

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

**Staff Report – Cease and Desist Order for Enforcement Action 2009-30**

**Mr. Joe Phillips, Bear Creek  
San Joaquin County**

**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 4409 Curlew Street in Stockton, California through 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. Joe Phillips  
4409 Curlew Street  
Stockton, California 95219  
Assessor’s Parcel Number (APN) 071-410-86

**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.

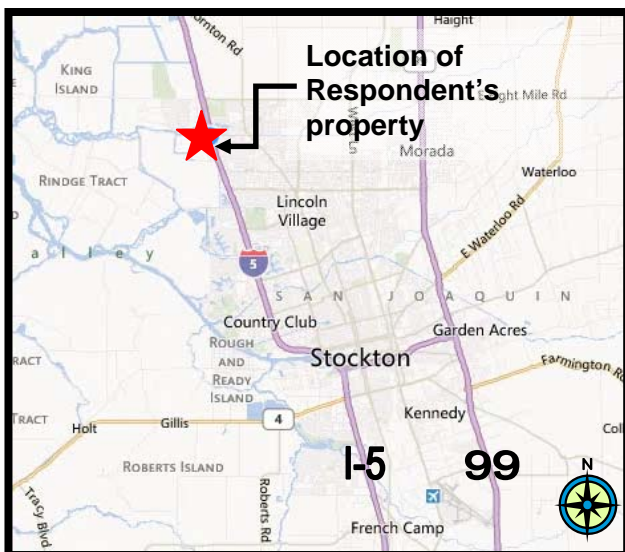


Figure 1a- Vicinity Map of property (Source: Bing maps)

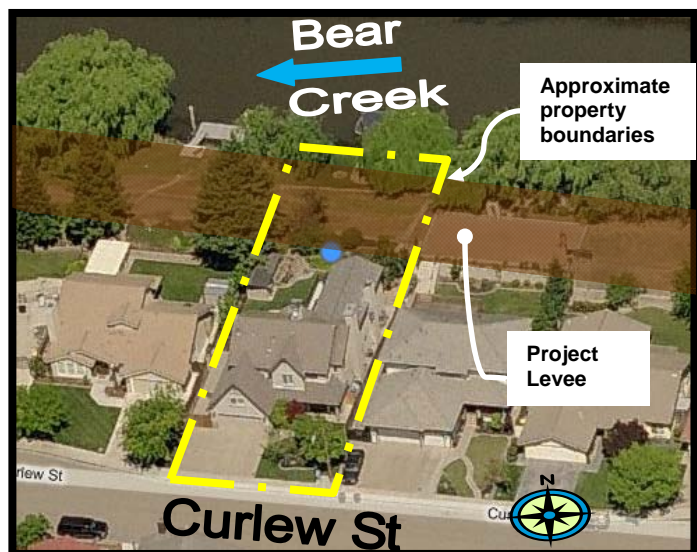


Figure 1b- Aerial view of the property (Source: Bing Maps)

#### **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. 09-30 signed October 23, 2009. In addition, the CVFPB directed staff to assist the Respondent to compile and submit additional evidence and supporting analyses necessary to determine if the existing waterside retaining wall was injurious to the adopted plan of flood control. Per letter dated October 29, 2009, the Respondent informed CVFPB staff he did not intend on submitting additional information and did not object to removing the wall. See *Attachment C* for copy of this letter.

On March 24, 2010, the Executive Officer issued Enforcement Notice and Order for Enforcement Action 2009-30 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 hearing. The Respondent removed most of the encroachments identified in the Enforcement Notice and Order with the exception of the wood shed and sprinkler system on the waterside slope per letter dated August 3, 2010 (see *Attachment E*). To date, the remaining two encroachments have not been removed.

Staff initiated discussions with the Respondent seeking a mutual agreement to address the remaining code 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 has been 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 recommends 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 2009-30 authorizing abatement of code violations on the Respondent's property.

**6.0 – LIST OF ATTACHMENTS**

- A. Proposed Cease and Desist Order for Enforcement Action 2009-30
- B. Resolution No. 09-30 signed October 23, 2009
- C. CVFPB letter to Respondent dated October 29, 2009
- D. Enforcement Notice and Order 2009-30 dated March 24, 2010
- E. CVFPB letter to Respondent dated August 3, 2010

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**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



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

**CEASE AND DESIST ORDER**

**Property Owner:** Mr. Joe Phillips  
**Mailing Address:** 4409 Curlew Street  
Stockton, CA 95219

**Date:** January 25, 2013  
**Enforcement Action:** 2009-30

**Encroachment Location:** Bear Creek, Project Levee (South Bank), Unit 8, Levee Mile 0.78  
**Local Maintaining Agency:** San Joaquin County Flood Control and Water Conservation District  
**Assessor Parcel Number:** 071-410-86

**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. Sprinkler system on the waterside slope.
2. Wood shed at the landside toe.

