

Meeting of the Central Valley Flood Protection Board**March 2, 2012****Staff Report - Hearing****Michael King, CA in Yuba County****1.0 – ITEM**

Enforcement hearing concerning a notice of violation issued to Michael King ordering the removal of a private fence and portion of a permanent structure located on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from December 2, 2011.

Consider Resolution No. 2012-06 (Attachment A) to:

1. Authorize removal of a private fence on State land subject to Permit No. 18690.
2. Grant a revocable license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Authorize a structure on parcel 020-121-021, owned by Michael King, to remain on State land subject to permitting.
4. Rescind the notice of violation (2011-268) subject to voluntary compliance with this resolution.

2.0 – RESPONDENT/PROPERTY OWNERS

Mr. Michael King
5722 Riverside Drive. A
Olivehurst, California 95961
Assessor's Parcel Number (APN) 020-121-021

3.0 – LOCATION

Figures 1 & 2 show the vicinity and an aerial view of the property at 5722 Riverside Dr., respectively.



Figure 1- Vicinity Map of property at 5722 Riverside Dr., West Linda, CA (Source: Google Maps)

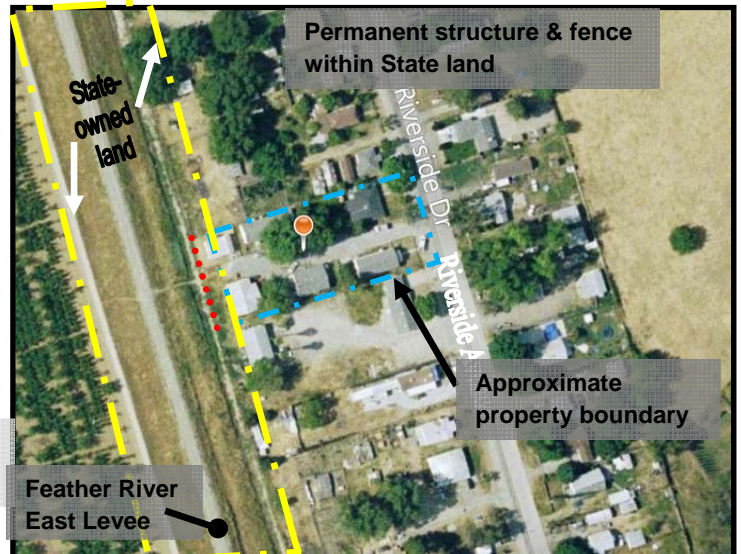


Figure 2- Aerial Map of the property at 5722 Riverside Dr., West Linda CA (Source: Bing Maps)

4.0 – APPLICABLE LAWS AND REGULATIONS

4.1 – California Water Code

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

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

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

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

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

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

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

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

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

5.0 – STAFF ANALYSIS

5.1 – Background

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

5.2 – Real Estate

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

- December 14, 1909 – Northern Electric Railway Company purchased property from Isaac G. Cohn, et. Al (Book 59, Page 441). See Attachment D.
- November 8, 1921 – Yuba Gardens survey map (Book 3 of Surveys 2). See Attachment E.
- June 14, 1939 – Yuba Gardens Subdivision map (Tract No. 8, Book 3 of Surveys Page 45). See Attachment F.
- April 27, 1956 – Interstate Commerce Commission decision to abandon portion track under the Sacramento Northern Railway (State-owned parcel adjacent to 51 private properties). See Attachment G.
- December 12, 1958 – Sacramento and San Joaquin Drainage District (SSJDD) purchased property from Sacramento Northern Railway (Deed 2475 recorded on Book 267 Page 509). See Attachment H and Exhibit A.
- January 11, 2012 – Record of Survey (2011-11) prepared by CTA recorded on Book 93 Page 36. See Attachment I.

5.3 – Proposed Alternative

Following the December 2, 2011 meeting and Board's direction, staff met with DWR and TRLIA representatives to develop an alternative that would meet the Board's directions. At Michael King's property, the existing fence and permanent structure is located approximately 15.9-ft and 2.5-ft inside State property, respectively. Therefore, a 20-ft wide corridor can be provided at Mr. King's parcel, with some remaining land. The proposed real estate alternative, which was presented at the January 26, 2012 Board meeting, is to install the new fence approximately 20-ft from the levee toe; issue revocable license to Michael King to use and maintain the remaining State land until needed for a public purpose and issue a Board permit for the existing structure located on State land. See Figure 3 and Section 5.4 for a legal analysis on the proposed alternative. On January 10, 2012, this alternative was presented to the residents at a community held in Olivehurst, California. At this meeting, Michael King's sister was present on his behalf and supported the presented alternative.

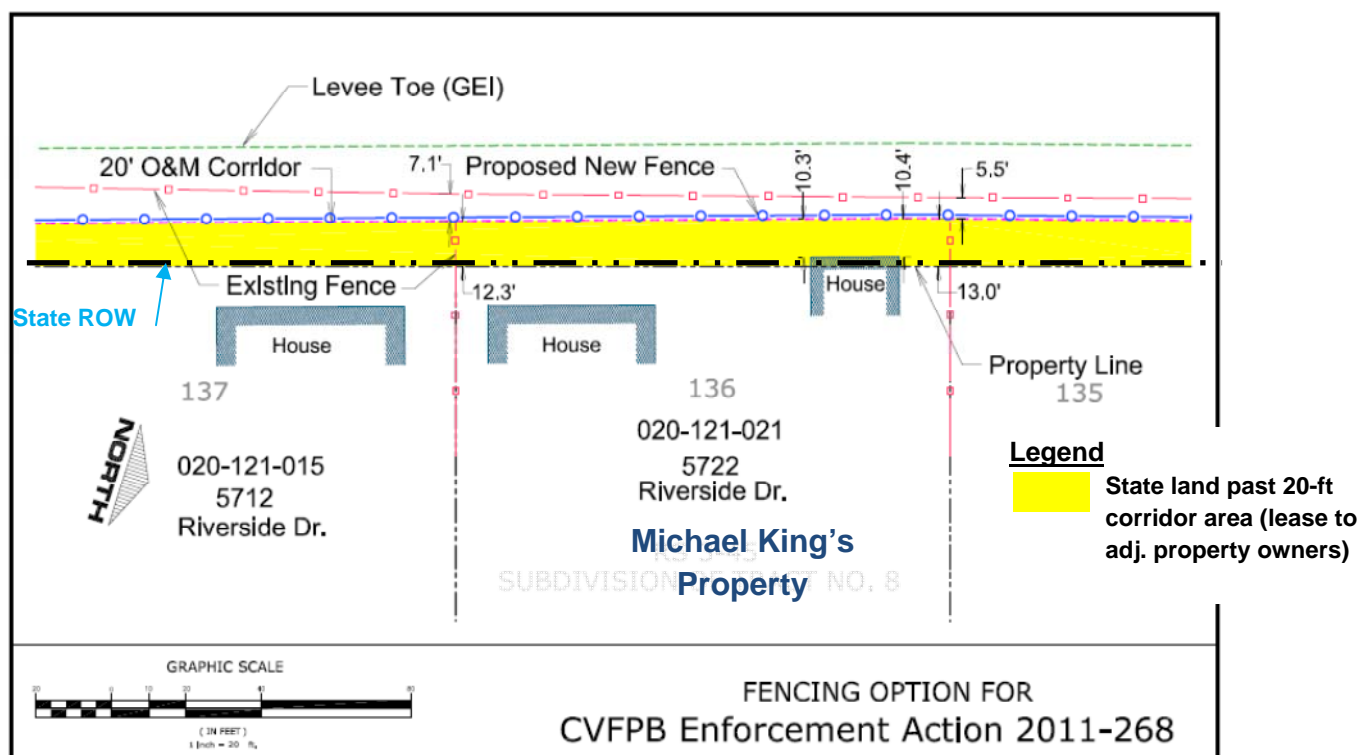


Figure 3- Exhibit prepared by CTA dated 01/16/2012

5.4 – Legal Analysis of Proposed Alternative

Board staff legal counsel has confirmed that the proposed alternative does not violate State laws and is therefore a legally acceptable solution.

