitclaim the land back to the
15 property owners because it would be a gift of State funds.
16 Is --
17 DWR STAFF COUNSEL BREWER: Correct.
18 VICE-PRESIDENT RIE: So how is that going to work
19 out if we can't quitclaim the land back to the property
20 owners?
21 DWR STAFF COUNSEL BREWER: Well, that's why also
22 I didn't want Real Estate involved in it so much for
23 what's going on prior as to what we're going to be doing
24 in the future. And we will have to work that out. I
25 don't know exactly. I can't tell you exactly. I just

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ATTACHMENT B

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1 know that we cannot give our land away.
2 BOARD MEMBER SUAREZ: Well, this Board has on
3 prior times quitclaimed property. So I know it's done.
4 DWR STAFF COUNSEL BREWER: Right. We need to
5 look into that. And that's part of our request to look
6 into the real estate and other legal issues involved with
7 all of this.
8 LEGAL COUNSEL SMITH: There is an exception to
9 the gift of public funds. You know, I haven't researched
10 this specific set of facts obviously. But there is an
11 exception for public uses. So I think looking at the
12 issue is part of what the negotiation process will be.
13 BOARD MEMBER SUAREZ: Yeah. And it might be that
14 we sell it for a dollar. I don't know.
15 DWR STAFF COUNSEL BREWER: Well, we have to
16 remember too that the previous property owner was the
17 railroad, not the landowners here. So they never owned
18 this in fee. So okay.
19 PRESIDENT CARTER: Very good.
20 Any other questions, comments?
21 VICE-PRESIDENT RIE: One more question.
22 If for some reason we couldn't quitclaim the
23 property back to these homeowners, would we have to lease
24 it to them or charge them rent?
25 DWR STAFF COUNSEL BREWER: I think this is

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1 covered under section 19 of your regs. And I don't -- you
2 know, these are just all issues that we haven't really
3 thought -- given a lot of thought to. But that could be.
4 And, again, as Ms. Suarez says, it could be for a very
5 nominal amount.
6 PRESIDENT CARTER: Very Good.
7 BOARD MEMBER SUAREZ: And just consider we might
8 give them an encroachment permit.
9 DWR STAFF COUNSEL BREWER: Exactly.
10 PRESIDENT CARTER: Right.
11 I just want to -- is Ms. LaGrand still here?
12 The Miller's still here?
13 Mr. King?
14 BOARD MEMBER VILLINES: They all walked back
15 while we negotiate.
16 PRESIDENT CARTER: They all walked out. Okay.
17 BOARD MEMBER VILLINES: No, I think they're
18 probably in the back.
19 PRESIDENT CARTER: Are they?
20 I just wanted to see if they had any comments
21 with respect to the Board's proposed action.
22 Does staff have any additional comments to the
23 Board's proposed action?
24 No?
25 SUPERVISING ENGINEER TARAS: There's no

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1 additional comment, President Carter.
2 PRESIDENT CARTER: And does TRLIA, the local
3 maintaining agency 784, do you have any comments with
4 respect to the Board's proposed action?
5 MR. BRUNNER: For the record, from TRLIA, Paul
6 Brunner. We're in support of the motion.
7 PRESIDENT CARTER: Okay. 784?
8 MR. FORDICE: Steve Fordice, 784. We're also in
9 support.
10 PRESIDENT CARTER: Okay.
11 MR. MILLER: Speaking for one property owner. I
12 don't agree with the encroachment. But, yeah, we were
13 just talking about it. Yes, we can live with it I think.
14 PRESIDENT CARTER: Okay. Thank you.
15 All right. Do any -- Ms. LaGrand, do you want to
16 say anything or --
17 MS. LaGRAND: No, I already said what I had to
18 say. Thank you.
19 PRESIDENT CARTER: All right. Mr. King, is he
20 back there or...
21 All right. Very good.
22 So, ladies and gentlemen, any other comments,
23 questions?
24 VICE-PRESIDENT RIE: Well, I think Ms. Brewer had
25 a good recommendation to direct staff to include the Real

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1 Estate Branch in this transaction.
2 PRESIDENT CARTER: Which I think the motioner and
3 the seconder agreed to.
4 VICE-PRESIDENT RIE: Okay.
5 PRESIDENT CARTER: Okay. So, does everybody
6 understand the motion?
7 Mr. Punia, would you call the roll.
8 EXECUTIVE OFFICER PUNIA: Board Member Mike
9 Villines?
10 BOARD MEMBER VILLINES: No.
11 EXECUTIVE OFFICER PUNIA: Board Member Emma
12 Suarez?
13 BOARD MEMBER SUAREZ: I'm going to vote aye. Key
14 here to me is there's no public safety issue. I don't
15 understand how we ended up with such a convoluted process
16 when there's really no public safety issue.
17 So I'm supportive.
18 EXECUTIVE OFFICER PUNIA: Board Member Butch
19 Hodgkins?
20 SECRETARY HODGKINS: I support the issue. I
21 realize this is a difficult situation because staff can't
22 do what the Board did here, which is basically say, "Hey,
23 let's try and find a compromise."
24 But I would encourage staff, and it improves with
25 time, but to think about, when you have a situation where

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1 it does seem like we can take care of public safety and
 2 avoid getting crosswise with a bunch of property owners,
 3 to think about coming early to the Board, not with an
 4 official action but perhaps with the local agency, and
 5 asking the Board if they would agree to let you try and go
 6 ahead and work it out, so that we don't spend a huge
 7 amount of time working on something that gets down to an
 8 enforcement action and then the Board compromises.

9 And I don't know how you figure out which ones
 10 you're willing to do that on. But think about it.

11 EXECUTIVE OFFICER PUNIA: Board Member John
 12 Moffatt?

13 BOARD MEMBER MOFFATT: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member John
 15 Brown?

16 BOARD MEMBER BROWN: Aye.

17 EXECUTIVE OFFICER PUNIA: Board Vice-President
 18 Teri Rie?

19 VICE-PRESIDENT RIE: I'm going to vote no. And
 20 it's not because I don't support Mr. Moffatt's motion. I
 21 think he made a good motion. It's because staff did not
 22 engage with the Real Estate Branch. And I think when
 23 we're talking about taking people's homes and their sheds,
 24 and we have a Real Estate Branch, I think it's our duty to
 25 review the documents, have professional Real Estate staff

1 check everything. We have our own documents. And it's
 2 surprising that those documents -- our own real estate
 3 maps were not provided to the surveyor and those documents
 4 weren't checked. So, you know, that concerns me.

5 So I'm voting no.

6 EXECUTIVE OFFICER PUNIA: Board PRESIDENT Ben
 7 Carter?

8 PRESIDENT CARTER: Aye.

9 So the motion carries, 5 ayes, 2 nays.

10 BOARD MEMBER VILLINES: Mr. Carter, can I just --
 11 because I'm losing my voice -- my opinion is the same. I
 12 totally support what everyone's doing. I wasn't convinced
 13 about the encroachment. I just want to put that on for
 14 the record.

15 PRESIDENT CARTER: Very good.

16 BOARD MEMBER MOFFATT: And notwithstanding,
 17 although I'm offended by both noes.

18 (Laughter.)

19 PRESIDENT CARTER: All right. Thank you very
 20 much, ladies and gentlemen.

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
 3 Reporter of the State of California, and Registered
 4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
 6 foregoing California Central Valley Flood Protection Board
 7 Item 10A meeting was reported in shorthand by me, James F.
 8 Peters, a Certified Shorthand Reporter of the State of
 9 California, and thereafter transcribed under my direction,
 10 by computer-assisted transcription.

11 I further certify that I am not of counsel or
 12 attorney for any of the parties to said meeting nor in any
 13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
 15 this 9th day of December, 2011.

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 JAMES F. PETERS, CSR, RPR
 Certified Shorthand Reporter
 License No. 10063

Meeting of the Central Valley Flood Protection Board
December 2, 2011
Staff Report – Enforcement Hearing
Ms. Carol Miller, Yuba County
1.0 – ITEM

Consider approval of Enforcement Order 2011-272 (Attachment A) regarding the Notice of Violation (NOV) issued to Ms. Carol Miller (Respondent) on August 5, 2011, notifying her of an existing unauthorized fence located on State of California, Sacramento and San Joaquin Drainage District (SSJDD) property and right-of-way, on the landside of the Feather River east levee in West Linda, CA.

2.0 – RESPONDENT/PROPERTY OWNER

Ms. Carol Miller
 5676 Riverside Drive
 Olivehurst, California 90731

Assessor's Parcel Number (APN) 020-171-001

3.0 – LOCATION

The encroachments are located on the landside of the Feather River East Levee, approximately 1.2 miles south of Marysville, California, near the confluence of the Yuba and Feather Rivers in Yuba County. Figures 1 and 2 below show the vicinity and an aerial view of the property at 5676 Riverside Drive, respectively.



Figure 1- Vicinity Map of Property at 5676 Riverside Dr., West Linda CA (Source: Google Maps)



Figure 2- Aerial view of property at 5676 Riverside Dr. in West Linda CA (Source: Bing Maps)

*Note: To avoid confusion, property owned by the CVFPB through SSJDD discussed in this staff report will be referred to as “State owned land”. Also, the terms “Board” and “State” are used interchangeably.

4.0 – APPLICABLE LAWS AND REGULATIONS

The following codes were considered in the staff analysis of the enforcement action to order removal of existing unauthorized encroachments on State-owned land.

4.1 – California Water Code

- § 8534: The Board has the authority to enforce the *“erection, maintenance and protection of such levees, embankments and channel rectification as will, in its judgment, best serve the interests of the State”*.
- § 8708: The Board has given assurances to the US Army Corps of Engineers (USACE) that the State will maintain and operate federal flood control works in accordance with federal law.
- § 8710: The Board must approve any encroachment into an adopted plan of flood control, such as the Sacramento River Flood Control Project, which includes the Feather and Yuba Rivers.
- § 8709: Unauthorized encroachments that may interfere with or obstruct the operation or maintenance of the flood control works constitute a public nuisance and as such, if the respondent fails to remove such unauthorized encroachment, the Board may commence and maintain a suit in the name of the people of the State to abate the nuisance.

4.2– California Code of Regulations, Title 23 (CCR 23)

- § 19 : *“No encroachment may be constructed or maintained upon lands owned in fee by the Sacramento and San Joaquin Drainage District, except when expressly permitted by a proper and revocable license, lease, easement, or agreement executed between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation therefor. This requirement is in addition to the need for a permit as required in section 6 of this article.”*
- § 6 (a) : *“Every proposal or plan of work...requires a Board approval prior to commencing any work”*
- §20 (a): *“The General Manager [subsequently retitled as Executive Office] may institute an enforcement proceeding by serving a notice by certified mail, return receipt requested, to the landowner or person (referred to hereafter as the “respondent”) owning, undertaking or maintaining a work that is in violation of this division or threatens the successful execution, functioning or operation of an adopted plan of flood control.”*

5.0 – REAL ESTATE

CTA Engineering & Surveying (“CTA”) prepared a Record of Survey dated June 2011 that delineates the property boundaries of the parcels adjacent to the Feather River East levee and Yuba River South levee. This map has been submitted to Yuba County Recorder’s office to be recorded. The parcel where the encroachments exist was purchased by the Board under SSJDD per Book 267 Page 509 (Parcel 5) of Yuba County Official Records recorded on December 12, 1958 (see Attachment G). In addition, CTA submitted a memorandum summarizing the basis for the survey map (see Attachment H).

6.0 – STAFF ANALYSIS**6.1 – Background**

Three Rivers Levee Improvement Authority (TRLIA) is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake. As part of these levee improvements, TRLIA is required to provide a 20-foot wide maintenance corridor in accordance with the Department of Water Resources (DWR) Interim levee Design Criteria. During the preparation of a survey, TRLIA discovered that in this area, the land for the levee and required 20-foot wide access corridor is owned by the State. However, existing fences, vegetation and other structures were located within State-owned land and the required 20-ft wide corridor. In early May 2011, TRLIA contacted the Board staff requesting assistance in removal of existing encroachments within the area needed to provide a 20-ft wide corridor. Board records indicate that there are no Board permits for any of the fences, structures or vegetation within the State’s property. On July 29, 2011 TRLIA sent letters to all landowners notifying them of the encroachments located within State-owned land and TRLIA’s plan to install a new fence at the State’s right-of-way. See Attachment E for a sample of this letter. Furthermore, on August 22, 2011, TRLIA held a community meeting in Olivehurst, California which was attended by many of the residents, Board staff, MBK Engineers, RD 784, Yuba County and local representatives. See Attachment F for a summary on the questions and answers from the community meeting.

6.2 –Notice of Violation 2011-272

On August 5, 2011, NOV 2011-272 was issued to Ms. Carol Miller (Attachment B). On August 25, 2011, Board staff received a hearing request from Respondent (see Attachment C). On October 4, 2011, a hearing acknowledgement letter was sent to the Respondent (see Attachment D). The NOV issued to the Respondent only identified the existing parallel fence constructed 16-18’ into State-owned land (See Figures 3 and 4). Board’s regulations prohibit any encroachments to be constructed within land owned by the State unless a lease or agreement has been executed between the Board and the landowner. Board records indicate there are no Board-issued permits or agreements for the encroachments noted on the NOV.

