

**Meeting of the Central Valley Flood Protection Board  
January 25, 2013**

**Staff Report – Cease and Desist Order for Enforcement Action 2009-29**

**Mr. Jesse Robles, Bear Creek  
San Joaquin County**

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**1.0 – ITEM**

Consider adoption of Cease and Desist Order (*Attachment A*) authorizing the Central Valley Flood Protection Board (“CVFPB”) or its contractor to abate encroachments located on the Bear Creek Project Levee at 4433 Curlew Street in Stockton, California through the removal of the encroachments. Respondent waived the right to a hearing and has failed to respond to previous requests by CVFPB staff to remove the encroachments.

**2.0 – RESPONDENT**

Mr. Jesse Robles  
4433 Curlew Street  
Stockton, California 95219  
Assessor’s Parcel Number (APN) 071-410-85

**3.0 – LOCATION**

The code violations are located on the left (south) levee of the Bear Creek, Unit 8, west of Interstate 5 in the City of Stockton in San Joaquin County. Figures 1a and 1b show the vicinity map and an aerial view of the property, respectively.

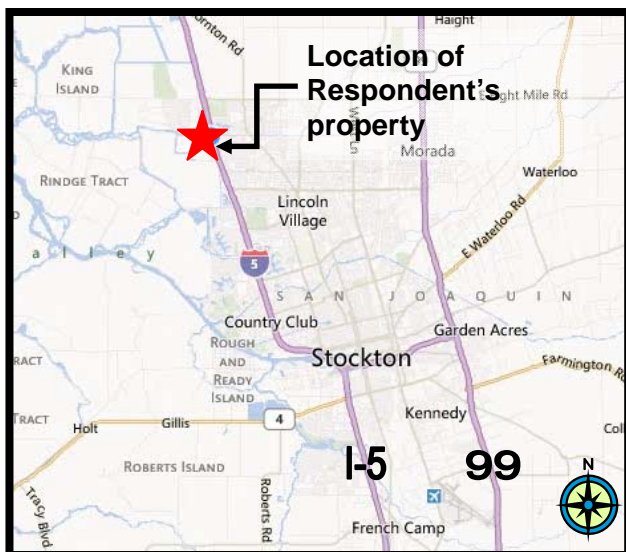


Figure 1a- Vicinity Map of property (Source: Bing maps)

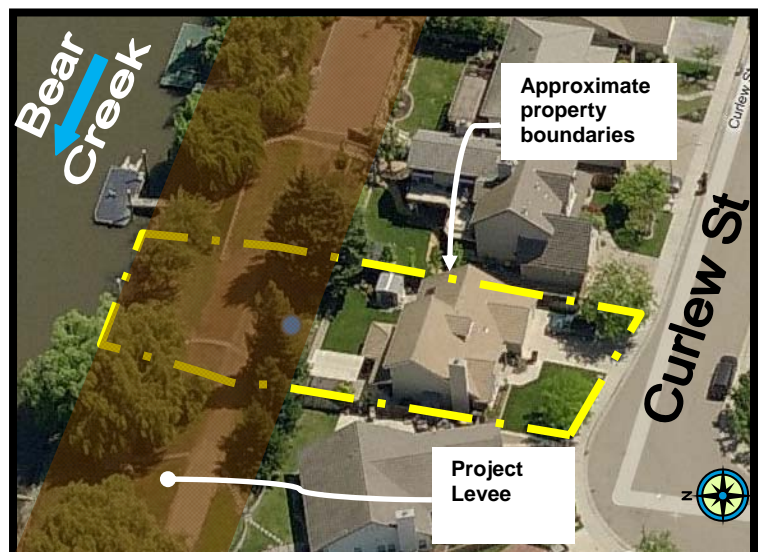


Figure 1b- Aerial view of the property (Source: Bing Maps)

#### **4.0 – STATUS**

On September 1 and 2, 2009, the CVFPB held several permit application hearings in Stockton, California. At these hearings, the CVFPB considered approving permits for existing encroachments on the Bear Creek Project Levee in accordance with CVFPB Regulations (California Code of Regulations Title 23). CVFPB denied issuing permits for existing encroachments that were determined to be inconsistent with Title 23 and directed staff to initiate enforcement proceedings to remove unauthorized encroachments. See *Attachment B* for copy of signed Resolution No. 09-29 signed October 23, 2009. In addition, the CVFPB directed staff to assist the Respondent in determining if the existing landside retaining wall and wrought iron fence was injurious to the adopted plan of flood control. Per letter dated October 12, 2009, CVFPB staff notified the Respondent of these findings. See *Attachment C* for copy of this letter.

On March 24, 2010, the Executive Director issued Enforcement Notice and Order for Enforcement Action 2009-29 to the Respondent ordering removal of existing non-compliant encroachments (See *Attachment D*). Respondent did not submit a request for a hearing within the 30-days noted on the Enforcement Order and therefore waived his right to a hearing. To date, none of the existing encroachments noted on the Enforcement Notice and Order have been removed.

Staff initiated discussions with the Respondent seeking a mutual agreement to address the violations. Initially the Respondent seemed receptive to a settlement proposal; however, to date, staff has not received a response from the Respondent on the presented settlement proposal. Respondent was given sufficient time to comply with issued Enforcement Notice and Order or enter into a settlement agreement with CVFPB. However, the Respondent has chosen neither of these options. Therefore, staff is recommending that the CVFPB approve the attached Cease and Desist Order for Enforcement Action 2009-30 authorizing abatement of the code violations through removal of the encroachments on the Respondent's property.