5.5 – Actions since January 26, 2012 Hearings

On January 26, 2012, the alternative discussed in Section 5.3 was presented to the Board. See Attachment J and K for copy of the staff report and official transcript, respectively. The Board voted 7-0 in favor of the presented alternative. However this decision was later vacated to meet a 10-day staff report mailing requirement per regulation. On February 6, 2012, all 51 property owners were notified of the Board's decision and provided copies of the Agenda (see Attachment L). On February 17, 2012 the staff report was published on the Board's website and Michael King was mailed a copy via over-night mail (Attachment M).

Additional documents have been submitted by several Respondents claiming there are errors in the land survey and dispute the State's ownership of its land. The letters also request the State take actions to protect oak trees and solve existing localized drainage problems. These issues have been discussed in prior hearings, staff reports, or via direct response to the Respondents. See Attachment O for staff response and copies of submitted correspondence. On February 14, 2012, CTA prepared a memorandum in response to property boundary disputes and concluded that the property boundary shown on Record of Survey 2011-11 dated January 11, 2012 remains accurate (Attachment N). Board staff is aware of the local drainage issue where water ponds during heavy rains at the backyard of the properties adjacent to State land. Any grading necessary for the corridor will be done in such a way that it does not aggravate existing drainage conditions and it is further discussed in Application 18690.

Board staff, TRLIA, CTA Engineering & Surveying, and legal counsel have exercised professional due-diligence in review of all pertinent documents. Board staff is confident that the proposed alternative remains the best compromise. In addition, on January 6, 2012, Board staff contacted Mr. King to inform him on the proposed alternative and he responded indicating support of it (See Attachment P for copy of email).

6.0 – PROPOSED CEQA FINDINGS

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

7.0 – STAFF RECOMMENDATION

The purpose of this enforcement action resolution is to protect the levee from illegal off road vehicles accessing the levee through private parcels and uncontrolled access points. Off-road vehicles have eroded the levee which weakens its slope stability. The corridor will provide sufficient space for two construction vehicles to pass each other during levee patrols and flood fight repairs.

Staff's recommendation is for the Board to approve the proposed resolution that authorizes: removal of the private fence and encroachments obstructing the 20 foot wide levee toe maintenance corridor, issue a revocable license to Michael King for use and maintenance of State land between the corridor and his property, and issue a Board permit for the existing structure on State land. For these reasons and those stated on this staff report, Board staff recommends the Board adopt Resolution No. 2012-06 (Attachment A).

8.0 – LIST OF ATTACHMENTS

- A. Resolution No. 2012-06
- B. December 2, 2011 Official Transcript for Agenda Items 10 A-D
- C. December 2, 2011 Staff Report without attachments for Agenda Item 10B
- D. Deed recorded on Book 59, Page 441 (December 14, 1909)
- E. Yuba Gardens survey map (Book 3 of Surveys 2, November 8, 1921)
- F. Yuba Gardens Subdivision Map (Tract No. 8, Book 3 of Surveys Page 45)
- G. Interstate Commerce Commission decision dated April 27, 1956
- H. Deed 2475 recorded on Book 267 Page 509 (December 12, 1958)
Exhibit A – SSJDD Acquisition Map dated January 7, 1958
- I. Record of Survey 2011-11 (Book 93 of Surveys Page 36, January 11, 2012)
- J. [January 26, 2012 Staff Report without attachments \(Agenda Item 8B\)](#)
- K. [January 26, 2012 Official Transcripts for Agenda Items 8A-8E](#)
- L. [January 26, 2011 Board Meeting – hearings decision notification letter date February 6, 2012](#)
- M. [Staff Report notification to Respondent per letter dated February 17, 2012](#)
- N. [CTA Memorandum dated February 14, 2012](#)
- O. [Board staff response memo and additional documents submitted by Respondents](#)
- P. [E-mail to Michael King notifying of proposed alternative on February 6, 2012](#)

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-06

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
MICHAEL KING, 5722 RIVERSIDE DR. A, OLIVEHURST, CA
FEATHER RIVER, YUBA COUNTY

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

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

WHEREAS, during the preparation of a survey, TRLIA discovered that in this area, the land covering the levee and required 20-ft wide O&M corridor was owned by the Board (through SSJDD); and

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

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

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

WHEREAS, on August 5, 2011 a total of 51 notices of violation were issued to property owners adjacent to the Feather River East levee in West Linda, CA. This resolution only addresses the NOV 2011-268 issued to Michael King who owns Parcel 020-121-021 (5722 Riverside Dr. A, Olivehurst, CA); and

WHEREAS, although the respondent did not request a hearing, the Board choose to address his property separately from the other 50 parcels due to the permanent structure located on State land; and

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

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

WHEREAS, the Board determined by a majority vote that private encroachments exist on State owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. The Board also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor; and

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

WHEREAS, the proposed real estate alternative is to issue a revocable license to Michael King for use and maintenance of the portion of the State land not needed to create the 20 foot wide levee toe maintenance corridor and issue a Board permit for the existing permanent structure on State land; and

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

WHEREAS, on January 10, 2012, this alternative was presented to the residents at a community meeting in Olivehurst, CA and Mr. King's sister was in attendance on his behalf and supports the presented alternative; and

WHEREAS, Board staff legal counsel has confirmed that the proposed alternative does not violate State laws and is therefore a legally acceptable solution; and

WHEREAS, on January 26, 2012, the Board held public hearings in Marysville, California. The Board voted 7-0 in favor of presented resolution. However, this decision was vacated because the Respondents were not provided the staff reports within the required ten (10) days; and

WHEREAS, following the January 26, 2012 Board meeting, additional documents were submitted by several respondents. The issues raised by these documents have been addressed in prior hearings, staff reports or via direct response to the respondents and they are discussed in the staff report; and

WHEREAS, the staff report was mailed via overnight mail to the Respondents on February 17, 2012, thereby meeting the Board's 10-day notification requirement; and

WHEREAS, Board staff, TRLIA, CTA Engineering & Surveying and legal counsel have exercises professional due-diligence in review of all pertinent documents and staff is confident that the proposed alternative remains appropriate and as the best compromise; and

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

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact

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

CEQA Findings

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

Approval of Resolution No. 2012-06

5. For these reasons and those stated on the staff report, staff recommends the Board adopt Resolution No. 2012-06 to:
 - a. Authorize removal of private fences and miscellaneous obstructions on State land subject to Permit No. 18690.
 - b. Grant a license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East levee.
 - c. Authorize a structure on Parcel 020-121-021, owned by Michael King, to remain in State land subject to permitting.
 - d. Rescind the notice of violation (2011-268) subject to voluntary compliance with this resolution.
 - e. Direct staff to file a Notice of Exemption with the State Clearinghouse.
 - f. Direct Executive Officer to execute the revocable license subject to review and concurrence from Board President.

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

Benjamin F. Carter
President

To be Determined
Secretary

AGENDA ITEM 4B

ATTACHMENT B

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

THE RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

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

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

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AFTERNOON SESSION

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

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

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

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

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

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who have not been through it before.