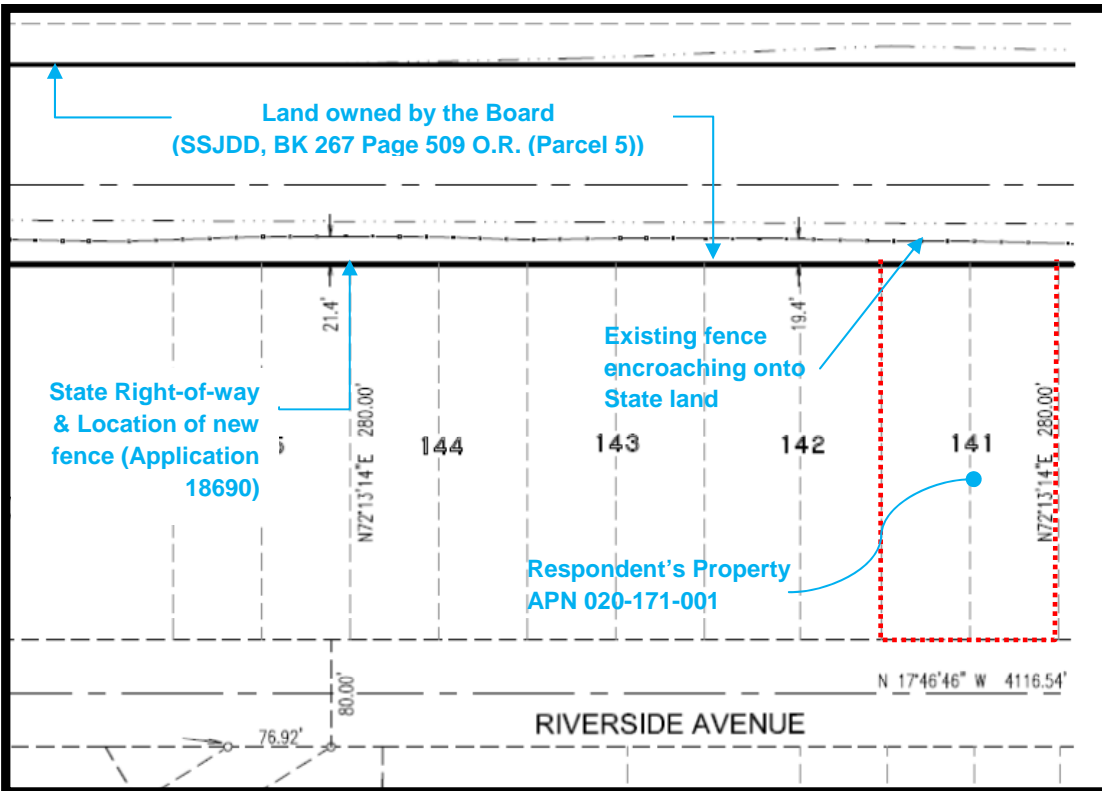


Figure 3- Source: Survey Map prepared by CTA Engineering & Surveying dated June 2011, Page 1 of 3



Figure 4- Photo of Respondent's property. (Source: Downey Brand 7/14/2011)

The following is a summary and response to the arguments raised by the Respondent's letter dated August 25, 2011 (Attachment C).

Argument 1: According to the Respondent, the existing fence was built by the Railroad in the late 1940's and the Railroad and Homeowner's agree the location of the fence was the property line.

Board Staff Response: California Civil Code § 1624 requires that any real estate agreements be in writing. Board staff has not been presented with any documents that confirm the agreement and construction of the existing fence.

Argument 2: According to the Respondent, the railroad alignment was abandoned at least 5 years after the fence was constructed and therefore adverse possession is in effect.

Board Staff Response: Record documents show that the portion of the Railway adjacent to the properties was abandoned in 1956. The State purchased the property in 1958. Therefore, the railway (not the land) was abandoned for only 2 years. To date, the Respondent has been unable to furnish documents that indicate when the fence was constructed. In addition, Pursuant to Civil Code § 1007 "*no possession by any person, firm or corporation no matter how long continued of any land, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.*" The property was purchased by the Board on December 12, 1958 from the Sacramento Northern Railway and in accordance with Civil Code Section 1007 above, no adjacent landowner can acquire prescriptive rights against State-owned land. Furthermore, pursuant to Public Utilities Code Sections 211 and 216, a public utility is every railroad performing a service for, or delivering a commodity to, the public or any portion thereof for which any compensation or payment whatsoever. Therefore the Railway Company is a public utility and in accordance with Civil Code Section 1007, no prescriptive rights against a public entity can be obtained.

Argument 3: The methods used for the development of the survey map completed by CTA are inaccurate and therefore the parcel boundaries shown on the map are incorrect.

Board Staff Response: Per Section 5.0, the property boundaries shown on the record of survey map prepared by CTA were certified by a licensed surveyor using record documents, existing monumentation, field verification and confirmation from Yuba County Surveyor's office. This map has been submitted to Yolo County for filing. In addition, CTA submitted a memorandum summarizing the basis for the survey map (see Attachment H). Board staff is confident that the survey map was prepared using the best available information, including proper due-diligence and verification of record documents, field verification and done in accordance with applicable professional codes.

Argument 4: Between 1951 and 1996, this area was flooded and inspected by State agencies but no requests were made to remove or relocate the fence during this time.

Board Staff Response: Any flood-fighting or inspections done in this area would be limited to verifying that the flood control structures are performing as intended and designed. This does not include performing field surveys or boundary verification. As indicated in Section 6.1, the removal of the fences and other structures at this location was discovered as part of TRLIA's levee improvements along the Feather and Yuba Rivers.

Argument 5: The Respondent claims that homeowner's paid property taxes for the portion of the land where the fence was constructed by the Railroad.

Board Staff Response: The parcel boundaries shown on the survey map prepared by CTA reflect the recorded subdivision map and these boundaries were confirmed with Yuba County Assessor's office. No documents have been provided to demonstrate that the landowners paid property taxes on the land where the encroachments exist.

7.0 – PROPOSED CEQA FINDINGS

Board staff has prepared the following CEQA determination:

The Board, acting as the CEQA lead agency, has determined the enforcement action is categorically exempt in accordance with CEQA Guidelines Section 15321 under Class 21 (a) actions of regulatory agencies to enforce standards and Section 15301 under Class 1 covering the minor alteration of existing public or private structures and facilities.

8.0 – STAFF RECOMMENDATION

Staff has considered the comments raised by the Respondent against the issued NOV. Staff has concluded that the benefits to improving levee patrol, maintenance access and maintaining this area clear should future levee improvements necessary, are most important. An allowing existing unauthorized encroachment to remain within State-owned land are prohibited by law, regulation and is not consistent with Board's new policy for landside levee setbacks. The information contained in this staff report constitutes significant evidence that the encroachments noted on issued Notice of Violation 2011-272 interfere with the maintenance, performance, or functioning of the Feather River Project Levees, part of the Sacramento River Flood Control Project and the adopted plan of flood control pursuant to Water Code sections 8708 and 8709. The State is obligated to enforce the removal or modification of encroachments that impact the flood control system operations and maintenance pursuant to Water Code section 8708. Furthermore, pursuant to Water Code section 8709, if an encroachment "does or may interfere with or obstruct the operation or maintenance" of the flood control works, the encroachments constitute a public nuisance. Therefore, the Board may commence or authorize actions to abate such nuisance.

For the reasons stated on this staff report, Board staff recommends the Board determine the encroachment removal to be exempt from CEQA, approve Enforcement Order No. 2011-272 (Attachment A).

9.0 – LIST OF ATTACHMENTS

- A. Proposed Enforcement Order No. 2011-272
- B. Notice of Violation issued on August 5, 2011
- C. Respondent's letters dated August 25, 2011 & November 17, 2011
- D. Hearing Acknowledgement Letter sent to Respondent on October 4, 2011
- E. Sample letter mailed by TRLIA on July 29, 2011
- F. TRLIA August 22, 2011 Community Meeting Q&A
- G. CTA Engineering & Surveying Record of Survey Map dated June 2011
- H. Memo prepared by CTA Engineering dated October 31, 2011

Report Completed by:	Angeles Caliso
Environmental Review:	Andrea Mauro
Document Review:	Curt Taras, Len Marino, Robin Brewer

NOW, THEREFORE, the said party of the first part, as executor as aforesaid of the will of said MATTHEW REDMOND, deceased, pursuant to said order of the said Superior Court, and for and in consideration of the said sum of Eleven Hundred dollars (\$1100.00) in United States gold coin, to him in hand paid by the said party of the second part, the receipt whereof by him is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest and estate of the said decedent at the time of his death, and all right, title and interest, which the said estate of said deceased has, by operation of law or otherwise, acquired other than, or in addition to that of the said decedent at the time of his death, in, to and of all that certain tract or parcel of land situated in the said County of Yuba, State of California, bounded and particularly described as follows, to wit: - - - The South one half of the South-west quarter of Section Thirty four (34), and all that part of the South one half of the South-east quarter of Section Thirty three (33), described as commencing at the South-east corner of Section Thirty three (33) and running thence West 33 chains to the middle of the road; thence along the middle of the road North 24 1/2 degrees East, 22 chains; thence East 23.71 chains; thence South 20 chains to the place of beginning, all in Township Seventeen (17) North of Range Four (4) East, M.D.M., containing One hundred and thirty six and 70/100 acres and being the same land conveyed by J. A. Saul, Sheriff of Yuba County, State of California, to James Redmond, by Sheriff's deed, dated March 2'd 1889, of record in Liber 38 of Deeds, at page 172 et. seq., Yuba County Records. - - -

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. - - -

TO HAVE AND TO HOLD all and singular the said above described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. - - -

IN WITNESS WHEREOF, the said party of the first part, as executor as aforesaid, has hereunto set his hand and seal the day and year first herein written. Roger R. Vair. - - (SEAL) Executor of the Will of Matthew Redmond, Deceased State of California. - - -

ss. On this 20th day of November A.D.

One Thousand Nine Hundred and Nine, before me, HENRY B. LISTER, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and qualified, personally appeared Roger R. Vair, the executor of the Will of Matthew Redmond deceased, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same, as such executor. - - -

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. Henry B. Lister (SEAL), Notary Public in and for the City and County of San Francisco, State of California. - - - Recorded at the Request of Annie Matti; December 13, A. D. 1909, at 5 min. past 3 o'clock P. M. - - -
S. O. Gunning Recorder, By Anna E. Gunning Deputy.

Isaac G. Cohn
J. A.
To
William California
Electric Railway Co

THIS INDENTURE, Made this Thirtieth day of November, 1908, between AMY HYMAN, HENRY HYMAN, ISAAC G. COHN, HUGO COHN, EMMA G. SIMONSOHN, HELENE COHN, ROSA COHN, GEORGE COHN (son of Simon G. Cohn) SIEGBERT COHN, GEORGE COHN (son of David Cohn), parties of the first part, and NORTHERN ELECTRIC RAILWAY COMPANY, a Corporation, incorporated under and by virtue of the laws of the State of California, with the principal place of its business situated and being in the City and County of San Francisco, in said State, party of the second part, - - -

WITNESSETH: That said parties of the first part for and in consideration of the sum of Eight Hundred forty Dollars (\$840.00) Gold Coin of the United States to them in hand paid by said party of the second part, receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed and by these presents do grant, bargain, sell, convey and confirm, unto the said party of the second part, and to its successors and assigns forever, the following described strip or tract of land situate in the County of Yuba, State of California, to-wit: - - -

A strip or tract of land one hundred (100) feet in width, being fifty (50) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC RAILWAY COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: - - -

Lot (or sub-divisions) of the 1373 acre tract south of the Yuba River opposite the City of Marysville, described as follows: Lot (or sub-division) five (5) and part of lot (or sub-division) four (4) The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: - - -

Beginning at a point on the boundary line between the land of the Western Pacific Railway Company, formerly owned by the P. George Estate, and the land owned by the estate of Mrs Rebecca G. Cohn, et al., said point being distant sixty and four tenths (60.4) feet east and North 4° 30' West six hundred ninety-six (696) feet from the southeast corner of lot six (6) of the one thousand three hundred seventy-three (1373) acre tract in the New Helvetia Grant, County of Yuba, State of California, said point being Engineer Station L15 - 242 plus 56.9 of the located center line of the Northern Electric Railway Company's Survey; thence South 11° 05' East, two thousand two hundred twenty-one (2221) feet, more or less, to Engineer Station L15 - 264 plus 77.91 of the located center line of the Northern Electric Railway Company's survey, said strip or tract of land containing 5.10 acres.