#### **5.0 – STAFF RECOMMENDATION**

Staff recommends the CVFPB approve the proposed Cease and Desist Order for Enforcement Action 2009-29 authorizing abatement of code violations on the Respondent's property.

#### **6.0 – LIST OF ATTACHMENTS**

- A. Proposed Cease and Desist Order for Enforcement Action 2009-29
- B. Resolution No. 09-29 signed October 23, 2009
- C. CVFPB letter to Respondent dated October 12, 2009
- D. Enforcement Notice and Order 2009-29 dated March 24, 2010

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
 SACRAMENTO, CA 95821  
 (916) 574-0609 FAX: (916) 574-0682  
 PERMITS: (916) 574-2380 FAX: (916) 574-0682

**CEASE AND DESIST ORDER**

**Property Owner:** Mr. Jesse Robles  
**Mailing Address:** 4433 Curlew Street  
 Stockton, CA 95219

**Date:** January 25, 2013  
**Enforcement Action:** 2009-29

**Encroachment Location:** Bear Creek, Project Levee (South Bank), Unit 8, Levee Mile 0.77  
**Local Maintaining Agency:** San Joaquin County Flood Control and Water Conservation District  
**Assessor Parcel Number:** 071-410-85

**Description:** The State of California - Central Valley Flood Protection Board (CVFPB) staff has documentation that encroachment violations of the State Plan of Flood Control exist within its jurisdiction at this location consisting of the following:

- |  |  |
|--|--|
| 1. Perpendicular wood property fence and posts on the landside slope | 2. Sprinkler system on the land and waterside levee slopes                       |
| 3. 3 Fir trees on the landside levee slope.                          | 4. Electrical outlet on the landside levee slope                                 |
| 5. Hose bib on the landside levee toe                                | 6. Electrical lights on the landside levee toe                                   |
| 7. Retaining wall on the landside toe                                | 8. Wrought iron fence on the landside slope                                      |
| 9. Tree on the waterside berm  | 10. Shrubs, bushes and vegetation over 12-inches in height on the landside slope |

**Regulations:** These encroachments are in violation of provisions in the California Water Code and the California Code of Regulations (CCR) Title 23 Waters, Division 1 and United States Army Corps of Engineers (USACE) Code of Federal Regulations Title 33, Part 208 – Flood Control Regulations. These provisions are as follows:

1. 33 CFR 208.10 Local flood protection works; maintenance and operation of structures and facilities.
2. California Water Code Section 8707 Flood Control – Removal and Alteration of Existing Structures.
3. California Water Code Section 8708 Flood Control - Interference with maintenance & operation of works.
4. California Water Code Section 8709 Flood Control - Public Nuisance; Abatement.

**Conditions:** You are ordered to remove the listed unauthorized encroachments within thirty (30) days of receipt of this cease and desist order in accordance with the conditions provided herein. To comply with this cease and desist order, please schedule a compliance inspection 10 days prior to starting the removal work.

**Past Notices:** You were previously issued an Encroachment Removal Enforcement Notice dated March 24, 2010 requiring removal of listed violations. This notice is attached to this package as Exhibit A.

**Failure to Comply:** If you do not comply with this cease and desist order within thirty (30) days of receiving the order, the Central Valley Flood Protection Board, or a contractor hired by the Central Valley Flood Protection Board shall abate the violations through physical removal of the encroachments, and the CVFPB may recover any costs incurred from the property owner.

**Staff Contact:** The staff member assigned to this enforcement action is: Angeles Caliso, Staff Engineer, Enforcement Section; E-mail: [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov); Desk: (916) 574-2389.

Signed,

Jay S. Punia  
 Executive Officer

Attachments:

1. Cease and Desist Order Conditions
- Exhibit A: Encroachment Removal Enforcement Notice dated March 24, 2010

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. LL40  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682

**CEASE AND DESIST ORDER CONDITIONS****GENERAL CONDITIONS:**

1. These enforcement conditions are issued under the provisions of Sections 8700-8723 of the California Water Code and the provisions of the California Code of Regulations, Title 23 Waters, Division 1, Article 8 Standards.
2. The property owner is responsible for all personal liability and property damage which may arise out of failure on the property owner's part to perform the obligations under this enforcement order. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the property owner shall hold each of them harmless from each claim.
3. Should any of the work not conform to the conditions of this order, the Central Valley Flood Protection Board or its contractor, shall remove all or any part of the work herein described and may recover the costs and expense of such removal from the property owner.

**REMOVAL CONDITIONS:**

4. The Property Owner shall contact the Enforcement Section by telephone at (916) 574-0609, to schedule an inspection conference at least 10 working days prior to start of work.
5. Encroachment removal work defined by this order can be completed during the flood season from November 1<sup>st</sup> through April 15<sup>th</sup> provided that the proposed work schedule and forecast for weather and river conditions are approved by the inspector.
6. The code violations noted on the Cease and Desist Order shall be removed and disposed of outside the floodway and Sacramento San Joaquin Drainage District's easement.
7. Backfill all voids following the removal of the unauthorized encroachments within the levee section and easement area.
8. Fill material shall be placed in 4-inch to 6-inch layers, moisture conditioned with water or by drying to +/- 2 percent of optimum moisture content, and compacted with a vibratory plate compactor or hand operated hammer to a minimum of 97 percent relative compaction as measured by ASTM Method D698.
9. Levee fill material must be free of stones or lumps exceeding three (3) inches in greatest dimension, and must be free of vegetative matter or other unsatisfactory materials.
10. Fill on levee section shall be keyed into the existing levee section whenever there is substantial fill, as determined by the inspector.
11. The finished slope of the levee must be 3:1 (Horizontal: Vertical) on the waterside and 2:1, on the landside of the levee.
12. Levee surfaces left barren due to encroachment removal shall be re-vegetated with sod or seeded grass.