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

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

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

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

So that's the process.

Any questions?

Very good.

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

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(Thereupon an overhead presentation was
Presented as follows.)

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

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

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

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

--oOo--

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

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AGENDA ITEM 4B ATTACHMENT B

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

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

--o0o--

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

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

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

--o0o--

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

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along the landside of the toe.

--o0o--

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

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

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

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

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land is about 14.8 feet at this location.

--o0o--

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

--o0o--

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

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

Some of the background pertinent to this

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

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

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

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

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

--o0o--

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

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AGENDA ITEM 4B ATTACHMENT B

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

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

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

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

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

19 --o0o--

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

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

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

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

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

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

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

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

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

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

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

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1 --o0o--

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

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

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So it doesn't apply in this case.

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

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

--o0o--

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

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

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

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

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

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

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

And I'll be glad to answer any questions.

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

STAFF ENGINEER CALISO: Thank you, Max.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 PRESIDENT CARTER: Thank you.

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

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

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

--o0o--

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

--o0o--

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

--o0o--

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

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

--o0o--

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

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

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

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

21 The encroachment removal is exempt from CEQA; and

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

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1 the State.

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

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

6 Go ahead.

7 BOARD MEMBER SUAREZ: Thank you.

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

12 STAFF ENGINEER CALISO: Sure.

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

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

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

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

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1 section 20(a) on our regulations gives the Executive
2 Officer the authority to issue an enforcement order.

3 BOARD MEMBER SUAREZ: No, no, that's to issue an
4 enforcement order, not to institute an enforcement
5 order -- institute an enforcement. Those are two
6 different things.

7 I mean he can issue an order, but it has to be
8 based on some statutory -- some regulatory mechanism
9 independent on that.

10 STAFF ENGINEER CALISO: I'm not sure I'm
11 understanding your question.

12 BOARD MEMBER SUAREZ: Well, again, the assumption
13 you're proceeding is that you own the land. So let's
14 assume for the sake of argument that we don't.

15 What other powers do you have under our
16 regulations to proceed with an enforcement action that are
17 not joined to the landownership issue?

18 STAFF ENGINEER CALISO: I'm not sure if this is a
19 question I'm qualified to answer.

20 BOARD MEMBER SUAREZ: Well, you may need some
21 legal help.

22 STAFF ENGINEER CALISO: Maybe, yeah, I might call
23 Legal.

24 BOARD MEMBER SUAREZ: Let me just quickly, the
25 issue of who owns the property is an issue. So let's --

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1 so what I'm trying to clarify is, do you have any other
2 authorities via that based on property ownership?

3 SUPERVISING ENGINEER TARAS: This is Curt Taras,
4 Branch Chief for Enforcement.

5 As you can see, the photo here shows the tire-rut
6 damage that has occurred from an uncontrolled boundary on
7 our levee. And so of course our code has provisions in
8 our standards that no cuts or excavations can be made into
9 a State levee. And it's the obligation of this Board to
10 prevent that.

11 I think Angeles Caliso correctly cited section 20
12 of the regulations for the State to -- the Executive
13 Officer may institute --

14 BOARD MEMBER SUAREZ: No, she's not correctly
15 citing that.

16 That is -- that doesn't give her independent
17 authority or give us independent authority to engage in
18 enforcement action. It just says that the Executive
19 Officer can issue an order if you have that authority.

20 I can see this. But how is this related to the
21 property owner? Do you have proof that it's a property
22 owner that's doing that damage?

23 SUPERVISING ENGINEER TARAS: The citation is not
24 assigning any compensation claim to the -- or damage claim
25 to the owner. It's simply to allow the State to take

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1 control of its boundary and protect the levee --

2 BOARD MEMBER SUAREZ: But that's the issue.
3 Assume that it doesn't belong to the State. That's my
4 point. Assume it doesn't belong to the State, the
5 property where the encroachment is -- the alleged
6 encroachment is.

7 I mean the whole enforcement action is based on
8 ownership. I just need to know that, if that's the only
9 angle we have.

10 SUPERVISING ENGINEER TARAS: No, it's not. It's
11 the main angle, but it's not the only angle, because, as
12 you see, we cited section 20 here, which says if something
13 threatens the --

14 BOARD MEMBER SUAREZ: You keep -- section 20
15 doesn't give you -- it doesn't get you there, section 20.
16 So what other sections do you have?

17 PRESIDENT CARTER: Why don't you both think about
18 that.

19 Are there any other questions?

20 BOARD MEMBER MOFFATT: I did have a question.

21 The ATV tracks going up on the levee, that's at a
22 different part of the levee? That's not behind this
23 particular property owner's property?

24 SUPERVISING ENGINEER TARAS: That's correct. The
25 whole area is -- the stretch of approximately a mile

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1 encompasses multiple parcels. And the justification for
2 the fence is to provide an adequate patrol road and to
3 address unauthorized access and off-roading.

4 BOARD MEMBER MOFFATT: Thank you.

5 PRESIDENT CARTER: Any other questions?

6 We're going to try and get to your question, Ms.
7 Suarez. But let them think about that.

8 VICE-PRESIDENT RIE: Can I ask a quick question.
9 How many patrol roads do we already have? Do we
10 have one on the other side of the levee, on the waterside;
11 do we have a patrol road there? And do we have one on the
12 crown of the levee? So this would be a third patrol road.
13 Is that what you're wanting to do?

14 STAFF ENGINEER CALISO: I think what it's being
15 called under the DWR's interim levee guidelines, it's a
16 20-foot-wide access maintenance corridor. So, in essence,
17 it's to provide enough space to do any flood fighting or
18 maintenance on the levee.

19 The crown is used or can be used as an access.
20 But I think preferably -- I don't know if there's any
21 patrol road on the waterside. I'd have to refer that to
22 maybe the local maintaining agency or Paul Brunner, who
23 might have more knowledge on what is the -- what is out
24 there.

25 PRESIDENT CARTER: What do our standards call

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1 for?

2 STAFF ENGINEER CALISO: Our standards

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

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

5 toe. This situation is unique, because the property

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

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

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

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

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

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

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

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

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

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

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

17 last question.

18 I didn't really understand your response about

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

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

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

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

23 that's applicable here.

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

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

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

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

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

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

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

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

7 under the section 19 of our regulations where the Board

8 owns the property.

9 PRESIDENT CARTER: Mr. Brown.

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

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

12 there be an inspection road?

13 STAFF ENGINEER CALISO: Yes, the plan under

14 Application 18690 will provide a driveable path. I

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

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

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

18 PRESIDENT CARTER: Question.

19 DWR ASSISTANT CHIEF COUNSEL TABOR: I wanted to

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

21 jurisdictional basis for this enforcement action.

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

23 ownership rights is the fact that your permit to Three

24 Rivers Levee Improvement Authority required them as part

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

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1 levee toe.

2 All of these fences, the fence on this particular

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

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

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

6 expressed exertion of its authority over the levee

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

8 fences prevent the applicant, the permittee, from

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

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

11 we assume that the time that we entered into agreement

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

13 go ahead and have those 20 feet?

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

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

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

17 clarify - what the Board owns in any existing levee

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

19 a unique area because the Board acquired the railroad

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

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

22 acquired it.

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

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

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

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1 then we might have a difficulty with enforcement?

2 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.

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

4 needed to know.

5 BOARD MEMBER MOFFATT: I had a question.

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

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

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

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

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

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

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

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

14 correct?

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

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

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

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

19 approximate location of the levee toe on the landside.

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

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

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

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

24 toe.

