

**Meeting of the Central Valley Flood Protection Board
September 13, 2013**

Staff Report – Cease and Desist Hearing for Enforcement Action 2009-33

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

1.0 – ITEM

Conduct a public hearing to consider adoption of Cease and Desist Order (*Attachment A*) that would authorize the Central Valley Flood Protection Board (“CVFPB”) or its contractor to abate encroachments listed in *Attachment A* located on the Bear Creek Project Levee at 4215 Curlew Street in Stockton, California through the removal of the encroachments. The Respondent previously waived the right to a hearing and has failed to respond to multiple requests by CVFPB staff to remove the encroachments.

2.0 – RESPONDENT

Mr. Jesse Castellon
4215 Curlew Street
Stockton, California 95219
Assessor’s Parcel Number (APN) 071-410-89

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.

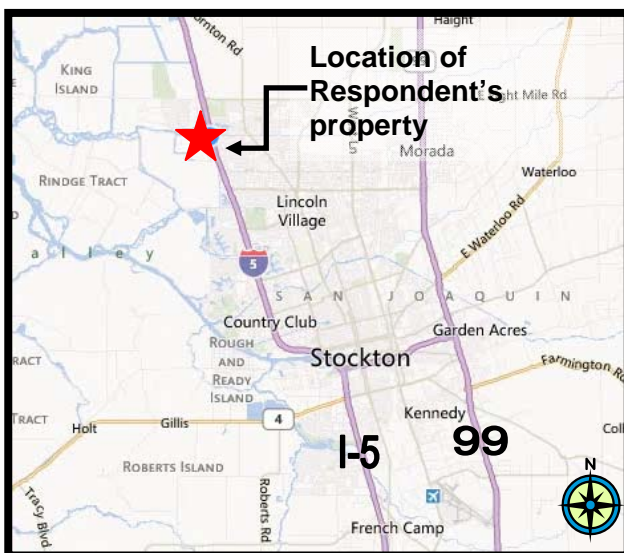


Figure 1a- Vicinity Map of property (Source: Bing maps)

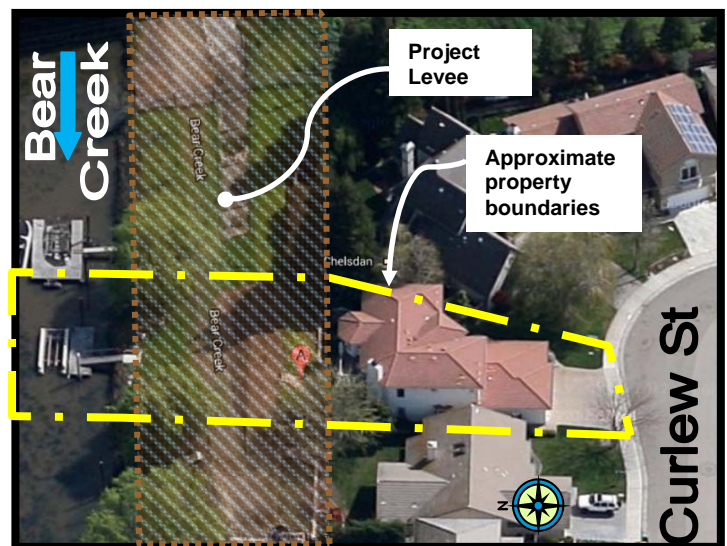


Figure 1b- Aerial view of the property (Source: Bing Maps)

4.0 – APPLICABLE LAWS AND REGULATIONS

4.1 – California Water Code

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

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

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

Pursuant to § 8709.6: The CVFPB may order the removal of encroachments and restoration of a site if the encroachment took place without a CVFPB encroachment permit.

Pursuant to § 8710: The Board must approve any encroachment into an adopted plan of flood control, such as the Bear Creek Flood Control Project.

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

Pursuant to § 4 a (4): where levees are involved, an Adopted Plan of Flood Control “*extends to at least ten (10) feet landward from the levee toe, except where an operation and maintenance manual furnished pursuant to 33 C.F.R. 208.10 or the real property rights acquired by the board specifically provide otherwise.*”

Pursuant to §4 (m): an “Encroachment” is defined as “*any obstruction or physical intrusion by construction of works or devices, planting or removal of vegetation, or by whatever means for purpose, into any of the following:*

- (1) any flood control project works;*
- (2) the waterway area of the project;*
- (3) the area covered by an adopted plan of flood control; or*
- (4) any area outside the above limits, if the encroachment could affect any of the above.”*

Pursuant to § 6 (a): “*Every proposal or plan of work, including the replacement, construction, reconstruction, removal, or abandonment of any... structure, obstruction, encroachment or works of any kind....within any area for which there is an adopted plan of flood control, must be approved by the board prior to commencement of work.*”

Pursuant to §20 (a): “*The board has the authority pursuant to Water Code section 8710 to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including, but not limited to, standards for encroachments, construction, vegetation and erosion control measures. In addition, the board has enforcement authority under Water Code sections 8709.5 and 8709.6 to*

issue Cease and Desist Orders, the violation of which may subject the violator to fines or penalties pursuant to Water Code section 8709.7'

Pursuant to §23: The Executive Officer may issue a Notice of Violation to the landowner or person ("respondent") responsible for any activity described in Water Code section 8709.5 (a), including but not limited to the following:

- (1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;
- (3)(A) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;
- (3)(B) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations;
- (3)(C) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such regulations.