Also a strip or tract of land one hundred fifty (150) feet in width being ninety (90) feet in width on the westerly side of and sixty (60) feet in width on the easterly side of, and adjacent and parallel to the following described center line which said center line is a continuation of the first described center line and begins at the aforesaid Engineer Station L15-264 plus 77.91 of the located center line of the Northern Electric Railway Company's survey; thence South 11° 05' East two hundred (200) feet, to beginning of curve at Engineer Station L15 - 266 plus 77.91; thence in a southeasterly direction on a tangent curve to the left of five thousand seven hundred and twenty-nine and six tenths (5729.6) feet radius six hundred forty-one and sixty-seven hundredths (641.67) feet to end of curve at Engineer Station L15-273 plus 19.58=L11-273 plus 19.58; thence south 17° 31' East four thousand two hundred thirteen and seventy-two hundredths (4213.72) feet more or less to a point on the boundary line between the property of Estate of Mrs R. G. Cohn et al and the property now or formerly owned by Mrs Jane Tomb . Said strip or tract of land containing seventeen and forty-seven hundredths (17.47) acres, more or less. For the purpose of laying down, erecting, maintaining, repairing and operating a single or double track railroad, to be operated by electricity, compressed air, or other motive power, in, over, along and across said lands upon said strip of land hereby conveyed, together with all necessary and convenient means of ingress, egress and regress to and from said right of way for the purpose of erecting, maintaining, protecting and operating said railroad and all privileges necessary and convenient therefor. - - - - -

TOGETHER with all and singular the tenements, hereditaments

ATTACHMENT D

and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. - - - - -

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the Said party of the second part and to its successors and assigns forever. - - - The aforesaid conveyance is made upon the express condition that the said party of the second part, its successors in interest or assigns, will build and maintain good and sufficient fences on each side of said strip of land; also construct and maintain through its railroad embankment on said strip of land, a flood-gate sufficient to permit the passage of all surface and drainage waters (exclusive of flood and overflow waters) coming thereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written, Amy Hyman, Henry Hyman, Isaac G. Cohn, Hugo Cohn By Isaac G. Cohn, his Attorney in Fact., Ema G. Simonsohn, By Isaac G. Cohn, Her Attorney in Fact., Helene Cohn By Isaac G. Cohn, Her attorney in fact., Ross Cohn By Isaac G. Cohn, Her attorney in fact. George Cohn Son of Simon Cohn, By Isaac G. Cohn, His attorney in fact. Siegbert Cohn, By Isaac G. Cohn His attorney in fact., George Cohn, Son of David G. Cohn, By Isaac G. Cohn, His attorney in fact. - - - - -

State of California)
City and County of San Francisco) ss.

On this 30th day of November in the year One Thousand Nine Hundred and - - - before me, Anne F. Hasty, a Notary Public, in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared, Amy Hyman and Henry Hyman known to me to be the person described in, whose names are subscribed to and who executed the ^{that} instrument, and they acknowledged to me that they executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. Anne F. Hasty (SEAL) Notary Public in and for the City and County of San Francisco, State of California. - - - - - My Commission expires July 26, 1911. - - -

State of California)
County of Yuba) ss.

ON this 7th day of December in the year of our Lord one thousand nine hundred and Nine, before me, Maud Lunsford, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared, Isaac G. Cohn, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. - - - - -

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official

Seal, the day and year in this certificate first above written. Maude Lunsford (SEAL)

Notary Public in and for the County of Yuba, State of California. - - - - -

State of California)

County of Yuba) ss.

On this 7th day of December, in the year of our Lord one thousand nine hundred and nine before me, MAUDE LUNSFORD, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ISAAC G. COHN, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of HUGO COHN, Emma G.

SIMONSOHN, HELENE COHN, ROSA COHN, GEORGE COHN (son of Simon G. Cohn), SIEGBERT

COHN, GEORGE COHN (son of David Cohn), and acknowledged to me that he subscribed

the names of Hugo Cohn, Emma G. Simonsohn, Helene Cohn, Rosa Cohn, George Cohn

(son of Simon G. Cohn), Siegbert Cohn and George Cohn (son of David Cohn) thereto

as principals and his own name as attorney-in-fact. - - - - -

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written. - - -

Maude Lunsford (SEAL) Notary Public in and for the County of Yuba, State of California. - - -

Recorded at the Request of Thomas Carlin, December 14th A. D. 1909, at

45 min. past 3 o'clock P.M. - - - - -

J. O. Gunning Recorder, BY *Alvina E. Gunning* Deputy.

THIS INDENTURE, made by and between John C. Carry of the County of

Yuba, State of California, the party of the first part, and CALIFORNIA MIDLAND

RAILROAD COMPANY, a corporation duly organized and existing under and by virtue

of the laws of the State of California, and having its office and principal place

of business in the City and County of San Francisco, State of California, the party

of the second part, - - - - -

WITNESSETH, that said party of the first part, for and in consideration

of the sum of ten (10) dollars in gold coin of the United States of America, to

him paid by the said party of the second part, the receipt whereof is hereby

acknowledged does hereby grant, bargain and sell unto the said party of the second

part, its successors and assigns, that certain parcel or strip of land situate in

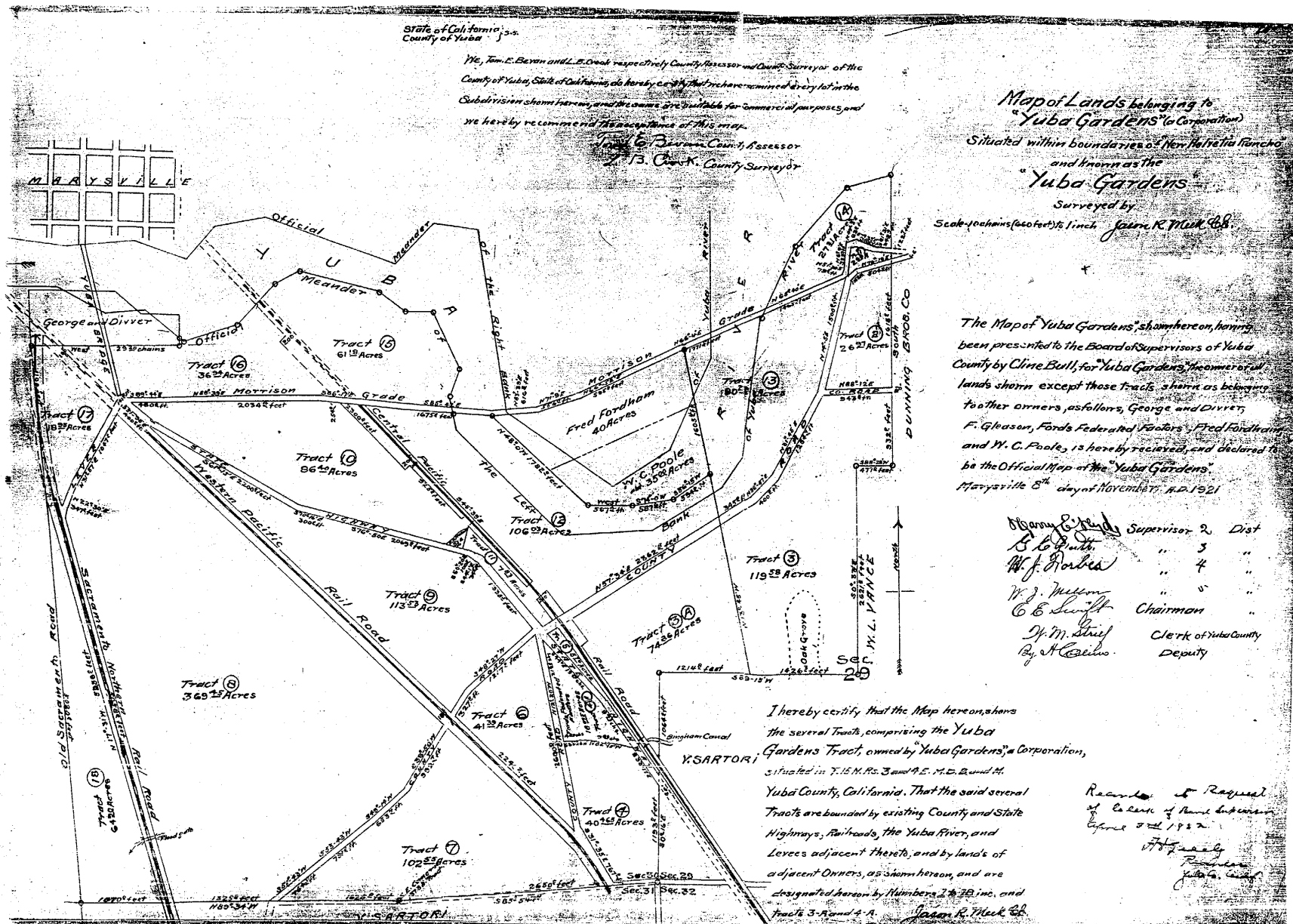
ATTACHMENT D

the County of Yuba, State of California, and more particularly bounded and described as follows:

viz.: A strip of parcel of land one hundred (100) feet in width, lying fifty (50) feet on each side of the center line of a certain route which has been surveyed and definitely located and marked upon the ground by the said California Midland Railroad Company under the direction of its Chief Engineer, by means of stakes driven at intervals of approximately one hundred (100) feet, and marked and numbered consecutively from Engineer's Station "G" 2095 x 77 to Engineers Station "G" 2157 x 30 and extending along said route, upon, over and across the lands of the said part of the first part situated in the North East quarter (N. E. $\frac{1}{4}$) and the West one half (W. $\frac{1}{2}$) of Section Eleven (11), Township fifteen (15) North Range four (4) East Mount Diablo Base and Meridian; said strip having a length of Six thousand One hundred and fifty three (6153) feet, more or less, and containing an area of nine and fifty three hundredths ($9\frac{53}{100}$) acres. The said center line, where the same crosses the said lands of the part - - of the first part, is described as follows, viz.: - - -

Beginning at Engineer's Station No. "G" 2093 x 77, which is situate on the East-erly boundary of said Section Eleven (11) from which the quarter corner between Sections Eleven and Twelve bears south 1319 feet distant, thence by a straight course south 46° 46' West 603 $\frac{4}{5}$ feet to Engineers Station "G" 21014 x 80 $\frac{4}{5}$, thence 330 feet by a curve to the right the rate of curvature of which changes 0° 15' for each 30 feet to Engineers Station "G" 2105 x 10 $\frac{4}{5}$, thence by a 3° curve to the right 477 $\frac{5}{6}$ feet to Engineers Station "G" 2109 x 87 $\frac{2}{3}$; thence by a 2° 15' curve to the right 414 $\frac{5}{6}$ feet to Engineers Station "G" 2114 x 02 $\frac{4}{5}$ thence by a curve to the right the rate of curvature of which changes 0° 15' for each 30 feet, 240 feet to Engineers Station "G" 2116 x 42 $\frac{4}{5}$ thence by a straight course south 78° 05' West 321 feet to Engineers Station "G" 2119 x 63 $\frac{4}{5}$, thence by a 3° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 1110 $\frac{5}{6}$ feet to Engineers Station "G" 2130 x 74 $\frac{2}{3}$, thence by a straight course South 54° 40' West 372 $\frac{2}{3}$ feet to Engineers Station "G" 2134 x 46 $\frac{2}{3}$, thence by a 0° 30' curve to the right 413 feet to Engineers Station "G" 2138 x 59 $\frac{2}{3}$, thence by a straight course South 56° 44' West 117 $\frac{7}{8}$ feet to Engineers Station "G" 2139 x 76 $\frac{9}{10}$, thence by a 1° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 483 $\frac{3}{4}$ feet to Engineers Station "G" 2144 x 60 $\frac{2}{3}$, thence by a straight course south 52° 48' West 1042 $\frac{4}{5}$ feet to Engineers Station "G" 2155 x 02 $\frac{6}{10}$, thence by a curve to the left the rate of curvature of which changes 0° 15' for each 30 feet 227 $\frac{4}{5}$ feet to Engineers Station "G" 2157 x 30 at the Westerly boundary of Section Eleven. - - -

The Westerly side or end of said strip or parcel of land is bounded on the



Edith M. Bull Vice President
Donald C. Bull Secretary

 Notary Public in and for the County of San Diego,
 State of California.
 My commission expires October 8 1940.

County Clerk for the County of Fresno, State of California.

County Surveyor for the County of Yuba, State of California

Dated April 28 - 1939.

Hubert House
Licensed Surveyor No. 1865

[illegible]

57476 of California)^{ss}.
County of Yuba

On this 3 day of June
1933, before me Edwin E. Muecke Notary Public in
and for the State of California, personally
personally appeared the parties whose signatures appear on the
above within italicized lines there is be the persons whose
signatures are attached thereto and they acknowledged to me
that they executed the same.

Oliver Caldwell Mowen
Notary Public in and for the County of Yuba,
State of California.

My commission expires Dec 14th 1936

Approved April 28, 1959
Yuba County Planning Commission

Chairman.
Secretary.