25 STAFF ENGINEER CALISO: See, this blowup area

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

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

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

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

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

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

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

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

3 MR. BRUNNER: Angeles, can I speak?

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

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

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

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

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

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

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

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

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

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

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

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

25 BOARD MEMBER MOFFATT: So --

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

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

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

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

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

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

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

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

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

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

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1 we're going to proceed with the testimony. And then we'll
2 ask questions. Once we have everybody's testimony, I
3 think we'll understand the gaps once we do that. Okay?
4 So go ahead and proceed and clear up exactly what
5 the dimensions are between the levee toe, the existing
6 fence, the proposed fence, and the building.
7 MR. HEENEY: I don't know --
8 BOARD MEMBER MOFFATT: Mr. PRESIDENT, maybe can
9 I --
10 MR. HEENEY: I'm not sure I have enough --
11 PRESIDENT CARTER: If you can't do that, then
12 we're moving on.
13 BOARD MEMBER MOFFATT: Can I suggest you go
14 figure out how to answer that and we move on with the
15 respondent --
16 PRESIDENT CARTER: Okay.
17 BOARD MEMBER MOFFATT: -- and answer it after?
18 Is that --
19 PRESIDENT CARTER: Okay. Let's do that.
20 Ms. Caliso, do you have anything more from the
21 staff?
22 STAFF ENGINEER CALISO: No, I don't, Mr.
23 PRESIDENT.
24 PRESIDENT CARTER: Okay. Thank you very much.
25 I'd like to invite the respondent up to offer

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1 testimony.
2 MS. LaGRAND: Hi.
3 First, what's she's giving you is the permit for
4 the building that the attorney here said that I did not
5 have.
6 The permit was taken out in 1984 by my
7 stepfather, who owned the land at that time. The permit,
8 if you look on page 3, is clearly marked that no
9 encroachment permit is necessary.
10 I'm just going to give you some background. My
11 family purchased this property 5578 and 5580 in 1946. It
12 was purchased by my maternal grandparents. They came here
13 from Missouri and built their home there. There was no
14 fence when they purchased the property. It had nothing.
15 The railroad came along, they put a fence up that
16 was basically wooden posts, barbed wire and pretty much
17 chicken wire. They told the residents - they didn't put
18 it in writing - they just told the residents, "This is
19 separating our property from yours." Everyone took that
20 to be what the property was.
21 A few properties on Riverside actually still have
22 these fences. They're in disrepair but they do still have
23 them. Just a second.
24 I'm a little nervous. You have to forgive me.
25 PRESIDENT CARTER: Please take your time.

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1 MS. LaGRAND: In 1951, a flood washed away the
2 railroad tracks. It was completely gone. My mother told
3 me about this numerous times, because it was the year that
4 she graduated from high school. And she said they came
5 out that summer, tore the tracks up, and they were never
6 seen again.
7 So, that's the timeline I have for when -- they
8 may not have filed abandonment, but that's when we know
9 that the track was gone.
10 My family have cared for this land all these
11 years. And we do take care of our lot. It is watered,
12 mowed, everything is taken care of.
13 Now, in the 1980's my mother and my stepfather,
14 Steve Moricz Sr., purchased the property from my
15 grandparents. My stepfather put in a new fence. He put
16 it all in in concrete at the same exact spot where the
17 railroad fence was. You know, he of course figured that's
18 where it belonged because that's where the railroad put
19 the fence.
20 So in 1984 he built the shop. And there is ten
21 and a half feet between the shop and the fence back behind
22 it. And there is probably about ten feet between the
23 bottom of what they are calling the railroad -- or the toe
24 of the levee. That is not the toe. That is part of the
25 road where the tracks used to run. By their own admission

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1 when they held that picnic in August, TRLIA told us that
2 they truly did not know where the toe was because it has
3 been long buried.
4 That road is part -- and it's partially buried as
5 well -- that they can drive their cars along is part of
6 where the railroad tracks used to be. That is not the
7 levee toe.
8 And, let's see, the shop -- of course you've got
9 the permit. This shop in 1984 cost over \$28,000. Today
10 that would be a lot more.
11 My stepfather -- I'm sorry -- he was an immigrant
12 from Hungary, who came to this place trying to build
13 something nice, and that building was his pride and joy.
14 He loved it. That was what he came to this country to do,
15 was to make something of himself.
16 Now, in 2008 I inherited the property from my
17 mother when she passed away. I am now the third
18 generation owner of this lot.
19 Now, in 2011, 27 years later, suddenly this shop
20 is in someone's way. I have to admit that I, with
21 somewhat of amusement, had to laugh when they declared it
22 a public nuisance. I don't know if it's screaming at
23 people as they run down the levee or what it's doing, but
24 evidently it's a public nuisance.
25 I have been given a letter telling me to demolish

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 PRESIDENT CARTER: Thank you.

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

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

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

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

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

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

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

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

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

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

19 MS. LaGRAND: That's not us.

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

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1 railroad up over the top and then continues.

2 --o0o--

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

9 --o0o--

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

22 BOARD MEMBER BROWN: Is this the waterside still?

23 MR. FORDICE: This is landside, sir.

24 --o0o--

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

7 --o0o--

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

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

18 --o0o--

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

23 --o0o--

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

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

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

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

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

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

6 --o0o--

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

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

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

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

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

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

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

14 I'd entertain any questions.

15 PRESIDENT CARTER: Thank you, Mr. Fordice.

16 MR. FORDICE: Thank you.

17 PRESIDENT CARTER: Mr. Brunner.

18 MR. BRUNNER: Thank you.

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

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

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

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

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

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

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1 that it was State property.

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

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

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

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

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

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

4 And with that, those are my comments.

5 PRESIDENT CARTER: Thank you.

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

8 PRESIDENT CARTER: Let's hold the questions.

9 VICE-PRESIDENT RIE: Okay.

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

12 VICE-PRESIDENT RIE: All right.

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

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

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

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1 number came from.

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

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

13 Thank you.

14 PRESIDENT CARTER: Very good.

15 Ms. Nagy.

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

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

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1 understand from the Corps' perspective.

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

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

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

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

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

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

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

24 Thank you.

25 PRESIDENT CARTER: Thank you.

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

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

5 MR. STEINHEIMER: Oh, sure.

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

10 MS. LaGRAND: Yeah.

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

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

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

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

20 PRESIDENT CARTER: Thank you.

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

25 And this is the actual railroad track running

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

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

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

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

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

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

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

17 MS. MILLER: This one?

18 STAFF ENGINEER CALISO: Uh-huh, yeah.

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

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

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

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

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

6 PRESIDENT CARTER: Go ahead. Please proceed.

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

9 Now, I need that one there.

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

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

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

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

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

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1 is now?

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

7 Did you want to talk?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 MR. HEENEY: We found several.

17 MR. MILLER: I'm sorry?

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

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

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

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And I will answer any questions.

PRESIDENT CARTER: Thank you very much.

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

PRESIDENT CARTER: I have one other party.

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

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

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

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

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

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

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

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

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

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

PRESIDENT CARTER: Okay. And if you --

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

PRESIDENT CARTER: Oh, Item 10B.

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

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

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

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

Do you want to speak to 10A?

MR. KING: No, sir.

PRESIDENT CARTER: Thank you very much.

We'll address yours next.

MR. KING: Okay.

PRESIDENT CARTER: I apologize.

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

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

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Okay?

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

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

Mr. King, did you have a question?

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

PRESIDENT CARTER: Let me consider that during the recess.

Thank you

(Thereupon a recess was taken.)