**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.

**Required Actions:** 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 of 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, 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. 09-30

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF  
ENCROACHMENT PERMIT NO. 18468  
MR. JOE PHILIPS, 4409 CURLEW STREET, STOCKTON, CA 95219  
BEAR CREEK, SAN JOAQUIN COUNTY

**WHEREAS**, Mr. Joe Philips (applicant) is owner of a residential property known as San Joaquin County Assessor's Parcel No. 071-410-86, also known by the address of 4409 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

**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**, two prior Reclamation Board permits (Nos. 16943 and 17050 – Exhibits C and D of Attachment B, respectively) have been issued for the 4409 Curlew Street property by the General Manager as delegated by CCR, Title 23, Article 2, Section 5; and

**WHEREAS**, Permit No. 16943 was issued on November 10, 1998 by Automatic Board Order (ABO) per CCR, Title 23 Article 6, Section 108, item (a)(1) (Attachment G) to address longstanding unauthorized encroachment issues along this portion of the Bear Creek Project. Permitted items included: concrete steps on the waterside slope; two ornamental trees, Red Apple ice plant, a sprinkler system, wooden steps, and a solid board fence on the landside slope; a wooden shed, a Modesto Ash tree, a wooden deck and a 1-foot-high wood retaining wall within 10 feet landward of the landside toe; and a 5-foot-high water pipe with a hose bib on the landside shoulder. 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. 17050, issued July 21, 1999, authorized the construction of a 22- by 8-foot floating boat dock supported on two pilings, plantation of two willow trees on the waterside berm, and installation of a 5-foot high, 60-foot long wooden picket style fence on the landside toe. The Corps endorsement was obtained and the County endorsement was not obtained; and

**WHEREAS**, the applicant, assisted by Siegfried Engineering, Inc., of Stockton, prepared and submitted an application for a new Board encroachment permit on February 2, 2009 which was accepted by the Board on March 4, 2009 and assigned application No. 18468; 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. Permit 16943 was not reviewed by the Corps. All encroachments previously authorized by the Board under this permit are now considered unauthorized by the Corps and should be removed or properly permitted; and

**WHEREAS**, application No. 18468 requests authorization of all existing encroachments previously authorized by Permit No. 16943 except for Permit 17050 because Permit 17050 was endorsed by the Corps; and

**WHEREAS**, the applicant is requesting to authorize the following existing encroachments previously installed or constructed on the flood control right of way for a federal project:

Item 1: Concrete steps on waterside slope,



- Item 2: 9-inch-high concrete block wall on waterside slope,
- Item 3: Wood steps on landside slope,
- Item 4: 12-inch-high wood retaining wall on landside slope,
- Item 5: 1-foot-high water pipe with hose bib on landside slope,
- Item 6: Sprinkler system on landside slope,
- Item 7: Wood shed at landside toe,
- Item 8: Modesto Ash at landside toe,
- Item 9: Wood deck at landside toe
- Item 10: 24-inch-high wood retaining wall at landside toe,
- Item 11: 9-inch-high concrete block wall at landside toe,
- Item 12: Grouted rock waterfall and pond at landside toe; and

**WHEREAS**, the County conditionally endorsed the application by letter on June 17, 2009. The County's special site-specific conditions for this particular application are as follows:

1. Water irrigation pipes buried below ground within ten feet of levee toe and below levee slope shall have a shut-off valve that is clearly marked, accessible and located at least ten-feet from the landside levee toe.
2. Remove or trim all vegetation on the landside and waterside of the levee slopes to comply with the Interim Levee Vegetation Inspection Criteria.
3. Remove the red apple ice plant groundcover and trim trees five feet above the ground on waterside levee slope.
4. Recommend removal of waterfall on the landside levee slope; and

**WHEREAS**, in accordance with provisions of CFR Section 208.10, the Corps' District Engineer stated no objection to approval of the following existing unauthorized encroachment:

Item 11: 9-inch-high concrete block wall at landside toe subject to installation of proper drainage shall be installed to ensure water does not pond on the levee slope; and

