

**Meeting of the Central Valley Flood Protection Board
January 28, 2011**

Staff Report – Encroachment Permit Hearing

**Donald Murphy
Sacramento County**

1.0 – ITEM

This is a continuation hearing from October 17, 2008 to consider denial of Application No. 18413 through Resolution No. 11-04 (Attachment A).

2.0 – APPLICANT

Donald Murphy

3.0 – LOCATION

The project is located at 7260 Pocket Road, Sacramento.
(Sacramento River, Sacramento County, See Figure1a and 1b).

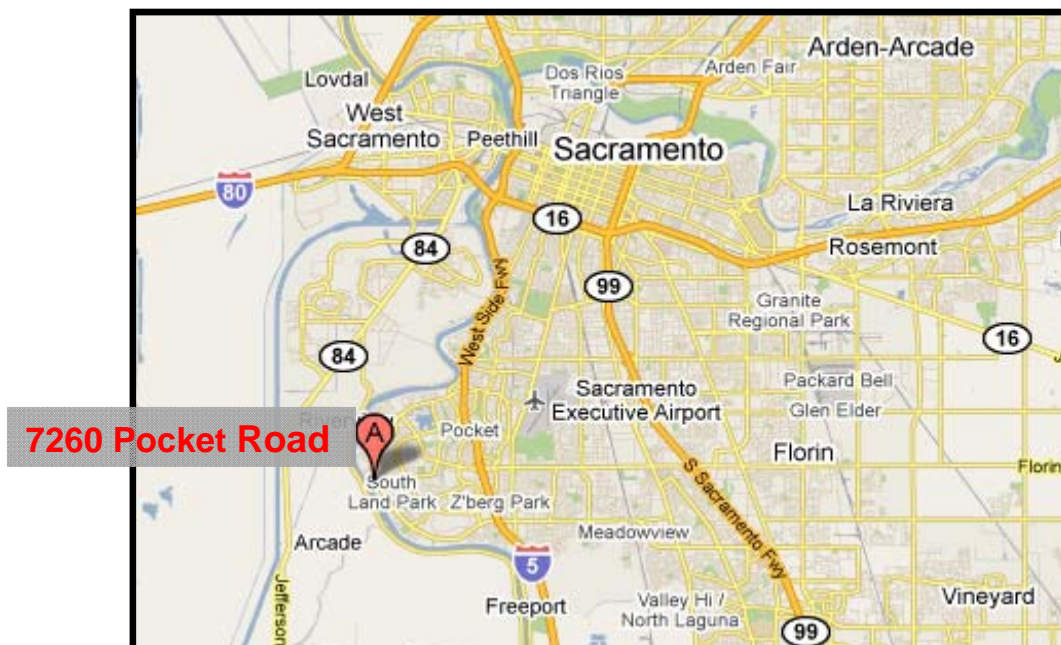


Figure 3a- Vicinity Map (Source: Google Maps)

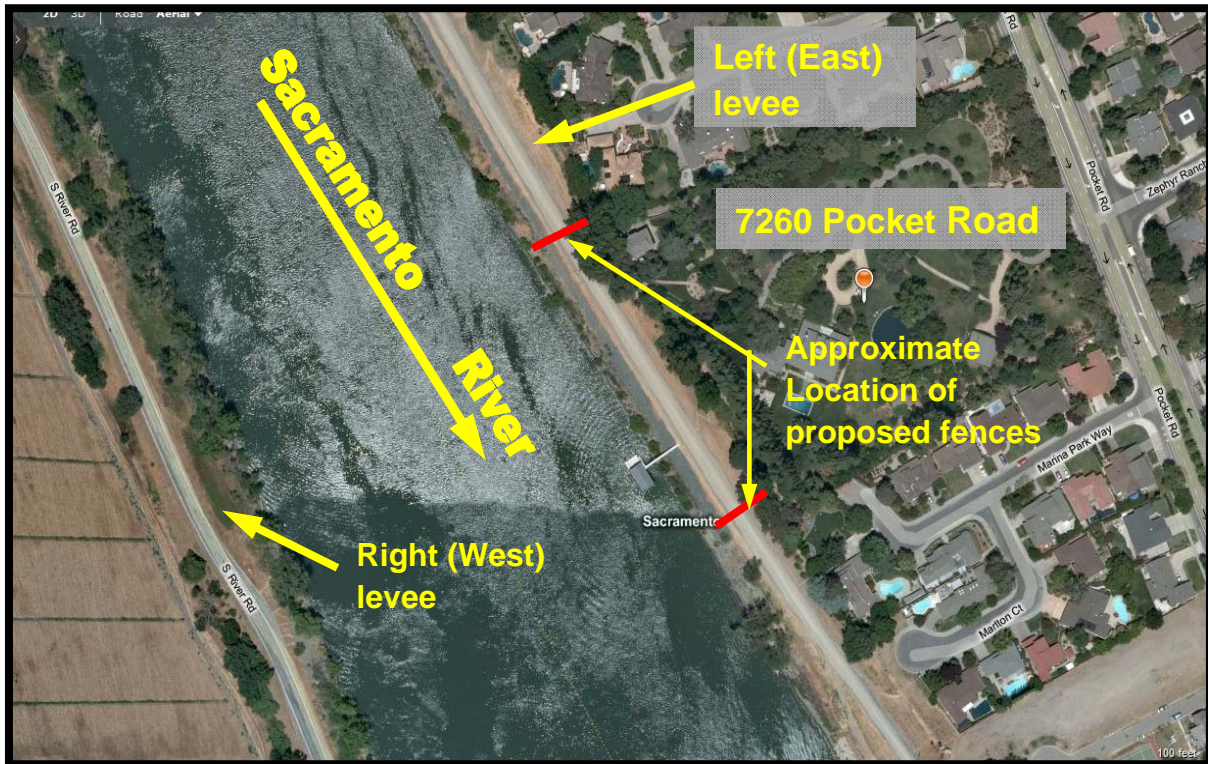


Figure 3b- Aerial view of the property at 7260 Pocket Road (Source: Bing Maps)

4.0 – DESCRIPTION

The applicant proposes to install a 6-foot high perpendicular cyclone fence with two (2) 7-foot wide by 6-foot high gates at the upstream and downstream boundaries of the property along the left (east) levee of the Sacramento River, as shown on Figure 3b.

5.0 – APPLICABLE LAWS AND REGULATIONS

5.1 – Water Code

The Central Valley Flood Protection Board (“Board”) has the authority to deny approval of a permit application if the Board determines that the proposed work will or may *“Interfere with the successful execution, functioning or operation of any plan of flood control adopted by the board”* (Water Code § 8723).

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

The Board may deny a permit application if the proposed work could:

- “*Impair the inspection of floodways or project works*” (CCR 23 § 15 (a) (4))
- “*Interfere with the maintenance of floodway or project works*” (CCR 23 § 15 (a) (5))
- “*Interfere with the ability to engage in floodfighting, patrolling, or other flood emergency activities*” (CCR 23 § 15 (a) (6))

In addition, Title 23 Section 126 (a)(6) states that if the “*distance between fences would be so close as to interfere unreasonably with levee inspection, maintenance and flood fight activities, the board may deny approval for additional fences.*”

6.0 – STAFF ANALYSIS

The installation of two perpendicular fences and gates over the Sacramento River East project levee would interfere with Maintenance Area 9 (MA9)’s operations and maintenance of the levee by limiting access. Currently, there are 14 perpendicular fences and gates within MA9 (9 are private and 5 are maintained by MA9). The closest gate to the applicant’s property is approximately 0.30 mile upstream and 0.10 mile downstream. The distance between the two proposed gates is approximately 0.10 mile. The distance between the proposed gates and the proximity to existing gates upstream and downstream is too close. Considerable time is spent by the need to open and close numerous consecutive gates on the levees during inspection and maintenance activities. Approval of additional gates will further delay and interfere with such necessary activities.

The original application submitted on May 2008 requested authorization to install two perpendicular fences to restrict access to their property as the applicant feared for his safety (see letter attached to original application Attachment D, Exhibit D). The applicant has an existing code compliant parallel fence that is approximately 10 feet from the landside levee toe that deters trespass to the applicant’s home (see figure 6a below). In addition, the applicant also has a gangway security gate on the boat dock gangway which restricts unlimited access to the boat dock. The installed gangway security gate is a code compliant method to prevent trespass on docks and does not interfere with levee patrols or maintenance (see figure 6b). Therefore staff believes that installation of perpendicular fences on the levee is unnecessary for the reasons stated above.



Figure 6a- Existing parallel fence along the landside levee toe (Staff site visit January 19, 2011)



Figure 6b- Existing gangway security gate (Staff site visit August 31, 2010)

6.1 – Background

This application was first heard by the Board in October 17, 2008 where staff recommended denial of the application (Refer to Attachment D, Exhibit A). The Board took a substantial amount of testimony during this hearing. Three different motions were made, including continuing the hearing and directing staff and the applicant to meet and reach a compromise; denial of the permit application on the basis that the proposed work interferes with the maintenance of the floodways and ability to engage in flood fighting, patrolling and other flood emergency activities; and approval of the application subject to the design being acceptable to Board staff and the Corps. The Board was not able to reach a quorum. Therefore, the hearing was continued to allow staff and the applicant to work to try to reach a compromise. Refer to Attachment D, Exhibit B for copy of the official meeting transcript.

Board staff communicated with the applicant on various occasions between November 2008 and July 2009 and was not successful at reaching a mutual agreement. On August 19, 2010 Board staff met with the applicant in an effort to reinstate discussions on the proposed application. Following the meeting, the application was revised and re-submitted to Board staff (see Attachment C). The revised application package was forwarded to the U.S. Army Corps of Engineers (“Corps”) for review. By letter dated November 12, 2010, the Corps recommended denial of this application (Refer to Section 7.0 of this report for details).

6.2 – Relevant Permitting information and Impacts on Policy

On June 19, 1996 the Board adopted “Levee Cross Fence and Gate Master Plan for MA9 (see Attachment G). The main objective of this master plan was to provide additional guidance for future cross fences within MA 9’s jurisdiction and also protect legal public access and private property rights while providing access for flood control and public safety. One of the newly adopted standards states that private cross fences shall be permitted on a case by case basis *“with the objective of minimizing the number of gates and cross fences so as to not adversely impact operation and maintenance of the flood control project.”*

Following the adoption of the MA9 master plan, the Board denied similar proposals within MA9. On May 17, 2002, the Board denied application No. 17243 requesting authorization to install a perpendicular fence and gate across the east levee on the Sacramento River. In addition, the Board also denied application No. 17884 on June 17, 2005 which requested authorization to install a perpendicular fence and gate across the levee. The denial of the mentioned applications demonstrated the Board’s commitment to the 1996 adopted guidelines at minimizing additional cross fences on the levee within MA9’s jurisdiction. Therefore, approval of this application would be contradictory to this success and may be perceived as setting precedence indicating to the public that similar proposals are acceptable to the Board.

6.3 – Hydraulic Analysis

Hydraulic analysis was not required for this project. However, the applicant submitted a hydraulic report prepared by Ensign & Buckley Consulting Engineers dated January 16, 1996 (see Attachment F). The report analyzed eight existing fences across the East levee of the Sacramento River between Levee Mile 0.79 and 5.51, within MA9’s jurisdiction. The report concluded that if the area of the fences was treated as completely blocked, the change in the 100 year water surface elevation (WSE) would be about 0.02 ft. The impact of one or two additional fences may not have a significant effect on the WSE. However, the cumulative effect of existing fences throughout the entire State Plan of Flood Control could be significant in the event of a 100-year storm in which the fences can be washed out by the storm or catch debris.

6.4 – Easement

The proposed fences are proposed to be installed on two parcels (APN: 031-0860-003 and 031-0860-004). The Board, through the Sacramento San Joaquin Drainage District (SSJDD), obtained easement rights on both parcels owned by the applicant, which are

discussed below. Although the applicant owns the land under the levee, the Board maintains statutory authority to regulate encroachments. In addition, any use of the easement may not interfere with the Board's rights under the easement to operate and maintain the project. As such, the Board has the authority to deny an application on the basis that the proposed fences could interfere with the Board's ability to maintain the levee and may interfere with the successful execution, functioning or operation of the plan of flood control, as discussed in Sections 5.0 and 6.0 of this report.

On January 18, 1956 the SSJDD obtained Deed 2370 for Parcel 031-0860-003 recorded on Volume 3459 Page 136 from Maria N. Silva, Joseph L. Silva and Israel Silva, Anthony Silva and Marie F. Silva, which granted the following rights:

"...a perpetual right of way and easement to build, construct, reconstruct, repair and forever maintain the east levee of the Sacramento River, a part of the Sacramento River Flood Control Plan of the California Debris Commission, including all embankment, ditches and appurtenant structures, incidental works to said levee and bank protection works..."(Attachment E, Exhibit A)

On June 1, 1954 the Sacramento San Joaquin Drainage District (SSJDD) obtained Deed 1633 for Parcel 031-0860-004 recorded on Book 2616 Page 71 from John L. Silva and Ignacia Silva, which granted the following rights:

"...a perpetual right of way and easement to build, construct, reconstruct, repair and forever maintain the East levee of the Sacramento River Flood Control Plan of the California Debris Commission, including all embankments, ditches, appurtenant structures, incidental works to said levee and bank protection works..."(Attachment E, Exhibit B).

7.0 – AGENCY COMMENTS

The comments associated with this project, from all pertinent agencies are shown below:

- The U.S. Army Corps of Engineers ("Corps") recommends denial of this permit application because the proposed fences and gates limit access for maintenance, inspection and flood fight procedures, as stated in letter dated November 12, 2010 (Attachment B, Exhibit A).
- Maintenance Area 9 (MA 9) who is the Local Maintaining Agency (LMA) does not endorse this application because the proposed work impairs and interferes with levee inspections, maintenance and flood fighting activities as stated in letter dated August 31, 2010 (Attachment B, Exhibit B).

8.0 – CEQA ANALYSIS

Board staff has prepared the following CEQA determination:

No CEQA Determinations or findings are required for the Board to deny this application. However, if the Board decides not to deny the project, then further CEQA review is necessary.

9.0 – SECTION 8610.5 CONSIDERATIONS

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the permit application and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

The accepted industry standards for the work proposed under this permit as regulated by Title 23 have been applied to the review of this application.

3. Effects of the decision on the entire State Plan of Flood Control:

Denial of this project will maintain the project levee clear of obstructions and prevent potential adverse impacts to the operation and maintenance of the Sacramento River Flood Control, portion of the State Plan of Flood Control.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

Denial of this project will keep the project levee clear of obstructions and allow for maintenance and operations of the Flood Control System.

10.0 – STAFF RECOMMENDATION

Board staff agrees with the LMA and USACE that the proposed fences across the levee will interfere with the operations and maintenance of the levee and therefore should be denied. Staff recommends that the Board adopt Resolution No. 11-04, which constitutes the Boards written findings and decision in the matter of Application No. 18413. The Resolution contains the Boards CEQA findings; Findings of Fact; and denial of Application No. 18413 to install a 6-foot high perpendicular cyclone fence with two (2) 7-foot wide by 6-foot high gates at the upstream and downstream boundaries of the property along the left (east) levee of the Sacramento River.