Pursuant to §24: The Executive Officer may issue a Cease and Desist Order if the respondent has failed to respond in a satisfactory manner to prior notifications.

5.0 – REAL ESTATE

The CVFPB acting through the Sacramento San Joaquin Drainage District (SSJDD) acquired an easement from Louis G. Baldwin and Dorothy Lang Sanderson recorded on December 20, 1963 [Book 2767 Page 585, Official Records of San Joaquin County, *Attachment D*] providing the following rights:

"...perpetual rights of way and easements over, across and upon the hereinafter described real property:

- (a) to clear, construct, reconstruct, enlarge, repair, operate and maintain the south or left bank levee, berm and channel of Bear Creek, a part of the Bear Creek Flood Control Project, together with all appurtenances thereto, including, but not limited to, all embankments, ditches, appurtenant structures, incidental works to said project and bank protection works; and the right to relocate public facilities thereon;*
- (b) to construct, reconstruct, repair, operate, maintain, and use access and patrol roads thereon as may be found necessary by the grantee;"*

"said rights of way and easements shall include, but not be limited to, the right to operate and maintain the flood control project of which said real property is a part, in conformity with the regulations of the Secretary of the Army, as prescribed in Section 208.10, Title 33, Code of Federal Regulations, now existing."

Figure 3 below, shows the southern boundary of the above easement at the Respondent's property.

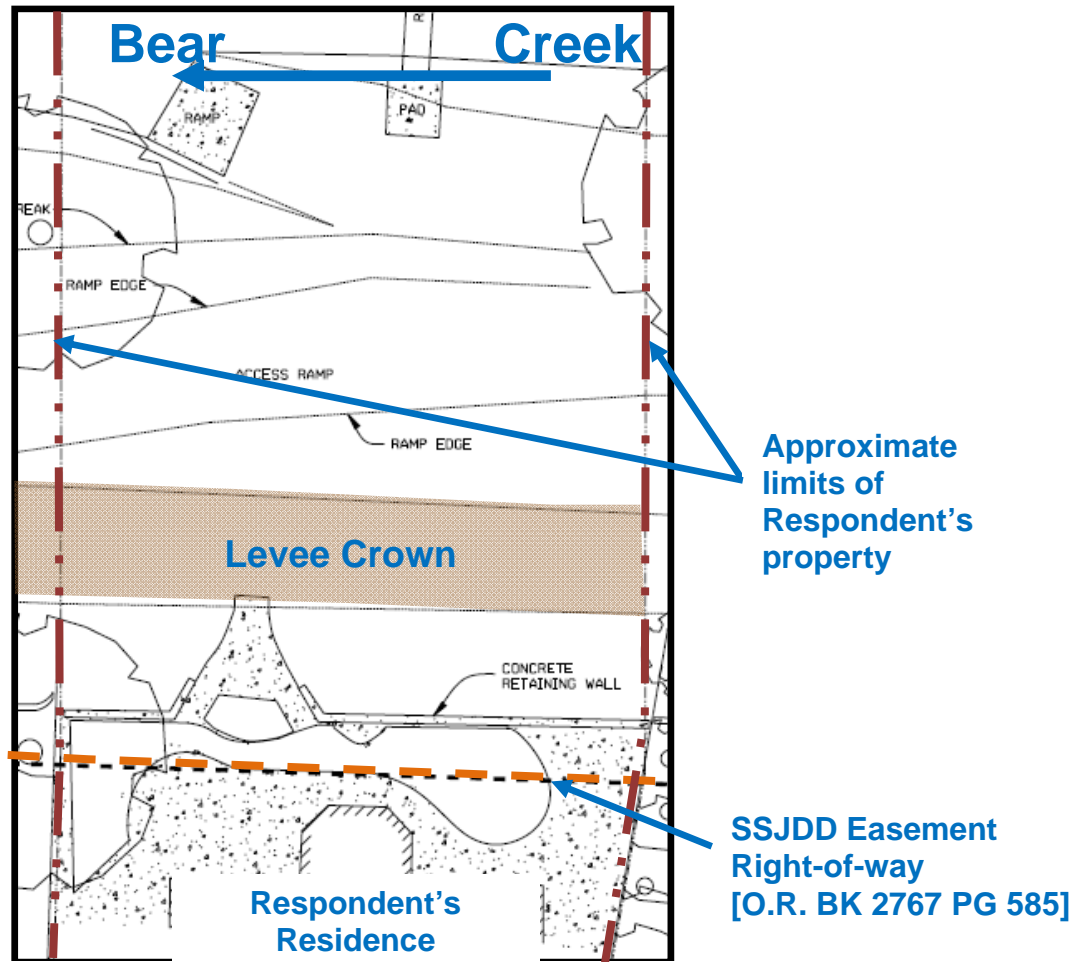


Figure 3- Bear Creek Properties Exhibit
[Source: DWR Cadastral, July 2009]

6.0 – STAFF ANALYSIS

6.1– Background

February 28, 2009 - The Respondent submitted Encroachment Application No. 18347 to CVFPB.

April 17, 2009 - The CVFPB held a hearing for Application No. 18347 and continued to May

May 15, 2009 - The CVFPB held the hearing on application No. 18347 that was continued from April. The CVFPB approved issuance of a permit for existing encroachments determined to be compliant with CVFPB Regulations (California Code of Regulations Title 23). The CVFPB denied authorization to retain existing encroachments that were determined to be inconsistent

with CVFPB Regulations. The CVFPB also directed CVFPB staff to initiate enforcement proceedings to remove the unauthorized encroachments. See *Attachment B* for copy of Resolution No. 09-13 signed on September 25, 2009.