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

- Item 1: Concrete steps on waterside slope,
- Item 2: 9-inch-high concrete block wall on waterside slope,
- Item 3: Wood steps on landside slope,
- Item 4: 12-inch-high wood retaining wall on landside slope,
- Item 5: 1-foot-high water pipe with hose bib on landside slope,
- Item 6: Sprinkler system on landside slope,
- Item 7: Wood shed at landside toe,
- Item 8: Modesto Ash at landside toe,
- Item 9: Wood deck at landside toe
- Item 10: 24-inch-high wood retaining wall at landside toe,
- Item 12: Grouted rock waterfall and pond at landside toe; and

**WHEREAS**, The Corps' review determined that the two wood retaining walls on the landside slope and the 9-in-high concrete block wall on waterside slope cut into levee prism; and

**WHEREAS**, The Corps' review determined that the waterfall and pond have a negative impact on levee safety and are not allowed on the levee or within the levee right-of-way; and

**WHEREAS**, The Corps' review determined that the wood shed, wood deck and step/stairs prohibit proper inspection and maintenance of the levee; and

**WHEREAS**, The Corps' review determined that the concrete steps on waterside slope extend out of the slope and may create turbulence during high water leading to levee slope erosion; and

**WHEREAS**, The Corps' review determined that the sprinkler system and water pipe will keep the levee slope saturated and any system or pipe malfunction may lead to levee slope erosion; and

**WHEREAS**, The Corps' review determined that plants, other than grasses, are not allowed on the levee slope and within 15 feet of the levee toe or within the easement area, whichever is less; and

**WHEREAS**, Board staff's review determined that only the 9-inch-high concrete block wall at the landside toe should be approved with special conditions that proper drainage and fine particle filtering features shall be installed; and

**WHEREAS**, Board staff's review determined that the remaining requested encroachments shall be denied because they are not compatible with Title 23; and

**WHEREAS**, Board staff's review determined that the two wood retaining walls are not compatible with Title 23 because they must be constructed of reinforced concrete, concrete gravity section, or of equivalent material and durability; and

**WHEREAS**, Board staff's review determined that the 9-inch-high concrete block wall on waterside slope cuts into the levee prism; and

**WHEREAS**, Board staff's review determined that the wood steps/stairs on landside slope, and the wood deck and wood shed at landside toe prohibit proper inspection and maintenance of the levee; and

**WHEREAS**, Board staff's review determined that the concrete steps on waterside slope are not constructed flush with levee slope; and

**WHEREAS**, Board staff's review determined that the sprinkler system and water pipe on landside slope will keep the levee slope saturated and any malfunction of the system will lead to levee slope erosion; and

**WHEREAS**, Board staff's review determined that the Modesto Ash tree at levee toe is not allowed because trees are not allowed on crown, slopes, and within 10 feet of levee toe per Title 23 Article 8, Section 131, item (f)(5); and

**WHEREAS**, Board staff's review determined that the waterfall and pond prohibit proper inspection and maintenance; and

**WHEREAS**, Special Condition SEVENTEEN in Permit No. 16943 also states that "*The permittee shall assume all responsibility for the protection, relocation or removal of the permitted project works if required by the Reclamation Board.*"; and

**WHEREAS**, Special Conditions TWENTY TWO and TWENTY SEVEN in existing permits No. 16943 and 17050, respectively, 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**, the above Corps and Board 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. The State is obligated to enforce the removal or modifications of encroachments that impact the integrity of the levee or the capacity of the flood channel; and

**WHEREAS**, pursuant to Water Code section 8709, because the encroachments "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; 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 is within an adopted plan of flood control, and therefore denial of non-conforming and/or non-compatible encroachments is supported by Regulation; and

**WHEREAS**, Board staff determined that encroachments not conforming to 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 based on independent analysis, Board staff concurs with the Corps' recommendations and recommends 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 18468 should supersede Permit No. 16493; 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, as lead agency, has determined that all existing project features described in existing permits 16943 and 17050 and proposed permit 18468 are categorically exempt from CEQA; and
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 issuance of final encroachment permits consistent with Draft Permit No. 18468, Mr. Joe Philips.
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 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.

7. **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.
8. **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.
9. **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.**

10. Based on the foregoing the Board finds and concludes that the issuance of Encroachment Permit No. 18468 to Mr. Joe Philips is in the interest of the State with the following approvals and denials:

The Board hereby approves authorization of the following existing encroachments:

- Item 8: Modesto Ash at landside toe, subject to current State interim vegetation management standards and compliance with the Central Valley Flood Protection Plan to be completed in 2012,
- Item 11: 9-inch-high concrete block wall at landside toe as conditioned on page 2 of the Corps' August 21, 2009 letter and per Title 23 Article 8, Section 125, Item (a)(3)

Special conditions apply to the above approved item and will be listed in Permit 18468.