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

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

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

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

So I'm looking for some guidance from staff.

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

Other than fences, are there any other

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1 permanent-type structures like the shop, like a house,
2 that would be within the 20 feet? So if we were to set a
3 line at 20 feet from the toe, would that still require
4 getting into a permanent structure like a house or a shop
5 or something like that?
6 So as you're addressing the President's issue, if
7 there's someone that can answer that question.
8 STAFF ENGINEER CALISO: I can answer that
9 question. Angeles Caliso, Board staff.
10 The only two permanent structures within this
11 area is the property owned by Ms. LaGrand and then the
12 property owned by Mr. Miller. Mr. Miller's property
13 encroaches onto State land about 1.5 feet or in that
14 magnitude. So it's much less than Ms. LaGrand's.
15 Aside from that, the rest of the structures are
16 non-permanent, barbecue pits and --
17 BOARD MEMBER SUAREZ: That's not the question.
18 BOARD MEMBER MOFFATT: But I think she answered
19 it in a roundabout way though. Because if we've got 1.3
20 difference between 20 feet and Ms. LaGrand's structure,
21 that means we've got about -- add 3 -- 4.3 feet between 20
22 feet and Mr. Miller's house. So I think you've -- if
23 that's accurate, you answered.
24 PRESIDENT CARTER: Yeah. It appears that we have
25 clearance to establish a 20-foot maintenance

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1 right-of-way -- or maintenance access on the landward side
2 toe.
3 So what do you guys think about my proposal?
4 EXECUTIVE OFFICER PUNIA: We have conferred with
5 the counsel. And I think our proposal is we'll go back
6 and come in January. And the main issue is the
7 encroachment on the State property. We will discuss that
8 subject with our legal counsel and then come back next
9 month, you know, with a proposal that -- with the staff
10 recommendation how to deal with it.
11 Maybe counsel can address that.
12 DWR STAFF COUNSEL BREWER: Yeah, let me just
13 elaborate on that.
14 We think -- we agree with you -- I'm sorry.
15 Robin Brewer, staff counsel -- staff legal counsel to the
16 Board staff.
17 We agree with you, President Carter, that this
18 can be resolved without potentially moving the building.
19 However, we do believe that there was evidence presented
20 here today, very clear evidence, that these buildings do
21 encroach on State property. Therefore, we would like the
22 Board to find that these two buildings are encroaching but
23 direct staff to go back and work out these issues.
24 Now, there are some very real real estate and
25 legal issues here. One is gift of state property. We

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1 can't just allow these -- we cannot quitclaim this back to
2 these people. That would be a gift of state property. We
3 cannot do that.
4 The Corps has brought forth whether or not they
5 are going to need to issue an encroachment permit here.
6 So that's another, that Ms. Nagy testified to.
7 And then at the end of the day, there would be
8 other permits that may or may not be required by this
9 Board.
10 So that's kind of where we at. We agree that
11 there's a way to resolve this absent moving the buildings,
12 tearing them down, whatnot. But there are some legal and
13 real estate issues that need to be resolved.
14 And this is clearly State property.
15 PRESIDENT CARTER: Yeah, I would -- with respect
16 to the Corps, I mean their standard is lower than 20 feet.
17 We own property all over the State that is in and outside
18 of Corps' jurisdiction. And as long as we're meeting
19 their minimum standard, I don't see how they could object.
20 And 20 feet exceeds their minimum standard. So I
21 personally am not too worried about that issue.
22 DWR STAFF COUNSEL BREWER: Okay.
23 PRESIDENT CARTER: Unless they make an issue of
24 it, which we can discuss at a future date.
25 DWR STAFF COUNSEL BREWER: Correct, that's not

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1 our issue.
2 PRESIDENT CARTER: But the gift of state
3 property, we have to work through. And that would be a
4 subject of negotiations between Board staff and the
5 respondents.
6 And certainly this solution would eliminate a lot
7 of the issues and the concerns we have with these
8 enforcement hearings that are before us today, and would
9 certainly save everybody a lot of time and heartache, I
10 think.
11 Mr. Hodgkins.
12 SECRETARY HODGKINS: Ms. Givens?
13 PRESIDENT CARTER: Ms. Brewer.
14 DWR STAFF COUNSEL BREWER: Brewer.
15 SECRETARY HODGKINS: I'm sorry. Brewer.
16 DWR STAFF COUNSEL BREWER: That's okay. I was
17 looking.
18 (Laughter.)
19 SECRETARY HODGKINS: That's my second Perry
20 moment for the day.
21 DWR STAFF COUNSEL BREWER: You can call me
22 whatever you want, sir.
23 SECRETARY HODGKINS: You know, you're asking for
24 a finding that these are on State property. But when you
25 start throwing up those original railroad maps, I'd be

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

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

22 DWR STAFF COUNSEL BREWER: Okay.

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

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

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

4 PRESIDENT CARTER: Thank you.

5 Mr. Shapiro.

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

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

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

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

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

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

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

11 PRESIDENT CARTER: Thank you.

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

13 PRESIDENT CARTER: Just a second.

14 VICE-PRESIDENT RIE: Okay.

15 PRESIDENT CARTER: I want to get the respondents.

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

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

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

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

7 You remember me telling you that?

8 PRESIDENT CARTER: Well, okay.

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

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

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

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

17 MS. LaGRAND: Okay. Thank you.

18 SECRETARY HODGKINS: Let me ask Mr. Brunner.

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

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

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

4 SECRETARY HODGKINS: Okay.

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

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

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

21 PRESIDENT CARTER: Okay. Ms. Rie.

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

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

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

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

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

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

4 PRESIDENT CARTER: Mr. Moffatt.

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

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

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

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

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

15 BOARD MEMBER SUAREZ: Sounds like a motion.

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

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

24 Everybody understand?

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

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MR. KING: Yes, sir. Thank you.

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

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

MR. KING: Thank you.

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

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

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

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

Thank you very much.

PRESIDENT CARTER: It's my understanding, Mr.

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

MR. KING: Yes.

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

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

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

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

PRESIDENT CARTER: And you will --

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

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

MR. KING: Thank you very much.

PRESIDENT CARTER: Thank you.

Mr. Miller.

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

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

PRESIDENT CARTER: Decision with respect to what?

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

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

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

PRESIDENT CARTER: Appreciate your comments.

Thank you.

So, Mr. Heeney --

MR. HEENEY: Yes.

PRESIDENT CARTER: -- you are --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 it does seem like we can take care of public safety and
2 avoid getting crosswise with a bunch of property owners,
3 to think about coming early to the Board, not with an
4 official action but perhaps with the local agency, and
5 asking the Board if they would agree to let you try and go
6 ahead and work it out, so that we don't spend a huge
7 amount of time working on something that gets down to an
8 enforcement action and then the Board compromises.
9 And I don't know how you figure out which ones
10 you're willing to do that on. But think about it.
11 EXECUTIVE OFFICER PUNIA: Board Member John
12 Moffatt?
13 BOARD MEMBER MOFFATT: Aye.
14 EXECUTIVE OFFICER PUNIA: Board Member John
15 Brown?
16 BOARD MEMBER BROWN: Aye.
17 EXECUTIVE OFFICER PUNIA: Board Vice-President
18 Teri Rie?
19 VICE-PRESIDENT RIE: I'm going to vote no. And
20 it's not because I don't support Mr. Moffatt's motion. I
21 think he made a good motion. It's because staff did not
22 engage with the Real Estate Branch. And I think when
23 we're talking about taking people's homes and their sheds,
24 and we have a Real Estate Branch, I think it's our duty to
25 review the documents, have professional Real Estate staff