## ATTACHMENT B

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 09-29

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF  
ENCROACHMENT PERMIT NO. 18418

MR. JESSE AND MRS. MARIE ROBLES, 4433 CURLEW STREET, STOCKTON, CA 95219  
BEAR CREEK, SAN JOAQUIN COUNTY

**WHEREAS**, Mr. Jesse and Mrs. Marie Robles (applicant) is owner of a residential property known as San Joaquin County Assessor's Parcel No. 071-410-85, also known by the address of 4433 Curlew Street, Stockton, California 95219 in Section 7, Township 2 North, Range 6 East, Mount Diablo Base and Meridian; and

**WHEREAS**, the property is one of eight on lower Bear Creek, west of Interstate 5 located within the federal Bear Creek Flood Control Project completed July 1964; and

**WHEREAS**, the former Reclamation Board signed assurances to the United States Army Corps of Engineers (Corps) on January 16, 1962 and February 3, 1965 (Staff Report Attachment D) to hold the Corps harmless and to maintain and operate all Project works in accordance with regulations prescribed by the Secretary of the Army; and

**WHEREAS**, the Reclamation Board signed a similar assurance agreement with the San Joaquin County Flood Control and Water Conservation District (County) for Operation and Maintenance of the project on December 12, 1960 (Staff Report Attachment E); and

**WHEREAS**, by letter dated March 30, 2007 (Staff Report Attachment F), the Corps found the Bear Creek Project levee system to be "unacceptable" due to "maintenance deficiencies" primarily due to unauthorized urban homeowner encroachments; and

**WHEREAS**, on January 1, 2008, the new Central Valley Flood Protection Board (Board) came into being, and assumed all of the responsibilities of the former Reclamation Board; and

**WHEREAS**, the lack of progress to remove the unauthorized encroachments resulted in the Corps on February 27, 2009 officially removing this portion of the Bear Creek project (Unit 8, levee mile 0.0 to Interstate 5) PL 84-99 rehabilitation and inspection program – a funding mechanism by which the Corps repairs levees if damaged during a flood event; and

**WHEREAS**, the Corps also on February 27, 2009 rescinded the previous levee certification for this portion of the Bear Creek Project; and

**WHEREAS** the County is now required to substantiate to the Corps and the Federal Emergency Management Agency (FEMA) that the Bear Creek Project provides 100-year flood protection as per the Provisionally Accredited Levee agreement signed by the County in 2008; and

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**WHEREAS**, failure to restore the Bear Creek Project up to at least a “minimally acceptable” inspection rating by April 1, 2010 is likely to result in FEMA remapping the area into the 100-year floodplain, potentially forcing up to 383 local homeowners to purchase flood insurance; and

**WHEREAS**, one prior Reclamation Board permit (No. 16942– Staff Report Exhibit C) has been issued for the 4433 Curlew Street property by the General Manager as delegated by CCR, Title 23, Article 2, Section 5; and

**WHEREAS**, Permit No. 16942 was issued on November 10, 1998 by Automatic Board Order (ABO) per CCR, Title 23 Article 6, Section 108, item (a) (1) (Staff Report Attachment G) to address longstanding unauthorized encroachment issues along this portion of the Bear Creek Project. Permitted items included: brick walkway on the crown; concrete steps on the waterside slope; brick and concrete steps, two crepe myrtle trees, one lime tree, three fir trees, a sprinkler system, and a solid board fence on the landside slope; a 2-foot high retaining wall, electric lights, a hose bib, concrete mowing strip, and an electric outlet on the landside levee toe. These encroachments were installed or constructed on the project right-of-way prior to applying or obtaining a permit from the Board; and

**WHEREAS**, Permit No. 16942 was not reviewed nor endorsed by the County or the Corps; and

**WHEREAS**, in accordance with the provisions of Title 33, Code of Federal Regulations (CFR) section 208.10 (Section 208.10), all permit requests for construction of improvements of any nature within the limits of a federal project right-of-way shall be referred to the Corps District Engineer for review. Therefore, Permit No. 16942 is not recognized by the Corps and all encroachments previously authorized by the Board under this permit is now considered unauthorized by the Corps and must be removed or properly permitted; and

**WHEREAS**, the applicant prepared and submitted an application for a new Board encroachment permit on August 21, 2008, which was revised and re-submitted on January 14, 2009 and was accepted by the Board on October 6, 2008 and assigned application No. 18418; and

**WHEREAS**, application No.18418 requests authorization of the following existing encroachments:

- Item 1: A 8-by 22-foot boat dock,
- Item 2: Two (2) 9-inch diameter steel pilings,
- Item 3: A 4-foot wide gangway,
- Item 4: A 6-by-6-foot concrete landing,
- Item 5: A brick walkway on the levee crown,
- Item 6: A sprinkler system on the land and waterside slopes,
- Item 7: Concrete steps on the land and waterside levee slopes,
- Item 8: Three (3) Fir trees on the landside slope,
- Item 9: A 2-foot, 4-inch high retaining wall on the landside slope,
- Item 10: A wrought iron fence above retaining wall on the landside slope,
- Item 11: A concrete mowing strip on the landside toe,
- Item 12: An electrical outlet on the landside toe;

**ATTACHMENT B**

Item 13: Hose bib on the landside toe, and

Item 14: Lights on the landside toe; and

**WHEREAS**, any encroachments not identified on application No. 18418 cannot be considered by the Corps at this time. Any additional existing encroachments will need to be addressed with a future encroachment permit application from the applicant; and

**WHEREAS**, the County conditionally endorsed the application with general and special site-specific conditions on letter dated June 17, 2009 (Exhibit B). The County's special site-specific conditions for this application are as follows:

1. Water irrigation pipes buried below ground within ten-feet of levee toe shall have a shut-off valve that is clearly marked, accessible and located at least ten-feet from the landside levee toe.
2. Electrical conduit buried below ground at landside levee toe and within ten-feet of the toe shall have a sub-panel that is clearly marked and located at least ten-feet from the landside levee toe to cut off power when required.
3. Remove or trim all vegetation on the landside slope to comply with the Interim Levee Vegetation Inspection Criteria.