11.0 – LIST OF ATTACHMENTS

- A. Resolution No. 11-04
- B. Correspondence
 - Exhibit A – Corps 208.10 Review Letter dated November 12, 2010
 - Exhibit B – Maintenance Area 9 letter dated August 31, 2010
- C. Application and site photos
- D. October 2008 Hearing for Application 18413
 - Exhibit A – Staff Report with attachments
 - Exhibit B - Copies of official transcript (only pages pertinent to Application 18413)
 - Exhibit C – MA 9 letter dated October 7, 2008
 - Exhibit D –Letter from applicant
- E. Easement Information
 - Exhibit A – Deed 2370 recorded on Volume 3459 Page 136
 - Exhibit B - Deed 1633 recorded on Book 2616 Page 71
- F. Hydraulic Analysis prepared by Ensign & Buckley Consulting Engineers dated January 16, 1996 (only summary included)
- G. Levee Cross Fence and Gate Master Plan for MA 9 dated June 1996

Report Completed by:	Angeles Caliso
Environmental Review:	James Herota/Andrea Mauro
Document Review:	Curt Taras, Debbie Smith

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 11-04

FINDINGS AND DECISION OF HEARING FOR
ENCROACHMENT APPLICATION NO. 18413
MR. DONALD MURPHY, SECTION 4 TOWNSHIP 7N RANGE 4E MDB&M
SACRAMENTO RIVER, SACRAMENTO COUNTY

WHEREAS, Mr. Donald Murphy (applicant) is owner of two properties known as Yolo County Assessor's Parcel No. 031-860-003 and 031-860-004 located in Section 4, Township 7 North, Range 4 East, Mount Diablo Base and Meridian; and

WHEREAS, the property is located at 7260 Pocket Road in Sacramento, on the east (left) bank levee of the Sacramento River; and

WHEREAS, the Sacramento River East Levee is part of the federal Sacramento River Flood Control Project completed in 1955 and adopted by the Board for its operation and maintenance; and

WHEREAS, the applicant proposes to install a 6-foot high perpendicular cyclone fence with two (2) 7-foot wide by 6-foot high gates at the upstream and downstream boundaries of the property along the left (east) levee of the Sacramento River; and

WHEREAS, the installation of two perpendicular fences and gates over the Sacramento River East project levee would interfere with Maintenance Area 9 (MA9)'s operations and maintenance; and

WHEREAS, the Central Valley Flood Protection Board ("Board") has the authority to deny approval of a permit application if the Board determines that the proposed work will or may *"Interfere with the successful execution, functioning or operation of any plan of flood control adopted by the board"* (Water Code § 8723); and

WHEREAS, the Board may deny a permit application if the proposed work could: *"Impair the inspection of floodways or project works"* (CCR 23 § 15 (a) (4)); *"Interfere with the maintenance of floodway or project works"* (CCR 23 § 15 (a) (5)); *"Interfere with the ability to engage in flood fighting, patrolling, or other flood emergency activities"* (CCR 23 § 15 (a) (6)); and

WHEREAS, the California Code of Regulations (CCR) Title 23 Article 8 Section 126 (a)(6) states that if the *"distance between fences would be so close as to interfere unreasonably with levee inspection, maintenance and flood fight activities, the board may deny approval for additional fences"*; and

WHEREAS, there are currently 14 perpendicular fences and gates within MA9 (9 are private and 5 are maintained by MA9). The closest gate to the applicant's property is approximately 0.30 mile upstream and 0.10 mile downstream. The distance between the two proposed gates is approximately 0.10 mile. The distance between the proposed gates and the proximity to existing gates upstream and downstream is too close. Considerable time is already spent by the need to open and close numerous consecutive gates on the levees during inspection and maintenance activities. Approval of additional gates will further delay and interfere with such necessary activities; and

WHEREAS, the applicant has an existing code compliant parallel fence that is approximately 10 feet from the landside levee toe and also has a gangway security gate on the boat dock gangway which restricts unlimited access to the boat dock. The existing parallel fence and gangway security gate are two code compliant methods to prevent trespass to the applicant's property and boat dock. Therefore staff believes that installation of perpendicular fences on the levee is unnecessary; and

WHEREAS, on June 19, 1996, the Board adopted the "Levee Cross Fence and Gate Master Plan for MA9 (Staff Report Attachment G), in which the Board would review new cross fences on a case by case basis *"with the objective of minimizing the number of gates and cross fences so as to not adversely impact operation and maintenance of the flood control project"*; and

WHEREAS, following the adoption of the MA9 master plan, the Board denied similar proposals within MA9. Application No. 17243 and 17884 were both denied by the Board on May 17, 2002 and on June 17, 2005, respectively. Denial of the mentioned applications demonstrated the Board's commitment to the 1996 adopted guidelines at minimizing additional cross fences on the levee within MA 9's jurisdiction. Therefore, approval of this application would be contradictory to this success and may be perceived as setting precedence indicating to the public that similar proposals are acceptable to the Board; and

WHEREAS, the proposed fences would be installed on two parcels (APN: 031-0860-003 and 031-0860-004) for which the Board, through the Sacramento San Joaquin Drainage District (SSJDD), obtained easement rights. Although the applicant owns the land under the levee, the Board maintains statutory authority to regulate encroachments. In addition, any use of the easement may not interfere with the Board's rights under the easement to operate and maintain the project. As such, the Board has the authority to deny an application on the basis that the proposed fences could interfere with the Board's ability to maintain the levee and may interfere with the successful execution, functioning or operation of the plan of flood control; and

WHEREAS, the U.S. Army Corps of Engineers recommends denial of this permit application because the proposed fences and gates limit access for maintenance, inspection and flood fight procedures, as stated in letter dated November 12, 2010 (Staff Report Attachment B, Exhibit A); and

WHEREAS, maintenance Area 9 (MA 9) who is the Local Maintaining Agency (LMA) does not endorse this application because the proposed work impairs and interferes with levee inspections, maintenance and flood fighting activities as stated in letter dated August 31, 2010 (Staff Report Attachment B, Exhibit B); and

WHEREAS, for all these reasons, staff recommends the Board determine the project is statutorily exempt from CEQA and deny authorization of Application No. 18413; and

WHEREAS, the Board has conducted a public hearing on Permit Application No. 18413 and has reviewed the Staff Report, the documents and correspondence in its file, and given the applicant the right to testify and present evidence on their behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact:

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.
2. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report. The Board has reviewed the Figures, Attachments, and References listed in the Staff Report.

CEQA Considerations

3. No CEQA Determination or findings are necessary for the Board to deny this application.
4. If the Board decides not to deny the project then further CEQA review is necessary.
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 151, Sacramento, California 95821.

Considerations 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, CEQA findings and USACE recommendation. The Board has also considered all other correspondence received by the Board and in the Board's files and 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 151, 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 application as regulated by Title 23 have been applied to the review of this application.

8. **Effects on State Plan of Flood Control.** Denial of this project will maintain the project levee clear of obstructions and prevent potential adverse impacts to the operation and maintenance of the Sacramento River Flood Control, portion of the State Plan of Flood Control.
9. **Effects of Reasonably Projected Future Events.** Denial of this project will keep the project levee clear of obstructions and allow for maintenance and operations of the Flood Control System.

Other Findings/Conclusions regarding Permit Application

10. The Board concurs with the LMA's and USACE that the proposed fences across the levee will interfere with operations and maintenance of the project levee and therefore the Board hereby denies authorization of Application No. 18413.
11. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Application No. 18413.

PASSED AND ADOPTED by vote of the Board on _____, 2011

Benjamin F. Carter
President

Francis ("Butch") Hodgkins
Secretary



REPLY TO
ATTENTION OF

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

Flood Protection and Navigation Section (18413)

NOV 12 2010

Mr. Jay Punia, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

Dear Mr. Punia:

We have reviewed a permit application by Donald Murphy (application number 18413). This project includes installing a 6 foot high cyclone fence across the landside and waterside slopes and installing a 14 foot wide gate across the crown at both the upstream and downstream boundaries of the applicant's property on the left (east) bank levee of the Sacramento River. This project is located in Sacramento at 7260 Pocket Road, at 38.4920°N 121.5538°W NAD83, Sacramento County, California.

The District Engineer recommends denial of this permit application from a flood control standpoint because the proposed fences and gates limit access for maintenance, inspection, and flood fight procedures.

A copy of this letter is being furnished to Mr. Don Rasmussen, Chief of the Flood Project Integrity and Inspection Branch, 3310 El Camino Avenue, Suite LL30, Sacramento, CA, 95821.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Leady", is written over the typed name.

William J. Leady, P.E.
Colonel, U.S. Army
District Commander

DEPARTMENT OF WATER RESOURCES

1450 RIVERBANK ROAD
WEST SACRAMENTO, CA 95605
(916) 375-6000 (916) 375-6020 (fax)



August 31, 2010

Central Valley Flood Protection Board
1416 Ninth Street
Sacramento, CA 95814

RE: Encroachment Application

This letter is regarding the application submitted by Mr. Murphy to install a fence and gate at 7260 Pocket Road, Sacramento, CA. At this time, I stand by the denial recommended for the same reasons as indicated in the October 7, 2008 response.

Pursuant to and in compliance with the California Code of Regulations, Title 23, Article 8, Section 126, sub-section (a)6, the additional fence and gate would impair and interfere with levee inspection and maintenance as well as flood fighting activities. There are already gates on the levee crown approximately 3-tenths of a mile upstream and 1-tenth of a mile downstream from the said property.

Again, I recommend that the application be denied.

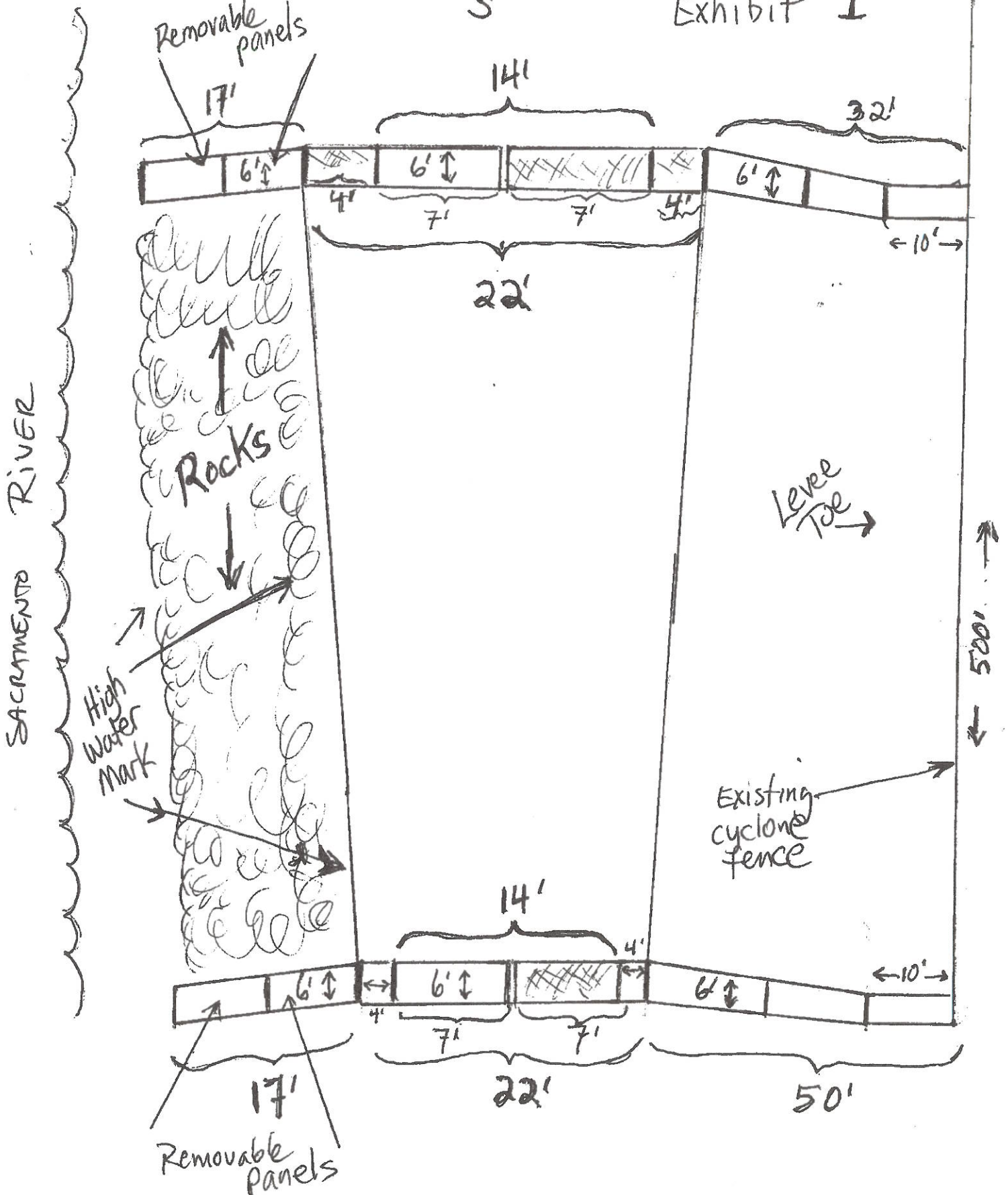
Sincerely,

A handwritten signature in black ink, appearing to read "Russell W Eckman".

Russ Eckman, Superintendent
Department of Water Resources
Sacramento Maintenance Yard
Maintenance Area 9



Application 18413
Exhibit 1



Notes for Application 18413

Gates and Fences will be constructed at the north and south ends of the property lines. Please refer to Exhibit 1 for detailed drawing of proposed project.

1. Cyclone fence and gates are 6 feet in height. Please refer to Exhibit 2 - Proposal from Freedom Fence, Inc. for details on gauge and fabric.
2. Gates are each 14 feet in total width (these are swing gates of 7 feet each). Gates will swing in either direction.
3. Panels on river side are removable. They are fastened to the posts with Kennel clamps for ease of removal.
4. Fences on river side will extend to the high-water mark at approximately 17 feet from levee crown.
5. Posts for fencing on river side and levee side will be submerged to a depth of 12 inches. Posts securing the gates will be submerged to a depth of 18 inches.
6. Existing cyclone fence that extends along the property is approximately 500 feet in length. This fence is at least 10 feet from the levee toe.
7. Rocks frame the borderline of the high-water mark.



Figure 1- Board Staff site visit 01.19.11 looking upstream. Standing on Sacramento River East levee



Figure 2- Board Staff site visit 01.19.11 looking downstream. Standing on Sacramento River East levee



Figure 3- Board Staff site visit 01.19.11 looking downstream. Standing on Sacramento River East levee



Figure 4- Board Staff site visit 01.19.11 looking west onto Sacramento River.

Permit No. 18413

Agenda Item No. 9B

**Meeting of the Central Valley Flood Protection Board
October 17, 2008**

**Draft Staff Report
DWR Floodway Protection Section**

Item

Consider Application No. 18413 to install chain link fence and gate at upstream and downstream boundary of property across the landside slope, crown and the waterside slope of the left (east) bank levee of the Sacramento River in Sacramento County.

Applicant

Donald Murphy

Location

The project is located in Sacramento at 7260 Pocket Road. (Sacramento River, Sacramento County, see Attachment A).

Description

To install 6-foot high chain link fence and 16-foot wide by 6-foot high chain link gate at the upstream and downstream boundary of the property across the landside slope, crown and the waterside slope of the left (east) bank levee of the Sacramento River.

Agency Comments and Endorsements:

- The U. S. Army Corps of Engineers has not endorsed this project.
- The Sacramento Maintenance Yard does not endorse this application.

Discussion

Mr. Murphy's purpose for installing the boundary cross fences is to restrict access to his private property. Mr. Murphy is concerned about general personal safety as a result of accessibility to his property. The Central Valley Flood Protection Board has a levee easement at the site of the proposed fences. The easement allows the Board to perform essential levee inspections and levee maintenance.

Permit No. 18413

Agenda Item No. 9B

Title 23
 Division 1
 Chapter 1
 Article 3
 Paragraph 15 Bases for Denial of Applications
 Items:

- 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 flood fighting, patrolling, or other flood emergency activities;

Proposed CEQA Determination of Exemption:

Board staff has prepared the following CEQA determination:

The Board, acting as the CEQA lead agency, has determined that the project is categorically exempt from CEQA under a Class 3 Categorical Exemption (CEQA Guidelines Section 15303(e)) covering fences added to existing structures.
Section 8610.5 Compliance

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

The Board will make its decision based on the evidence in the permit application and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

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.