March 24, 2010 – CVFPB’s Executive Director issued Enforcement Notice and Order No. 2009-33 to Respondent ordering removal of existing non-compliant encroachments (See *Attachment C*). The 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.

In late 2011, CVFPB 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 been unable to reach an agreement with the Respondent and none of the existing encroachments noted on the Enforcement Notice and Order have been removed. The 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, CVFPB staff is now recommending that the CVFPB conduct a public hearing to consider adoption of the proposed Cease and Desist Order (*Attachment A*) to authorize removal of the unauthorized encroachments.

Notice of this hearing was sent to the Respondent on August 13, 2013 via overnight mail thereby meeting the CVFPB’s 30-day hearing notice requirement. A copy of this staff report was sent on August 22, 2013 via overnight mail thereby meeting the CVFPB’s 20-day requirement.

6.2– Basis for Recommended Actions

The basis for CVFPB staff recommendations to remove the violating encroachments listed in the proposed Cease and Desist Order (*Attachment A*) are presented as follows:

Item 1: Concrete steps on the landside levee slope

- The CVFPB authorized the Executive Officer to enforce removal of this item as shown on page 7 of Resolution No. 09-13 (*Attachment B*).
- Excavation in the levee slope must not exceed 12-inches in depth in accordance with 23 C.C.R. Section 137 (c) (3). The existing steps penetrate the levee section more than the allowed 12-inches.
- The USACE recommended denial of the steps on their letter dated March 16, 2009 citing that “*the concrete steps are constructed within the levee slope and are not acceptable. The steps shall be removed ...*” (*Attachment E*)

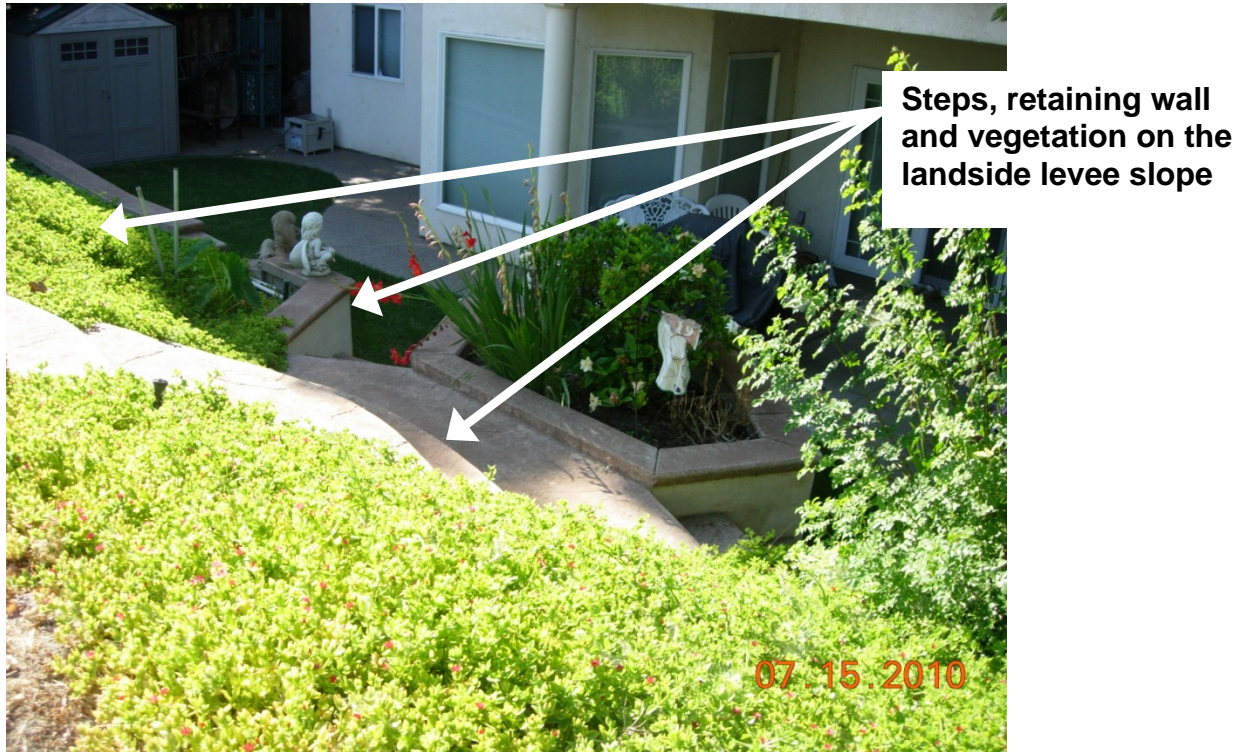


Figure 4- Respondent's property (Source: CVFPB Staff site visit on July 15, 2010)

Item 2: Concrete retaining wall on the landside levee slope

- The CVFPB authorized the Executive Officer to enforce removal of this item as shown on page 7 of Resolution No. 09-13 (*Attachment B*).
- Excavation in the levee slope must not exceed 12-inches in depth in accordance with 23 C.C.R. Section 137 (c) (3). The existing steps penetrate the levee section more than the allowed 12-inches.
- The retaining wall penetrates the levee slope and does not have drainage features and fine particle filtering features as required by Board Standards, 23 C.C.R., Section 125 (a) (3). In addition, CVFPB staff performed a structural analysis of the retaining wall at the adjacent property to the Respondent's and the retaining wall failed to meet the minimum design factor for structural stability.
- The USACE recommended denial of the retaining wall on their letter dated March 16, 2009 citing that "*the retaining wall footing is built into the levee slope. The retaining wall shall be removed and the levee rebuilt to design lines and grade.*" (*Attachment E*)

Item 3: Perpendicular wood property fence and posts on landside levee slope within SSJDD easement

- The CVFPB authorized the Executive Officer to enforce removal of this item as shown on page 7 of Resolution No. 09-13 (*Attachment B*).