The Board hereby denies authorization of the following existing encroachments:

- Item 1: Concrete steps on waterside slope,
- Item 3: Wood steps on landside slope,
- Item 4: 12-inch-high wood retaining wall on landside slope,
- Item 5: 1-foot-high water pipe with hose bib on landside slope,
- Item 6: Sprinkler system on landside slope,
- Item 7: Wood shed at landside toe,
- Item 9: Wood deck at landside toe

- Item 10: 24-inch-high wood retaining wall at landside toe,
- Item 12: Grouted rock waterfall and pond at 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 2: 9-inch-high concrete block wall on waterside slope.

11. This resolution shall constitute the written decision of the Board in the matter of Permit No. 18468.

**Approval of Encroachment Permit No. 18468.**

12. Based on the foregoing, the Central Valley Flood Protection Board hereby directs the Executive Officer to develop and issue Encroachment Permit No. 18468 in concurrence with Resolution No. 09-30, and Corps recommendations, and to supersede permit No. 16943.

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.**

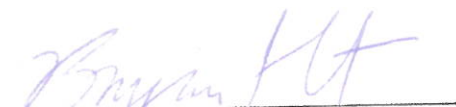
14. The Board authorizes the Executive Officer to begin enforcement proceedings in accordance with CCR, Title 23, Division 1, Chapter 1, Article 4, Sections 20 and 21 to remove unauthorized encroachments listed in paragraph 16 below.

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 1: Concrete steps on waterside slope,
- Item 3: Wood steps on landside slope,
- Item 4: 12-inch-high wood retaining wall on landside slope,
- Item 5: 1-foot-high water pipe with hose bib on landside slope,
- Item 6: Sprinkler system on landside slope,
- Item 7: Wood shed at landside toe,
- Item 9: Wood deck at landside toe
- Item 10: 24-inch-high wood retaining wall at landside toe,
- Item 12: Grouted rock waterfall and pond at landside toe.

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

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

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

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**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



October 29, 2009

Mr. Joe Philips  
4409 Curlew Street  
Stockton, California 95219

Dear Mr. Philips:

On September 1 and 2, 2009, the State of California, Central Valley Flood Protection Board (Board) held the Bear Creek Levee Encroachment Hearings in Stockton, California. The hearing for your Permit Application No. 18468 was held on September 1, 2009. During this particular hearing, Resolution No. 09-30 was developed for this permit application. In the resolution, Board staff was directed by the Board to assist you so that you may compile and submit any and all additional evidence and supporting analyses necessary for the Board, the United States Army Corps of Engineers, and the San Joaquin County Flood Control and Water Conservation District staffs to determine if the 9-inch-high concrete block wall on waterside slope is injurious to the adopted plan of flood control or to the levee.

On October 22, 2009, Board staff called you and asked if you planned to provide additional supportive information to retain this 9-inch-high concrete block wall. Your response to Board staff was "No." Then, Board staff asked you if you were comfortable with this block wall being removed and your response was "Yes." Therefore, this block wall will now be categorized as one of the encroachment removal items on a forthcoming enforcement notice.

Should you have any questions, please call Board Staff engineer Joo Chai Wong at (916) 574-2389 or email him at [jwong@water.ca.gov](mailto:jwong@water.ca.gov).

Sincerely,

Curt Taras, P.E., MSCE  
Chief, Encroachment Control and Land Use

cc: Mr. Ryan Larson, Acting Chief  
Flood Protection and Navigation Section  
U.S. Army Corps of Engineers - Sacramento District  
1325 J Street  
Sacramento, California 95814

Mr. Mark W. Connelly, Engineering Services Manager  
Flood Management Division  
San Joaquin County Department of Public Works  
1810 East Hazelton Avenue  
Stockton, California 95201