3. Effects of the decision on the entire State Plan of Flood Control:

This project has negative effects on the State Plan of Flood Control.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

The proposed project will add to existing encroachments in this reach of State Maintenance Area 9 that will interfere with general inspections, maintenance of and any flood fight along this reach of levee

Permit No. 18413

Agenda Item No. 9B

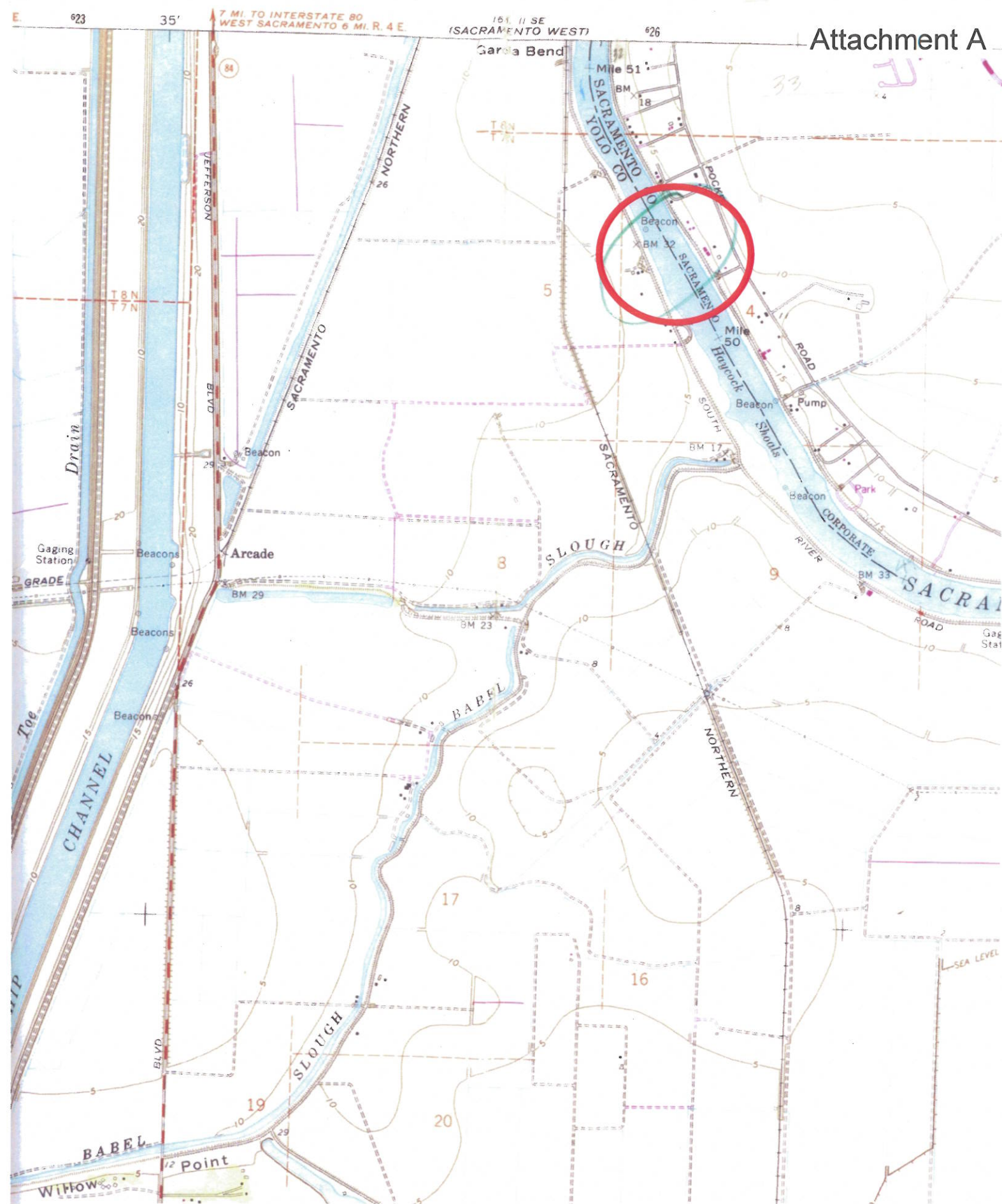
Staff Recommendation

Staff recommends that the Board deny the application for encroachment permit.

List of Attachments

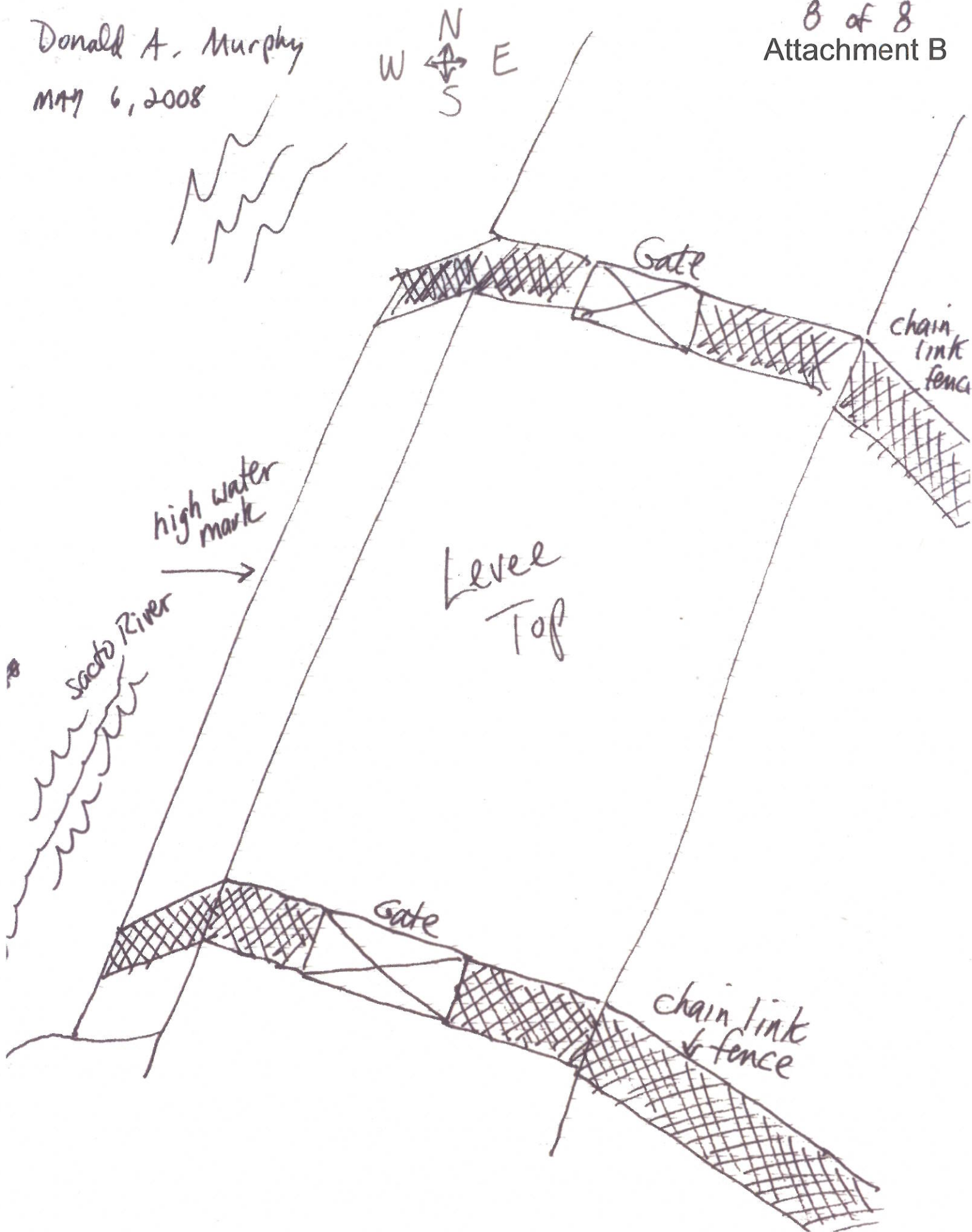
- A. Location Map
- B. Project Diagram

Attachment A



Donald A. Murphy
MAY 6, 2008

8 of 8
Attachment B



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

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 17, 2008
8:32 A.M.


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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 Thank you very much.
2 We'll close the hearing then on that permit.
3  And we will move to Item 9B. And we'll go ahead
4 and open the hearing to consider an application, No.
5 18413, to install chain-link fence and a gate at upstream
6 and downstream boundaries of property across the landside
7 slope, crown, and waterside slope of the left bank of the
8 levee of the Sacramento River in Sacramento County.
9 And, Mr. Yego, you're here to present on behalf
10 of the staff?
11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
12 Yes. Good morning, President Carter, Vice
13 President Butch Hodgkins, Board members. My name is John
14 Yego. I am the Chief of the Floodway Protection Section.
15 I'm here presenting to consider the Application
16 No. 18413 to install a 6-foot-high chain-link fence and
17 16-foot-wide gate at the upstream and downstream boundary
18 of the property located at 7260 Pocket Road.
19 The proposed fence and gate would cross the
20 landside slope, crown, and waterside slopes of the east,
21 or left, bank of the Sacramento River located in
22 Maintenance Area 9, a state -- or a Sacramento Maintenance
23 Yard maintenance area.
24 The application is by Mr. Donald Murphy.
25 Staff recommends denial of Application 18413 for

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 the following reasons:
2 The proposed cross fence and gate will interfere
3 with inspection, operation and maintenance and flood-fight
4 activities, and will contribute to the overall cumulative
5 effect on the access for these activities.
6 Under Title 23, Division 1, Chapter 1, Article 3,
7 paragraph 15, basis for denial of application items: Item
8 4 states that it will impair the inspection of floodways
9 or project works; Item 5, interfere with maintenance of
10 floodways or project works; and Item 6, interfere with the
11 abilities to engage in flood fighting, patrolling or other
12 flood emergency activities.
13 Also, staff expects, with the approval, this will
14 encourage other property owners along the levee to request
15 more permission to install cross fencing and gates to
16 retain their privacy.
17 There has been similar applications before the
18 Board, one as recent as June of 2004 by Sacramento City
19 Parks and Recreation, Permit No. 17844, in which the Board
20 denied the application.
21 If I may state why we're doing this hearing.
22 This application was originally submitted for
23 consideration as an addendum to Permit No. 17678, which is
24 for a boating dock, which was approved. Basically under
25 the previous standards prior to January 1, which requires

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1 the evidentiary hearings and Board action, applications of
2 this type were normally denied by staff and returned to
3 the applicant.

4 This particular application is unique since that
5 under Title 23, Article 3, paragraph 7, which is the
6 endorsement of local maintaining agencies, properties
7 within state-maintained properties do not require local
8 maintaining endorsement. In these actions, the Floodway
9 Protection Section has acted on behalf of the state by
10 delegation of the State Maintenance Yards.

11 Based on this, a letter dated May 9th by Mr. --
12 or signed by Mr. Steve Dawson was sent to Mr. Murphy
13 recommending denial of Mr. Murphy's rights -- oh, his
14 rights to appeal. With that, a letter was received by Mr.
15 Murphy on May 22nd, 2008, which states that he wishes to
16 exercise his right of appeal. Mr. Murphy was contacted by
17 the Floodway Protection Section on June 25th of 2008 to
18 notify that his hearing was going to be scheduled for July
19 2008's Board meeting. Mr. Murphy then requested because
20 of scheduling conflicts that his hearing could be
21 postponed to September 2008.

22 During the August 15th, 2008, Board meeting with
23 the review of the future agenda for September 2008's
24 Central Valley Flood Protection Board meeting, under
25 Hearings and Decisions a Board member stated that staff

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1 procedural standpoint, I thought our staff could deny an
2 application or the permit, and then the applicant has the
3 right to appeal it to the Board, and then the Board has
4 the right to hear it or not. Is that incorrect, Ginny?

5 LEGAL COUNSEL CAHILL: That had been the prior
6 procedure. But we thought that -- since January 1st when
7 the new legislation took effect, it now says the Board
8 shall hold an evidentiary hearing for any matter that
9 requires the issuance of a permit. So we're interpreting
10 that to say it would be up to the Board whether to approve
11 or deny permit applications.

12 BOARD MEMBER RIE: Question?

13 PRESIDENT CARTER: Go ahead.

14 BOARD MEMBER RIE: You referenced several letters
15 from the applicant. None of those letters are attached to
16 the staff report. Do you have copies of those?

17 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

18 Yes, we do.

19 This is a copy of Mr. Murphy's response letter.

20 Would you like a copy of the letter sent by Mr.
21 Dawson acting for the --

22 BOARD MEMBER RIE: Well, since we're holding a
23 hearing on this issue and we're potentially considering
24 denying an application, I think we need to review the
25 evidence for the denial.

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1 cannot deny an encroachment application, only that the
2 Central Valley Flood Protection Board can deny an
3 application. Upon direction from the Board, the Floodway
4 Protection Section proceeded to process the request as a
5 new encroachment application.

6 Based upon that, under the CEQA findings, items 3
7 and 4, the effects of the decision on the entire State
8 Plan of Flood Control: This project has negative effects
9 on the State Plan of Flood Control. And then Item 4,
10 effects of reasonable projected future events, including,
11 but not limited to, changes of hydraulic, climate, or
12 development within the applicable watershed: The proposed
13 project will add to the existing encroachments in this
14 reach of State Maintenance Area 9 that will interfere with
15 general inspections, maintenance of and any flood fight
16 along this reach of the levee.

17 Mr. Russ Eckman, Superintendent of the Sacramento
18 Maintenance Yard, is available for questions. And this
19 concludes my part of the presentation.

20 LEGAL COUNSEL CAHILL: Could I clarify with Mr.
21 Yego. It's not CEQA but it's Section 8610.5 of the Water
22 Code that sets out those points, is that right?

23 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

24 That's correct.

25 BOARD MEMBER BROWN: Mr. Chairman, from a

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1 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

2 This is a copy of the letter that was sent by Mr.
3 Dawson acting for the Chief of the Floodway Protection
4 Section in response to Mr. Murphy's application.

5 BOARD MEMBER RIE: Is there any other
6 correspondence?

7 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO: Not
8 written correspondence. After this, most of the
9 correspondence was verbalized over the phone.

10 BOARD MEMBER SUAREZ: Mr. President, I have a
11 question.

12 PRESIDENT CARTER: Go ahead.

13 BOARD MEMBER SUAREZ: I was wondering if somebody
14 could add information regarding, how does this particular
15 fence or barrier interfere with or preclude legal public
16 access on the levee? In other words, has he agreed to
17 provide us with a key to the gate that we can have access,
18 or has anybody asked him?

19 DWR FLOODWAY PROTECTION SECTION CHIEF YEGO:

20 That would be a requirement for flood fighting.
21 And that access is required through the gates for all the
22 entities that would be involved. So the applicant would
23 have to provide keys to the State Maintenance Yards for MA
24 9.

25 BOARD MEMBER SUAREZ: Was he asked to provide

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1 those keys?

2 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: He

3 was not asked.

4 BOARD MEMBER SUAREZ: So we don't know whether

5 he'd be willing to provide 24/360 -- all-time access for

6 us to do the work we need to do?

7 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

8 That's correct.

9 BOARD MEMBER SUAREZ: Thank you.

10 BOARD MEMBER BROWN: I have a question, Mr.

11 Chairman.

12 PRESIDENT CARTER: Mr. Brown.

13 BOARD MEMBER BROWN: Why does the applicant want

14 to fence this off, number one? And then, two, if he wants

15 to fence it off for protection of the property for

16 whatever, why couldn't he put in a fence parallel on the

17 landward side of the embankment?

18 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

19 Under Title 23, the parallel fence is not allowed with the

20 exception basically from -- or permission from the local

21 maintaining agency, and that it be below four feet in

22 height and that it be -- basically you can see through it,

23 basically a chain-link fence or a wrought-iron fence.

24 BOARD MEMBER BROWN: Well, it would seem like a

25 parallel fence to the levee on the landside would be a lot

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1 2004, the public access was actually for the bike trail.

2 So basically on the crown of the levee, that was the

3 public access.

4 This particular area has several points of public

5 access. There's no private property that prevents the

6 public from accessing it directly from city streets. And

7 there's actually a vacant property that is nearby that

8 people can have access to the Sacramento River system.

9 PRESIDENT CARTER: Are there other fences and

10 gates that go across the levee in this area?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: If

12 I can defer that to Mr. Russ Eckman, he could answer that

13 more properly.

14 PRESIDENT CARTER: Okay.

15 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

16 Mr. President, members of the Board. I'm Russ

17 Eckman. I'm Maintenance Superintendent for the Sacramento

18 Maintenance Yard. And Maintenance Area 9's one of the

19 projects that we do maintain.

20 There are several gates that do cross the levees

21 and cross the crowns. Actually there's 14 gates, some

22 private, some maintained by us, there's 14 of them within

23 the first six miles at Maintenance Area 9. So there's a

24 significant amount of gates already up there.

25 Near this property there's actually a gate about

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1 less obtrusive than the one perpendicular to the river

2 itself on the wet side of the levee.

3 What's he want the fence for to begin with?

4 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: I

5 don't know. I think Mr. Murphy -- is he -- he's

6 actually -- Mr. Murphy is here in the audience.

7 PRESIDENT CARTER: Okay. Well, we're going to

8 hold that for right now.

9 My understanding, Mr. Yego, is that if there is a

10 fence across the levee, there is a DWR lock on that fence,

11 and that's the provision in terms of supplying keys or

12 access, we have our own lock that we put on that, is that

13 correct?

14 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

15 Generally, yes, that is correct.

16 PRESIDENT CARTER: Okay. The other question I

17 have is, what is legal public access in this area? I know

18 that -- I know that in the Pocket Area it's customary for

19 people to walk the levees and what not, also along the

20 American River as well. But I mean what is legal public

21 access? The public access I know is restricted --

22 strictly restricted further up in the Sacramento system.