- The existing fence and posts within the levee easement interfere with the Local Maintaining Agency's (LMA) operations, maintenance and flood fighting activities and is therefore in violation of the CVFPB Regulations Section 15 (a)(4)(5)(6), which states that "*The Board may deny a permit for any of the following reasons:...(4) Impair the inspection of floodways or project works;(5)Interfere with the maintenance of floodways or project works;(6)Interfere with the ability to engage in floodfighting, patrolling or other flood emergency activities;*"
- The USACE recommended denial of the fence on their letter dated March 16, 2009 citing that "*the fence from the landside levee toe up to the landside crown shoulder is not acceptable as it limits levee visibility and the posts penetrate the levee prism.*" (Attachment E)

Item 4: Vegetation on the landside levee slope

- The CVFPB authorized the Executive Officer to enforce removal of this item as shown on page 7 of Resolution No. 09-13 (Attachment B).
- Planted vegetation on the levee slope is not grass and therefore in violation of 23 C.C.R. Section 131 (f) (1) which state that only acceptable use of ground cover on the levee slope is grass.
- The USACE recommended denial of the vegetation on their letter dated March 16, 2009 citing that "*Plants, existing or planned, on the levee slope. Plantings, other than grasses are not allowed.*" (Attachment E)

7.0 – CEQA ANALYSIS

CVFPB staff has prepared the following CEQA determinations:

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

8.0 – STAFF RECOMMENDATION

Based on the findings of this report, staff recommends that the CVFPB approve the Cease and Desist Order for Enforcement Action 2009-33 (Attachment A) authorizing abatement of the code violations through removal of the encroachments on the Respondent's property.

9.0 – LIST OF ATTACHMENTS

- A. Proposed Cease and Desist Order for Enforcement Action 2009-33
- B. Resolution No. 09-13 signed September 25, 2009
- C. Enforcement Notice and Order 2009-33 dated March 24, 2010
- D. Easement Deed recorded on Book 2767 Page 585 (O.R.) on December 20, 1963
- E. USACE letter dated March 16, 2010 for Application No. 18347

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 Castellon
Mailing Address: 4215 Curlew Street
 Stockton, CA 95219

Date: September 13, 2013
Enforcement Action: 2009-33

Encroachment Location: Bear Creek, Project Levee (South Bank), Unit 8, Levee Mile 0.81
Local Maintaining Agency: San Joaquin County Flood Control and Water Conservation District
Assessor Parcel Number: 071-410-89

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. Concrete steps on the landside slope
2. Concrete retaining wall at the landside toe
3. Perpendicular wood property fence and posts on the landside slope within SSJDD easement
4. Vegetation taller than 12-inches on the land and waterside slopes

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 CVFPB, or a contractor hired by the CVFPB 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; 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 1st through April 15th 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.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 09-13

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18347
MR. JESSE CASTELLON, 4215 CURLEW STREET, STOCKTON, CA 95219
BEAR CREEK, SAN JOAQUIN COUNTY

WHEREAS, Mr. Jesse Castellon SR. (applicant) is owner of a residential property known as San Joaquin County Assessor's Parcel No. 071-410-89, also known by the address of 4215 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 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; and

WHEREAS, by letter dated March 30, 2007, 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, an itemized list of the unauthorized encroachments was compiled on April 12, 2007 during a levee inspection that included staff from the Central Valley Flood Protection Board (Board), County, and California Department of Water Resources (DWR); 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, the applicant prepared and submitted an application for a Board encroachment permit on February 28, 2008 which was accepted by the Board on March 10, 2008 and assigned application No. 18347; 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 without prior determination by the Corps that the encroachments would not adversely affect the flood control project as required by Title 33, Code of Federal Regulations (CFR) section 208.10 (Section 208.10):

1. A boat dock supported by steel pilings and attached to a gangway and landing,
2. A willow tree on the waterside berm,
3. Perpendicular wooden fences on the landside slope,
4. Concrete steps on the landside slope,
5. A concrete retaining wall (and waterfall basin) at the landside toe,
6. A landside concrete patio within 10 feet of the levee toe,
7. Landscape plants on the landside slope (fed by an existing irrigation system); and

WHEREAS, the applicant is requesting to install or construct the following new encroachments:

- A. Concrete steps on the waterside slope,
- B. A parallel 6-foot high wrought iron fence at landside crown hinge point,
- C. A lawn and light pole with electrical outlet on the waterside berm,
- D. Electrical conduit to the waterside berm,
- E. A waterfall on the landside slope (spills into existing retaining basin),
- F. A sprinkler system on the landside and waterside,
- G. Additional Landscape plants on the landside slope; and

WHEREAS, in accordance with provisions of CFR Section 208.10 by March 16, 2009 letter the Corps' District Engineer stated no objections to approval of the following encroachments:

- Existing Item 1 – existing boat dock, pilings, gangway and landing,
- Existing Item 2 – existing willow tree on the waterside berm,
- Existing Item 6 – existing concrete patio within 10-feet of the landside levee toe,
- Proposed Item A – proposed concrete steps on the waterside slope,
- Proposed Item C – proposed lawn and light pole with electrical outlet on the waterside berm,
- Proposed Item D – proposed electrical conduit to the waterside berm,
- Proposed Item F – proposed sprinkler system on landside and waterside,

WHEREAS, also by March 16, 2009 letter the Corps' District Engineer recommended denial of the following encroachments pursuant to CFR Section 208.10:

- Existing Item 3 – perpendicular wooden fences on the landside levee slope,
- Existing Item 4 – concrete steps on the landside levee slope,
- Existing Item 5 – concrete retaining wall (and waterfall basin) at the landside levee toe,
- Existing Item 7 – plants on the landside levee slope,
- Proposed Item B – parallel wrought iron fence at the landside crown hinge point,
- Proposed Item E – waterfall on the landside slope,
- Proposed Item G – additional landscape plants on the landside slope; and

The Corps letter and testimony at the April 17, 2009 Board hearing constitutes 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, 8712, 8719 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 are unlawful 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 and maintain a suit in the name of the people of the State to abate the nuisance; and

WHEREAS, pursuant to Water Code section 8712, no levee shall be cut or altered without permission of the Board, and because items 3, 4, 5, A, B, C, D, E and F cut (including penetrations) or alter the levee Board permission is required; and

WHEREAS, pursuant to Water Code sections 8710 and 8719, the applicant unlawfully constructed encroachments on the levee without Board permission, thus creating a public nuisance; and

WHEREAS, under federal law the Board does not have the discretion to approve encroachments independently of Corps recommendations while the January 16, 1962 and February 3, 1965 assurance agreements between the Corps and Board, as well as sections 3-01 through 3-07 of the Corps Operations and Maintenance manual for the Bear Creek Project require the Board to comply with section 208.10. Therefore, approval of these features for which the Corps has recommended denial would violate these agreements; and

WHEREAS, under Title 23, Code of Regulations section 15(a)(8) and Water Code section 8723, 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. As a part of a federal project, the area encompassed by these features is within an adopted plan of flood control, and approval of them therefore could be injurious to, or interfere with the successful execution, functioning, or operation of an adopted plan of flood control because such approval would violate the Board's agreements with the Corps and threaten the status of the project. For all these reasons, 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

WHEREAS, the Board has reviewed the Figures, Attachments, and References listed in the Staff Report; and

WHEREAS, the Board, as lead agency, has determined that the components of the applicant's project are categorically exempt from the California Environmental Quality Act (CEQA) under Classes 1, 3 and 4 Categorical Exemptions (CEQA Guidelines Sections 15301 (c, h), 15303 (d, e) and 15304 (b, f). The Class 1 exemption covers existing private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The Class 3 exemption covers construction and location of limited numbers of new, small facilities or structures. The Class 4 exemption covers minor private alterations in the condition of land, water, and vegetation; 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 project components (both existing and proposed) are exempt from CEQA.
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. 18347, Mr. Jesse Castellon, Sr.
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 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.** This project including recommended approval items, recommended denial and removal of existing encroachments and recommended denial of certain additional proposed encroachments 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. 18347 is interest of the State with the following approvals and denials:

The Board hereby approves:

Authorization of the existing boat dock, pilings, gangway and landing,
Authorization of the existing willow tree on the waterside berm,
Authorization of the existing concrete patio within 10-feet of the landside levee toe,
Construction of the proposed concrete steps on the waterside slope,
Construction of a proposed lawn and light pole with electrical outlet on the waterside berm,
Construction of proposed electrical conduit and additional irrigation piping within the levee right of way.

Board hereby denies:

Authorization of existing perpendicular wooden fences on the landside levee slope,
Authorization of existing concrete steps on the landside levee slope,
Authorization of existing concrete retaining wall (including waterfall retaining basin) at the landside levee toe,
Authorization of existing plants on the landside levee slope,
Construction of a proposed wrought iron fence on the landside crown hinge point,
Construction of a proposed waterfall on the landside slope,

11. This resolution shall constitute the written decision of the Board in the matter of Permit No. 18347.

Approval of Permit.

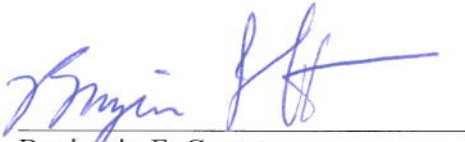
12. Based on the foregoing, the Central Valley Flood Protection Board hereby approves issuance of an Encroachment Permit in substantially the form provided as Attachment B of the Staff Recommendations.

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

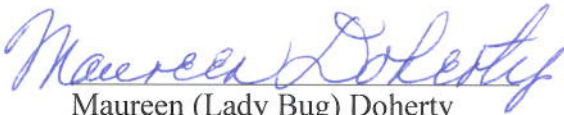
Removal of Unauthorized Encroachments.

14. The Board authorizes the Executive Officer to begin enforcement proceedings 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:
 - Perpendicular wooden fences on the landside levee slope,
 - Concrete steps on the landside levee slope,
 - Concrete retaining wall (including waterfall retaining basin) at the landside levee toe
 - Plants on the landside levee slope

PASSED AND ADOPTED by vote of the Board on 9-25, 2009



Benjamin F. Carter
President



Maureen (Lady Bug) Doherty
Secretary

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
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 Castellon
Mailing Address: 4215 Curlew Street
Stockton, CA 95219

Date: MAR 24 2010
Enforcement Action: 2009-33

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
Assessor Parcel Number: 071-410-89

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. Concrete steps on the landside slope.
2. Concrete retaining wall on the landside toe.
3. Perpendicular wood fences on the landside slope.
4. Vegetation taller than 12 inches on the land and waterside slopes and berm.