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1 check everything. We have our own documents. And it's
2 surprising that those documents -- our own real estate
3 maps were not provided to the surveyor and those documents
4 weren't checked. So, you know, that concerns me.
5 So I'm voting no.
6 EXECUTIVE OFFICER PUNIA: Board PRESIDENT Ben
7 Carter?
8 PRESIDENT CARTER: Aye.
9 So the motion carries, 5 ayes, 2 nays.
10 BOARD MEMBER VILLINES: Mr. Carter, can I just --
11 because I'm losing my voice -- my opinion is the same. I
12 totally support what everyone's doing. I wasn't convinced
13 about the encroachment. I just want to put that on for
14 the record.
15 PRESIDENT CARTER: Very good.
16 BOARD MEMBER MOFFATT: And notwithstanding,
17 although I'm offended by both noes.
18 (Laughter.)
19 PRESIDENT CARTER: All right. Thank you very
20 much, ladies and gentlemen.
21
22
23
24
25

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1 CERTIFICATE OF REPORTER
2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:
5 That I am a disinterested person herein; that the
6 foregoing California Central Valley Flood Protection Board
7 Item 10A meeting was reported in shorthand by me, James F.
8 Peters, a Certified Shorthand Reporter of the State of
9 California, and thereafter transcribed under my direction,
10 by computer-assisted transcription.
11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 9th day of December, 2011.
16
17
18
19
20
21
22 JAMES F. PETERS, CSR, RPR
23 Certified Shorthand Reporter
24 License No. 10063
25

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Meeting of the Central Valley Flood Protection Board

December 2, 2011

Staff Report – Enforcement Order

Michael King, Yuba County

1.0 – ITEM

Consider approval of Enforcement Order 2011-268 (Attachment A) for removal of existing encroachments located on State of California, Sacramento and San Joaquin Drainage District (SSJDD) property and right-of-way, on the landside of the Feather River east levee in West Linda, CA. A Notice of Violation (NOV) was issued to Mr. Michael King on August 5, 2011, however he did not request a hearing in response to the issued NOV.

2.0 – RESPONDENT/PROPERTY OWNER

Mr. Michael King
5722 Riverside Drive. A
Olivehurst, California 95961

Assessor's Parcel Number (APN) 020-121-021

3.0 – LOCATION

The property is located on the landside of the Feather River East Levee, approximately 1.2 miles south of Marysville, California, near the confluence of the Yuba and Feather Rivers in Yuba County. Figures 1 and 2 below show the vicinity and an aerial view of the property at 5722 Riverside Drive, respectively.



Figure 1- Vicinity Map of property at 5722 Riverside Dr., West Linda, CA (Source: Google Maps)

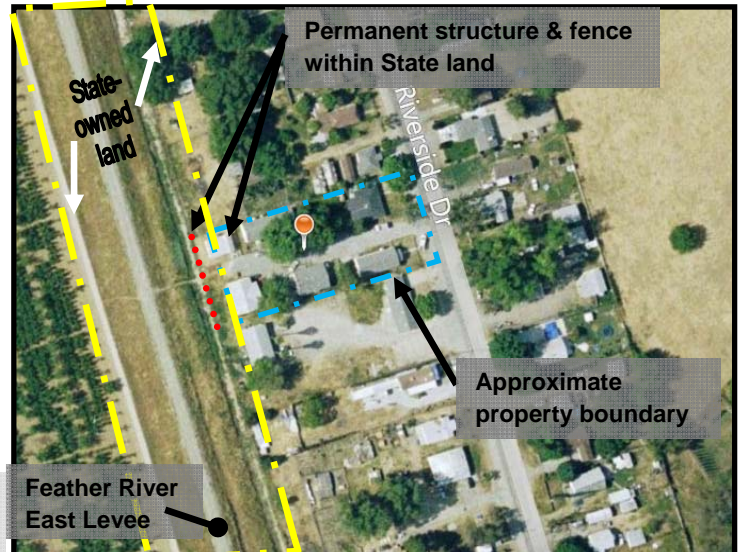


Figure 2- Aerial Map of the property at 5722 Riverside Dr., West Linda CA (Source: Bing Maps)

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

4.0 – APPLICABLE LAWS AND REGULATIONS

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

4.1 – California Water Code

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

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

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

5.0 – REAL ESTATE

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

6.0 – STAFF ANALYSIS

6.1 – Background

Three Rivers Levee Improvement Authority (TRLIA) is completing a \$400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake. As part of these levee improvements, TRLIA is required to provide a 20-foot wide maintenance corridor in accordance with the Department of Water Resources (DWR) Interim levee Design Criteria. During the preparation of a survey, TRLIA discovered that in this area, the land for the levee and the required 20-foot wide access corridor is owned by the State. However, vegetation, fences, and other existing structures were located within State-owned land and the required 20-ft wide corridor. In early May 2011, TRLIA contacted the Board staff requesting assistance in removal of existing encroachments within the area needed to provide a 20-ft wide corridor. Board records indicate that there are no Board permits for any of the fences, structures or vegetation within the State’s property. On July 29, 2011 TRLIA sent letters to all landowners notifying them of the encroachments located within State-owned land and TRLIA’s plan to install a new fence at the State’s right-of-way. See Attachment D for a sample of this letter. Furthermore, on August 22, 2011, TRLIA held a community meeting in Olivehurst, California which was attended by many of the residents, Board staff, MBK Engineers, RD 784, Yuba County and local representatives. See Attachment E for a summary on the questions and answers from the community meeting. On August 5, 2011 a total of 51 Notices of Violation (NOV) were issued to the property owners where unauthorized encroachments were located within State-owned land. This staff report only addresses Michael King’s (Respondent) property whose property includes a portion of a residence and a fence constructed within State-owned land. Although the Respondent did not request a hearing, the proposed enforcement action is addressed separately due to the significant impacts the proposed order will have on the Respondent.

6.2 – Notice of Violation

On August 5, 2011, Notice of Violation (Enforcement Action # 2011-268) was issued to Michael King (previously owned by Glenna H. Hromiko, see Attachment B). A certified mail receipt was received by Board staff on August 12, 2011, which was signed by Mr. Michael King (see Attachment C). The notice identified an existing fence and a permanent structure located within State-owned land. The structure and fence encroach onto State-own land by 2.7-feet and 20-feet, respectively (See Figures 3 and 4). To date, Board staff has not received any correspondence from the Respondent. Board records indicate no Board permit was issued for this property for any of the existing encroachments. Furthermore, staff has not been provided copies of any agreements or lease for the existing encroachments noted on the NOV.

The Board's regulations are being revised to reflect a 20-foot setback from the landside toe as part of the regulatory area for levees. Therefore, allowing any structures to remain within State-owned land, the area necessary to provide a 20-foot wide access corridor, would be inconsistent with this policy. The existing encroachments are in violation of the Board's regulations (CCR 23, Section 19) and interfere with future levee improvements. Therefore, the portion of the existing residence and fence located within State land must be removed or relocated outside of the Board's property.