23 But I don't know what it is in the Pocket Area.

24 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: In

25 the previous application that I stated that was in June

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1 a tenth of a mile downstream of the property, and there's

2 also another gate restricting access about three-tenths of

3 a mile upstream of his property. And he's now looking to

4 try to put two more gates within a half mile there to

5 tighten it up. But there are several gates and even some

6 right close to his property but not necessarily protecting

7 his property.

8 And then the issue on the locks, it is a

9 standard. Our yard will have a lock on all gates so we

10 have access to get through it at any time.

11 PRESIDENT CARTER: Okay. Ms. Suarez.

12 BOARD MEMBER SUAREZ: Well, then, you know, I

13 would ask again, on what basis did Mr. Dawson write that

14 sentence? What is the evidence that we can look at and

15 rely on to make a decision to support that sentence, I

16 mean to make the point? Because it's, is that correct,

17 the sole reason why he denies?

18 SECRETARY DOHERTY: Perhaps the laws have

19 changed.

20 How long ago were those previous gates put up?

21 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

22 Exactly when they were established, I don't know.

23 I've been with the Department for ten years and those

24 gates have been up for at least ten years.

25 BOARD MEMBER SUAREZ: So then my only point is

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1 that he sites specifically that this would interfere as a
2 reason. But he never explains why. And the more we talk,
3 the least amount of interference I see. So I like --

4 PRESIDENT CARTER: Perhaps you can speak to why
5 this interferes with your ability to maintain the Levee
6 and Maintenance Area 9.

7 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
8 The more gates and obstructions we have, the
9 harder it makes us do our mowing, controlling vegetation.
10 There's a little more at each gate's location, a little
11 more spring, a little more work that needs to be done in
12 these areas to keep them maintained. Some of these older
13 fences have been up for a while. The original people that
14 applied for the encroachments don't necessarily maintain
15 their gates after a few years. So it brings a little more
16 burden on to our department to keep these things
17 maintained. And just a matter of access trying to get all
18 the gates open, get in and do our work and close up at the
19 end of the day does take time. And there's already a
20 significant amount of gates up on there that already are
21 established that do impact our work.

22 PRESIDENT CARTER: Has this area, the Pocket Area
23 been cited as part of the inspection process as one of
24 those noncompliant areas under the Corps guidelines and
25 are they considering discontinuing PL 84-99 assistance as

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1 requirements, or is it not?

2 CHIEF ENGINEER HESTER: The situation in the Bear
3 Creek/Calaveras River situation is a little bit more
4 complicated in terms of what is out there in terms of
5 encroachments, fences included. We're part of the project
6 when it was constructed, and it's reflected in the
7 easement deed. So the property owners, whether they can
8 have that fence or not, is really, you know, a
9 determination of that history of, you know, how the
10 project was constructed with that fence or encroachment in
11 place.

12 This situation is a little bit different. But
13 back to what the Corps is expecting in terms of moving
14 forward, maintaining agencies dealing with encroachment
15 issues, this is an example of one that if the
16 determination of the local maintaining agency is that it
17 impedes the ability to flood fight, and this -- certainly
18 during high water in adverse conditions wrestling with
19 another set of gates in order to make your patrols is one
20 of the considerations, then the determination could be
21 made that this is not an acceptable encroachment.

22 VICE-PRESIDENT HODGKINS: Gary, do you know, has
23 the Corps done the kind of inspection that resulted in the
24 identification of problems in San Joaquin on this
25 particular piece of the levee?

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1 a result of that?

2 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
3 Most of Maintenance Area 9 has a lot of
4 landscaping encroachments on there that do not meet
5 current standards. We are in the process of working with
6 some of the homeowners to remove some of this vegetation
7 and also limiting up the trees so we do pass. But that
8 issue's still kind of vague on just where we're going to
9 draw the lines on how much vegetation or other
10 encroachments are allowed.

11 PRESIDENT CARTER: Okay. Any other questions of
12 staff?

13 BOARD MEMBER RIE: Yes. Maybe this is a question
14 for legal counsel.

15 What does Title 23 say with regards to gates
16 perpendicular to the levee? If you want to come back to
17 that in a little while, that'd be fine.

18 PRESIDENT CARTER: Okay. Any other questions?

19 Mr. Hodgkins.

20 VICE-PRESIDENT HODGKINS: I'd like to ask Gary,
21 if he would, to speak to the implications of this kind of
22 a fence in light of the challenges we're facing in San
23 Joaquin County along Bear Creek and the Stanislaus. Isn't
24 this similar to some of the encroachments there that the
25 Corps has said must be removed to meet maintenance

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1 CHIEF ENGINEER HESTER: I am sure they have. How
2 recently, I don't know. What I understand is that the
3 Corps does a rotating five-year inspection. So they try
4 to cover 5 percent of their area -- or 20 percent of their
5 area every year. And so I would think in the last five
6 years it's been inspected by the Corps.

7 PRESIDENT CARTER: Any other questions of staff?

8 LEGAL COUNSEL CAHILL: Actually could I ask, has
9 the local maintenance area taken a position or sent a
10 letter with regard to this application?

11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

12 Yes, Russ has submitted a letter.

13 LEGAL COUNSEL CAHILL: And could copies of that
14 be made for the Board and entered into the record?

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

16 Yes.

17 LEGAL COUNSEL CAHILL: Ms. Rie, would you like me
18 to respond now to your question?

19 BOARD MEMBER RIE: Sure.

20 LEGAL COUNSEL CAHILL: Title 23, Section 126,
21 fences and gates. Section A5 says, "Where the distance
22 between fences would be so close as to interfering
23 reasonably with levee inspection, maintenance and flood
24 fight activities, the Board may deny approval for
25 additional fences."

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1 PRESIDENT CARTER: In the staff report it
 2 mentions under "Agency Comments and Endorsements" that the
 3 Sacramento Maintenance Yard does not endorse the
 4 application. And you've mentioned that the maintenance
 5 yard -- Mr. Eckman has sent a letter to Board staff to
 6 that effect. It also states that the U.S. Army Corps of
 7 Engineers has not endorsed this project. Does that mean
 8 that they have sent a letter or we just haven't heard from
 9 them?

10 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: We
 11 haven't even submitted it to the Corps for --

12 PRESIDENT CARTER: Okay. So they're silent on
 13 this? It's not that they haven't endorsed it; they're
 14 silent --

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
 16 Yes, they're silent on it.

17 BOARD MEMBER RIE: Well, how can they speak?

18 PRESIDENT CARTER: Okay.

19 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: And
 20 basically -- if I could add, that basically it's in
 21 inclement conditions it makes it very difficult for the
 22 flood fighters to access wherever areas they have to be
 23 during an emergency. And with gates and fences, it makes
 24 it difficult for them to attempt to do their flood
 25 fighting.

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1 gentleman. And he is entitled to an explanation besides
 2 just a code section arbitrary decision or what appears to
 3 be at least an arbitrary decision. Please consider that
 4 in the future, especially when you're denying something or
 5 you're recommending a denial on applications. To me it's
 6 just very disturbing that the reasons that have been
 7 articulated for denying, the more we look into them,
 8 perhaps are not that solid.

9 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
 10 Okay. In past history, basically as a
 11 requirement of the application is that we get -- receive
 12 local endorsement. But because this a state-maintained
 13 area, the Floodway Protection Section acts on behalf of
 14 the local maintainer. Prior to this they would
 15 normally -- an applicant would normally have to bring this
 16 before the local maintainer to receive their endorsements
 17 of the project. This does not preclude them from trying
 18 to apply from it, but they have not received endorsement
 19 from the local sponsor.

20 BOARD MEMBER SUAREZ: And based on your answer,
 21 I'm not sure you heard what I just said.

22 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: No,
 23 I understand --

24 EXECUTIVE OFFICER PUNIA: I think the point's
 25 well taken. We will revise our letters to explain what

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1 PRESIDENT CARTER: Okay. Any other questions of
 2 staff?

3 BOARD MEMBER RIE: One more question.

4 BOARD MEMBER SUAREZ: Yes, I have --

5 BOARD MEMBER RIE: Go ahead.

6 BOARD MEMBER SUAREZ: I actually want to take
 7 this opportunity to perhaps express to the staff -- and
 8 Mr. Dawson, I guess he's not here.

9 If I'm the applicant and I receive this letter
 10 and all I get is that one line and nobody has taken the
 11 time to explain to me what that line means, I would be
 12 wondering what type of arbitrary and capricious process
 13 this Board engages in.

14 Now, you all have articulated very good reasons
 15 perhaps for us to consider denying. Counsel has even
 16 identified yet another reason why we might consider
 17 denying this. But the poor gentleman who provided the
 18 application has no way of knowing that. He has no way of
 19 being prepared now to rebut appropriately these things.

20 It doesn't do the public that we serve a service when they
 21 get -- and I think it's the type of thing that -- it's the
 22 reason why the public is fed up with the way government
 23 works and doesn't work for them, for this -- precisely
 24 this kind -- this might not be -- it might seem like a
 25 small thing to us, but I'm sure it's a big deal to this

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1 the logic for denying the application is. We will
 2 definitely revise our letters.

3 BOARD MEMBER BROWN: Mr. Chairman, Emma brings up
 4 a very correct point. And we base our hearing decisions
 5 upon the Rules of Evidence. So far I've heard no evidence
 6 that would support a decision one way or the other.

7 PRESIDENT CARTER: Okay. I might disagree, but
 8 that's -- reasonable parties can disagree.

9 I think what we ought to do is --

10 BOARD MEMBER RIE: Can I ask another technical --

11 PRESIDENT CARTER: Yes, you can, and then we'll
 12 move on to gathering more evidence.

13 Go ahead.

14 BOARD MEMBER RIE: What is an acceptable distance
 15 between gates on a levee for flood fighting purposes?
 16 Title 23 allows it. So what is an acceptable distance in
 17 order for us to maintain the levees?

18 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN: I
 19 don't think there's any standard saying 100 feet, 1,000
 20 feet or whatever. I don't -- I've never seen anything
 21 like that in the code. It's just a matter of -- some of
 22 these properties out there we've had the applications for
 23 and it would put a gate almost every 100 feet. And that
 24 is definitely a major impact on our work. This property's
 25 a little bit large, so there's a little more space. But I

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1 did mention there was a gate already just a little bit
 2 downstream and then one a little further upstream.
 3 BOARD MEMBER RIE: Okay. What is the distance
 4 from the proposed gate to the next gate that's on the
 5 levee?
 6 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
 7 Downstream is roughly a tenth of a mile, and then
 8 from the upstream gate it'd be about three-tenths of a
 9 mile.
 10 BOARD MEMBER RIE: So 3 or 400 feet between
 11 gates?
 12 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
 13 There should be 500 feet downstream, and there'd
 14 be roughly 1800 feet or so upstream where the next gates
 15 are that are already existing.
 16 BOARD MEMBER RIE: And it seems to me that 500
 17 feet, 1800 feet, that seems like a reasonable distance for
 18 flood fighting purposes.
 19 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN: It
 20 does delay our actions to get out there to stop and open
 21 up all these gates and get our patrols out there. And if
 22 we did have an emergency, trying to get emergency
 23 equipment out deal with the situation out there, the more
 24 gates we have it just delays our action of getting out
 25 there and getting something accomplished.

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1 by hand, where normally we could do it by machinery.
 2 PRESIDENT CARTER: Okay. Any other questions of
 3 staff?
 4 We'll move on. We'll open up to public
 5 testimony.
 6 Would the applicant wish to address the Board?
 7 MR. MURPHY: Good morning. And thank you for
 8 giving me this opportunity.
 9 You, like me, heard a bunch of information this
 10 morning, and I --
 11 PRESIDENT CARTER: I'm sorry. But, Mr. Murphy,
 12 would you please just introduce yourself for the record.
 13 MR. MURPHY: Oh, I'm sorry. Donald Murphy and I
 14 live at 7260 Pocket Road.
 15 PRESIDENT CARTER: Thank you.
 16 MR. MURPHY: You, as I, have heard a bunch of
 17 information this morning that I was unaware of. The
 18 letter that you saw that I received was very arbitrary,
 19 and I was quite surprised. And so when I filed my appeal
 20 I realized that when I first submitted my application,
 21 that I was a naive property owner. I assumed that since I
 22 own the property, I pay taxes on my property on the levee,
 23 that putting up a fence seemed to be within my rights.
 24 Since that time and since the rejection of my appeal, I've
 25 done a reasonable amount of work to prepare for the next

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1 BOARD MEMBER RIE: How much of a delay?
 2 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
 3 Well, you figure each gate it will be probably no
 4 more than about a minute or two per gate you're getting it
 5 open, swinging it open, and then drive down to the next
 6 gate. But when you start getting a whole series of gates,
 7 it does start -- and sometimes the faster we can react to
 8 boils or whatever could mean we save the levee or we
 9 don't. So it's just a matter of time. And who knows how
 10 much time you have. But the sooner we can get there, the
 11 better off we all are.
 12 PRESIDENT CARTER: Does staff wish to add
 13 anything?
 14 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:
 15 Also, these gates especially on the waterward
 16 side being down there, they do catch debris; they do
 17 deflect the water, which could convert the water into the
 18 levee, cause more erosion. Sometimes these gates do break
 19 away. And then they get hung up on trees or other debris
 20 downstream and cause other potential erosion issues.
 21 And then like I mentioned too, our maintenance,
 22 it's harder to get our equipment in there to mow around
 23 these gates. We typically do use a large piece of
 24 equipment. But around these gates sometimes we'll have to
 25 put people down with weed eaters and do a lot of this work

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1 phase.
 2 In doing so, what I'd like to suggest today is
 3 not a decision, but if I could get some direction from the
 4 Board and the staff on how I could work with these people
 5 to arrive at a solution that works for everybody.
 6 I submitted four copies of my application
 7 originally. I sense that those wound up in the garbage
 8 can. Because when I filed my appeal, I was asked to
 9 resubmit my application. The fact that you haven't seen
 10 that, my cover letter, the reasons for the request, that's
 11 a surprise to me.
 12 A couple of other things I've learned recently is
 13 there has been the approval of some new gates in the
 14 immediate area. If you're familiar with the La Reva
 15 Hotel, the former Captain's Table, for those of you are
 16 familiar with Old Sacramento or the older Sacramento
 17 neighborhoods, they have a new gate/fence across the levee
 18 top.
 19 In the July meeting here there was an approval
 20 made in San Joaquin County, I believe. I have the number
 21 for that, but -- Application 18347.
 22 There's also an organization called the
 23 Sacramento Riverfront Association that filed a lawsuit
 24 against the Department of Water Resources in 1999, I
 25 believe. And I have a copy of the hydraulic report that

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1 was prepared. And the matter was settled out of court.
 2 But the fact remains that that study and that survey
 3 showed that these types of fences and gates do not
 4 necessarily create a negative effect on the river flow.
 5 So, that's why I'm saying that if I was given the
 6 opportunity to get some direction from the Board and from
 7 the staff, I'm prepared to do what it takes to arrive at a
 8 solution with everybody.
 9 The maintenance issues and the fact that they
 10 have to drive their trucks, I'm quite aware of that.
 11 During the heavy rain seasons they drive up and down the
 12 levee all night, so I can hear them. But I'm prepared to
 13 leave the gates open during heavy times of the year when
 14 they need access.
 15 As far as cutting the lawn, their blades go about
 16 20 feet down. And there's still a lot of growth that
 17 occurs there on the levee sides, which I maintain myself.
 18 So, I'm prepared to do what it takes to work
 19 together.
 20 My primary reason for submitting the application
 21 was my concern for security. The access to my property
 22 from the levee and from the river causes me to be
 23 concerned because of -- the Pocket Area has had a lot of
 24 vandalism, home invasions. I have vandalism -- I had the
 25 approval for my dock, which has now been installed for

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1 application process?
 2 BOARD MEMBER RIE: Yes, we are. We don't have a
 3 copy of your application.
 4 MR. MURPHY: Which was a surprise to me.
 5 I submitted four copies of that back in May, I
 6 believe. And then I was asked to resubmit it, because I
 7 sense that it wasn't on file. It wasn't on file because I
 8 had to resubmit it. And I did that at their -- when I
 9 filed my appeal, they asked me to resubmit the
 10 application.
 11 PRESIDENT CARTER: What we do have I think from
 12 your application is a hand-drawn schematic of the levee
 13 cross-section with the gates going across, dated May 6th
 14 from you. And it says it's page 8 of 8. But we don't
 15 have the other seven pages.
 16 MR. MURPHY: Oh, okay. I apologize for the
 17 hand-drawn nature of my --
 18 PRESIDENT CARTER: There's no problem with that.
 19 MR. MURPHY: Okay. And I have since submitted
 20 another drawing from a fence company that I had put a bid
 21 on what it would cost to build the fence.
 22 SECRETARY DOHERTY: They did state that you
 23 wanted fences to restrict access to your private property.
 24 They did tell us that.
 25 MR. MURPHY: Okay.