**WHEREAS**, in accordance with provisions of CFR Section 208.10 by August 21, 2009 letter (Permit Exhibit A), the Corps' District Engineer stated no objections to approval of the following:

Item 1: A 8-by 22-foot boat dock,

Item 2: Two (2) 9-inch diameter steel pilings,

Item 3: A 4-foot wide gangway, subject to removal of existing railing, as it can collect debris.

Item 4: A 6-by-6-foot concrete landing,

Item 5: A brick walkway on the levee crown,

Item 7: Concrete steps on the land and waterside levee slopes, and

Item 11: A concrete mowing strip on the landside toe; and

**WHEREAS**, also by August 21, 2009 letter, the Corps' District Engineer recommended denial of the following existing unauthorized encroachments pursuant to CFR Section 208.10:

Item 6: A sprinkler system on the land and waterside slopes,

Item 8: Three (3) Fir trees on the landside slope,

Item 9: A 2-foot, 4-inch high retaining wall on the landside slope,

Item 10: A wrought iron fence above retaining wall on the landside slope,

Item 12: An electrical outlet on the landside toe,

Item 13: Hose bib on the landside toe, and

Item 14: Lights on the landside toe; and

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**WHEREAS**, the Corps' application review determined that the sprinkler system will keep the levee slopes well saturated and any malfunction of the system may lead to excessive erosion of the levee slope; and

**WHEREAS**, the Corps' application review also determined that the retaining wall may penetrate the levee prism and therefore pose a threat to the structural integrity of the levee;

**WHEREAS**, the Corps' application review also determined that plantings other than grasses are not allowed within the levee right-of-way, and concludes that the items listed above create potential operation and maintenance deficiencies; and

**WHEREAS**, Special Condition TWENTY THREE in existing permit No. 16942 state "*The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause.*"; and

**WHEREAS**, Special Condition TWENTY-ONE in Permit No. 16942, states "*All shrubs exceeding 1 foot in height on the levee and within 10 feet from the toe of the levee on either side shall be removed*"; and

**WHEREAS**, the above Corps recommendations and determinations constitute substantial evidence that these encroachments may interfere with the maintenance, performance or functioning of the Bear Creek project and an adopted plan of flood control pursuant to Water Code sections 8708, 8709 and 8723; and

**WHEREAS**, pursuant to Water Code section 8708, because the State has given assurances to the Corps that the State will maintain and operate federal flood control works in accordance with federal law, the encroachments denied by the Corps should be removed because the Corps has determined that they now or will interfere with the maintenance or operation of the flood control works; and

**WHEREAS**, pursuant to Water Code section 8709, because the denied encroachments "may interfere with or obstruct the operation or maintenance" of the flood control works, the encroachments constitute a public nuisance. Therefore, if the permittee fails to remove the existing denied encroachments, the Board may commence or authorize actions to abate such nuisance; and

**WHEREAS**, under Water Code section 8723 and Title 23, Code of Regulations section 15(a)(8) the Board may deny a permit if the proposed work could be injurious to, or interfere with, the successful execution, functioning, or operation of any adopted plan of flood control. The Lower Bear Creek Levee and Channel are within an adopted plan of flood control, and therefore denial of non-conforming encroachments is supported by Regulation; and



**ATTACHMENT B**

**WHEREAS**, Board Staff has found that encroachments not conforming with Title 23 Regulations can affect levee integrity, operations and maintenance, flood fighting, and/or channel capacity; and

**WHEREAS**, at a public hearing on September 1, 2009, Board staff presented technical findings which concluded that some types of encroachments can adversely impact levee performance; and

**WHEREAS**, for all these reasons and independent analysis, staff concurs with the Corps' recommendations and recommend that the Board act in accordance with the Corps' recommendations to deny features of the project application, as listed above, and as stated above Special Conditions are applicable that Permit 18418 should supersede Permit No. 16942; and

**WHEREAS**, the Board, acting as the CEQA lead agency, has determined the project is categorically exempt in accordance with CEQA Guidelines Section 15301 covering permitting of existing private structures or topographical features under Class 1 (a) exterior alterations; (h) existing landscaping and Section 15321 under Class 21 (a) actions of regulatory agencies to enforce standards or revoke a permit to enforce standards; and

**WHEREAS**, the Board has conducted a hearing and has reviewed the application for encroachment permit, the Figures, Attachments, and References Reports listed in the Staff Report, the documents and correspondence in its file, and the environmental findings;

**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.
2. The Board has reviewed the Figures, Attachments, and References listed in the Staff Report.

**CEQA Findings.**

3. The Board, acting as the CEQA lead agency, has determined the project is categorically exempt in accordance with CEQA Guidelines Section 15301 covering permitting of existing private structures or topographical features under Class 1 (a) exterior alterations; (h) existing landscaping and Section 15321 under Class 21 (a) actions of regulatory agencies to enforce standards or revoke a permit to enforce standards.
4. The Board, after consideration of the application and staff report, adopts the project description, analysis and findings which are relevant to activities authorized by the issuance of a final encroachment permit No. 18418 to Jesse and Marie Robles.