Dated June 8, 1939.
Thelen Wast
 County Auditor of the County of Yuba State of California

J. W. Lachue

G. E. Smith

G. C. Smith

} Board of Supervisors
County of Yuba,
State of California.

Attest H. M. Strickland Clerk.
June 6, 1939

Filed in the office of the County Recorder, of the County of Yuba,
State of California this 14th day of June 1939.

Helen Wast
County Recorder
Deputy Recorder

The following Lots are not a part of this Subdivision

83	83 F.	28	29	South 1 Bc. Lot 58	48	49
58	89	90	91	92	96	97 101 107 108 115 116

**SUBDIVISION OF TRACT NUMBER 8,
OF
YUBA GARDENS.**

BEING RESUBDIVISIONS OF
SUBDIVISION OF THE SOUTHERLY PART OF TRACT NUMBER 2
OF YUBA GARDENS,
AND
SUBDIVISION OF THE NORTHERLY PORTION OF TRACT NUMBER 6
OF "YUBA GARDENS,"
AND
SUBDIVISION OF LOTS 49, 50, 51, 52 AND 53 OF SUBDIVISION OF
TRACT NUMBER 8 OF "YUBA GARDENS"

Scale 1 inch = 300 feet
 Surveyed by Hugh Stone Licensed Surveyor, Marysville, California.

ATTACHMENT F

SUBDIVISION OF TRACT NUMBER 8, OF YUBA GARDENS.

BEING RESUBDIVISIONS OF
SUBDIVISION OF THE SOUTHERLY PART OF TRACT NUMBER 8
OF YUBA GARDENS,
AND
SUBDIVISION OF THE NORTHERLY PORTION OF TRACT NUMBER 8
OF "YUBA GARDENS,"

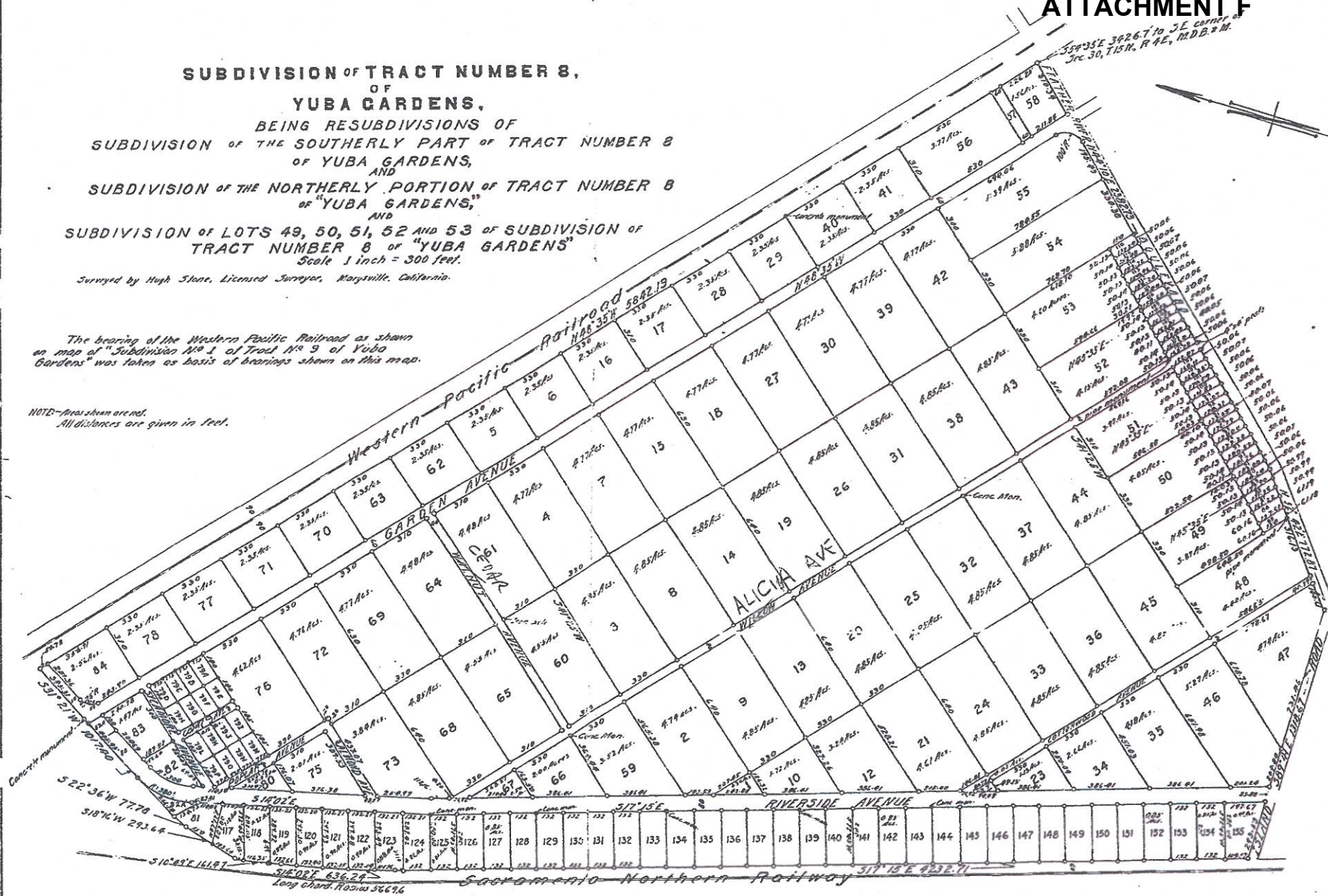
AND
SUBDIVISION OF LOTS 49, 50, 51, 52 AND 53 OF SUBDIVISION OF
TRACT NUMBER 8 OF "YUBA GARDENS"

Scale 1 inch = 300 feet.

Surveyed by Hugh Stone, Licensed Surveyor, Marysville, California.

The bearing of the Western Pacific Railroad as shown
on map of "Subdivision No 1 of Tract No 9 of Yuba
Gardens" was taken as basis of bearings shown on this map.

NOTE: Areas shown are ad.
All distances are given in feet.



2 (a) Reg trackage rights
This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

INTERSTATE COMMERCE COMMISSION

FD-19254

Finance Docket No. 10254

SACRAMENTO NORTHERN RAILWAY TRACKAGE RIGHTS, ETC.

Decided April 27, 1930

1. Acquisition of ~~trackage rights~~ by the Sacramento Northern Railway over the line of railroad of The Western Pacific Railroad Company between milepost 175.63 and Oliver in Yuba County, Calif., approved and authorized. Conditions prescribed.
2. Certificate issued (a) permitting abandonment by the Sacramento Northern Railway of a portion of its line of railroad located in Yuba County, Calif., and (b) authorizing construction by the Sacramento Northern Railway of a connecting track in Yuba County, Calif. Conditions prescribed.

E. L. Van Dellen for applicant.

A. E. Lyon for Railway Labor Executives' Association.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS JOHNSON, MITCHELL, TUGGLE, AND HUTCHINSON

BY DIVISION 4:

The Sacramento Northern Railway, hereinafter sometimes referred to as Sacramento Northern, on February 17, 1926, applied (1) under section 5(2) of the Interstate Commerce Act, as amended, for authority to operate under trackage rights over the line of The Western Pacific Railroad Company, hereinafter sometimes referred to as Western Pacific, between the latter's milepost 175.63 and their jointly operated tracks at Western Pacific's milepost 178.09 (applicant's milepost 41.00), a distance of 2.46 miles, and (2) for (a) permission to abandon that portion of its line of railroad extending from milepost 38.06 to milepost 41.00 (Western Pacific's milepost 178.09), 2.94 miles, and (b) authority to construct a connecting track

extending from applicant's milepost 176.63, 1.81 mile. Representations have been made by the applicant that no objection to the application of the line involved.

The Railway Labor Executive Association has filed an application on the ground that the proposed operation of the line would adversely affect applicant's association and the application of the same conditions as were prescribed in Abandonment, 257 I.C.C. 177. Our certificate is granted. Our certificate is granted on the stipulated conditions who may be adversely affected. In opinion a public hearing is not required for the reason that the proposed transportation service. No objection is mentioned herein are in California.

Applicant's purpose in obtaining authority to continue without replacing a trestle at recent focus. Applicant's line and Marysville roughly parallel lines enter Marysville from the beginning at a point known as the head of the Yuba River just below the Feather River. South of Old Marysville the Yuba River on the balance of the Yuba River on the existing line, of which the integral segment, was originally constructed by the Electric Company in 1906 and service. After passing through

permanent

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Northern
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Conditions

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3.09),
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F. D. No. 19254 - Sheet 2

extending from applicant's milepost 38.00 to Western Pacific's milepost 175.63, 1.61 miles; all in Yuba County, Calif. No representations have been made by State authorities and no objection to the application has been presented by users of the line involved.

The Railway Labor Executives' Association opposed the application on the ground that the proposed abandonment would adversely affect applicant's employees, but subsequently that association and the applicant agreed, by stipulation, to the imposition of the same conditions for the protection of carrier employees as were prescribed in Oklahoma Ry. Co. Trustees' Abandonment, 257 I.C.C. 177, in the event the application is granted. Our certificate herein will include, by reference, the stipulated conditions for the protection of all employees who may be adversely affected by the transaction. In our opinion a public hearing is not necessary in the public interest, for the reason that the proposals will not adversely affect transportation service. Unless otherwise indicated, all points mentioned herein are in California.

Applicant's purpose in presenting this application is to obtain authority to continue its heretofore existing operations without replacing a trestle over the Yuba River, destroyed by recent floods. Applicant's existing line between Sacramento and Marysville roughly parallels Western Pacific's line. Both lines enter Marysville from the south over joint trackage, beginning at a point known as Oliver and crossing the main thread of the Yuba River just above its confluence with the Feather River. South of Oliver, each of the lines crosses the balance of the Yuba River on separate trestles. Applicant's existing line, of which the portion to be abandoned forms an integral segment, was originally constructed by Northern Electric Company in 1906 and 1907 for passenger and freight service. After passing through the hands of two successors,

it was acquired

The section
the Yuba River,
was destroyed and
which will cost
replaced without
are opposed to
river's flow and
supports, create
the levee system
flood. The re-
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net salvage value

There are
flood damage, the
loss of the trees
averaged 6 trees
years. Under the
to continued un-
In 1963 and 1964
handled on the
the past 2 years

Yuba County
Southern Pacific
applicant, in order
replace the destroyed
Western Pacific,
between the last
operated tracks;
178.00 (Oliver).
to construct a
its milepost 38.
Construction will

F. D. No. 19284 - Sheet 3

it was acquired by applicant on November 4, 1935.

The segment in question crossed the remaining portion of the Yuba River, referred to above, on a 1906-foot trestle which was destroyed during floods in December 1935. The trestle, which will cost an estimated \$250,000 to rebuild, cannot be replaced without the approval of various public authorities who are opposed to its reconstruction, since it would impede the river's flow and cause the accumulation of debris on its supports, creating, during floods, a dam which could weaken the levee system. A part of the segment was destroyed in the flood. The remaining portion consists of badly worn 60-pound rail with untreated ties on gravel ballast. The estimated net salvage value of the segment is \$4,335.

There are no stations on the segment and, because of the flood damage, there is no train service thereon. Prior to the loss of the trestle, traffic, exclusively overhead or bridge, averaged 6 trains per week in each direction for the past 5 years. Under applicant's proposal herein, such service will be continued under trackage rights over Western Pacific's lines. In 1933 and 1934 there were 3,003 and 2,777 cars respectively, handled on the line. There has been no passenger service for the past 2 years.

Yuba County, population 24,420, is served also by the Southern Pacific Company and the Western Pacific. As indicated, applicant, in order to avoid the expenditure of \$200,000 to replace the destroyed trestle, proposes to use the trackage of Western Pacific, of which company it is a subsidiary, extending between the latter company's milepost 175.63 and their jointly operated trackage commencing at Western Pacific's milepost 175.09 (Oliver). To accomplish this result, applicant proposes to construct a connecting track between the lines extending from its milepost 39.95 to Western Pacific's milepost 175.63. Construction will begin immediately upon the receipt of our

authority and it will engineering work has and profiles. The 1 pound rail, with the with Western Pacific grade crossing which of 0.6 percent, not The maximum rate of to be constructed. which will include \$17,800 for public in cost of construction will traverse a parso Yuba expects to devel

The trackage-right terms of an agreement between Sacramento Har agreement, Western Pacific, the tracks, and facilities appurtenant such point of connection Western Pacific and the has no intermediate tr joint track.

Applicant will pay rate of \$3.50 for each direction. This amount rate of \$2.50 a t. and the rental, is our written notice by either any change which may be rate.