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1 about two years. And since that time, I've got people
 2 that are trespassing on my dock, I have problems with
 3 people -- neighbors with their dogs fence-fighting my
 4 dogs, things like that. So there was a number of things
 5 that I stated in my application.
 6 Somehow I can't believe that somebody having an
 7 unlocked gate is more important than my security. So I
 8 was offended by the fact that the maintenance crew has to
 9 spend another couple of minutes opening the gate.
 10 So, again, I'd like some direction from the
 11 Board, work with the staff on what it would take to reach
 12 an amicable solution.
 13 BOARD MEMBER RIE: Can I ask a question?
 14 PRESIDENT CARTER: Absolutely.
 15 BOARD MEMBER RIE: We only received a copy of
 16 your May 22nd letter. Were there other letters and other
 17 information you submitted to --
 18 MR. MURPHY: Was that my application?
 19 BOARD MEMBER RIE: No, it's just a one paragraph
 20 letter.
 21 MR. MURPHY: Oh, okay. That was requesting the
 22 appeal.
 23 BOARD MEMBER RIE: Is that the only thing you've
 24 submitted?
 25 MR. MURPHY: No, I -- are you familiar with the

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1 SECRETARY DOHERTY: And you were concerned about
 2 general personal safety as a result of accessibility to
 3 your property. So they did tell us what you had
 4 requested.
 5 MR. MURPHY: All right. That's fine.
 6 For those of you that aren't familiar with that
 7 stretch of the Pocket Area, my property is fairly unique
 8 in that -- you may know that around the turn of the 20th
 9 Century there was a lot of Portuguese families that had
 10 farms down there. In the 1970s most of that land was
 11 developed and, as such, the developers relinquished the
 12 rights to the levee. But my property, along with some
 13 others, is unique in that we still own across the levee
 14 top to the high watermark. So that's a real advantage for
 15 me of course to be a property owner. And we have always
 16 allowed people to walk on our property. It's gotten to
 17 the point now though where I need to provide restricted
 18 access.
 19 PRESIDENT CARTER: So these gates -- you
 20 mentioned trespassing on the dock. These are not going --
 21 these fences are not going to do anything with regard to
 22 waterside access?
 23 MR. MURPHY: That's correct.
 24 PRESIDENT CARTER: It's only landside access?
 25 MR. MURPHY: Yeah. But --

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1 PRESIDENT CARTER: Basically access from the
 2 levee top?

3 MR. MURPHY: Yes. And right now I have a
 4 liability issue with respect to -- I mean there's kids,
 5 there's dogs, there's people walking up there that are
 6 going down my gangplank. And if somebody falls and gets
 7 hurt, I guess I'm responsible because they're on my
 8 private property. And I of course have insurance to cover
 9 that. But at the same time, it is my private property.

10 SECRETARY DOHERTY: Mr. Chairman, I believe he
 11 says and the waterside slope of the left bank levee.
 12 So you are projecting your fence down into the
 13 water, correct?

14 MR. MURPHY: No, that's -- no, ma'am. It's
 15 actually -- I drew it up to where it would only go to the
 16 high watermark, which is my property line. And that's
 17 denoted by I think in '97 or '98 to put a slurry wall in
 18 that stretch of the levee. And there's large rocks that
 19 fortify the levee on the bank side of the river there.

20 PRESIDENT CARTER: Okay. Any other questions of
 21 the applicant?

22 BOARD MEMBER BROWN: What would keep vandals from
 23 going around the fence?

24 MR. MURPHY: Well, you know as well as I do, if
 25 somebody wants to get somewhere, they probably would.

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1 does that provide any protection for you from vandals?

2 MR. MURPHY: No.

3 BOARD MEMBER BROWN: There's access -- easy
 4 access to the levees around the existing fences then?

5 MR. MURPHY: There is a -- there's some vacant
 6 lots, they're really not buildable parcels, just to the
 7 north of me. There's a street called Port Now Circle.
 8 And at the end of that street -- it's a horseshoe -- there's
 9 supposedly no parking there. But a lot of people will
 10 come up and they can access the levee from there.

11 To the south of me at the end of Marina Parkway,
 12 there's another kind of vacant lot area where people can
 13 access the levee. In effect, in terms of restricting
 14 access for pedestrians and whoever else goes up there, I'm
 15 not cutting off that much of the levee to the public
 16 that's using it, because of the neighbor to the south that
 17 has a gate that's 500 feet down.

18 BOARD MEMBER BROWN: Okay.

19 PRESIDENT CARTER: Any other questions of the
 20 applicant?

21 VICE-PRESIDENT HODGKINS: For purposes of the
 22 security of your home, is there any room in your backyard
 23 to put a cross fence that at least would stop people from
 24 getting ready access? It would have to be out at least
 25 ten feet from the toe of the levee. I'm just not familiar

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1 BOARD MEMBER BROWN: Would there be room for them
 2 just to walk around without getting wet as a for
 3 instance --

4 MR. MURPHY: They could do it without getting
 5 wet. It would deter the casual person from wanting to do
 6 that because it's somewhat dangerous. It's sloped, it's
 7 rocky. But you really could not prevent it if somebody
 8 wanted to get in there.

9 BOARD MEMBER RIE: Question?

10 PRESIDENT CARTER: Go ahead.

11 BOARD MEMBER RIE: How far are there nearest
 12 gates? And do you agree that they're about 500, 1800
 13 feet --

14 MR. MURPHY: Yeah, Mr. Eckman's assessment was
 15 pretty accurate. My neighbor to the south, the Da Rosa
 16 family is their name, they've been there for many years.
 17 They have an old gate that crosses all the way down --
 18 there's a flat area there before the water. So their gate
 19 goes quite a ways down.

20 To the north the gate is actually I think a gate
 21 that's from the maintenance department. It's not a
 22 private property gate. And that is about -- what'd he
 23 say? -- three-tenths of a mile or 1800 feet. That's
 24 probably pretty close.

25 BOARD MEMBER BROWN: With the existing gates,

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1 with your lot.

2 MR. MURPHY: Okay. I already have that fence.
 3 There is a Cyclone fence that runs ten feet from the levee
 4 toe the entire length of my property. There's actually
 5 two parcels on my property -- two separate parcels, but I
 6 own them both. And that chain-link fence runs the entire
 7 length of the west end of the property right off the
 8 levee.

9 SECRETARY DOHERTY: So do you have then gates on
 10 that levee?

11 MR. MURPHY: Yes, I have two walk gates --
 12 walkthrough gates which I keep chained and locked at all
 13 times. But, yes, I have levee access from there.

14 PRESIDENT CARTER: But those are outside the
 15 levee easement on the landward side of the levee --

16 MR. MURPHY: Yes, that's correct.

17 PRESIDENT CARTER: -- at the base -- beyond the
 18 toe of the levee?

19 MR. MURPHY: Right.

20 BOARD MEMBER BROWN: But that gives you
 21 protection from a home invasion. What you're concerned
 22 with now in addition to that is the dock and your boat
 23 down there?

24 MR. MURPHY: That's correct. And also there's
 25 been instances with kids riding motor vehicles up there --

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1 motor bikes dirt bikes. There's even a guy around there
2 with a golf cart. There's -- I have some dogs. And
3 people walk their dogs off leash and they'll come down and
4 fence fight with my dogs, things like that. I mean I --
5 that's an irritant I guess more than a danger. But
6 nonetheless it's an invasion of my privacy.

7 PRESIDENT CARTER: Any other questions of the
8 applicant?

9 BOARD MEMBER RIE: One more.

10 Would you be okay with one gate rather than two?

11 MR. MURPHY: If that was a condition of getting
12 the permit approval, yes.

13 BOARD MEMBER RIE: Okay.

14 MR. MURPHY: I don't if that would satisfy my
15 real concerns though, but I would certainly consider
16 compromising. I'm trying to be reasonable about this.
17 And at the same time since I don't know the actual
18 processes what I have to go through, I'm prepared to be
19 open minded about everything.

20 PRESIDENT CARTER: Okay. Any other questions of
21 the applicant?

22 Thank you very much, Mr. Murphy.

23 MR. MURPHY: Thank you.

24 PRESIDENT CARTER: Are there any persons in the
25 public that wish to speak in support of the application?

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1 maintaining agencies patrolling our levees. And we have
2 required these agencies at times to make up to hourly
3 patrols 24 hours a day. And I would strongly encourage
4 you to consider that any time you put another fence up
5 across our levee systems, as you -- the more fences we
6 allow, the more delay and inconvenience we make to our
7 flood fight agencies to safely patrol these levees. And
8 many times, as Mr. Eckman pointed out, we have found boils
9 that we believe had they been able to continue to flow for
10 even another hour we may have lost those levees. So from
11 my personal experience, I would highly recommend the Board
12 to strongly consider denial of this application and others
13 in the future for cross fences.

14 Thank you.

15 PRESIDENT CARTER: Ms. Suarez.

16 BOARD MEMBER SUAREZ: Yeah, a quick question, Mr.
17 Butler.

18 You mentioned that the application that we're
19 going to see in the future is different, the fence is
20 different.

21 SENIOR ENGINEER BUTLER: In my reading of the
22 staff report that we prepared for you in July, which then
23 we pulled, it is not fences that completely cross the
24 levee.

25 BOARD MEMBER SUAREZ: And why is that distinction

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1 Are there any other persons that wish to speak in
2 opposition of the application?

3 Okay. Hearing none.

4 Board staff, do you wish to comment on the
5 applicant's testimony?

6 SENIOR ENGINEER BUTLER: I would.

7 PRESIDENT CARTER: Mr. Butler.

8 SENIOR ENGINEER BUTLER: Eric Butler, Board
9 staff.

10 Just to clarify a point that the applicant made.

11 He referenced -- and please correct me if I'm wrong -- a
12 permit, 18347, that he claimed we approved in July. And
13 just to clarify that, that was brought to you in July, it
14 was deferred. You have not yet heard it. It's one we'll
15 probably bring up in a month or two. But in reading the
16 staff report from July, there was a perpendicular wooden
17 fence on the landside slope and a longitudinal, or
18 parallel, fence at the landside levee crown. So my
19 understanding of that application is different. It is not
20 fences going over and across the levee crown. So I wanted
21 to clarify that.

22 Furthermore, since we're offering testimony,
23 during my time as leading the Flood Operations Center
24 through several of the major floods, '95, '97, '98, which
25 Jay can further attest to, we rely heavily on our levee

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1 important?

2 SENIOR ENGINEER BUTLER: Because that particular
3 fence would not prohibit -- would not inhibit ease of
4 access for flood fight activities and for maintenance.

5 BOARD MEMBER SUAREZ: So it's an access issue,
6 it's not an integrity of the levee issue?

7 SENIOR ENGINEER BUTLER: That's correct.

8 PRESIDENT CARTER: Any other comments from staff?
9 Question?

10 VICE-PRESIDENT HODGKINS: Could I ask a question
11 of the maintenance folks?

12 There are -- I cannot tell from this where this
13 is. But there are areas down here where the seepage is
14 really bad. And I know SAFCA went in somewhere close to
15 this I think and did some deep slurry wall. Is this an
16 area where the landside seepage is bad?

17 DWR SACRAMENTO MAINTENANCE YARD CHIEF ECKMAN:

18 Actually, the worst seepage area was in the
19 Surfside Street. And that's probably a half mile north of
20 this property is where we had the worst seepage and where
21 that new seepage wall was placed. But we do have seepage
22 issues all through that area.

23 VICE-PRESIDENT HODGKINS: Thank you.

24 PRESIDENT CARTER: Mr. Punia.

25 EXECUTIVE OFFICER PUNIA: I think our Board

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1 President already mentioned but I want to explain it a
2 little more. When we had a meeting with the Corps, they
3 pointed out that we are superimposing too many things on
4 the flood control project. And any time if we superimpose
5 additional things, it takes a little bit off our response
6 time and it decreases our flood protection for that area.
7 So this type of fence will definitely impact our
8 capability for operation and maintenance and capability
9 for a flood fight.

10 Thank you.

11 PRESIDENT CARTER: Okay. Mr. Swanson, did you
12 want to address the Board?

13 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

14 Yeah, if I could.

15 Keith Swanson, Chief of the Flood Maintenance
16 Office. I just wanted to reiterate two points.

17 One is there is a maintenance impact. You asked
18 about the standards, you know. No, we don't have
19 standards on when gates can be there. But every time you
20 add a gate, that increases our maintenance obligations, it
21 makes it more difficult.

22 Normally we'd be running -- you know, we now have
23 EB mowers, slope mowers, we run them down the slopes.
24 Every time there's a gate that's one other thing you've
25 got to work around. It's hand labor, slows us down.

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1 The other point is during a flood emergency, we
2 keep the gates open. And so it's not opening and shutting
3 the gates. But you do have the gate going down the
4 waterside slope out into the -- you know, out into the
5 channel, toward the channel. Vegetation, debris does pile
6 up against those gates. Those gates can -- you know, the
7 fences can break free and then you've got something going
8 down. And so there's potential for increased erosion.
9 I know, you know, you can argue anything you
10 want. But the reality of it is, those things do trap
11 debris. When you have trapped debris you get localized
12 higher velocities, which can cause problems.
13 Specifically, will it? You know, I can't say specifically
14 there. But it's just another problem that we have to deal
15 with.

16 And then the overall problems with encroachments
17 are huge and we're going to be dealing with that. And
18 we're going to be coming in front of you on a regular
19 basis as we try to come to grips with encroachments that
20 were allowed, encroachments that were allowed but then
21 haven't been maintained, encroachments that were allowed
22 but then they were augmented with other encroachments.
23 This is a huge issue.

24 Now, I understand that the applicant has, you
25 know, a safety concern. And I know he'd like to preclude

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1 access. It is a problem though when you live on a levee,
2 because those do attract people. And there's lots of
3 people that are up there walking. And they're going to go
4 around his fence, through his fence, over his fence. You
5 know, every time you put one of those gates up, we're
6 dealing with people that are, you know, up north driving
7 through them. I mean they're tough to maintain and keep
8 people out. People are going to access our levees.

9 So thank you.

10 PRESIDENT CARTER: Thank you.

11 BOARD MEMBER RIE: Question?

12 PRESIDENT CARTER: Go ahead.

13 BOARD MEMBER RIE: Does this particular proposed
14 gate go down to the waterside of the levee?

15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: It
16 doesn't go down. It goes across the crown of the levee.

17 BOARD MEMBER RIE: How far?

18 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: But
19 when it opens -- it's a 15 foot or 16 foot.

20 BOARD MEMBER RIE: Does it stop at the crown?

21 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

22 It's basically on the shoulders. And so when you
23 open it up it will be -- and I don't know the exact
24 details of which way --

25 BOARD MEMBER RIE: Does it go down the waterside

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1 slope?

2 EXECUTIVE OFFICER PUNIA: The gate doesn't. But
3 the fence goes -- if it's shown on the sketch.

4 BOARD MEMBER BROWN: You said gate. You meant
5 fence, didn't you, Teri?

6 EXECUTIVE OFFICER PUNIA: The fence goes to the
7 high water level.

8 PRESIDENT CARTER: On the waterside slope.

9 EXECUTIVE OFFICER PUNIA: On the waterside, yes,
10 slope.

11 PRESIDENT CARTER: So it basically crosses the
12 levee from the landward toe across the crown down to the
13 high watermark on the waterside.

14 BOARD MEMBER RIE: So the fence stops at the high
15 watermark?

16 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

17 That is correct.

18 BOARD MEMBER RIE: So if the fence stops at the
19 high watermark, are we still concerned about debris
20 getting caught on that fence?

21 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:

22 Yes, we are, because you can have floating debris
23 caught on the fence. Your driftwoods.

24 BOARD MEMBER RIE: Does the applicant want to
25 come back up?

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1 MR. MURPHY: Thank you.

2 Well, I don't have direct experience on that.

3 But it wouldn't seem likely that there's going to be

4 debris gathering that close to the top of the levee. And

5 those gates are on the very top of the levee. There's

6 room off the shoulder, so it's not all the way. It's a

7 proposed 16-foot-wide gate. And I asked the fence company

8 to build it that way so there was more than sufficient

9 room for two large vehicles to pass if that needed to be

10 the case.

11 BOARD MEMBER RIE: Okay.

12 MR. MURPHY: I might also like to add regarding

13 the previous comment about, "Gee, you know, we allow this

14 gate and other people are going to be wanting to build

15 gates there," I'll stress again that my property is unique

16 in that it wasn't part of the development process of the

17 Pocket Area where the land was -- the levee land was

18 relinquished when the developers built it. There really

19 are no people to the south of me that have a similar type

20 of property that could put up a gate because they don't

21 own the levee.