**ATTACHMENT B**

5. **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 LL40, Sacramento, California 95821.

**Findings pursuant to Water Code section 8610.5**

6. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including the application, Staff Report and addendum, CEQA findings, Corps recommendations, and County analysis and survey. The Board has also considered all letters and other correspondence received by the Board and in the Board's files related to this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board, 3310 El Camino Avenue, Room LL40, Sacramento, California 95821.

6. **Best Available Science.** In making its findings the Board has used the best available science relating to the issues presented by all parties. The accepted industry standards for the work proposed (authorize existing encroachments) under this permit as regulated by Title 23 have been applied to the review of this permit.
7. **Effects on State Plan of Flood Control.** Once all existing encroachments denied for authorization are removed the resulting project will help prevent potential adverse future impacts to the operation and maintenance of the Bear Creek Project portion of the State Plan of Flood Control.
8. **Effects of reasonably projected future events.** Staff has determined no immediately identifiable adverse effects due to reasonably projected future events, such as changes in hydrology, climate, and development within the applicable watershed. Long-term sea level rise impacts on the Delta and its immediate vicinity could result in future determinations that project levees, including those of the Bear Creek Project could require raising to maintain sufficient flood risk reduction levels, but these impacts have not been studied specifically for this project.

**Other Findings / Conclusions Regarding Issuance of a Permit.**

9. Based on the foregoing the Board finds and concludes that the issuance of Encroachment Permit No. 18418 to Mr. Jesse and Mrs. Marie Robles, is in the interest of the State with the following approvals and denials:

The Board hereby approves authorization of the following existing encroachments:

- Item 1: A 8-by 22-foot boat dock,
- Item 2: Two (2) 9-inch diameter steel pilings,
- Item 3: A 4-foot wide gangway,
- Item 4: A 6-by-6-foot concrete landing,
- Item 5: A brick walkway on the levee crown as conditioned on page 3 of the Corps' August 21, 2009 letter

**ATTACHMENT B**

Item 7: Concrete steps on the land and waterside levee slopes as conditioned on page 3 of the Corps' August 21, 2009 letter, and

Item 11: A concrete mowing strip on the landside toe.

The Board hereby denies authorization of the following existing encroachments:

Item 6: A sprinkler system on the land and waterside slopes,

Item 8: Three (3) Fir trees on the landside slope,

Item 12: An electrical outlet on the landside toe,

Item 13: Hose bib on the landside toe, and

Item 14: Lights on the landside toe.

The Board staff is directed to assist the applicant so that they may compile and submit any and all additional evidence and supporting analyses necessary for Board, Corps and San Joaquin County staffs to determine if the following items are injurious to the adopted plan of flood control or to the levee:

Item 9: A 2-foot, 4-inch high retaining wall on the landside slope, and

Item 10: A wrought iron fence above retaining wall on the landside slope.

10. This resolution shall constitute the written decision of the Board in the matter of Permit No. 18418.

11. The Board direct Executive Officer to issue Permit No. 18418, with the description based on adopted resolution.

**Approval of Encroachment Permit No. 18418**

12. Based on the foregoing, the Central Valley Flood Protection Board hereby directs the Executive Officer to develop and issue Encroachment Permit No. 18418 in concurrence with Resolution No. 09-29, and Corps recommendations, and to supersede permit No. 16942.

13. The Board directs the Executive Officer to take the necessary actions to prepare and execute this permit and all related documents, along with preparing and filing a Notice of Exemption under the California Environmental Quality Act.

**Removal of Unauthorized Encroachments.**


14. The Board authorizes the Executive Officer to begin enforcement proceedings in accordance with CCR, Title 23, Division 1, Chapter 1, Article 4, Sections 20 and 21 to remove unauthorized encroachments listed in paragraph 16 below.

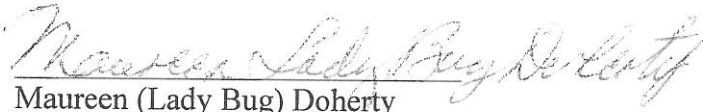
15. The Removal Notice shall state that existing flood project encroachments in violation of Federal and State regulations shall be removed within thirty (30) days after service of the Enforcement Order.

16. The unauthorized existing encroachments to be removed are:

- Item 6: A sprinkler system on the land and waterside slopes,
- Item 8: Three (3) Fir trees on the landside slope,
- Item 12: An electrical outlet on the landside toe,
- Item 13: Hose bib on the landside toe, and
- Item 14: Lights on the landside toe.

PASSED AND ADOPTED by vote of the Board on October 23, 2009

  
\_\_\_\_\_  
Benjamin F. Carter  
President

  
\_\_\_\_\_  
Maureen (Lady Bug) Doherty  
Secretary

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. LL40  
SACRAMENTO, CA 95821  
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PERMITS: (916) 574-0685 FAX: (916) 574-0682



October 12, 2009

Mr. Jesse Robles  
4433 Curlew Street  
Stockton, California 95219

Subject: Retaining wall analysis summary

Dear Mr. Robles:

Thank you for your continued cooperation and for providing additional information regarding the retaining wall built into the levee on your property. As you know, Central Valley Flood Protection Board staff was directed by the Board at the Special Hearing held on September 1, 2009 to assist you in gathering additional evidence to determine if the retaining wall is injurious to the adopted plan of flood control. This letter is to provide you with a summary of the analysis that was completed by Board staff based on the additional information you provided and field measurements from our site visit on September 16, 2009.