F. D. No. 19254 - Sheet 4

authority and it will be completed within 4 months. All engineering work has been completed, including surface plans and profiles. The track will be standard gage, laid with 86-pound rail, with the exception of the turnout at the connection with Western Pacific's line which will be 115-pound rail and 1 grade crossing which will be 100-pound rail. A maximum grade of 0.5 percent, not compensated for curvature, is planned. The maximum rate of curve will be 10 degrees. No trestles are to be constructed. Construction cost is estimated at \$138,000, which will include \$25,315 for signals and interlockers and \$17,800 for public improvements. Applicant proposes to pay the cost of construction out of current funds. The proposed track will traverse a parcel of 85 acres of land which the county of Yuba expects to develop in the future as an industrial area.

The trackage-right operation will be conducted under the terms of an agreement made and executed on February 17, 1936, between Sacramento Northern and Western Pacific. Under the agreement, Western Pacific grants applicant the right to construct a connection, and to use in common with Western Pacific, the tracks, including all bridges, structures, signals, and facilities appurtenant thereto, of Western Pacific between such point of connection and the jointly operated tracks of Western Pacific and the applicant at Oliver. However, applicant has no intermediate traffic privileges at any point on the joint track.

Applicant will pay rental for the use of the track at the rate of \$3.50 for each road train traversing it in either direction. This amount is based on the Standard Detour Agreement rate of \$2.50 a train mile. Payment will be made monthly and the rental, is subject to revision from time to time, upon written notice by either party to the other, so as to reflect any change which may be made in the Standard Detour Agreement rate.

Western Pacific will control and management direct the movement of under such reasonable r All such rules and regul not unjustly discriminat visions relate to the ap case of a dispute betwee damage arising out of, o operation. The agreement year to year thereafter 50-year term, one of the to the other, at least 1 terminate the agreement. izing future changes in prior approval.

It is apparent that described and the propos acquisition of the track change in service now fur for the purpose of acqui permit applicant to resu of \$34,000 over the cost and roadbed, and will pr the standpoint of both a;

The trackage-right increase in total fixed guaranty or assumption of railroad has requested to Adequate transportation

Subject to the condi employees, as heretofore Sacramento Northern Rail

F. D. No. 19254 - Sheet 3

Western Pacific will own, maintain, and have the exclusive control and management of the joint tracks and will order and direct the movement of cars, engines, and trains over the tracks under such reasonable rules and regulations as it may adopt. All such rules and regulations must be equal, just and fair, and not unjustly discriminate against either party. Other provisions relate to the appointment of a board of arbitrators in case of a dispute between the parties and liability for loss or damage arising out of, or incidental to, the trackage-right operation. The agreement is for a period of 50 years and from year to year thereafter unless, after the expiration of the 50-year term, one of the parties thereto gives notice in writing to the other, at least 1 year in advance, of its intention to terminate the agreement. We are not to be understood as authorizing future changes in the terms of the agreement without our prior approval.

It is apparent that the proposed abandonment of the segment described and the proposed construction, along with the acquisition of the trackage-rights, will not result in any change in service now furnished by applicant and are not designed for the purpose of acquiring additional traffic, but will permit applicant to resume operation and effect a net savings of \$14,000 over the cost of reconstructing the washed-out trestle and roadbed, and will provide a means of safer operation from the standpoint of both applicant and the general public.

The trackage-right acquisition will not result in any increase in total fixed charges of the applicant, or the guaranty or assumption of dividends or fixed charges. No other railroad has requested to be included in the transaction. Adequate transportation service to the public will be promoted.

Subject to the conditions for the protection of railway employees, as heretofore stated, we find that (1) acquisition by Sacramento Northern Railway of trackage rights over a line of

The Western Pacific Railroad transaction within the Commerce Act, as amended, are just and reasonable, consistent with public interest, convenience and necessity. Northern Railway of a p Yuba County, Calif., an Northern Railway of a o all as described herein

An appropriate order effective as to the above the date operations are authorized to be constructed by Pacific Railroad Company and order also will provide authorized shall be completed on or before suitable provisions for changes in tariffs as necessary and compliance with COMMISSIONER JOHNSON, be proceeding.

F. D. No. 19284 - Sheet 5

The Western Pacific Railroad Company, described herein, is a transaction within the meaning of section 5(2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed are just and reasonable and that the transaction will be consistent with public interest, and (2) the present and future public convenience and necessity (a) permit abandonment by Sacramento Northern Railway of a portion of its line of railroad located in Yuba County, Calif., and (b) require construction by Sacramento Northern Railway of a connecting track in Yuba County, Calif., all as described herein.

An appropriate certificate and order will be entered, effective as to the abandonment permitted herein, from and after the date operations are commenced over the line herein authorized to be constructed and over the tracks of The Western Pacific Railroad Company, as herein authorized. Our certificate and order also will provide that the construction herein authorized shall be commenced on or before June 1, 1956, and be completed on or before December 1, 1956, and will contain suitable provisions for the filing of schedules making such changes in tariffs as may be required, the submission of journal entries and compliance with valuation order No. 24. COMMISSIONER JOHNSON, being absent, did not participate in this proceeding.

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CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington D. C. on the 27th day of April, A. D. 1958.

Finance Docket No. 19284

SACRAMENTO NORTHERN RAILWAY TRACKAGE RIGHTS, ETC.

Investigation of the matters and things involved in this proceeding having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That, subject to the conditions for the protection of railway employees referred to in the report aforesaid, the present and future public convenience and necessity (a) permit abandonment by the Sacramento Northern Railway of the portion of a line of railroad in Yuba County, Calif., and (b) require construction by the Sacramento Northern Railway of the line of railroad in Yuba County, Calif., described in the report aforesaid: Provided, however, and this certificate is issued on the express condition that such construction shall be commenced on or before June 1, 1958, and be completed on or before December 1, 1958.

It is ordered, That, subject to the conditions for the protection of employees, the acquisition by the Sacramento Northern Railway of trackage rights over a line of The Western Pacific Railroad Company in Yuba County, Calif., described in the report aforesaid, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized;

It is further ordered, That the Sacramento Northern Railway shall report to this Commission, in writing, the commencement and the completion of the line herein authorized to be constructed, within 15 days after such commencement and completion, respectively;

It is further ordered, That this certificate and order insofar as it pertains to the abandonment herein permitted, shall take effect and be in force from and after the date operations are commenced over the line herein authorized to be constructed and over the tracks of The Western Pacific Railroad Company, as herein authorized;

It is further ordered, That the Sacramento Northern Railway, when making such changes in tariffs as may be required, may do so upon notice to this Commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and shall in such schedules refer to this certificate and order by title, date, and docket number;

It is further ordered, That, if the authorizations herein granted are exercised, the Sacramento Northern Railway shall submit for our consideration and approval two copies of the journal entries showing the retirement and construction of the lines herein involved.

And it is further
Railway shall report to
order No. 24, effective

By the Commission,

(SEAL)

-2-

And it is further ordered, That the Sacramento Northern
Railway shall report to this Commission as required by valuation
order No. 24, effective May 16, 1928.

By the Commission, division 4.

(SEAL)

HAROLD D. MCCOY,
Secretary.

R.B. Dec #2475

THIS INDENTURE made this 22nd day of December, 1958, by and between SACRAMENTO NORTHERN RAILWAY, hereinafter designated as grantor, and the (SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT,) a public agency, hereinafter designated as grantee,

W I T N E S S E T H :

FIRST: That grantor for and in consideration of the sum of Five Thousand Four Hundred Forty Dollars (\$5,440.00), in hand paid, receipt of which is hereby acknowledged, does hereby grant to said grantee, its successors and assigns, the following described parcels of real property, together with all of the appurtenances thereto and all of the improvements located thereon:

Said parcels of real property are located in the County of Yuba, State of California, and are described as follows:

PARCEL 1: All of the following described 80.00 foot strip of land lying southerly of the southwesterly line of that certain tract of land conveyed by the City of Marysville to the Western Pacific Railway Company by deed recorded November 27, 1906, in Volume 54 of Deeds, page 632, Yuba County Records.

A strip of land 80.0 feet in width, being 40.0 feet on each side of, and parallel with the located centerline of the Northern Electric Company line of railroad as the same is staked out and located over and across the following described parcel of land: Lot 6 of the 1373 acre tract of the new Helvetia Grant south of the Yuba River, containing 116.34 acres. The centerline of said strip or tract of land hereby conveyed being described as follows: Beginning at a point on the south line of Yuba River situated in Lot 6 of the 1373 acre tract in the New Helvetia Grant, in the County of Yuba, said point being 750 feet, more or less, southerly and 962 feet, more or less, westerly from the intersection of the centerlines of "D" Street and First Street, in the City of Marysville, the southerly distance being measured along "D" Street produced and the westerly direction being at right angles thereto, and said point being at Engineer Station L11-235+78 of the located centerline of the Northern Electric Company survey; thence South 12° 29' East 1335.1 feet, more or less, to Engineer Station L11-249+13.1 equals L11-248+99.2 B.C.; thence to the left on a tangent curve of 5729.6 feet, radius 8.8 feet to a point on the boundary line between the property of the City of Marysville, and the property now or formerly owned by George Van Buskirk, said point being 4 feet, more or less, west of the southeast corner of Lot 6 in the above-mentioned tract, and being at Engineer Station L11-249+08 of the Northern Electric Company survey; said strip or tract of land being conveyed herein contains 1.88 acres, more or less.



Yuba

3045

RECORDED AT REQUEST OF Yuba County Title Guarantee Co.

Jan. 7 1959 AT 2:55 P.M. BOOK 207 PAGE 509

OFFICIAL RECORDS, YUBA COUNTY

MILDRED TAPLEY RECORDER BY M. Supter DEP.

No Fee

PARCEL 2: A strip of land 80.0 feet in width, being 40.0 feet on each side of, and parallel with the located centerline of the Northern Electric Company line of railroad as the same is staked out and over and across the following described parcel of land: Fractional South one-half of Lot 6, and North one-half of Lot 7 of the 1373 acre tract of the New Helvetia Grant, South of the Yuba River, containing 60 acres more or less. The centerline of said strip or tract of land hereby conveyed being described as follows: Beginning at a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by the City of Marysville; said point being 4 feet, more or less, North and 74 feet, more or less, West of the southeast corner of Lot 6 in the 1373 acre tract in the New Helvetia Grant in the County of Yuba, and being at Engineer Station L11-249+08 of the located centerline of the Northern Electric Company survey; thence in a southeasterly direction on a tangent curve to the left of 5729.6 foot radius 494.5 feet, more or less, to a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by J. G. Cohn, said point being the centerline of the abandoned Marysville and Sacramento road and 496 feet, more or less, South 6° 00' East along said centerline of road from the southeast corner of Lot 6 of the above-mentioned tract and being at Engineers Station L11-254+02.5 E.C. of the located centerline of the Northern Electric Company survey, said strip or tract of land containing 0.91 acre, more or less.

PARCEL 3: A strip or tract of land 100.00 feet in width, being 50.0 feet on each side of and parallel with the located centerline of the Northern Electric Railway Company line of railroad, as the same is staked out and located over and across the following described parcel of land: Lot or subdivision of the 1373 acres south of the Yuba River opposite the City of Marysville, described as follows: Lot or subdivision 5 and part of lot or subdivision 4, the centerline of said strip or tract of land hereby conveyed being described as follows:

Beginning at a point on the boundary line between the land of the Western Pacific Railway Company formerly owned by the P. George Estate, and the land owned by the Estate of Mrs. Rebecca G. Cohn, et al, said point being distant 60.4 feet East and North 4° 30' west 696.0 feet from the southeast corner of Lot 6 of the 1373 acre tract in the New Helvetia Grant, said point being Engineer Station L15-242+56.9 of the located centerline of the Northern Electric Railway Company survey; thence south 11° 05' east 2221 feet, more or less, to Engineer Station L15-264+77.91 of the located centerline of the Northern Electric Railway Company survey;

EXCEPTING THEREFROM any portion thereof which may lie within the boundary of the real property described in the Deed to Western Pacific Railway Company by deed recorded July 28, 1906, in Volume 54 of Deeds, page 518, Yuba County Records, and also excepting therefrom any portion thereof which may lie within the boundary of the real property described in the Deed to Western Pacific Railway Company by deed recorded January 18, 1907, in Volume 56 of Deeds, page 75, Yuba County Records.

PARCEL 4: A strip or tract of land as hereinafter described being situated on each side of the located centerline of the Northern Electric Company line of railroad which said strip or tract of land is described as follows:

Beginning at the southeast corner of Lot 6 of the 1373 acre tract of the New Helvetia Grant south of the Yuba River, being a portion on the west line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East 40.0 feet to a point on the centerline of said road; thence North $4^{\circ} 30'$ West along said centerline of abandoned road 696.0 feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West 40.0 feet along said line to a point on the west line of the abandoned Sacramento Road; thence North $4^{\circ} 30'$ west 132.0 feet along westerly line of said road, being also the division line between land owned by the City of Marysville and land now or formerly owned by the Western Pacific Railway to a point on the southerly right of way line of Western Pacific Railway; thence North $48^{\circ} 52'$ west along said southerly line of right of way of the Western Pacific Railway 245.5 feet to a point on the easterly line of right of way of Northern Electric Company; thence south $12^{\circ} 29'$ east 1008.0 feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the land of the City of Marysville and land now or formerly owned by George Van Buskirk; thence east along said division line 27.0 feet to the point of beginning, containing 2.55 acres, more or less.