22 To the north of me there is one property about

23 500 feet north. They don't have a gate. It's unlikely

24 that they would gate it. But outside of that, you'd have

25 to go quite a ways up the levee before you have any

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1 property owner, because it's pretty obvious that the Corps

2 of Engineers is changing the expectations. And I think

3 collectively we have all come to the conclusion that we

4 need to do a better job of maintaining our flood control

5 system. And encroachments are one of those aspects that

6 we have not done a good job in the past, and so we will in

7 the future. And we've already started.

8 PRESIDENT CARTER: Any other questions?

9 Okay. I'm going to close the public testimony

10 portion of the hearing.

11 And Board members can make comments, motions,

12 discussion.

13 I can start this off maybe. I appreciate the

14 applicant Mr. Murphy's concerns about security. I don't

15 fully understand how the cross fence on the levee is going

16 to improve security other than limiting access to the top

17 of the levee crown perhaps or some of the access to the

18 top of the levee crown for looking down on his property

19 perhaps. And I don't know what the situation is. We have

20 no photographs as part of this application.

21 But clearly if somebody wants to go around the

22 gate on the waterside -- or around the fence on the

23 waterside, they can. It's only 15 feet down the slope.

24 And given that we have a fence at the toe of the

25 levee, I am not convinced that this is going to add

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1 private property.

2 BOARD MEMBER RIE: Okay.

3 PRESIDENT CARTER: Thank you.

4 SECRETARY DOHERTY: Mr. Chairman, I have one more

5 question.

6 PRESIDENT CARTER: Go ahead.

7 SECRETARY DOHERTY: Mr. Swanson, in this flood

8 operation that you're in charge of, are you going to be

9 checking on the other gates and fences up and down that

10 levee to see if they were put there with a permit? And,

11 like he says, Le Rivage. And as you're doing down on the

12 Bear, are you going to cause people to replace? Or what's

13 the situation?

14 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

15 Well, I'm not involved with anything on the Bear.

16 But the encroachment issue is an issue that my group is

17 going to have to be dealing with in a much more aggressive

18 manner. Because it's something that as a department we

19 haven't ever really addressed adequately. The Board has

20 wrestled with this and it hasn't addressed it adequately

21 either. And so encroachments are going to be a huge issue

22 as we move forward.

23 And we will have to be looking at, you know,

24 encroachment by encroachment. And we're going to have to

25 be working with property owner after property owner after

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1 significantly to security to the property.

2 I am sure that it will add significantly to the

3 maintaining agency's time, inconvenience, cost. And as

4 someone who is going through gates on a daily basis, being

5 a livestock manager, they are a pain in the derriere. And

6 I wish we had a bump gates instead of having to get out

7 and -- park, get out, open, then go through, park and

8 shut. That takes -- in my opinion it takes a lot more

9 than two minutes. In my opinion it's five minutes per

10 gate probably. But in any case, they are difficult.

11 And I think that during flood operations and

12 flood times, if the gates are left open, that is not

13 really an inconvenience. What is an inconvenience more is

14 the annual maintenance periods where we're trying to

15 maintain vegetation and levee crowns, grading and sloping

16 and resloping or dragging the slopes of the levees. And

17 that's where gates and fences are -- there are significant

18 portions around these structures, at least in the area

19 where I live, that don't get graded and you have road

20 buildup and whatnot in those areas because they're not

21 regularly floated.

22 So, I don't think that this is in the public

23 interest in terms of public safety. And the public safety

24 I think is important. And so that's kind of where I'm

25 coming out on this.

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1 Anybody else want to add, comment, rebut?

2 VICE-PRESIDENT HODGKINS: I don't want to rebut.

3 I think you said it pretty well from my viewpoint.

4 Although I think you also have to think of

5 suppose there is a problem out here with erosion and now

6 you've got a six-foot chain-link fence to deal with as

7 well. And I know the chance of that is small. But the

8 chance of a 100-year flood is small as well, and that's

9 what we deal with.

10 But I would like to apologize to the applicant.

11 And I don't want pick on staff. But we have got to get

12 better - and I know staff is shorthanded - in helping

13 people understand what the issues are associated with

14 bringing forward a permit like this. I agree with Ms.

15 Suarez here. We've got to work harder on helping people

16 to understand why we're doing what we're doing, and not

17 leaving people with the impression that we threw -- and I

18 know that's not necessarily even this staff -- but that we

19 threw the application in the garbage can.

20 I know it's difficult. There's limits. But

21 we've got to get better.

22 SECRETARY DOHERTY: In defense of the staff, I

23 feel that if I had gotten that letter, I'd think, "What in

24 the heck are they talking about?" I'd be on the phone.

25 I'd call you. I'd come down there, "Explain this to me."

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1 yes, it's an inconvenience. However, I think we should

2 consider at least one gate.

3 SECRETARY DOHERTY: What about the fences?

4 BOARD MEMBER RIE: Maybe we can allow the gate

5 across the levee crown and, you know, maybe it can go two

6 or three feet down the levee slope.

7 SECRETARY DOHERTY: So you'd have just one fence,

8 not two?

9 BOARD MEMBER RIE: Yes. I think, you know, we

10 should look at -- if there's room to compromise here, you

11 know, I just think it's the right thing to do, and not to

12 use this one application as an example. I think we're all

13 concerned about public safety and the ability to maintain

14 the levees. But where it's such a large piece of property

15 and the concerns, and because it's allowed in Title 23 and

16 we've allowed gates and fences before, we ought to

17 consider one gate.

18 PRESIDENT CARTER: Comments?

19 BOARD MEMBER SUAREZ: Mr. President, I have a

20 comment, I think to kind of follow up on Ms. Rie's point.

21 We don't have information regarding this

22 application. We don't -- we are not familiar with the

23 property. The property owner has indicated he's willing

24 to sit down and try to figure out a better way of meeting

25 his needs but at the same time taking care of the very

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1 So I think that there's responsibility on both

2 parties. I don't think it's just responsibility on our

3 staff. I think that there's an awful lot that has to be

4 done. So I think the applicant also needs to accept some

5 responsibility.

6 PRESIDENT CARTER: Ms. Rie.

7 BOARD MEMBER RIE: No, I'm done.

8 PRESIDENT CARTER: You look like you were ready.

9 Okay. Anybody else want to comment?

10 I'd like to echo Butch's apology. Mr. Murphy, I

11 really do apologize for our process. It is not perfect.

12 It's far from perfect. And we will endeavor to improve

13 that in the future. But I apologize for the inconvenience

14 and poor communication that our staff has had with you in

15 this regard.

16 SECRETARY DOHERTY: Would a motion be in order?

17 BOARD MEMBER RIE: Can I make a comment?

18 PRESIDENT CARTER: Absolutely.

19 BOARD MEMBER RIE: You know, I think -- you know,

20 I agree with everything you said, President Carter. But I

21 think we're making an example out of this one particular

22 application. And I think we ought to consider perhaps

23 allowing one gate, the gate where the next gate is 1800

24 feet away. You know, we've allowed gates before, we've

25 allowed fences before, and it's allowed in Title 23. And,

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 serious and very real needs that our team has in terms of

2 emergency and maintenance.

3 And I do think that again we owe the public that

4 are paying the taxes and paying the bonds that make our

5 work possible an opportunity to -- we owe them an

6 opportunity to treat them fairly. That I would just like

7 to suggest to postpone this and have parties get together

8 again and see if there's an opportunity to figure out a

9 solution.

10 So my recommendation would be to --

11 PRESIDENT CARTER: Is that a motion?

12 BOARD MEMBER SUAREZ: Yes, to not act on this

13 permit right now, give the parties the next month to sit

14 down and see if there's a way of addressing these

15 concerns.

16 BOARD MEMBER RIE: Second.

17 PRESIDENT CARTER: Okay. We have a motion to --

18 would that be a postponement, a table, a continuance of

19 the hearing? What's appropriate here?

20 BOARD MEMBER BROWN: Mr. Chairman?

21 PRESIDENT CARTER: Just a second. If I can get

22 some clarification.

23 LEGAL COUNSEL CAHILL: I think you can use

24 "continuance".

25 PRESIDENT CARTER: Okay. Is that acceptable?

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1 It's a motion to continue the hearing to allow
2 the applicant and Board and DWR staff to get together with
3 them to discuss ways to satisfy both parties' concerns.
4 And we have a second, Ms. Rie?
5 BOARD MEMBER RIE: Yes.
6 PRESIDENT CARTER: All right. Mr. Brown.
7 BOARD MEMBER BROWN: Thank you, Mr. Chairman.
8 I personally don't like to see fences down into
9 the waterside of any levee for reasons discussed. But
10 since we have done that, I -- in this case, I believe that
11 property rights would trump the additional maintenance,
12 time or expense that we might bear in dealing with the
13 fence.
14 PRESIDENT CARTER: Okay. Other comments?
15 Okay. Does staff wish to comment on the motion
16 before the Board as it stands now? And that motion, I
17 repeat, is to continue this hearing on this application to
18 allow Board staff and the parties to -- and the applicant
19 to get together and reach a compromise.
20 Staff, no comment?
21 The applicant. Do have a comment, Mr. Murphy?
22 MR. MURPHY: None. I'm perfectly happy to
23 proceed on that basis.
24 PRESIDENT CARTER: Okay. That's the motion we
25 have before us.

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1 Any further discussion?
2 Mr. Punia, would you call the roll.
3 EXECUTIVE OFFICER PUNIA: Board Member John
4 Brown?
5 BOARD MEMBER BROWN: Aye.
6 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?
7 SECRETARY DOHERTY: No.
8 EXECUTIVE OFFICER PUNIA: Board Member Emma
9 Suarez?
10 BOARD MEMBER SUAREZ: Aye.
11 EXECUTIVE OFFICER PUNIA: Board Member Butch
12 Hodgkins?
13 VICE-PRESIDENT HODGKINS: No.
14 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
15 BOARD MEMBER RIE: Aye.
16 EXECUTIVE OFFICER PUNIA: Board President Ben
17 Carter?
18 PRESIDENT CARTER: No.
19 The motion fails.
20 What's the Board's pleasure here?
21 SECRETARY DOHERTY: I would like to make a motion
22 that we deny the application because of Title 23, Division
23 1, Chapter 1, Article 3: It impairs the inspection of
24 floodways or project works, it interferes with the
25 maintenance of the floodways, and it interferes with the

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1 ability to engage in flood fighting, patrolling or other
2 flood emergency activities.
3 PRESIDENT CARTER: Okay. Do we have a second?
4 VICE-PRESIDENT HODGKINS: Second.
5 PRESIDENT CARTER: Okay. Motion to deny the
6 application with a second?
7 Any discussion.
8 VICE-PRESIDENT HODGKINS: I would point out that
9 the fact that this application is denied doesn't prevent
10 the applicant from coming to staff and looking for a
11 different approach. But generally from my perspective,
12 the idea of putting another gate is not something that I
13 would support unless the Corps is willing to get up here
14 and say that they think it's okay as well.
15 PRESIDENT CARTER: Okay. Any other comments?
16 Does the staff or applicant wish to comment on
17 this motion?
18 Okay. Mr. Punia, would you call the roll,
19 please.
20 EXECUTIVE OFFICER PUNIA: Board Member Emma
21 Suarez?
22 BOARD MEMBER SUAREZ: I'll pass for now.
23 EXECUTIVE OFFICER PUNIA: Board Member Butch
24 Hodgkins?
25 VICE-PRESIDENT HODGKINS: Aye.

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1 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
2 BOARD MEMBER RIE: No.
3 EXECUTIVE OFFICER PUNIA: Board Member John
4 Brown?
5 BOARD MEMBER BROWN: No.
6 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?
7 SECRETARY DOHERTY: Aye.
8 EXECUTIVE OFFICER PUNIA: Board President Ben
9 Carter?
10 PRESIDENT CARTER: Aye.
11 Motion fails.
12 BOARD MEMBER BROWN: You still have a pass.
13 PRESIDENT CARTER: Oh, we do have a pass.
14 BOARD MEMBER SUAREZ: No.
15 PRESIDENT CARTER: I'm sorry?
16 BOARD MEMBER SUAREZ: It's a no.
17 PRESIDENT CARTER: No.
18 Motion fails.
19 Any other ideas, ladies and gentlemen?
20 (Laughter.)
21 BOARD MEMBER BROWN: I'll make a motion that we
22 allow the fence to be constructed, in the belief that, as
23 much as I hate to have fences down in the river area, we
24 certainly have a precedent set that others have done this.
25 And until this Board changes that policy, I think that the

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1 property rights prevail. I'll make a motion that we allow
 2 the fence.
 3 BOARD MEMBER SUAREZ: I'll second that.
 4 PRESIDENT CARTER: So we have a motion to grant
 5 the application and a second, the application as
 6 submitted.
 7 Okay. Discussion?
 8 Comment from staff?
 9 No new information?
 10 Applicant?
 11 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
 12 Actually I would like to add something. If the
 13 fence is allowed on the waterside, one of the conditions
 14 will probably be that the fence has to be removable and
 15 that during the high water event that it would be stored
 16 so that the waterside access would exist. So every year
 17 prior to flood season that the fence would have to be
 18 removed.
 19 LEGAL COUNSEL CAHILL: You know, I'm wondering
 20 whether, since you don't have a draft permit in front of
 21 you and you don't know what the conditions of such a
 22 permit might be, whether you want to continue this, bring
 23 it back with a permit -- a draft permit that you could
 24 respond to.
 25 BOARD MEMBER SUAREZ: Well, what a lovely idea.

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1 PRESIDENT CARTER: We have a motion and a second
 2 to grant the application in the absence of a draft permit.
 3 BOARD MEMBER SUAREZ: I was wondering if Mr.
 4 Brown would consider amending his motion to again continue
 5 this item until we actually have an application before us
 6 to consider with the appropriate information and a
 7 proposed permit.
 8 BOARD MEMBER BROWN: Certainly I would be
 9 receptive to that if that's the Board's pleasure.
 10 The concern here with the application is that --
 11 and certainly there is a precedent of setting these fences
 12 down into the waterside. And I don't -- I don't see how
 13 we can start changing that policy without establishing
 14 some different ground rules. I think it would be unfair
 15 to the property right holder on that basis.
 16 By developing a new permit application, I'm not
 17 sure what that would add to our decision. I would
 18 certainly be receptive to having the staff to try to
 19 negotiate reasonable criteria in the permit. And if a
 20 reasonable criteria can be negotiated, as to taking the
 21 fence down or the exact location of the fence and such,
 22 and we can get staff concurrence on that, then we move
 23 ahead. If for some reason that staff objects to the
 24 design of the fence or the location or the maintenance or
 25 operation, then bring it back to the Board for our

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1 reconsideration.
 2 Otherwise, I'll amend the motion that we grant
 3 the application with the proviso that staff can be
 4 satisfied with the permit as drafted.
 5 So amended, Mr. Chairman.
 6 SECRETARY DOHERTY: If staff can support it?
 7 BOARD MEMBER BROWN: The point being is that
 8 until we change policy on whether or not we allow this
 9 kind of construction, I think we are obligated to permit
 10 the applicant to proceed. But a new permit has to be
 11 requested or a design that shows that it's reasonable and
 12 acceptable and that staff is not denying anything without
 13 just reason, which I'm sure they would not.
 14 So the motion, to clarify it a little bit for
 15 myself and the rest of you, is that I make a motion that
 16 we grant the applicant the permission to put in the fence
 17 as long as the design, location, and such is acceptable to
 18 staff. If it is not, then bring it back before this
 19 Board.
 20 So moved.
 21 PRESIDENT CARTER: Okay. Let's see. Ms. Rie,
 22 were you the one who seconded the motion?
 23 Who seconded the motion?
 24 SECRETARY DOHERTY: Emma did.
 25 BOARD MEMBER SUAREZ: I did.

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1 PRESIDENT CARTER: Emma, do you accept that?
 2 BOARD MEMBER SUAREZ: Absolutely.
 3 PRESIDENT CARTER: Okay. So we have a motion to
 4 grant the application with the provision that the fence
 5 and gate design is acceptable to staff. Okay?
 6 BOARD MEMBER BROWN: Yes, sir.
 7 PRESIDENT CARTER: Discussion?
 8 I might point out that, when we talk about
 9 policy, I don't know that that there really is a policy.
 10 There's regulations and there's precedent. And each one
 11 of these things has been decided by staff in the past or
 12 the Board in the past or now the Board on a case-by-case
 13 basis. I've got to believe some of them have been
 14 accepted and some of them have been denied. So I don't
 15 know that the Board or the staff really has a policy per
 16 se. It's a case-by-case thing.
 17 The other thing, in terms of asking staff to do
 18 this, you're putting them in kind of a tough situation,
 19 because they don't support the application to begin with
 20 and support the idea. So that puts them in somewhat of a
 21 difficult situation, but I'm sure not insurmountable.
 22 BOARD MEMBER SUAREZ: I'm sorry, Mr. President,
 23 but it wouldn't be the first time we direct staff to do
 24 something they originally oppose.
 25 PRESIDENT CARTER: I recognize that.