The retaining wall was analyzed for stability, which includes checking the following three components: soil bearing capacity, overturning, and sliding. All three components have a minimum design factor of safety which must be met. The retaining wall passed bearing capacity but failed on sliding and overturning (see Attachment A for details on the calculations). We commend you for a well-built retaining wall, which would be adequate for most standard uses. Unfortunately, when retaining walls are used to support critical facilities such as levees, the forces on the wall are higher than normal and therefore, the factor of safety gains greater importance.

Based on this analysis, engineering staff recommendation remains that the wall and fence must be removed. Staff recommends that a new fence be constructed along the right-of-way which would address your safety concerns while providing access for maintenance and flood fighting. Please note that an encroachment permit will be required to construct the new fence.

Once again, we thank you for your cooperation. Our staff does not make these decisions without carefully considering the inconvenience caused by removal of these encroachments. Should you have any questions, feel free to contact staff engineer Angeles Caliso at (916) 574-2386 or via Email at [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov).

Sincerely,

Len Marino, P.E.  
Chief Engineer

Jesse Robles  
October 12, 2009  
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**Attachments**

A: Retaining wall analysis calculations

B: Site visit photos 9-16-09

cc: Ms. Meegan Nagey, Chief  
Flood Protection & Navigation Section  
U.S. Army Corps of Engineers  
Sacramento District Office  
1325 J Street  
Sacramento, California 95814-29

Mark W. Connelly  
San Joaquin Flood Control & Water Conservation District  
1810 East Hazelton Avenue  
Stockton, California 95201



Retaining wall & wrought iron fence along the landside levee toe on Mr. Robles' property

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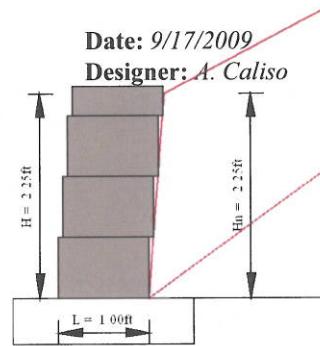


**RETAINING WALL DESIGN**  
Version 3.6.2 Build 16

**Project:** Robles Retaining wall  
**Project No:** 18418  
**Case:** Case 1  
**Design Method:** Rankine-w/Batter (modified soil interface)

**Design Parameters**

<b>Soil Parameters:</b>	$\phi$	$c$ psf	$\gamma$ pcf
Retained Zone	28	0	115
Foundation Soil	28	0	115
<b>Unit Fill:</b>	Crushed Stone, 1 inch minus		



**Minimum Design Factors of Safety**

sliding:	1.50	pullout:	1.50	uncertainties:	1.50
overturning:	2.00	shear:	1.50	connection:	1.50
bearing:	3.00	bending:	1.50		

**Analysis:**

<b>New Case</b>		<b>Case: Case 1</b>
Unit Type:	Compac / 120.00 pcf	Wall Batter: 4.40 deg.
Leveling Pad:	Crushed Stone	embedment: 0.00 ft
Wall Ht:	2.25 ft	9.00 ft long
BackSlope:	27.00 deg. slope,	DL: 40 psf uniform surcharge
Surcharge:	LL: 100 psf uniform surcharge	Load Width: 9.00 ft
	Load Width: 10.00 ft	

**Results:**

Factors of Safety:	<b>Sliding</b>	<b>Overturning</b>	<b>Bearing</b>	<b>Shear</b>	<b>Bending</b>
	1.41<<	1.28<<	6.63	N/A<<	N/A<<
Calculated Bearing Pressure:	297 / 297 psf				
Eccentricity at base:	0.17 ft				

NOTE: THESE CALCULATIONS ARE FOR PRELIMINARY DESIGN ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION WITHOUT REVIEW BY A QUALIFIED ENGINEER

FAILS: 1.50 Minimum

FAILS: 2.00 Minimum

OK: 3.00 Minimum

**DETAILED CALCULATIONS**

**Project:** Robles Retaining wall

**Date:** 9/17/2009

**Project No:** 18418

**Designer:** A. Caliso

**Case:** Case 1

**Design Method:** Rankine-w/Batter (modified soil interface)

<b>Soil Parameters:</b>	$\phi$	$c$ psf	$\gamma$ pcf
Retained Zone	28	0	115
Foundation Soil	28	0	115

**Leveling Pad:** Crushed Stone

**Modular Concrete Unit:** Compac

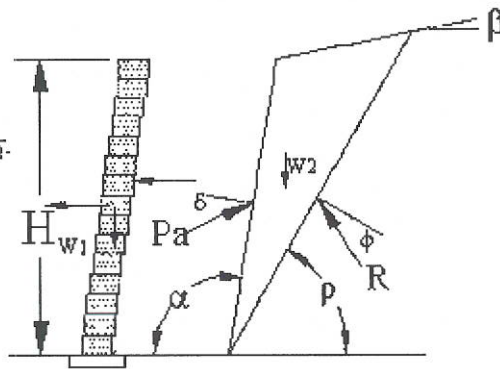
**Depth:** 1.00 ft

**In-Place Wt:** 120 pcf

**Geometry**

**Earth Pressures:**

$$k_a = \frac{\sin^2(\alpha + \phi)}{\sin^2 \alpha \sin(\alpha - \delta) \left[ 1 + \frac{\sin(\phi + \delta) \sin(\phi - \beta)}{\sin(\alpha - \delta) \sin(\alpha + \beta)} \right]^2}$$