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

**ENCROACHMENT REMOVAL ENFORCEMENT NOTICE**

**Property Owner:** Mr. Joe Philips  
**Mailing Address:** 4409 Curlew Street  
 Stockton, CA 95219

**Date:** MAR 24 2010  
**Enforcement Action:** 2009-30

**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:** 071-410-86

**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. 9-inch-high concrete block wall on the waterside slope.
3. Wooden steps on the landside slope.
4. 12-inch high wood retaining wall on the landside slope.
5. Water pipe with hose bib on the landside slope.
6. Sprinkler system on the landside slope.
7. Wood shed at the landside slope.
8. Wood deck at the landside toe.
9. 24-inch high wood retaining wall at the landside toe.
10. Grouted rock waterfall and pond at the landside toe.
11. Bushes, shrubs, and vegetation taller than 12 inches on the waterside and landside slope.
12. The red apple ice plant on the waterside 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:  
 Joo Chai Wong, P.E., Engineer, Encroachment Control and Land Use Section  
 jwong@water.ca.gov Desk: (916) 574-2389

Signed,

Jay S. Punia  
 Executive Officer

Attachments:

1. Enforcement Order
2. Enforcement Conditions

**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

**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 comply with 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**

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

**ENFORCEMENT CONDITIONS**

**Property Owner:** Mr. Joe Philips  
**Mailing Address:** 4409 Curlew Street  
Stockton, CA 95219  
**Date:**  
**Enforcement Action:** 2009-30

**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:** 071-410-86

**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 and Land Use 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 9-inch-high concrete block wall on the waterside slope shall be removed and disposed of outside of the floodway.
8. The existing wooden steps on the landside slope shall be removed and disposed of outside of the floodway
9. The existing 12-inch high wood retaining wall on the landside slope shall be removed and disposed of outside of the floodway
10. The existing water pipe with hose bib on the landside slope shall be removed and disposed of outside of the floodway.

11. The existing sprinkler system on the landside slope shall be removed and disposed of outside of the floodway
12. The existing wood shed at the landside slope shall be removed and disposed of outside of the floodway.
13. The existing wood deck at the landside toe shall be removed and disposed of outside of the floodway.
14. The existing 24-inch high wood retaining wall at the landside toe shall be removed and disposed of outside of the floodway.
15. The existing grouted rock waterfall and pond at the landside toe shall be removed and disposed of outside the floodway.
16. The existing bushes, shrubs, and vegetation taller than 12 inches on the waterside berm and landside slope shall be removed and disposed of outside the floodway.
17. The existing red apple ice plant on the waterside slope shall be removed and disposed of outside the floodway.

### **RESTORATION CONDITIONS:**

18. Backfill all voids following the removal of the unauthorized encroachments within the levee section and easement area.
19. Fill material shall be placed in 4-inch to 6-inch layers, moisture conditioned with water or by drying to  $\pm 2$  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.
20. 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.
21. Fill on levee section shall be keyed into the existing levee section whenever there is substantial fill, as determined by the inspector.
22. The finished slope of the levee must be 3:1 (Horizontal:Vertical) on the waterside and 2:1, on the landside of the levee.
23. Levee surfaces left barren due to encroachment removal shall be re-vegetated with sod or seeded grass.

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

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PERMITS: (916) 574-0685 FAX: (916) 574-0682



August 3, 2010

Mr. Joe Philips  
4409 Curlew Street  
Stockton, California 95219

Dear Mr. Philips:

The staffs of the Central Valley Flood Protection Board (Board) and the California Department of Water Resources (DWR) visited the left (south) bank levee of Bear Creek west of the Interstate 5 Bridge on July 16, 2010. The purpose of the site visit was to check the status of the encroachment removal with respect to the encroachment removal enforcement notice that was sent to you dated March 24, 2010 (see Attachment A).

Board staff observed that most of the encroachments listed in the enforcement notice have been removed with the exception of the Item 7 wood shed at the landside slope. We thank you for your positive approach in respecting the public interest by resolving the encroachment issues.

To comply with the California Code of Regulations, Title 23 Waters, Board staff urges you to take action for full compliance by:

- Moving the wood shed so that it will be outside the Sacramento San Joaquin Drainage District (SSJDD) boundary (see Figures 1 and 2).
- Removing the sprinkler system on the waterside slope (see Figure 3).

When the above two corrections are completed, please inform our office so that the Board will issue a notice of full compliance with Board regulations and release your property from enforcement action.

The Board staff representing the Board appreciates your effort in taking action to remove the encroachments. The encroachment removal has substantially reduced the negative impacts caused by the encroachments to the flood control project. Thank you again for your close cooperation in this matter.

Mr. Joe Philips  
August 3, 2010  
Page 2 of 2

Should you have any more questions, please contact Mr. Joo Chai Wong, staff engineer of the Encroachment Control and Land Use Section, at (916) 574-2389, or by e-mail at [jwong@water.ca.gov](mailto:jwong@water.ca.gov).