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1 BOARD MEMBER RIE: And I think that there's some
 2 guidance in Title 23, the section that Ms. Cahill
 3 referenced earlier. I forget what it is, 26, 126.
 4 There's specific criteria in Title 23 that you must meet
 5 in order to get your gate approved. You know, there has
 6 to be a certain width, a certain length, it has to be at a
 7 certain angle. So I think that if staff can follow Title
 8 23, the guidance is there
 9 PRESIDENT CARTER: Okay. Mr. Punia.
 10 EXECUTIVE OFFICER PUNIA: I'm just getting one
 11 more clarification.
 12 So you are asking us to approve this permit
 13 without getting the Corps's concurrence on this permit?
 14 PRESIDENT CARTER: Is that the motion?
 15 BOARD MEMBER BROWN: Yes.
 16 LEGAL COUNSEL CAHILL: You know, I would point
 17 out that unlike the last one which didn't involve project
 18 levees, I think you would not want to grant it
 19 unconditionally without knowing that the Corps finds it
 20 acceptable.
 21 EXECUTIVE OFFICER PUNIA: And I agree with the
 22 counsel recommendation. Under the Corps regulations,
 23 208-10, that the district engineer has to weigh in before
 24 we approve these type of projects.
 25 BOARD MEMBER RIE: Is staff planning on sending

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1 So at this point, since the Board wants to push
 2 the application, that would be the appropriate time to
 3 submit it to the Corps.
 4 BOARD MEMBER BROWN: Mr. Chairman, I think Ms.
 5 Cahill's right. I think in this instance - change my
 6 position - that the Corps should review this. So I'll add
 7 that to my motion.
 8 PRESIDENT CARTER: So it would be subject to
 9 Corps concurrence.
 10 BOARD MEMBER BROWN: Yes, sir.
 11 PRESIDENT CARTER: Is that acceptable to the
 12 seconder?
 13 BOARD MEMBER SUAREZ: Absolutely.
 14 PRESIDENT CARTER: Okay.
 15 EXECUTIVE OFFICER PUNIA: I think our Chief
 16 Engineer has a comment, Ben.
 17 PRESIDENT CARTER: Mr. Hester.
 18 CHIEF ENGINEER HESTER: I would like to also get
 19 some clarification on the levee maintaining agency's
 20 endorsement. We typically do not begin the permit process
 21 until we have the LMA endorsement. And that was a key
 22 element of this recommendation to deny, that we put an
 23 awful lot of weight in the maintaining agency's
 24 determination whether this will impact them in their
 25 ability to maintain the levee and/or flood fight. So I

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1 it to the Corps? Because we heard earlier that staff
 2 didn't send it originally.
 3 EXECUTIVE OFFICER PUNIA: Because we were denying
 4 the application we didn't send it. If we are approving
 5 it, then we need to involve the Corps and seek their
 6 input.
 7 BOARD MEMBER SUAREZ: I thought that --
 8 EXECUTIVE OFFICER PUNIA: I didn't hear, Emma.
 9 You're --
 10 BOARD MEMBER SUAREZ: I thought that the process
 11 was that you send it right when you got the application,
 12 not after you made the decision.
 13 EXECUTIVE OFFICER PUNIA: I need to check.
 14 Did we send the application to the Corps, John?
 15 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO: No,
 16 we did not.
 17 PRESIDENT CARTER: Normally -- and this again
 18 comes from the discussion with the colonel and his staff
 19 two or three or four weeks ago, that they asked our staff
 20 not to send them permits that the staff would not normally
 21 approve and support. And so I think staff is following
 22 the protocol here in terms of, if staff is not supporting
 23 it, the Corps doesn't really want to see it because it
 24 just adds to their workload. If staff wants to push the
 25 application, then the Corps is willing to consider it.

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1 would want some clarification in the motion about whether
 2 we would be directed to issue this permit without the
 3 LMA's endorsement.
 4 BOARD MEMBER RIE: I don't think that's a
 5 requirement to issue a permit.
 6 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
 7 It's actually an issue of the application.
 8 BOARD MEMBER RIE: Pardon me?
 9 DWR FLOODWAY PROTECTION SECTIION CHIEF YEGO:
 10 It's an issue of the application, because -- in
 11 this case, like I stated in my presentation, that as part
 12 of the application normally -- prior to receipt of the
 13 application they normally go before the local maintaining
 14 agency and receive their endorsement. In this case,
 15 because that it is a state maintained area, they are not
 16 required because the state itself is the local maintainer.
 17 So there's a sign off on the application process,
 18 Item 4 --
 19 BOARD MEMBER RIE: Yes, but --
 20 PRESIDENT CARTER: Right. But that doesn't mean
 21 that the support of the local maintaining agency is a
 22 hurdle that necessarily has to -- that's a condition of
 23 approval of the permit. The applicant has appealed the
 24 recommendation of the staff and the local maintaining
 25 agency, and it's up to the Board to decide, and regardless

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1 of what staff and the local maintaining agency recommends.
2 So, we have a motion to grant the application
3 subject to the design being acceptable to staff and Corps
4 concurrence.
5 Any further discussion?
6 BOARD MEMBER BROWN: Call for the question.
7 PRESIDENT CARTER: Mr. Punia, would you call the
8 roll.
9 EXECUTIVE OFFICER PUNIA: Board Member John
10 Brown?
11 BOARD MEMBER BROWN: Aye.
12 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?
13 SECRETARY DOHERTY: No.
14 EXECUTIVE OFFICER PUNIA: Board Member Emma
15 Suarez?
16 BOARD MEMBER SUAREZ: Aye.
17 EXECUTIVE OFFICER PUNIA: Board Member Butch
18 Hodgkins?
19 VICE-PRESIDENT HODGKINS: No.
20 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
21 BOARD MEMBER RIE: Aye.
22 EXECUTIVE OFFICER PUNIA: Board Member Ben
23 Carter?
24 PRESIDENT CARTER: No.
25 Okay. So the motion fails.

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1 Ladies and gentlemen, if I could make a
2 suggestion that we continue this and basically return to
3 the original motion that Ms. Suarez made and direct the
4 applicant and staff to continue discussions. We're really
5 at an impasse right now. I don't think any further
6 discussion is going to be any more productive. We need
7 some new information.
8 So with your concurrence, I'd like to continue
9 this hearing to a future date.
10 Any objections?
11 BOARD MEMBER BROWN: No objection.
12 PRESIDENT CARTER: Okay. So we are going to
13 continue this hearing at this point.
14 You guys get together.
15 Also, I want to just reiterate Ms. Suarez's and
16 Vice President Hodgkins' recommendations. I felt that the
17 staff reports on both of these two hearings that we had
18 this morning, 9A and 9B, was very thin. When we are doing
19 evidentiary hearings, it's different than the consent
20 calendar. In my mind, we need to have a staff report that
21 gives the Board members a very thorough picture of what's
22 going on on these sites and in these projects and what's
23 being requested and what's being considered. These
24 reports that we had today in my opinion were not
25 acceptable. Okay? So, guys, please work on that.

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1 All right. Ladies and gentlemen, we're going to
2 recess for lunch.
3 We are pretty far behind on our schedule. What
4 I'd like to request is that people come back in 45
5 minutes. So we will reconvene here at 1:30.
6 Thank you.
7 (Thereupon a lunch break was taken.)

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DEPARTMENT OF WATER RESOURCES

SACRAMENTO MAINTENANCE YARD

1450 RIVERBANK RD

WEST SACRAMENTO, CA 95605



October 7, 2008

Central Valley Flood Protection Board

1416 Ninth Street

Sacramento, CA 95814

RE: Fence and Gate Application

This letter is regarding the application submitted by Mr. Murphy to install a fence and gate at 7260 Pocket Road in Sacramento, CA.

Pursuant to and in compliance with the California Code of Regulations, Title 23, Article 8, Section 126, sub-section (a)6, the additional fence and gate would impair and interfere with levee inspection and maintenance as well as flood fighting activities. There are existing gates on the levee crown approximately 3-tenths of a mile upstream and 1-tenth of a mile downstream from the said property.

I recommend that the application be denied.

Sincerely,

A handwritten signature in blue ink, reading 'Russell W Eckman'.

Russ Eckman, Superintendent
Department of Water Resources
Sacramento Maintenance Yard
Maintenance Area 9

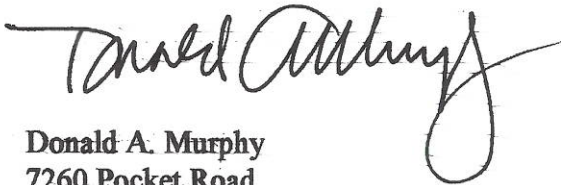
Description of Project

This application is for the installation of fencing and gates over the levee top at both the upriver and downriver boundary lines of our property, parcel 031-0860-003-0000 and 031-0860-004-0000.

The primary reason for this request is to restrict access to our private property by persons using the levee. We are concerned about our general personal safety as a result of accessibility to our property. In the recent past there have been numerous occurrences of home invasions in the Pocket area. Our property is secluded and could be an easy target, especially from the levee. There have also been occurrences of vandalism, littering, disruption caused by people's pets (dogs), invasion of privacy, and unauthorized operation of recreational vehicles (motorbikes, golf carts) on our levee property. Further, since the installation of our boat dock (completed in early 2007 under Permit # 17678 GM), there is now a concern of liability because pedestrians are unlawfully walking on the gangway leading to our boat dock.

Please note that we have allowed persons unrestricted use our levee property since we purchased the land in 1999. However, as a result of the items mentioned above, we feel that we can no longer do so.

Thank you for your consideration and approval of this project.



Donald A. Murphy
7260 Pocket Road
Sacramento, CA 95831
Home (916) 395-2233
Fax (916) 446-5299

031-86

POR. SEC. 4, T.7N., R.4E., M.D.B. 8 M.

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ZEPHYR RANCH DR

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Order No 78531 1-6 MEH:cmh 6/3/55
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#78531-
BLD

THIS INDENTURE made this 18 day of January,
 1956, by and between MARIA N. SILVA, JOSEPH L. SILVA and ISABEL
 SILVA, ANTHONY L. SILVA and MARIE F. SILVA, hereinafter designated
 as grantors, and 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 the grantors for and in consideration
 of the sum of Five Hundred Eighty-nine Dollars (\$589.00), in
 hand paid, the receipt of which is hereby acknowledged, do hereby
 grant to said grantee, its successors and assigns, a perpetual
 right of way and easement to build, construct, reconstruct,
 repair and forever maintain the east levee of the Sacramento
 River, a part of the Sacramento River Flood Control Plan of the
 California Debris Commission, including all embankments, ditches
 and appurtenant structures, incidental works to said levee and
 bank protection works adjacent thereto, over, or across the
 real property described as follows, to-wit:

All that certain parcel or tract of real property
 situate, lying in and being a portion of Swamp Land
 Survey No. 147, located in Section 4, T. 7 N., R. 4
 E., M.D.M., Sacramento County, California; said parcel
 being particularly described as follows:

Beginning at the intersection of the landside right
 of way line of the proposed levee easement with the
 property line common to land of grantor and that land,
 now or formerly, owned by F. J. Lewis and John E. Lewis;
 said point of beginning being located South 12° 26' 44"
 East 2,651.11 feet from a one-inch diameter iron pipe
 monument, capped and marked with a copper disc inscribed
 Reg. C. E. 318, driven at the northeast corner of that
 certain 0.955 acre tract allotted to Frank Rogers by
 Decree No. 15772 in Suit No. 26891 entered July 22,
 1921, in Book 524 of Deeds at page 287, Sacramento
 County Records; THENCE FROM SAID POINT OF BEGINNING
 and along said right of way line, upstream, the following
 ten courses:

- (1) North 35° 49' 50" West 128.89 feet;
- (2) North 32° 28' 20" West 182.54 feet;
- (3) North 37° 35' 50" West 118.01 feet;
- (4) North 38° 55' 40" West 100.26 feet;
- (5) North 37° 01' 50" West 142.80 feet;
- (6) North 34° 13' 30" West 357.39 feet;
- (7) North 35° 35' 00" West 213.95 feet;
- (8) North 37° 41' 40" West 125.11 feet;

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 OFFICIAL RECORDS
 RECORDED AT REQUEST OF
 Security Title Insurance Company

JAN 23 8 01 AM 1956

Leonard J. Hooper
 SACRAMENTO COUNTY RECORDER

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 76-4104

VOL 3459 PAGE 137 # 2370

(9) North 30° 05' 00" West 167.57 feet; and
 (10) North 00° 38' 50" West 89.49 feet, more or less, to the property line common to land of the grantor and that land, now or formerly, owned by John L. Silva; thence leaving said right of way line and along said common boundary, South 63° 03' 30" West 134.10 feet to the waterside right of way line of the herein described parcel; thence along said line, downstream, the following three courses:

(1) South 33° 48' 50" East 335.68 feet;
 (2) South 31° 08' 50" East 280.17 feet; and
 (3) South 31° 56' 50" East 978.64 feet, more or less, to said first-named common boundary; thence along said boundary, North 67° 27' 30" East 163.99 feet, more or less, to the point of beginning, containing 4.22 acres, more or less, of which 0.53 of an acre is new land taken.

The North Meridian adopted for this survey is identical with that used by the Department of the Army, Corps of Engineers, for this area.

SECOND: Grantors do hereby waive all claim or claims for any and all compensation for and on account of the location, establishment and construction of said levee, embankments and appurtenant structures upon the right of way area hereinabove described in accordance with the provisions hereof.

THIRD: Grantors do hereby acknowledge that all obligations of grantee under that certain agreement executed by grantors and grantee on February 19, 1952, have been performed by grantee.

FOURTH: Neither the grantors nor any of their agents, successors or assigns shall conduct any pasturing or grazing of livestock upon the right of way and easement described in this deed, unless and until such time as authorization therefor shall have been applied for to, and granted by, the State Engineer.

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

100	100	VALUE	DEPOSIT
DEPARTMENT OF FINANCE			
APPROVED			
JUN 16 1955			
JOHN M. PEIRCE, Director			
Administrative Advisor			

Maria N. Silva
Joseph L. Silva
Isabel Silva
Anthony L. Silva
Maria F. Silva

13908 FEB 25 58

VOL 3459 PAGE 137 2370

(9) North 30° 05' 00" West 167.57 feet; and
 (10) North 00° 38' 50" West 89.49 feet, more or less, to the property line common to land of the grantor and that land, now or formerly, owned by John L. Silva; thence leaving said right of way line and along said common boundary, South 63° 03' 30" West 134.10 feet to the waterside right of way line of the herein described parcel; thence along said line, downstream, the following three courses:

(1) South 33° 48' 50" East 335.68 feet;
 (2) South 31° 08' 50" East 280.17 feet; and
 (3) South 31° 56' 50" East 978.64 feet, more or less, to said first-named common boundary; thence along said boundary, North 67° 27' 30" East 163.99 feet, more or less, to the point of beginning, containing 4.22 acres, more or less, of which 0.53 of an acre is new land taken.

The North Meridian adopted for this survey is identical with that used by the Department of the Army, Corps of Engineers, for this area.

SECOND: Grantors do hereby waive all claim or claims for any and all compensation for and on account of the location, establishment and construction of said levee, embankments and appurtenant structures upon the right of way area hereinabove described in accordance with the provisions hereof.

THIRD: Grantors do hereby acknowledge that all obligations of grantee under that certain agreement executed by grantors and grantee on February 19, 1952, have been performed by grantee.

FOURTH: Neither the grantors nor any of their agents, successors or assigns shall conduct any pasturing or grazing of livestock upon the right of way and easement described in this deed, unless and until such time as authorization therefor shall have been applied for to, and granted by, the State Engineer.

STATE OF CALIFORNIA,
 COUNTY OF SACRAMENTO,

ss.

VOL 3459 PAGE 138

On this 18th day of January, 1956, before me, JOSEPH W. MENTO, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared

MARIA N. SILVA, JOSEPH L. SILVA, ISABEL SILVA, ANTHONY L. SILVA and MARIE F. SILVA,

known to me to be the person described in and whose name is subscribed to the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal, the day and year first above written.