**External**

\$\phi\$ = 28 Deg

\$\alpha\$ = 94.40 Deg

\$\beta\$ = 27.00 Deg

\$\delta\$ = 27.00 Deg

\$k\_a\$ = 0.596

**Hinge Height:** Hinge Ht= 13 ft

**Calculated Reactions**

For the "modified" design method, the back of the mass assumed to be vertical for calculation of resisting forces.

$$P_a = 0.5 H (\gamma H k_a - 2c\sqrt{k_a})$$

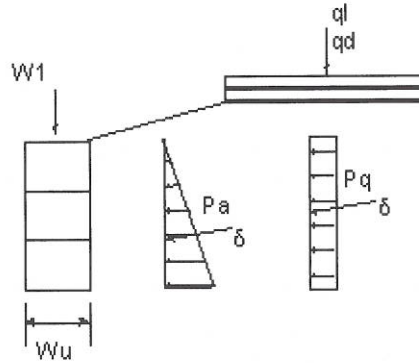
$$P_{a_h} = P_a \cos(\delta)$$

$$P_{a_v} = P_a \sin(\delta)$$

$$P_q = q H k_a$$

$$P_{q_h} = P_q \cos(\delta)$$

$$P_{q_v} = P_q \sin(\delta)$$



Reactions are:

Area	Force	Arm-x	Arm-y	Moment
W1	270.00	[0.587]	1.125	158.37
Pa_h	154.46	N/A	[0.750]	-115.85
Pa_v	78.70	[1.000]	N/A	78.70
Pql_h	4.77	N/A	[1.125]	-5.37
Pql_v	2.43	[1.000]	N/A	2.43
Pqd_h	1.91	N/A	[1.125]	-2.15
Pqd_v	0.97	[1.000]	N/A	0.97
Sum V =	352.11		Sum Mr =	240.48
Sum H =	161.14		Sum Mo =	-123.37

Calculate Sliding at the base:

Horizontal Earth Pressure (Df) = 161.14 ppf

Base Sliding Resistance, RF = 227 ppf

Factor of Safety = Rf/Df = 1.41

Calculate Overturning about base:

Driving Moment (Dm) = -123.37

Resisting Moment (Rm) = 158.37

Factor Of Safety Of Overturning = Rm / Dm = 1.28

**Calculate eccentricity at base: [no surcharge]**

Sum Moments = 117

Sum Vertical = 352

Base Length = 1.00

$e = 0.167$

**Calculate Ultimate Bearing based on shear:**

where:

$$N_q = 14.72$$

$$N_c = 25.80$$

$$N_g = 16.72 \text{ (ref. Vesic(1973, 1975) eqns)}$$

$$Q_{ult} = 1966 \text{ psf}$$

Equivalent footing width,  $B' = L - 2e + L_v$  pad depth = 1.17

Bearing pressure =  $\sum V/B' = 297 \text{ psf}$

Factor Of Safety For Bearing  $Q_{ult} \text{ Bearing} = 6.63$

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. LL40  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-0685 FAX: (916) 574-0682

**Sent Via U.S. Certified Mail Return Receipt Requested**

**ENCROACHMENT REMOVAL ENFORCEMENT NOTICE**

**Property Owner:** Mr. Jesse Robles  
**Mailing Address:** 4433 Curlew Street  
Stockton, CA 95219

**Date:** MAR 24 2010  
**Enforcement Action:** 2009-29

**Encroachment Location:** Bear Creek, Project Levee (South Bank), Due West of Interstate 5 Bridge  
**Local Maintaining Agency:** San Joaquin County Flood Control and Water Conservation District  
**Assessors Parcel Number:** 071-410-85

**Description:** The State of California - Central Valley Flood Protection Board (Board) Staff has documentation that encroachment violations of the State Plan of Flood Control exist within its jurisdiction at this encroachment location consisting of the following:

1. Perpendicular wood property fence and posts on the landside slope.
2. Sprinkler system on the land and waterside levee slopes.
3. 3 Fir trees on the landside levee slope.
4. Electrical outlet on the landside levee slope.
5. Hose bib on the landside levee toe.
6. Electrical lights on the landside levee toe.
7. Retaining wall on the landside toe.
8. Wrought iron fence on the landside slope.
9. Tree on the waterside berm.
10. Shrubs, bushes, and vegetation over 12 inches in height on the landside slope.

**Regulations:** These encroachments are in violation of provisions in the California Water Code and the California Code of Regulations (CCR) Title 23 Waters, Division 1. The United States Army Corps of Engineers has also determined that these encroachments are in violation of provisions of the Code of Federal Regulations (CFR) Title 33--Navigation and Navigable Water, Part 208 –Flood Control Regulations. The provisions are as follows:

1. 33 CFR 208.10 Local flood protection works; maintenance and operation of structures and facilities.
2. California Water Code Section 8708 Flood Control - Interference with maintenance & operation of works.
3. California Water Code Section 8709 Flood Control - Public Nuisance; Abatement.

**Conditions:** Removal of the identified encroachments shall be completed in accordance with the attached enforcement conditions within sixty (60) days of receipt of this notice. To comply with this notice please schedule a compliance inspection within 10 days of the start of removal work. The rights of the Respondent and the Board are detailed in the attached enforcement order.