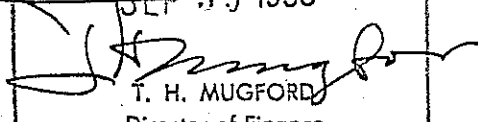
PARCEL 5: A strip of land 150.0 feet in width, being 90.0 feet wide on the westerly side and 60.0 feet wide on the easterly side of the following described centerline:

Beginning at the southerly terminus of the centerline described in Parcel No. 3 above, as aforesaid Engineer Station L15-264+77.91 of the located centerline of the Northern Electric Railway Company survey; thence south $11^{\circ} 05'$ east 200.0 feet to beginning of curve at Engineer Station L15-266+77.91; thence in a southeasterly direction on a tangent curve to the left of 5729.6 feet radius, 641.67 feet to the end of curve at Engineer Station L15-273+19.58 equals L11-273+19.58; thence south $17^{\circ} 31'$ east 4213.72 feet, more or less, to a point on the southerly boundary line of the 1373 acre tract above referred to at Engineer Station L11-315+33.3, said strip or tract of land containing 17.47 acres, more or less.

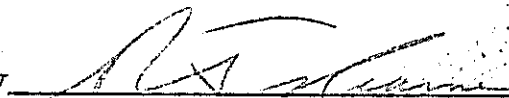
PARCEL 6: Beginning at a point, said point being the most northerly corner of the land conveyed to William C. McIntyre and Glenn E. Clarridge by deed recorded January 7, 1958, in Volume 251 of Official Records, page 283, Yuba County Records, said point also being South $17^{\circ} 29'$ east, a distance of 100 feet from the intersection of the southerly line of that certain tract of land entitled, "Partition of 1373 acre Tract", on file in the office of the County Recorder of the County of Yuba, in Book 12 of Deeds, page 569 and the easterly line of that certain 80 foot strip of land conveyed to Northern Electric Co. by deed recorded September 21, 1907 in Volume 56 of Deeds, page 273, Yuba County Records; thence from said point of beginning, North $17^{\circ} 29'$ west along the easterly line of the land conveyed to said Northern Electric Co., a distance of 100 feet to the southerly line of the Partition of 1373 Acre Tract above referred to; thence westerly along the southerly line of said tract a distance of 80 feet, more or less, to the southwesterly line of the land

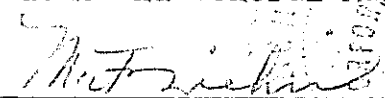
conveyed to said Northern Electric Co., by deed above referred to; thence south 17° 29' east along the southwesterly line of the land conveyed to said Northern Electric Co., a distance of 175 feet to the northerly line of the land conveyed to William C. McIntyre, et al, above referred to; thence north 39° 55' east a distance of 94.96 feet to the point of beginning containing .25 acre, more or less.

IN WITNESS WHEREOF, grantor through its duly authorized agents has hereunto set its hand and seal on the day and year first hereinabove written.

FORM	BUDGET	POLICY	DESCRIPT.
DEPARTMENT OF FINANCE			
APPROVED			
SEP 23 1958			
			
T. H. MUGFORD Director of Finance			

SACRAMENTO NORTHERN RAILWAY

By 
President and General Manager

Attest: 
Secretary

STATE OF CALIFORNIA,)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 12th day of December, 1958, before me,
EMMA N. McCLURE, a Notary Public in and for the City and County
of San Francisco, State of California, residing therein, duly
commissioned and sworn, personally appeared R. T. KEARNEY, known
to me to be the President and General Manager of SACRAMENTO
NORTHERN RAILWAY, the corporation described in and that executed
the within instrument, and he acknowledged to me that such cor-
poration executed the same pursuant to a resolution of its Board
of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and af-
fixed my official seal at my office in the City and County of
San Francisco, the day and year in this certificate first above
written.

Emma N. Mc Clure
Notary Public
in and for the City and County of
San Francisco, State of California.

My Commission expires April 5, 1959.

I, M. F. ZIEHN, Secretary of SACRAMENTO NORTHERN RAILWAY, a California corporation, as such Secretary, do hereby CERTIFY that at a special meeting of the Board of Directors of said corporation held on the 8th day of December, 1958, at which a quorum of said Board was present, a resolution was duly and regularly passed in the words and figures following to wit:

"RESOLVED, that this corporation execute and deliver to SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency, a grant deed conveying the following described parcels of real property, together with all of the appurtenances thereto and all of the improvements located thereon:

Said parcels of real property are located in the County of Yuba, State of California, and are described as follows:

PARCEL 1:

All of the following described 80.00 foot strip of land lying southerly of the southwesterly line of that certain tract of land conveyed by the City of Marysville to the Western Pacific Railway Company by deed recorded November 27, 1906, in Volume 54 of Deeds, page 632, Yuba County Records.

A strip of land 80.0 feet in width, being 40.0 feet on each side of, and parallel with the located centerline of the Northern Electric Company line of railroad as the same is staked out and located over and across the following described parcel of land: Lot 6 of the 1373 acre tract of the new Helvetia Grant south of the Yuba River, containing 116.34 acres. The centerline of said strip or tract of land hereby conveyed being described as follows: Beginning at a point on the south line of Yuba River situated in Lot 6 of the 1373 acre tract in the New Helvetia Grant, in the County of Yuba, said point being 750 feet, more or less, southerly and 962 feet, more or less, westerly from the intersection of the centerlines of 'D' Street and First

Street, in the City of Marysville, the southerly distance being measured along 'D' Street produced and the westerly direction being at right angles thereto, and said point being at Engineer Station L11-235+78 of the located centerline of the Northern Electric Company survey; thence South $12^{\circ} 29'$ East 1335.1 feet, more or less, to Engineer Station L11-249+13.1 equals L11-248+99.2 B.C.; thence to the left on a tangent curve of 5729.6 ^{feet} radius, 8.8 feet to a point on the boundary line between the property of the City of Marysville, and the property now or formerly owned by George Van Buskirk, said point being 4 feet, more or less, west of the southeast corner of Lot 6 in the above-mentioned tract, and being at Engineer Station L11-249+08 of the Northern Electric Company survey; said strip or tract of land being conveyed herein contains 1.88 acres, more or less.

PARCEL 2:

A strip of land 80.0 feet in width, being 40.0 feet on each side of, and parallel with the located centerline of the Northern Electric Company line of railroad as the same is staked out and over and across the following described parcel of land: Fractional South one-half of Lot 6, and North one-half of Lot 7 of the 1373 acre tract of the New Helvetia Grant, South of the Yuba River, containing 60 acres, more or less. The centerline of said strip or tract of land hereby conveyed being described as follows: Beginning at a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by the City of Marysville; said point being 4 feet, more or less, North and 74 feet, more or less, West of the southeast corner of Lot 6 in the 1373 acre tract in the New Helvetia Grant in the County of Yuba, and being at Engineer Station L11-249+08 of the located centerline of the Northern Electric Company survey; thence in a southeasterly direction on a tangent curve to the left of 5729.6 foot radius 494.5 feet, more or less, to a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by J. G. Cohn, said point being the centerline of the abandoned Marysville and Sacramento road and 496 feet, more or less, South $6^{\circ} 00'$ East along said centerline of road

from the southeast corner of Lot 6 of the above-mentioned tract and being at Engineers Station L11-254+02.5 E.C. of the located centerline of the Northern Electric Company survey, said strip or tract of land containing 0.91 acre, more or less.

PARCEL 3:

A strip or tract of land 100.00 feet in width, being 50.0 feet on each side of and parallel with the located centerline of the Northern Electric Railway Company line of railroad, as the same is staked out and located over and across the following described parcel of land: Lot or subdivision of the 1373 acres south of the Yuba River opposite the City of Marysville, described as follows: Lot or subdivision 5 and part of lot or subdivision 4, the centerline of said strip or tract of land hereby conveyed being described as follows:

Beginning at a point on the boundary line between the land of the Western Pacific Railway Company formerly owned by the P. George Estate, and the land owned by the Estate of Mrs. Rebecca G. Cohn, et al., said point being distant 60.4 feet East and North 4° 30' West 696.0 feet from the southeast corner of Lot 6 of the 1373 acre tract in the New Helvetia Grant, said point being Engineer Station L15-242+56.9 of the located centerline of the Northern Electric Railway Company survey; thence south 11° 05' east 2221 feet, more or less, to Engineer Station L15-264+77.91 of the located centerline of the Northern Electric Railway Company survey;

EXCEPTING THEREFROM any portion thereof which may lie within the boundary of the real property described in the Deed to Western Pacific Railway Company by deed recorded July 28, 1906, in Volume 54 of Deeds, page 518, Yuba County Records, and also excepting therefrom any portion thereof which may lie within the boundary of the real property described in the Deed to Western Pacific Railway Company by deed recorded January 18, 1907, in Volume 56 of Deeds, page 75, Yuba County Records.

PARCEL 4:

A strip or tract of land as hereinafter

described being situated on each side of the located centerline of the Northern Electric Company line of railroad which said strip or tract of land is described as follows:

Beginning at the southeast corner of Lot 6 of the 1373 acre tract of the New Helvetia Grant south of the Yuba River, being a portion on the west line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East 40.0 feet to a point on the centerline of said road; thence North $4^{\circ} 30'$ West along said centerline of abandoned road 696.0 feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West 40.0 feet along said line to a point on the west line of the abandoned Sacramento Road; thence North $4^{\circ} 30'$ west 132.0 feet along westerly line of said road, being also the division line between land owned by the City of Marysville and land now or formerly owned by the Western Pacific Railway to a point on the southerly right of way line of Western Pacific Railway; thence North $48^{\circ} 52'$ west along said southerly line of right of way of the Western Pacific Railway 245.5 feet to a point on the easterly line of right of way of Northern Electric Company; thence south $12^{\circ} 29'$ east 1008.0 feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the land of the City of Marysville and land now or formerly owned by George Van Buskirk; thence east along said division line 27.0 feet to the point of beginning, containing 2.55 acres, more or less.

PARCEL 5:

A strip of land 150.0 feet in width, being 90.0 feet wide on the westerly side and 60.0 feet wide on the easterly side of the following described centerline:

Beginning at the southerly terminus of the centerline described in Parcel No. 3 above, as aforesaid Engineer Station L15-264+77.91 of the located centerline of the Northern Electric Railway Company survey; thence south $11^{\circ} 05'$ east 200.0 feet to beginning of curve at Engineer Station L15-266+77.91; thence in a southeasterly direction on a tangent curve to

the left of 5729.6 feet radius, 641.67 feet to the end of curve at Engineer Station L15-273+19.58 equals L11-273+19.58; thence south $17^{\circ} 31'$ east 4213.72 feet, more or less, to a point on the southerly boundary line of the 1373 acre tract above referred to at Engineer Station L11-315+33.3, said strip or tract of land containing 17.47 acres, more or less.

PARCEL 6:

Beginning at a point, said point being the most northerly corner of the land conveyed to William C. McIntyre and Glenn E. Clarridge by deed recorded January 7, 1958, in Volume 251 of Official Records, page 283, Yuba County Records, said point also being South $17^{\circ} 29'$ east, a distance of 100 feet from the intersection of the southerly line of that certain tract of land entitled, 'Partition of 1373 acre Tract', on file in the office of the County Recorder of the County of Yuba, in Book 12 of Deeds, page 569 and the easterly line of that certain 80 foot strip of land conveyed to Northern Electric Co. by deed recorded September 21, 1907 in Volume 56 of Deeds, page 273, Yuba County Records; thence from said point of beginning, North $17^{\circ} 29'$ west along the easterly line of the land conveyed to said Northern Electric Co., a distance of 100 feet to the southerly line of the Partition of 1373 Acre Tract above referred to; thence westerly along the southerly line of said tract a distance of 80 feet, more or less, to the southwesterly line of the land conveyed to said Northern Electric Co., by deed above referred to; thence south $17^{\circ} 29'$ east along the southwesterly line of the land conveyed to said Northern Electric Co., a distance of 175 feet to the northerly line of the land conveyed to William C. McIntyre, et al, above referred to; thence north $39^{\circ} 55'$ east a distance of 94.96 feet to the point of beginning containing .25 acre, more or less.

BE IT FURTHER RESOLVED, that the President and General Manager or any Vice President, and the Secretary or any Assistant Secretary of this corporation be

and they are hereby authorized and directed to execute said deed on behalf of this corporation and in its name and under its seal.

BE IT FURTHER RESOLVED, that the Secretary or any Assistant Secretary of this corporation be and he is hereby authorized and directed to attach to said deed a copy of this resolution duly certified to by him as such Secretary, or Assistant Secretary, and under the seal of this corporation."

I DO FURTHER CERTIFY that said resolution has not been revoked or amended and that the same is now in full force and effect at the time of the execution of the attached deed.