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:
Gary Lemon, P.E., Engineer, Floodway Protection Section
glemon@water.ca.gov Desk: (916) 574-0649

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. 151
 SACRAMENTO, CA 95821
 (916) 574-0609 FAX: (916) 574-0682
 PERMITS: (916) 574-0685 FAX: (916) 574-0682

**ENFORCEMENT CONDITIONS**

Property Owner: Mr. Jesse Castellon
Mailing Address: 4215 Curlew Street
 Stockton, CA 95219
Date:
Enforcement Action: 2009-33

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
Assessor Parcel Number: 071-410-89

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 1st through April 15th provided that the proposed work schedule and forecast for weather and river conditions are approved by the inspector.
6. The existing concrete steps on the landside slope shall be removed and disposed of outside of the floodway.
7. The existing concrete retaining wall on the landside toe shall be removed and disposed of outside of the floodway.
8. 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.
9. The existing vegetation taller than 12-inches on the land and waterside slopes and berm shall be removed and disposed of outside of the floodway.

RESTORATION CONDITIONS:

10. Backfill all voids following the removal of the unauthorized encroachments within the levee section and easement area.
11. 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.
12. 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.
13. Fill on levee section shall be keyed into the existing levee section whenever there is substantial fill, as determined by the inspector.
14. The finished slope of the levee must be 3:1 (horizontal:vertical) on the waterside and 2:1 on the landside of the levee.
15. Levee surfaces left barren due to encroachment removal shall be re-vegetated with sod or seeded grass.

PARCEL NO. 2973

Return to
Melancthon Board
1215 O ST
Sacramento, Calif

62396
Recorded at request of
TITLE INSURANCE AND TRUST CO.
DEC 20 1963 at 31 min. past 1 P.M.
BOOK 2767 PAGE 584
Official Records of San Joaquin County
W. George H. Bergman
County Recorder

114701 AB

THIS EASEMENT DEED made this 22nd day of March, 1963, by and between LOUIS G. BALDWIN and DOROTHY LANG SANDERSON, hereinafter designated as grantors, and THE SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency, hereinafter designated as grantee:

W I T N E S S E T H :

FIRST: That grantors do hereby grant to said grantee, its successors and assigns, the following perpetual rights of way and easements over, across and upon the hereinafter described real property:

(a) To clear, construct, reconstruct, enlarge, repair, operate and maintain the south or left bank levee, berm and channel of Bear Creek, a part of the Bear Creek Flood Control Project, together with all appurtenances thereto, including, but not limited to, all embankments, ditches, appurtenant structures, incidental works to said project and bank protection works; and the right to relocate public facilities thereon;

Parcel No. 2973

(b) To construct, reconstruct, repair, operate, maintain, and use access and patrol roads thereon as may be found necessary by the grantee;

(c) To excavate and remove material therefrom for the construction, reconstruction, repair or maintenance of the aforesaid levee and any appurtenances thereto;

(d) To waste or spoil material thereon as may be found necessary in the construction, reconstruction, repair and maintenance of the aforesaid levee and any appurtenances thereto;

(e) To otherwise utilize the described property as may be found necessary for the construction, reconstruction, repair and maintenance of the works referred to above.

Said rights of way and easements shall include, but not be limited to, the right to operate and maintain the flood control project of which said real property is a part, in conformity with the regulations of the Secretary of the Army, as prescribed in Section 208.10, Title 33, Code of Federal Regulations, now existing.

SECOND: That said real property is described as follows:

All that certain parcel or tract of real property situate, lying in and being portion of Sections 7 and 8, Township 2 North, Range 6 East, M.D.M., County of San Joaquin, State of California, said parcel being described as follows:

Beginning at the intersection of the section line common to Sections 5 and 8, Township 2 North, Range 6 East, M.D.M., with the southwesterly right of way line of that certain County Road known as Thornton Road, being also known as Telegraph Road, said point being located South 10° 40' 38" East 5511.26 feet from a brass cap monument marking the northwest corner of said Section 5; THENCE FROM SAID POINT OF BEGINNING along said southwesterly right of way line of Thornton Road, South 42° 56' 55" East 87.52 feet to the landside right of way line of the herein described parcel; thence along said landside right of way line, the following fourteen (14) courses:

- | | | |
|-----|------------------------|--------------|
| (1) | North 88° 19' 40" West | 225.32 feet; |
| (2) | South 87° 12' 50" West | 617.63 feet; |
| (3) | North 87° 52' 20" West | 389.68 feet; |
| (4) | North 88° 25' 50" West | 199.74 feet; |

Parcel No.2973

(5) North 87° 52' 20" West 1003.27 feet;
 (6) North 88° 26' 50" West 199.73 feet;
 (7) North 87° 52' 20" West 194.05 feet;
 (8) North 87° 42' 30" West 1001.47 feet;
 (9) North 87° 25' 30" West 203.73 feet;
 (10) North 88° 08' 10" West 209.50 feet;
 (11) North 87° 27' 10" West 583.14 feet;
 (12) North 89° 08' 10" West 1000.37 feet;
 (13) North 88° 11' 10" West 662.86 feet; and
 (14) South 81° 15' 00" West 30.70 feet to a
 point in the west line of said Section 7; thence along
 said West line North 136.10 feet to the northwest corner
 of said Section 7; thence along the north line of said
 Section 7; South 87° 47' 10" East 3180.00 feet to the
 North 1/4 corner of said Section 7; thence South 87°
 55' 10" East 2647.00 feet to the Northwest corner of
 said Section 8; thence along the North line of said
 Section 8, South 88° 50' 50" East 634.24 feet to the
 point of beginning, containing 15.77 acres, more or less,
 of which 10.76 acres are in existing channel and levee
 of Bear Creek, leaving 5.01 acres, new land taken.