SEAL

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

My Commission Expires Oct. 24th, 1956

13908 FEB 25 58

13908 FEB 25 58

VOL 3456 PAGE 139 #

RESOLUTION 2370

PASSED AND ADOPTED BY THE RECLAMATION BOARDAT MEETING HELD FEBRUARY 19, 1941

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

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

I, GEO. H. HOLMES, Secretary of The Reclamation Board, do hereby certify that the above and foregoing is a true and exact copy of a resolution duly passed and adopted by said Board at its regular monthly meeting held February 19, 1941.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 4 day of February, 1958

SEAL

George H. Holmes
 GEORGE H. HOLMES
 Secretary
 The Reclamation Board

STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO) SS.

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

DATE: February 14 1958

A. M. Barton
 Chief Engineer and General Manager
 The Reclamation Board

NO FEE

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Deed of Partial Reconveyance VOL 3459 PAGE 133

Known All Men By These Presents: #2370

Whereas, on November 8, 1955, - - - Anthony L. Silva and Maria F. Silva, his wife - - -

made, executed and delivered a Deed of Trust to Continental Auxiliary Company, a California Corporation - - -

as Trustee for Bank of America NT&SA, a national banking association - - -

as Beneficiary, which Deed of Trust was recorded on February 8, 1956, in

the office of the County Recorder of County of Sacramento

State of California, in Book 3014 of Official Records, at Page 194, et seq.; and

Whereas, CONTINENTAL AUXILIARY COMPANY, a California Corporation, is now the Trustee under said Deed of Trust and;

Whereas, pursuant to the terms of said Deed of Trust, the CONTINENTAL AUXILIARY COMPANY has been requested to execute a partial reconveyance, and is authorized to reconvey the real property hereinafter described, conveyed to it by said Deed of Trust;

Now Therefore, said CONTINENTAL AUXILIARY COMPANY, as Trustee, does hereby remise, grant, release and reconvey to the person or persons legally entitled thereto all of the estate and interest derived by it through or under said Deed of Trust, in and to the following described portion of the premises therein described, to-wit:

(Description)

The attached description now becomes a part and parcel of this document:

Handwritten signature

A perpetual right of way and easement to build, construct, reconstruct, repair and forever maintain the east levee of the Sacramento River, a part of the Sacramento River Flood Control Plan of the California Debris Commission, including all embankments, ditches and appurtenant structures, incidental works to said levee and bank protection works adjacent thereto, over, or across the real property described as follows, to-wit:

All that certain parcel or tract of real property situate, lying in and being a portion of Swamp Land Survey No. 147, located in Section 4, T. 7 N., R. 4 E., M. D. M. Sacramento County, California; said parcel being particularly described as follows:

Beginning at the intersection of the landside right of way line of the proposed levee easement with the property line common to land of grantor and that land, now or formerly, owned by F. J. Lewis and John E. Lewis; said point of beginning being located South 12° 26' 44" East 2,651.11 feet from a one-inch diameter iron pipe monument, capped and marked with a copper disc inscribed Reg. C. E. 318, driven at the northeast corner of that certain 0.955 acre tract allotted to Frank Rogers by Decree No. 15772 in Suit No. 26891 entered July 22, 1921, in Book 524 of Deeds at page 287, Sacramento County Records; THENCE FROM SAID POINT OF BEGINNING and along said right of way line, upstream, the following ten courses:

- (1) North 35° 49' 50" West 128.89 feet;
- (2) North 32° 28' 20" West 182.54 feet;
- (3) North 37° 35' 50" West 118.01 feet;
- (4) North 38° 55' 40" West 100.26 feet;
- (5) North 37° 01' 50" West 142.80 feet;
- (6) North 34° 13' 30" West 357.39 feet;
- (7) North 35° 35' 00" West 213.95 feet;
- (8) North 37° 41' 40" West 125.11 feet;
- (9) North 30° 05' 00" West 167.57 feet; and
- (10) North 00° 38' 50" West 89.49 feet, more or less, to the property

line common to land of the grantor and that land, now or formerly, owned by John L. Silva; thence leaving said right of way line and along said common boundary, South 63° 03' 30" West 134.10 feet to the waterside right of way line of the herein described parcel; thence along said line, downstream, the following three courses:

- (1) South 33° 48' 50" East 335.68 feet;
- (2) South 31° 08' 50" East 280.17 feet; and
- (3) South 31° 56' 50" East 978.64 feet, more or less, to said first-named

common boundary; thence along said boundary, North 67° 27' 30" East 163.99 feet; more or less, to the point of beginning, containing 4.22 acres, more or less, of which 0.53 of an acre is new land taken.

The North Meridian adopted for this survey is identical with that used by the Department of the Army, Corps of Engineers, for this area.

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R. L. Doc #1633

BOOK 2616 PAGE 71

THIS INDENTURE made this 1st day of June, 1954, by and between JOHN L. SILVA and IGNACIA SILVA, his wife, hereinafter designated as grantors, and 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 the grantors for and in consideration of the sum of Ninety-two Dollars (\$92.00), in hand paid, the receipt of which is hereby acknowledged, do hereby grant to said grantee, its successors and assigns, a perpetual right of way and easement to build, construct, reconstruct, repair and forever maintain the East levee of the Sacramento River, a part of the Sacramento River Flood Control Plan of the California Debris Commission, including all embankments, ditches and appurtenant structures, incidental works to said levee and bank protection works adjacent thereto, over, or across the real property described as follows, to-wit:

All that certain parcel or tract of real property situate, lying in and being a portion of Swamp Land Survey No. 147, located in Section 4, T. 7 N., R. 4 E., M.D.M., Sacramento County, California; said parcel being particularly described as follows:

Beginning at the intersection of the landside right of way line of the proposed levee easement with the property line common to land of the grantors and that land, now or formerly, owned by Maria N. Silva; said point of beginning being located South 14° 01' 16" West 1,279.96 feet from a one-inch diameter iron pipe monument, capped and marked with a copper disc inscribed Reg. C.E. 318, driven at the northeast corner of that certain 0.955 acre tract allotted to Frank Rogers by Decree No. 15772 in Suit No. 26891, entered July 22, 1921, in Book 524 of Deeds at page 287, Sacramento County Records; THENCE FROM SAID POINT OF BEGINNING and along said right of way line, upstream, North 39° 45' 10" West 228.30 feet and thence North 29° 09' 50" West 466.41 feet, more or less, to the property line common to land of the grantors and that land, now or formerly, owned by Margurite Lee; thence leaving said right of way line and along said common boundary, South 61° 26' 10" West 103.06 feet to the waterside right of way line of the herein described parcel; thence along said line, downstream, the following three courses:

31326

No Lee

BOOK 2616 PAGE 71
VOL OFFICIAL RECORDS
RECORDED AT REQUEST OF
Fidelity Title Insurance Company

JUN 4 - 8 01 AM 1954

SACRAMENTO COUNTY
RECORDER

BOOK 2616 PAGE 72

(1) South 25° 29' 30" East 302.49 feet;
 (2) South 33° 20' 30" East 175.49 feet; and
 (3) South 33° 57' 30" East 210.54 feet, more or less, to said first named common boundary; thence along said boundary, North 63° 03' 30" East 134.10 feet, more or less, to the point of beginning, containing 1.84 acres, more or less, of which none is new land taken.

The North Meridian adopted for this survey is identical with that used by the Department of the Army, Corps of Engineers, for this area.

SECOND: Grantors do hereby waive all claim or claims for any and all compensation for and on account of the location, establishment and construction of said levee, embankments and appurtenant structures upon the right of way area hereinabove described in accordance with the provisions hereof.

THIRD: Grantors do hereby acknowledge that all obligations of grantee under that certain agreement executed by grantors and grantee on March 17, 1952, have been performed by grantee.

FOURTH: Neither the grantors nor any of their agents, successors or assigns shall conduct any pasturing or grazing of livestock upon the right of way and easement described in this deed, unless and until such time as authorization therefor shall have been applied for to, and granted by, the State Engineer.

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

John L. Silva

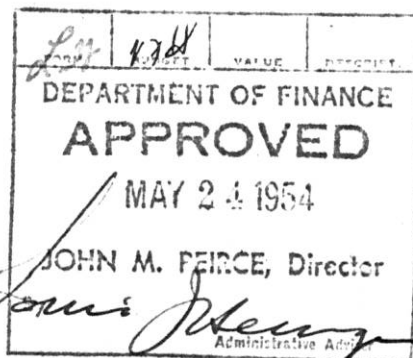
his

his

Josephine Huff
 Josephine Costa
 Anna Davies

John L. Silva
 by
 Francis Silva

31326



APPROVED: 5-13-54

EDMUND G. BROWN
 Attorney General

By R. H. WILLIAMSON
 Deputy Attorney General

BOOK 2616 PAGE 74

R E S O L U T I O N

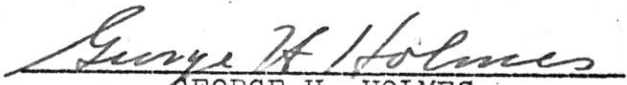
PASSED AND ADOPTED BY THE RECLAMATION BOARDAT MEETING HELD FEBRUARY 19, 1941

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

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

I, GEO. H. HOLMES, Secretary of The Reclamation Board, do hereby certify that the above and foregoing is a true and exact copy of a resolution duly passed and adopted by said Board at its regular monthly meeting held February 19, 1941.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 3 day of February, 1941

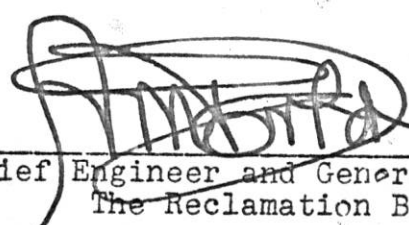

 GEORGE H. HOLMES
 Secretary
 The Reclamation Board

SEAL

STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO) SS.

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

DATED: June 2, 1941


 Chief Engineer and General Manager
 The Reclamation Board

SEAL

31326

Zell

TEL: 916/971-3961
FAX: 916/971-0578

ENSIGN & BUCKLEY

CONSULTING ENGINEERS



Mr. Phil Hiroshima, Co-Chairperson
Mr. Charles E. Zell, Co-Chairperson
Sacramento Riverfront Association
7360 Pocket Road
Sacramento, CA 95831

Dear Mr. Hiroshima and Mr. Zell:

At the request of Mr. Zell, on January 11, 1996, Mr. Bori Touray and I met with Mr. Zell and Mr. Peter Rabbon, with the Department of Water Resources, to review the eight fences that cross the East Levee of the Sacramento River between Levee mile 0.79 and mile 5.51.

We were asked to address two specific questions; to evaluate the impact of the fences on the 100-year frequency flood water surface elevations in the river and, based upon field observations and the estimated velocities in the vicinity of the fences, to provide a judgemental assessment of the potential for the fences to cause local erosion.

In summary, we found that if we treated the entire area of the fences as being blocked, the difference in the upstream 100-year water surface elevation, with and without the fences, would be about 0.02 feet or about 1/4 of an inch. We found the average cross sectional velocity of about 4.50 feet per second at the fence locations increased a maximum amount of 0.08 feet per second with the fence area entirely block off. Based upon our field observations and estimated velocities in the river at the fence location, erosion due to the fences does not appear to be a problem.

Attached are the following:

1. Summary Report
2. List of Fence Locations
3. Schematic Diagram - Fence Locations
4. Cross Sections of the Fences
5. Water Surface Profiles
6. Department of Water Resources "Office Memo" Dated January 10, 1996; "Sacramento River Stages."
7. Qualifications of Ensign & Buckley Consulting Engineers

We hope that this adequately addresses the two issues that you requested us to evaluate. If you have additional questions, please let us know.

Sincerely,

A handwritten signature in cursive script, reading "Ferrel H. Ensign". The signature is written in dark ink and is positioned above the printed name.

Ferrel H. Ensign

Enclosures

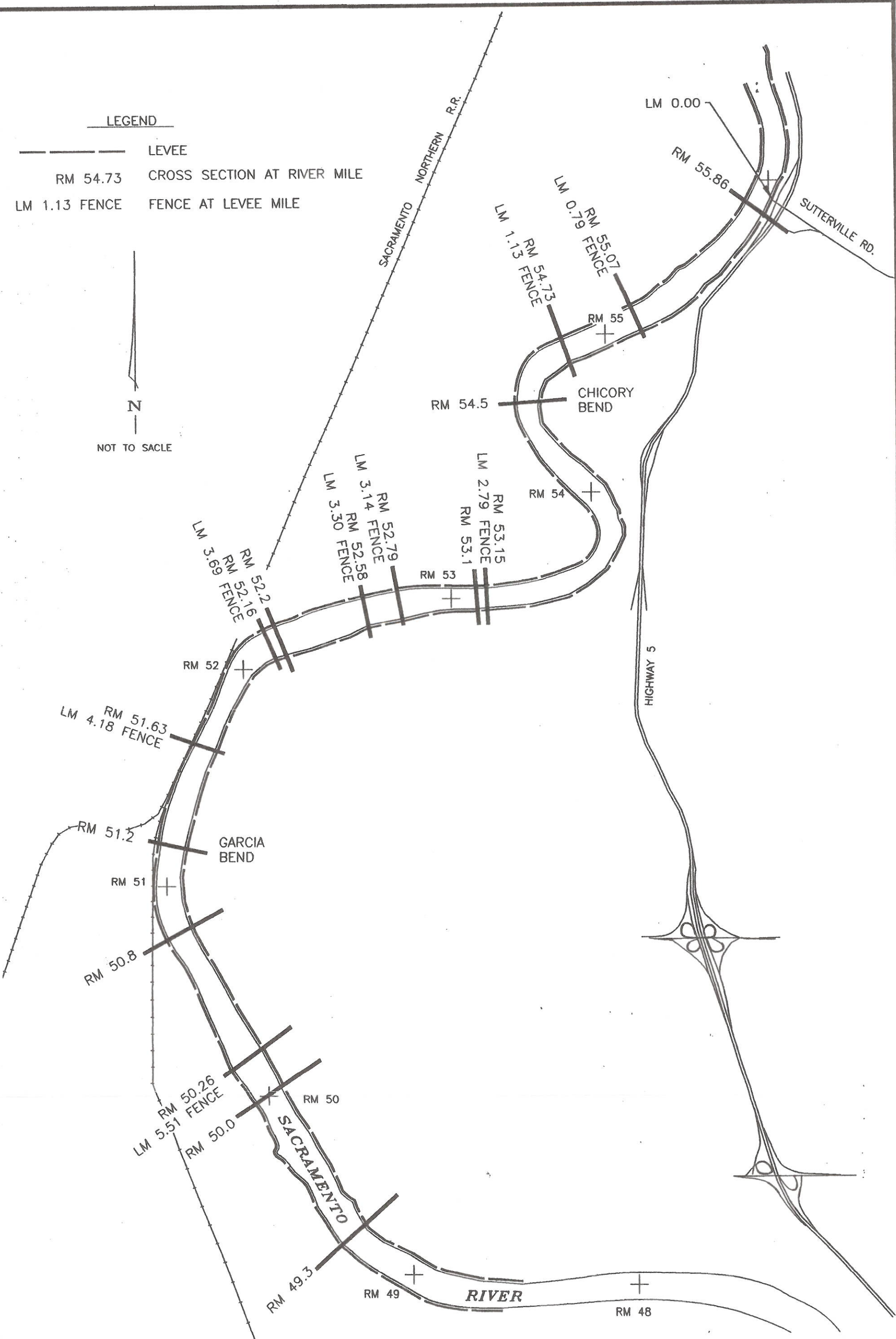
cc Peter Rabbon w/Enclosures

LEGEND

—— LEVEE

RM 54.73 CROSS SECTION AT RIVER MILE

LM 1.13 FENCE FENCE AT LEVEE MILE



**SCHEMATIC DIAGRAM
FENCE LOCATIONS**

State of California - The Reclamation Board
Levee Cross Fence and Gate
Master Plan
for
Maintenance Area 9
June 1996

In addition to the existing standards for levee cross fences and gates, staff is recommending the Board adopt the following new standards for levee cross fences and gates in Maintenance Area 9:

- Private cross fences for the control of trespass should be permitted on a case by case basis with the objective of minimizing the number of gates and cross fences so as to not adversely impact operation and maintenance of the flood control project
- The Board should prevent any unnecessary duplication in the control of access to private lands or vehicular access.
- The Board should coordinate with private property owners through the normal encroachment permit process to delineate and post the boundaries between private and public lands.
- All gates with legal public access on both the upstream and downstream side shall be accessible to pedestrians, bicyclists and American's with disabilities.