IN WITNESS WHEREOF, I have hereunto signed my name as such Secretary and affixed the seal of said corporation this 12th day of December, 1958.


Secretary of
SACRAMENTO NORTHERN RAILWAY



R E S O L U T I O N

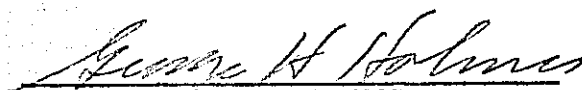
PASSED AND ADOPTED BY THE RECLAMATION BOARDAT MEETING HELD MAY 21, 1947

IT IS RESOLVED AND ORDERED by The Reclamation Board of The State of California that A. M. Barton, as Chief Engineer and General Manager of said Board, is hereby authorized to consent to deeds or grants conveying to the Reclamation Board of the State of California or the STATE OF CALIFORNIA, real estate, or any interest therein, or easements thereon, for public purposes, and to evidence said consent by his written acceptance attached to such deeds or grants, together with a certified copy of this resolution in accordance with Section 1158 of the Civil Code of the State of California.

STATE OF CALIFORNIA)
 County of Sacramento) SS.
 Office of The Reclamation Board)

I, GEORGE H. HOLMES, Secretary of The Reclamation Board, do hereby certify that the above and foregoing is a true and exact copy of a resolution duly passed and adopted by said Board at its regular monthly meeting held May 21, 1947.

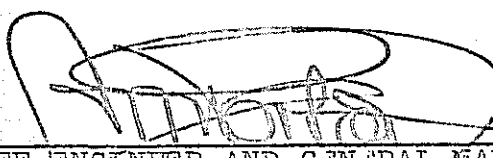
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 18th day of December, 1958.


 GEORGE H. HOLMES
 Secretary
 The Reclamation Board

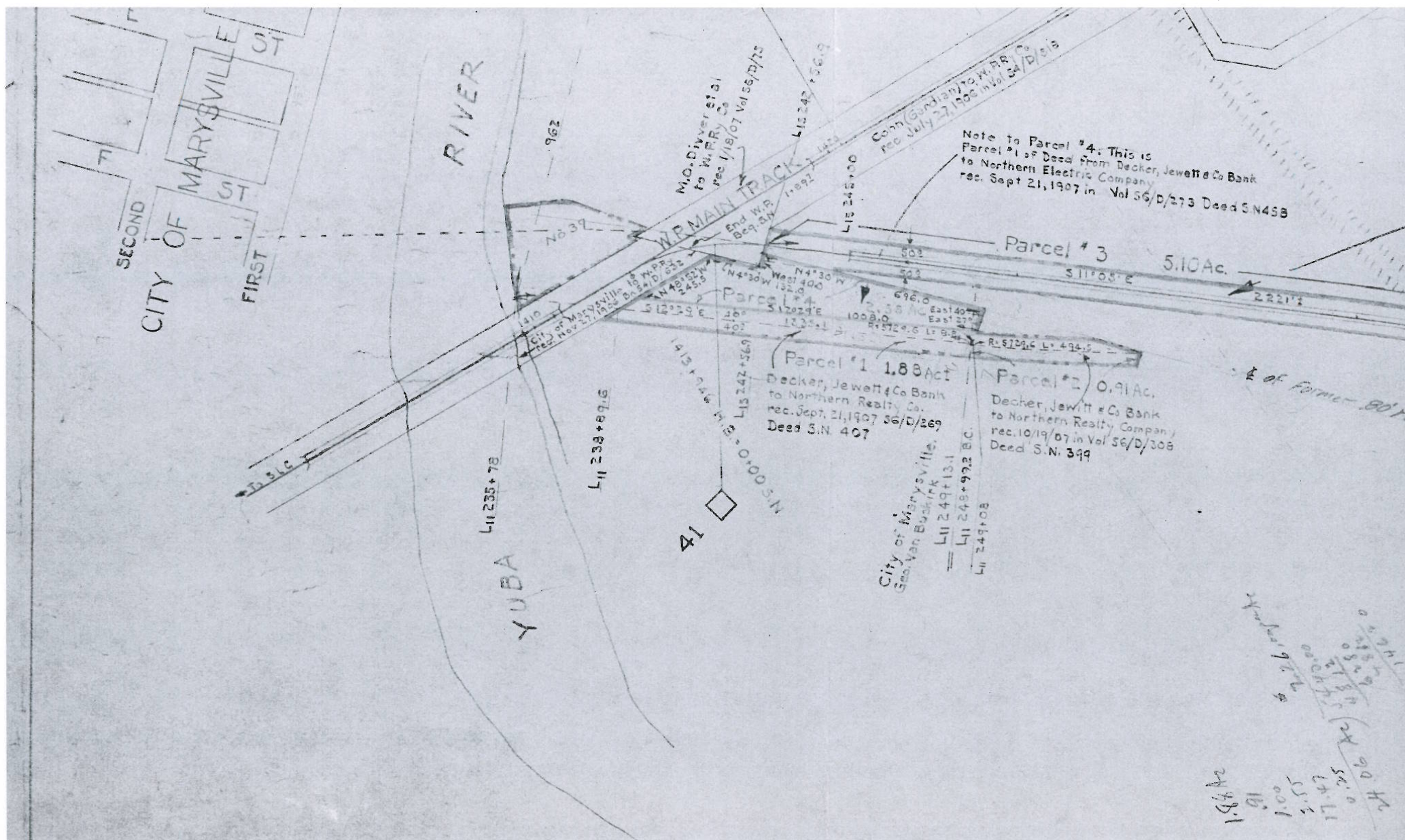
STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO) SS.

This is to certify that I, the undersigned, duly appointed, qualified and acting Chief Engineer and General Manager of The Reclamation Board, do consent to and accept the attached deed or grant by virtue of the authority vested in me by the resolution of said board, a certified copy of which is above set forth.

DATED: December 22, 1958.


 CHIEF ENGINEER AND GENERAL MANAGER,
 The Reclamation Board

ATTACHMENT H, EXHIBIT A



ATTACHMENT H, EXHIBIT A

State parcel where encroachments exist

Note to Parcels 345
Parcels 345 acquired by
Northern Electric Railway Co.
from Geo. Coh et al
rec. Dec. 14, 1909 in Vol 39/D/441
Deed. S.N 441

Note to Parcel #4: This is Parcel #1 of Deed from Becker, Jewette Co Bank to Northern Electric Company rec. Sept 21, 1907 in Vol 56, p. 573 Deed S.N.453

Parcel # 3 5.10Ac.

Parcel #5

Deed 441

YUBA BY PASS

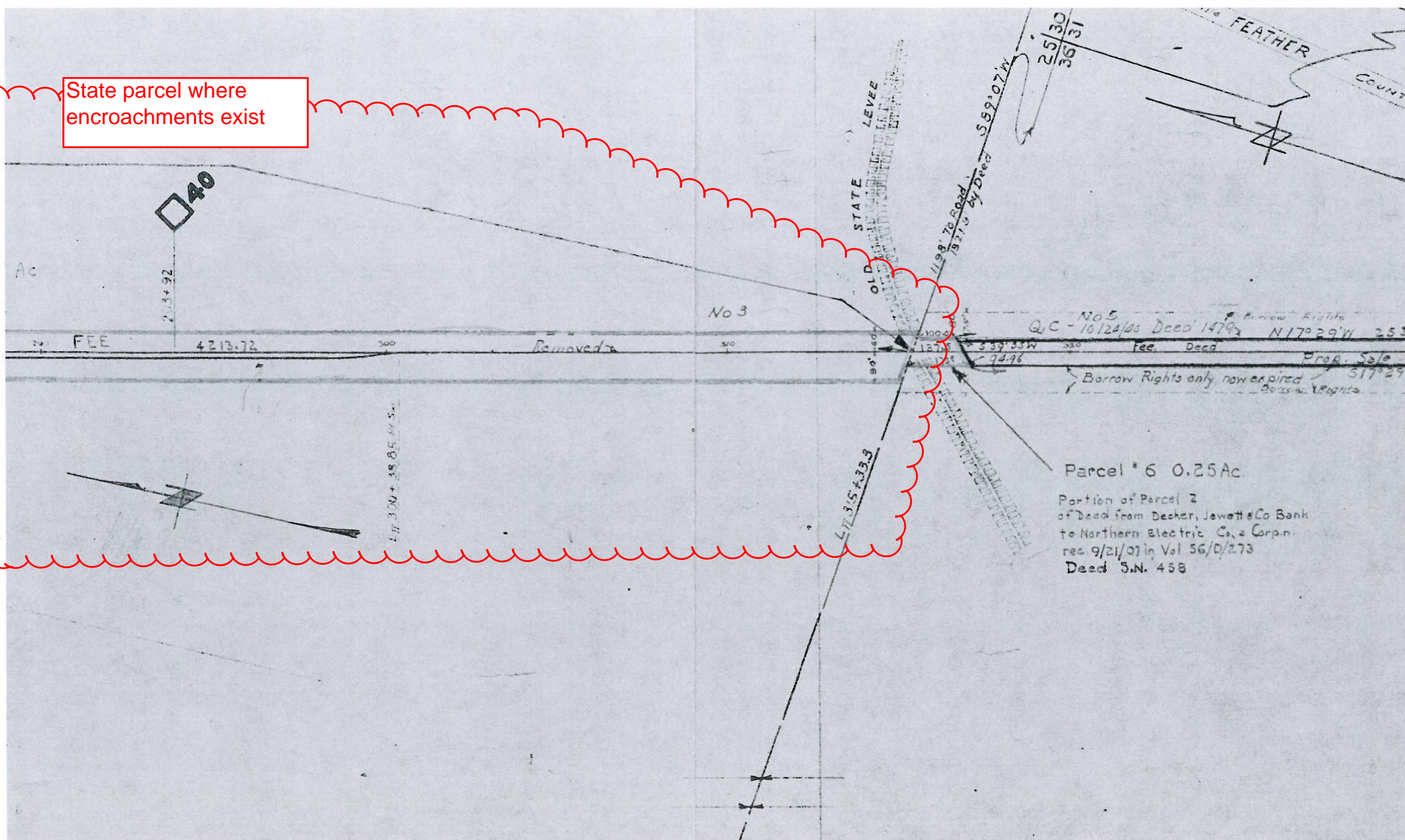
Parcel #2 0.91 AC.
Decher, Jewitt & Co Bank
to Northern Realty Company
rec. 10/19/07 in Vol 56/D/308
Deed S.N. 399

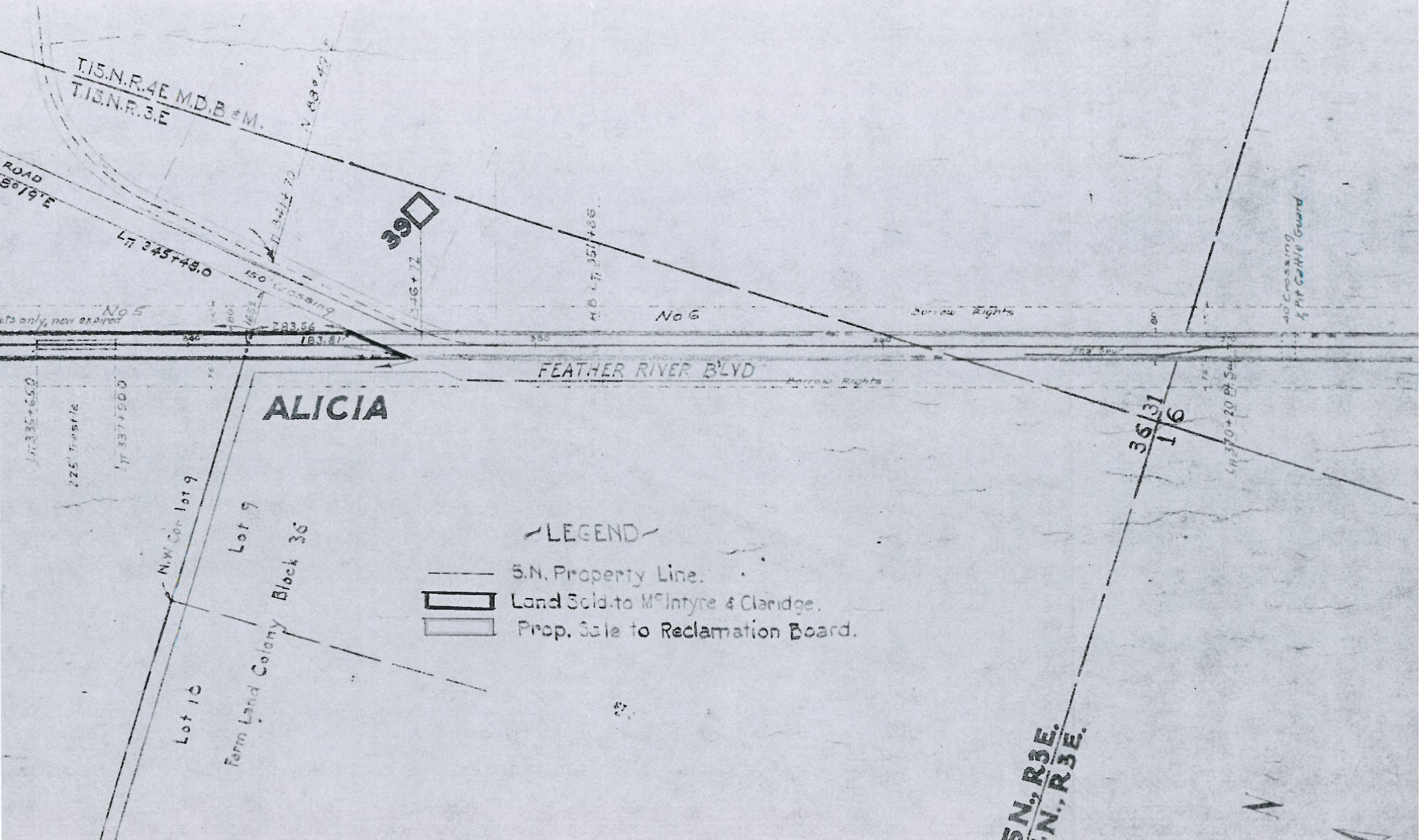
1.88 Act
t Co Bank
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56/D/269