The North Meridian used in this description is that
 adopted for this area by the Department of the Army,
 Corps of Engineers.

RESERVING, HOWEVER, unto grantors, their heirs, successors
 and assigns, any water rights and rights of access to Bear Creek.

THIRD: This indenture and the rights of way and easements
 hereby granted are subject to the 30' Right of Way and easement
 for road purposes over, and across a portion of the above des-
 cribed real property granted to John M. Hammer and Lucille
 Hammer, his wife, by indenture this day recorded.

FOURTH: That the consideration being given for the above
 grant is in full payment for the above conveyed rights in the real
 property described.

FIFTH: That grantors do hereby waive all claim or claims
 for any and all compensation as to said real property herein-
 above described for and on account of the location, establishment
 and construction of flood control works and appurtenant structures

Parcel No. 2973

upon the right of way area hereinabove described in accordance with the provisions hereof.

IN WITNESS WHEREOF, grantors have hereunto set their hands on the day and year first hereinabove written.

Louis G. Baldwin
Louis G. Baldwin

Dorothy Lang Sanderson
Dorothy Lang Sanderson

STATE OF CALIFORNIA, }
 County of SAN JOAQUIN } ss.
 On this 22nd day of March in the year one thousand nine hundred and sixty-three
 before me, JEANETTE PODESTA, a Notary Public in and for the
 County of San Joaquin, State of California, duly commissioned
 and sworn, personally appeared LOUIS G. BALDWIN and
DOROTHY LANG SANDERSON
 known to me to be the person whose name subscribed to the within instrument
 and acknowledged to me that they executed the same.
 IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal
 in the County of San Joaquin the day and year in this
 certificate first above written.

Jeanette Podesta
 Notary Public in and for the County of San Joaquin State of California.
 My Commission Expires _____

Cowdery's Form No. 32—Acknowledgment—General.
(C. C. Sec. 1189) 27802

DEPARTMENT OF ~~MINING~~ General Services
 APPROVED
 NOV 20 1963
 ROBERT L. HARKNESS,
~~XXXXXXXXXXXXXXXXXXXX~~ Director
~~XXXXXXXXXXXXXXXXXXXX~~
 Chief Land Agent

RESOLUTION

PASSED AND ADOPTED BY THE RECLAMATION BOARD

AT MEETING HELD DECEMBER 6, 1962

IT IS RESOLVED AND ORDERED by The Reclamation Board of the State of California that A. E. McCOLLAM, General Manager of said Board, is hereby authorized to consent to deeds or grants conveying to the Sacramento and San Joaquin Drainage District, The Reclamation Board of the State of California, or the State of California, real estate, or any interest therein, or easements thereon, for public purposes, and to evidence said consent by his written acceptance attached to such deeds or grants, together with a certified copy of this resolution in accordance with Section 27261 of the Government Code of the State of California, and does further consent to recordation thereof by the said General Manager.

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

I, H. J. SULLIVAN, Assistant Secretary of The Reclamation Board, do hereby certify that the above and foregoing is a true and exact copy of a resolution duly passed and adopted by said Board at a meeting held on December 6, 1962.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 22nd day of May, 1963.

[Signature of H. J. Sullivan]
Assistant Secretary
The Reclamation Board

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss.

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

DATED: May 23, 1963.

[Signature of A. E. McCollam]
General Manager
THE RECLAMATION BOARD

R E S O L U T I O N

PASSED AND ADOPTED BY THE RECLAMATION BOARDAT MEETING HELD DECEMBER 6, 1962

IT IS RESOLVED AND ORDERED by The Reclamation Board of the State of California that A. E. McCOLLAM, General Manager of said Board, is hereby authorized to consent to deeds or grants conveying to the Sacramento and San Joaquin Drainage District, The Reclamation Board of the State of California, or the State of California, real estate, or any interest therein, or easements thereon, for public purposes, and to evidence said consent by his written acceptance attached to such deeds or grants, together with a certified copy of this resolution in accordance with Section 27281 of the Government Code of the State of California, and does further consent to recordation thereof by the said General Manager.

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

I, H. J. SULLIVAN, Assistant Secretary of The Reclamation Board, do hereby certify that the above and foregoing is a true and exact copy of a resolution duly passed and adopted by said Board at a meeting held on December 6, 1962.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 7th day of August, 1963.


 Assistant Secretary
 The Reclamation Board

STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO) ss.

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

DATED: August 7, 1963.