Sincerely,



Len Marino, P.E.  
Chief Engineer

Enclosures:            Attachment A  
                                 Figures 1 through 3

cc:    Mr. David J. Pesavento, P.E.



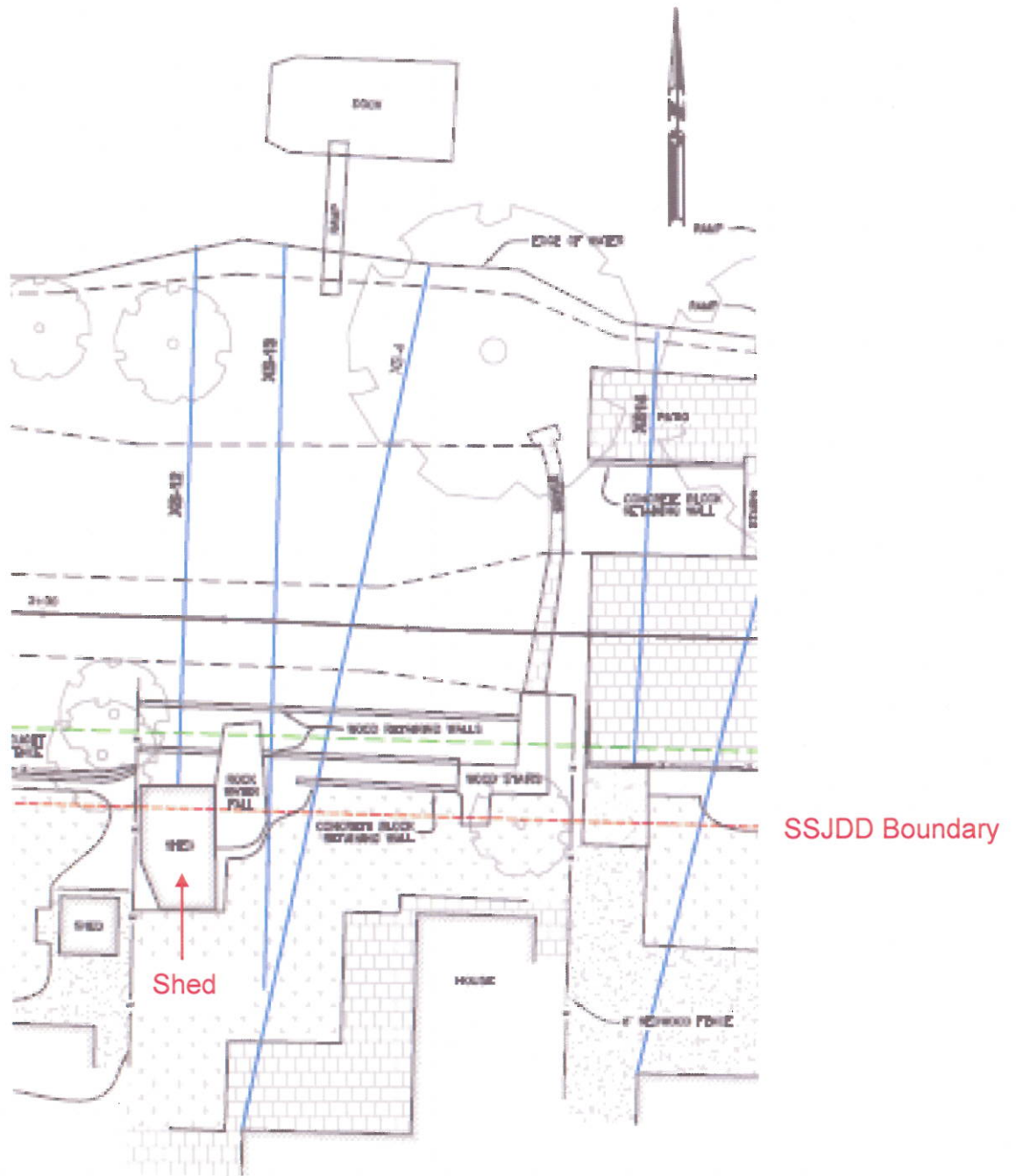


Figure 1 Site Plan

Source: Drawing titled, "SJAFCA 2008 Northwest Stockton Surveys, Bear Creek Survey Site, Sheet 6 of 9" prepared by KSN, Inc. and dated July 2008 (last revised February 3, 2009)



Figure 2 Wood shed at the western edge of property (levee landside); most of the encroachments have been removed.



Figure 3 Sprinkler system at the levee waterside; the red apple ice plant has been removed.