**Staff Contact:** The staff member assigned this enforcement action is:  
Angeles Caliso, E.I.T., Engineer, Encroachment Control and Land Use Section  
acaliso@water.ca.gov Desk: (916) 574-2386

Signed,

Jay S. Punia  
Executive Officer

Attachments:

1. Enforcement Order
2. Enforcement Conditions

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

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SACRAMENTO, CA 95821  
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PERMITS: (916) 574-0685 FAX: (916) 574-0682

**ENCROACHMENT REMOVAL ENFORCEMENT ORDER**

The State of California - Central Valley Flood Protection Board (Board) has determined that encroachments in violation of the California Water Code or of the more specific California Code of Regulations (CCR) Title 23 Waters, Division 1 are constructed works or activities that threaten the successful execution, functioning, operations, or maintenance of an adopted plan of flood control. California Water Code Section 8709 also states that an encroachment that interferes with or obstructs such operation and maintenance constitutes a public nuisance. You are therefore requested to cease the encroaching activity and remove the encroachments described in the enforcement notice. You may obtain a compliance inspection of the encroachment removal by contacting the inspection section identified in the notice ten (10) days prior to the start of removal work. Restoration of the encroachment removal site shall be completed in accordance with the specifications found in the California Code of Regulations Title 23, Div 1, Article 8, Section 120 Levees which are summarized in the attached enforcement conditions.

**Respondents Rights:** The landowner or person owning, undertaking, or maintaining the work that is the subject of the attached notice is the respondent. The respondent has the opportunity to an enforcement hearing which must be requested in writing within 30 days of receipt of this notice. All hearings are open to the public and are held by one or more members of the Board or a designated hearing officer. Failure to file a hearing request response within thirty (30) days constitutes a waiver of the respondent's right to a hearing. The respondent and other parties may request the board provide a copy of any document not exempt from disclosure under the Public Records Act that is relevant to the enforcement proceedings. The Board may charge a reasonable fee for each copy.

**Board's Rights:** If the respondent fails to respond to this notice within the specified timelines, the Board may seek judicial enforcement and commence and maintain a suit in the name of the People of the State of California for the prevention and abatement of the nuisance. A failure to comply with this notice renders the owner or operator of any of the encroaching structures liable to any person for the damages caused by the structure's failure. The Board may also physically remove the violating encroachments using a contractor or the local maintaining agency and recover its costs from the respondent. Further, the Board may abate violations or threats to the adopted plan of flood control by requiring you to take an action, at your cost, that may include, but is not limited to: (1) removal of the work; (2) alteration of the work; (3) performance of additional work; (4) implementation of specified mitigation for effects on the environment; (5) compliance with additional reasonable conditions; (6) filing an application for a permit pursuant to this division; or (7) revocation of a permit.

Jay S. Punia  
Executive Officer

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

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SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-0685 FAX: (916) 574-0682



**ENFORCEMENT CONDITIONS**

**Property Owner:** Mr. Jesse Robles **Date:**  
**Mailing Address:** 4433 Curlew Street **Enforcement Action:** 2009-29  
Stockton, CA 95219

**Encroachment Location:** Bear Creek, Project Levee (South Bank), Due West of Interstate 5 Bridge  
**Local Maintaining Agency:** San Joaquin County Flood Control and Water Conservation District  
**Assessors Parcel Number:** 071-410-85

**GENERAL CONDITIONS:**

1. These enforcement conditions are issued under the provisions of Sections 8700-8723 of the California Water Code and the provisions of the California Code of Regulations, Title 23 Waters, Division 1, Article 8 Standards.
2. The property owner is responsible for all personal liability and property damage which may arise out of failure on the property owner's part to perform the obligations under this enforcement order. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the property owner shall hold each of them harmless from each claim.
3. Should any of the work not conform to the conditions of this enforcement notice, the property owner, upon order of the Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein described.

**REMOVAL CONDITIONS:**

4. The Property Owner shall contact the Encroachment Control Section by telephone at (916) 574-0609, to schedule an inspection conference at least 10 working days prior to start of work.
5. Encroachment removal work defined by this enforcement notice can be completed during the flood season from November 1<sup>st</sup> through April 15<sup>th</sup> provided that the proposed work schedule and forecast for weather and river conditions are approved by the inspector.
6. The existing perpendicular wood property fences, including posts, on the landside slope and within the State's Levee right of way easement shall be removed and disposed of outside of the floodway.
7. The existing sprinkler system on the land and waterside levee slopes shall be removed and disposed of outside of the floodway.
8. Three (3) existing fir trees on the landside levee slope shall be removed and disposed of outside of the floodway.
9. The existing electrical outlet on the landside levee slope shall be removed and disposed of outside the floodway.
10. The existing hose bib on the landside levee toe shall be removed and disposed of outside the floodway.

## ATTACHMENT D

11. The existing electrical lights on the landside levee toe shall be removed and disposed of outside the floodway.
12. The existing retaining wall on the landside toe shall be removed and disposed of outside the floodway.
13. The existing wrought iron fence on the landside slope shall be removed and disposed of outside the floodway.
14. The existing tree on the waterside berm shall be removed and disposed of outside the floodway.
15. The existing shrubs, bushes and vegetation over 12-inches in height on the landside slope shall be removed and disposed of outside the floodway.

### **RESTORATION CONDITIONS:**

16. Backfill all voids following the removal of the unauthorized encroachments within the levee section and easement area.
17. Fill material shall be placed in 4-inch to 6-inch layers, moisture conditioned with water or by drying to +/- 2 percent of optimum moisture content, and compacted with a vibratory plate compactor or hand operated hammer to a minimum of 97 percent relative compaction as measured by ASTM Method D698.
18. Levee fill material must be free of stones or lumps exceeding three (3) inches in greatest dimension, and must be free of vegetative matter or other unsatisfactory materials.
19. Fill on levee section shall be keyed into the existing levee section whenever there is substantial fill, as determined by the inspector.
20. The finished slope of the levee must be 3:1 (Horizontal: Vertical) on the waterside and 2:1, on the landside of the levee.
21. Levee surfaces left barren due to encroachment removal shall be re-vegetated with sod or seeded grass.