 General Manager
 THE RECLAMATION BOARD



DEPARTMENT OF THE ARMY
U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

REPLY TO
ATTENTION OF

Flood Protection and Navigation Section (18347)

MAR 16 2009

Mr. Jay Punia, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Ave. Rm. LL40
Sacramento, California 95821

Dear Mr. Punia:

We have reviewed a permit application by Jesse Castellon (application number 18347). These plans cover authorizing an existing 8- by 30-foot boat dock supported by two 12-inch diameter steel piles, authorizing a 4-foot wide gangway, constructing concrete steps on the waterside slope, installing a lawn on the waterside berm, installing an electrical pole on the waterside berm, constructing a 6-foot high wrought iron fence on the landside crown, authorizing concrete steps on the landside slope, authorizing a concrete retaining wall at the landside toe, authorizing a 6-foot high wooden fence (perpendicular) on the landside slope, constructing a waterfall on the landside slope, authorizing a concrete patio within 10-feet of the landside toe, authorizing existing plants on the landside slope, planting additional plants on the landside slope, trenching through the levee and installing an electrical conduit, and installing irrigation piping on the left (south) bank levee of Bear Creek. The project is located in Stockton at 4215 Curlew Street, at 38.0429°N 121.3691°W NAD83, San Joaquin County, California.

The District Engineer recommends denial of the following elements of this permit application:

- a. Wrought iron fence on the landside crown of the levee. Fences are not allowed on the levee crown as they inhibit inspections and emergency access.
- b. Concrete steps on the landside levee slope. The concrete steps are constructed within the levee slope and are not acceptable. The steps shall be removed and the levee rebuilt to design lines and grade.
- c. Concrete retaining wall at the landside levee toe. The retaining wall footing is built into the levee slope. The retaining wall shall be removed and the levee rebuilt to design lines and grade.

-2-

d. Wooden fence on the landside levee slope. The fence from the landside levee toe up to the landside crown shoulder is not acceptable as it limits levee visibility and the posts penetrate the levee prism. The fence, from the toe to the crown, shall be removed and the post holes backfilled.

e. Waterfall on the landside slope.

f. Plants, existing or planned, on the levee slope. Plantings, other than grasses, are not allowed.

The District Engineer has no objection to approval of the following elements of this application by your Board from a flood control standpoint, subject to the conditions following:

a. The boat dock and gangway to a landing.

1. That the top elevation of the pilings shall be 2-feet above elevation 9.2-feet¹ as shown on "Flood Protection Restoration Project Lower Bear Creek" as-built drawing 96-02-15, sheet 5 (enclosed).

2. That after each period of high water, all debris caught by the boating facility shall be cleared and disposed of outside the limits of the project right-of-way.

3. That in the event that levee or bank erosion injurious to the flood damage reduction project occurs at or adjacent to the boating facility, the applicant is responsible for the repair of the eroded area and for the placement of adequate bank protection to prevent further erosion.

4. That the United States of America shall be held harmless for any damages caused to the boat dock during flood fighting operations.

5. That the gangway and boat dock shall be properly anchored to prevent flotation into the floodway during periods of high water.

b. Concrete steps on the waterside slope.

¹ Control point elevations are based on an elevation control loop established by Towill Inc. for the Schaaf & Wheeler FEMA study (1992) beginning at a San Joaquin County benchmark (brass disk stamped FE-17.6) set in the bridge deck on the N.W. corner of the Escalon-Belotta Road bridge over Mormon Slough, 46 feet southeast of the centerline of State Highway 26 and 27 feet southwest of the centerline of the bridge, located at the intersection of State Highway 26 and the Escalon-Belotta Road, 4.5 miles east along Highway 26 from the town of Linden.

-3-

1. That the concrete steps shall be installed flush with the levee slope.
2. That the steps shall not be more than 4-feet in width.
3. That the cuts into the levee slope shall not exceed 12-inches in depth.

c. Lawn on the waterside berm.

1. That the applicant shall maintain the lawn to ensure a clear and unobstructed view of the levee and berm.

d. Electrical pole on the waterside berm.

1. That the proposed pole shall be located at least 15 feet waterward from the levee toe.

e. Concrete patio within 10-feet of the landside levee toe.

f. Electrical conduit and irrigation piping within the levee right-of-way.

1. That the conduits or piping shall be installed in the levee crown above elevation 9.2-feet as referenced in a.1. above.

2. That the conduits or piping shall have at least 2-feet of cover in the levee crown and 1-foot of cover over the levee slopes.

3. Trench backfill shall consist of either controlled low-strength material (CLSM) or lean mix concrete. The CLSM or lean-mix concrete shall have a 28-day compressive strength of between 15 and 50 psi and a 28-day hydraulic conductivity of 1×10^{-6} cm/sec or less.

g. Willow tree on the waterside berm.

1. That the willow tree shall be no closer than 15 feet from the waterward toe of the levee.

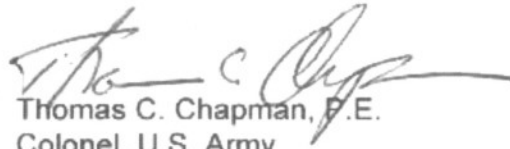
A recent survey shows the residential structure is 5-feet outside the levee easement but 9-feet from the landside levee toe (retaining wall). The Board needs to determine if the local maintaining agency can access the levee system in an emergency with this structure in place. If not, the structure should be removed or relocated at least 10-feet from the levee toe.

-4-

A Section 10 and/or Section 404 permit (200000353) has been issued for this work.

If you have any questions concerning our comments on this permit application, please contact Mr. Ryan Larson at (916) 557-7568 or Mr. Robert Murakami at (916) 557-6738.

Sincerely,



Thomas C. Chapman, P.E.
Colonel, U.S. Army
District Engineer

Copy Furnished:

Mr. Jeremy Arrich, Chief, Flood Project Integrity and Inspection Branch,
3310 El Camino Ave., Suite LL30, Sacramento, CA 95821