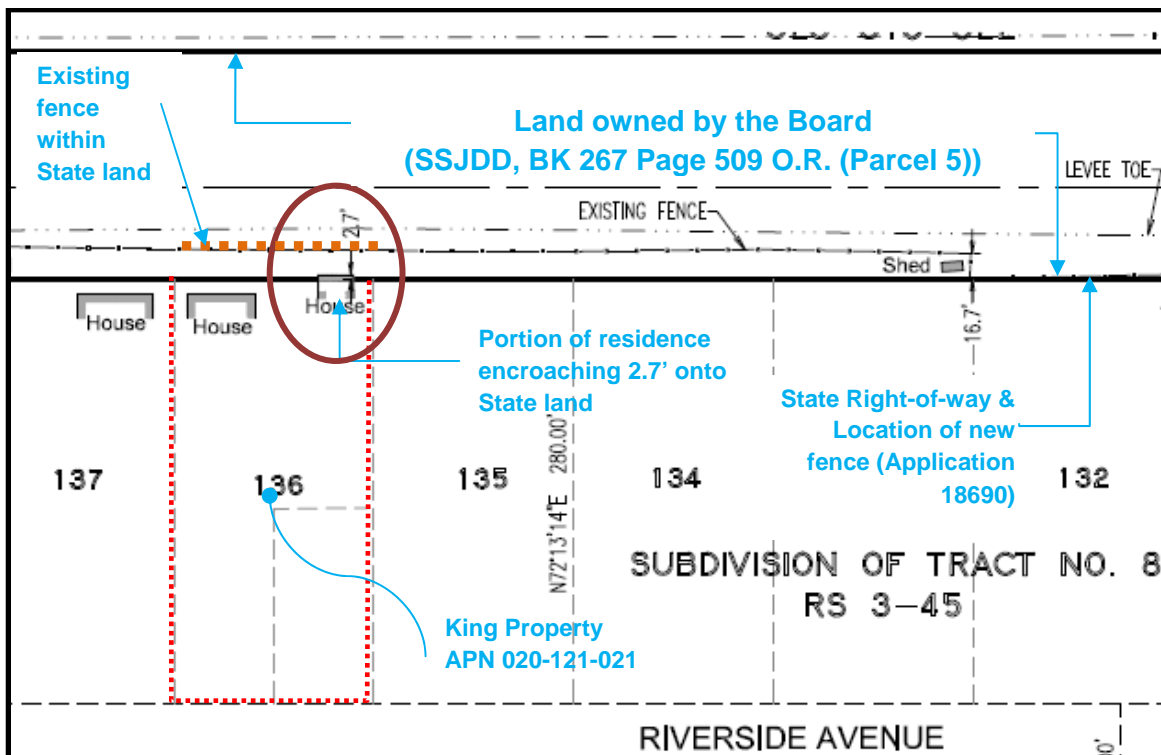


Figure 3- Source: Survey Map prepared by CTA Engineering & Surveying dated June 2011, Page 2 of 3



Figure 4- Photo of Residence encroaching onto State land. (Source: Downey Brand 7/14/2011)

7.0 – PROPOSED CEQA FINDINGS

Board staff has prepared the following CEQA determination:

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

8.0 – STAFF RECOMMENDATION

In the review of the proposed enforcement order, staff has considered the concerns raised by the adjacent landowners against the issued NOVs. Staff has concluded that the benefits to improving levee patrol, maintenance access and maintaining this area clear should future levee improvements be necessary, are most important. Allowing existing unauthorized encroachments to remain within State-owned land is prohibited by law, regulation and is inconsistent with the Board's new policy. The information contained in this staff report constitutes significant evidence that the encroachments identified issued Notices of Violation 2011-268 interfere with the maintenance, performance, or functioning of the Feather River East Project Levee, part of the Sacramento River Flood Control Project and the adopted plan of flood

control pursuant to Water Code Sections 8708 and 8709. The State is obligated to enforce the removal or modification of encroachments that impact the flood control system operations and maintenance pursuant to Water Code Section 8708. Furthermore, pursuant to Water Code section 8709, if an encroachment “does or may interfere with or obstruct the operation or maintenance” of the flood control works, the encroachments constitute a public nuisance. Therefore, the Board may commence or authorize actions to abate such nuisance.

For the reasons stated on this staff report, Board staff recommends the Board determine the encroachment removal to be exempt from CEQA, approve Enforcement Order No. 2011-268 (Attachment A).

9.0 – LIST OF ATTACHMENTS

- A. Proposed Enforcement Order No. 2011-268
- B. Notice of Violation # 2011-268 issued on August 5, 2011
- C. Notice of Violation #2011-268, signed returned certified mail receipt dated August 12, 2011
- D. Sample letter mailed by TRLIA on July 29, 2011
- E. TRLIA August 22, 2011 Community Meeting Q&A
- F. CTA Engineering & Surveying Record of Survey Map dated June 2011
- G. Memo prepared by CTA Engineering dated October 31, 2011

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

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

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

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

IN WITNESS WHEREOF, the said party of the first part, as executor as aforesaid, has hereunto set his hand and seal the day and year first herein written. Roger R. Vair. - - (SEAL) Executor of the Will of Matthew Redmond, Deceased State of California. ss. City and County of San Francisco) On this 20th day of November A.D.

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

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

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

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

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

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

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

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

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

TOGETHER with all and singular the tenements, hereditaments

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

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

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

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

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

State of California)
County of Yuba) ss.

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

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

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

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

State of California)

County of Yuba) ss.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the second part, - - - - -

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

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

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

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

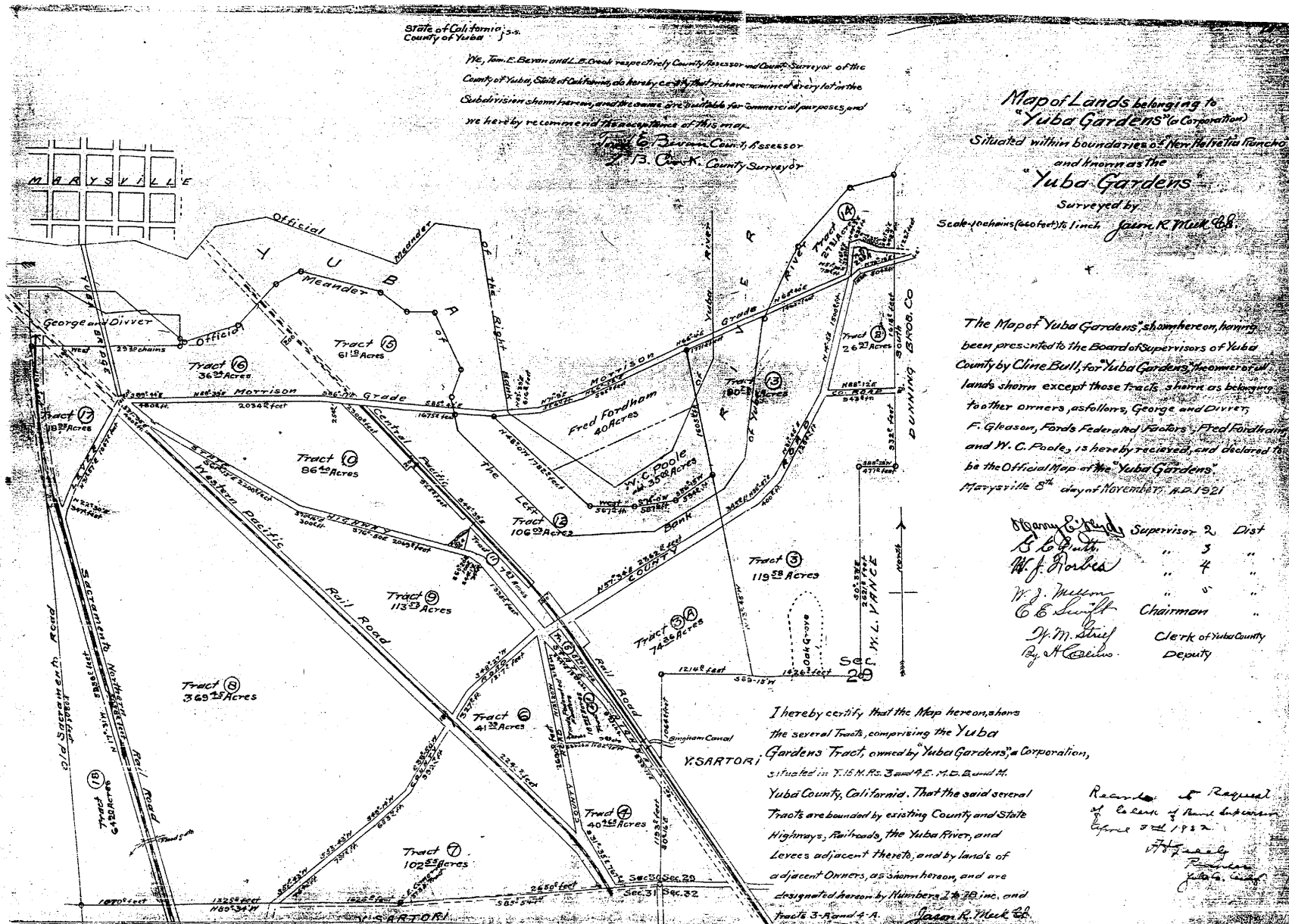
part, its successors and assigns, that certain parcel or strip of land situate in