City of Marysville
2nd Van Buren
= LII 249+13-1
= LII 248+992 BC
LII 247+08

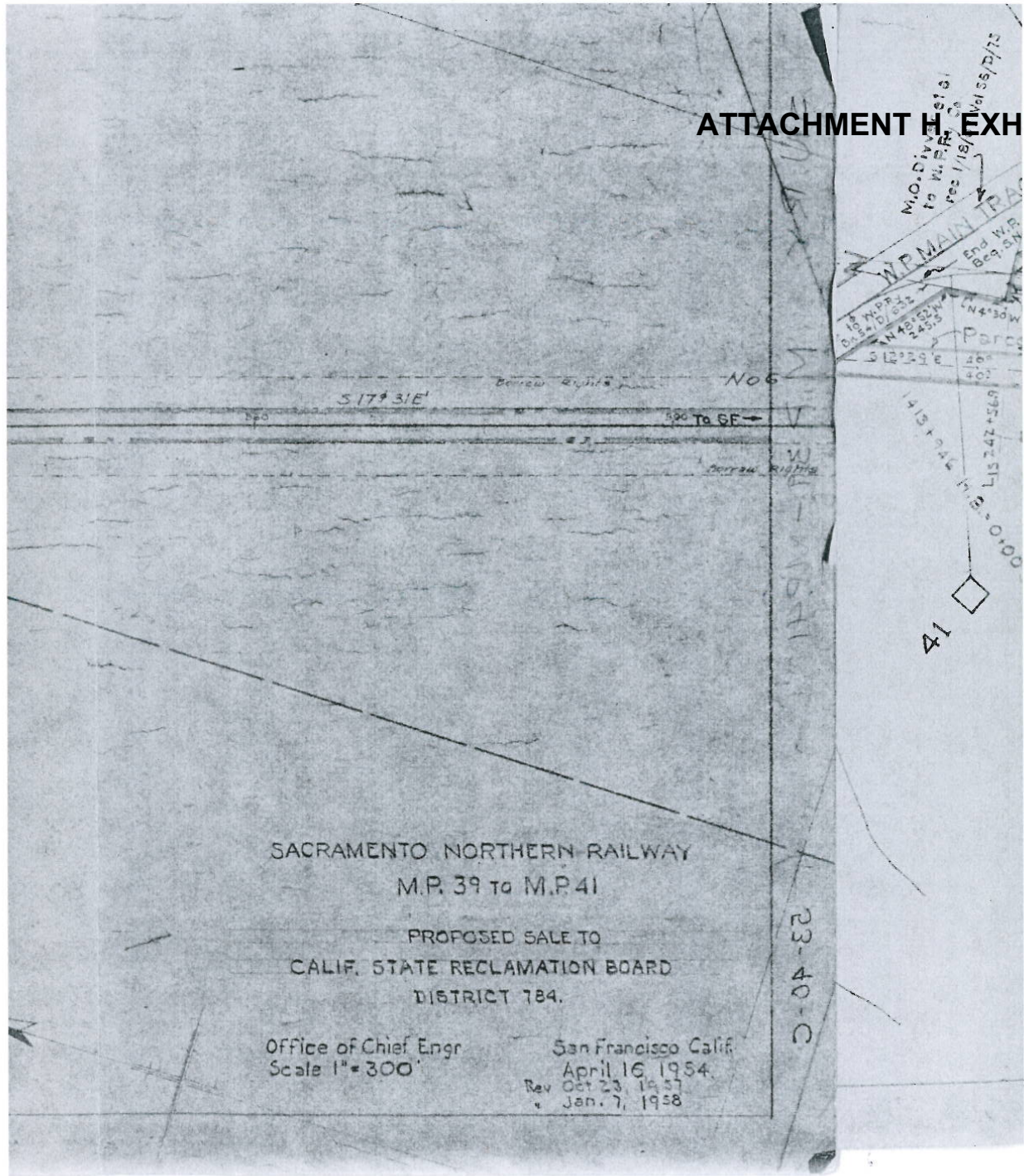
ATTACHMENT H, EXHIBIT A

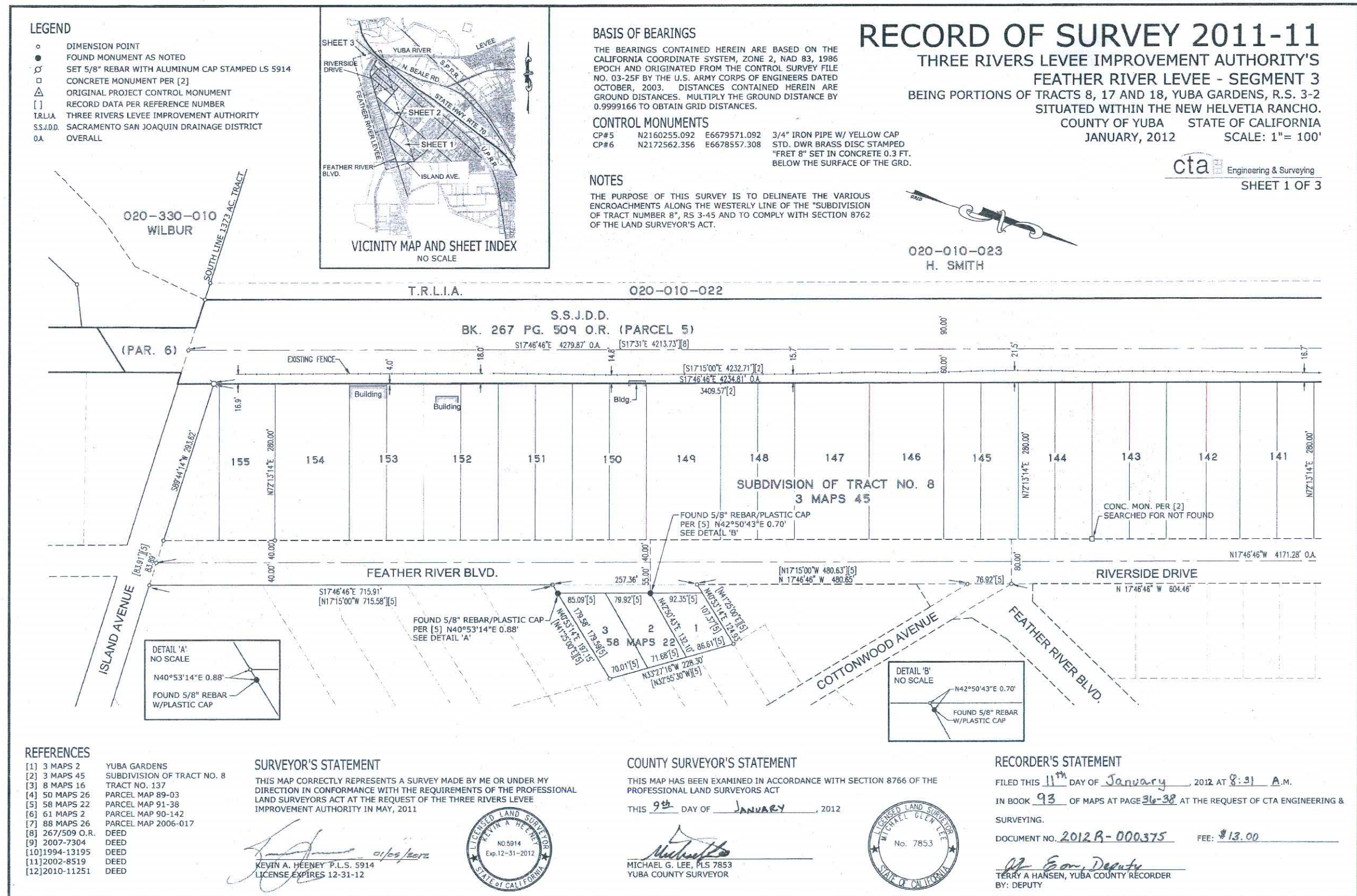
State parcel where
encroachments exist



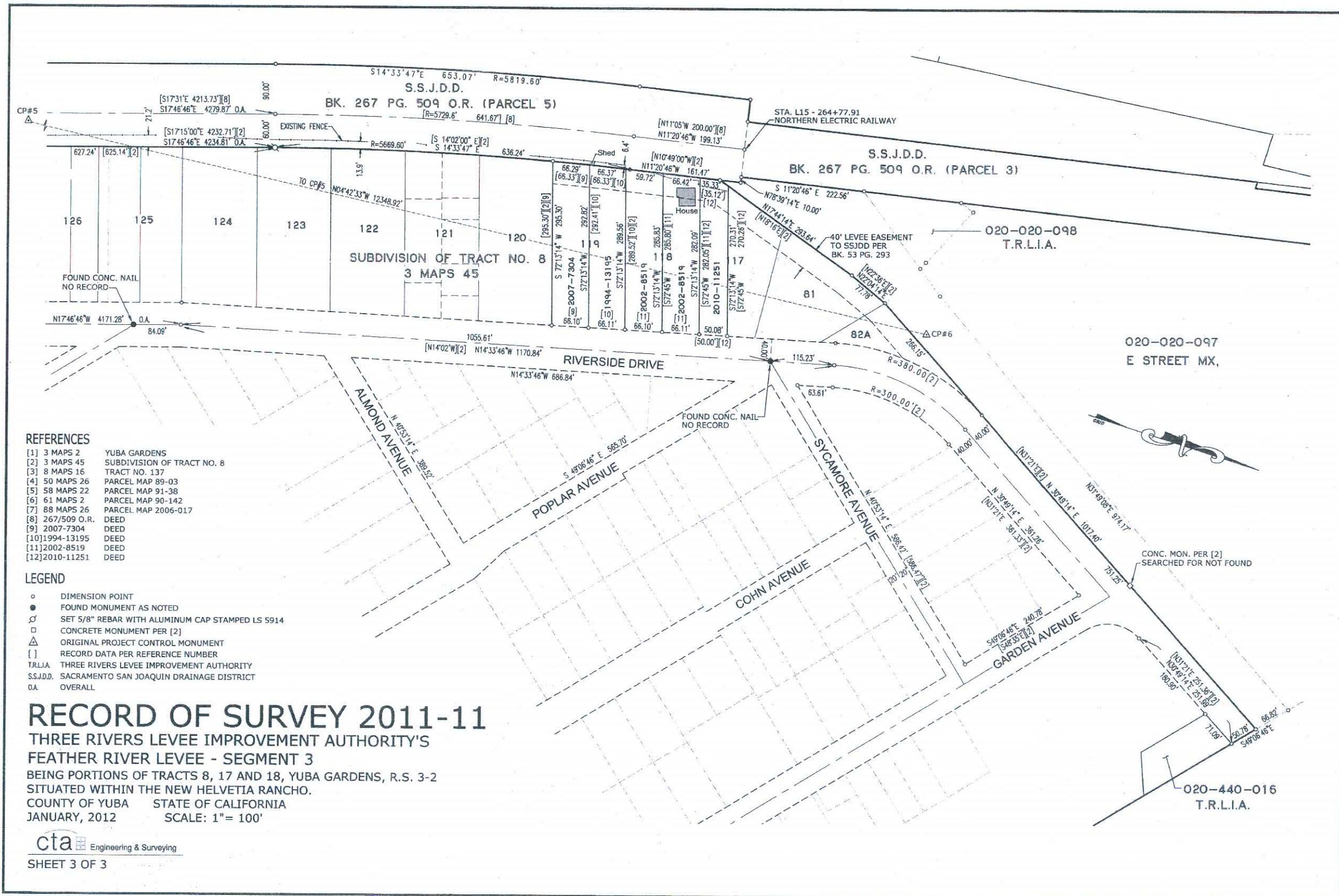


ATTACHMENT H EXHIBIT A









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