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

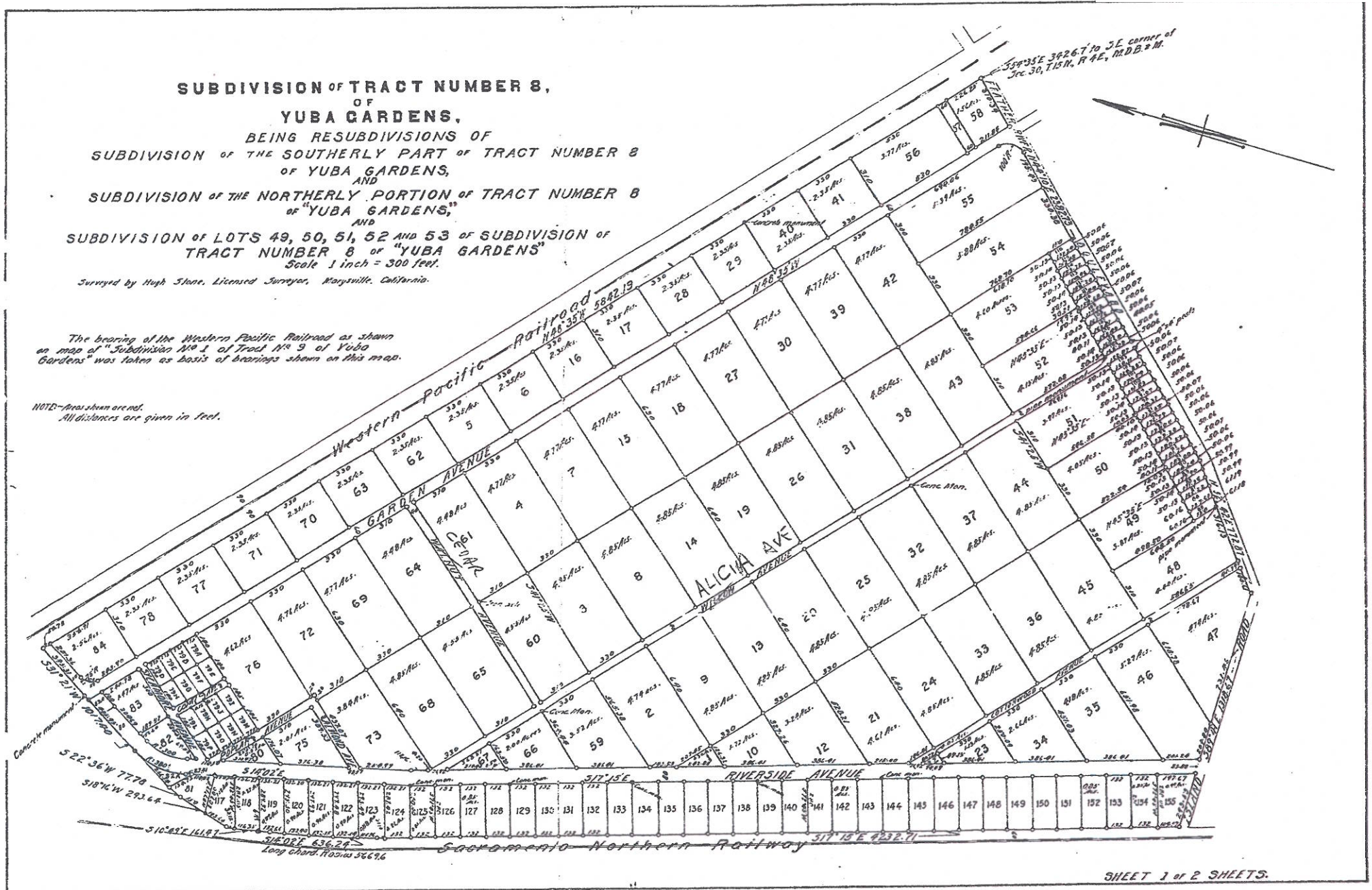
viz.: A strip of parcel of land one hundred (100) feet in width, lying fifty (50) feet on each side of the center line of a certain route which has been surveyed and definitely located and marked upon the ground by the said California Midland Railroad Company under the direction of its Chief Engineer,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

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

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



Page 46 of 244



This report will not be printed in full in the permanent series of Interstate Commerce Commission reports.

INTERSTATE COMMERCE COMMISSION

FD-19254

Finance Docket No. 10254

SACRAMENTO NORTHERN RAILWAY TRACKAGE RIGHTS, ETC.

Decided April 27, 1930

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

E. L. Van Dellen for applicant.
A. E. Lyon for Railway Labor Executives' Association.

REPORT OF THE COMMISSION

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

BY DIVISION 4:

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

extending from applicant's milepost 175.63, 1.81 mile. representations have been objection to the applicant the line involved.

The Railway Labor Executive application on the ground adversely affect applicant association and the application of the same conditions as were prescribed. Abandonment, 257 I.C.C. 177 granted. Our certificate the stipulated conditions who may be adversely affect opinion a public hearing is for the reason that the pre transportation service. Un mentioned herein are in Cal Applicant's purpose in obtain authority to continue without replacing a trestle recent flood. Applicant's and Marysville roughly parallel lines enter Marysville from beginning at a point known a thread of the Yuba River just further River. South of Old balance of the Yuba River on existing line, of which the integral segment, was originally Electric Company in 1906 and service. After passing through

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F. D. No. 19254 - Sheet 2

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

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

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

it was acquired

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

F. D. No. 19284 - Sheet 3

it was acquired by applicant on November 4, 1935.

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

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

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

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

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

Applicant will pe rate of \$3.50 for each direction. This amount rate of \$2.50 a t. and the rental, is oup written notice by oith any change which may b. rate.

F. D. No. 19254 - Sheet 4

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

The trackage-right operation will be conducted under the terms of an agreement made and executed on February 17, 1956, between Sacramento Northern and Western Pacific. Under the agreement, Western Pacific grants applicant the right to construct a connection, and to use in common with Western Pacific, the tracks, including all bridges, structures, signals, and facilities appurtenant thereto, of Western Pacific between each point of connection and the jointly operated tracks of Western Pacific and the applicant at Oliver. However, applicant has no intermediate traffic privileges at any point on the joint track.

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

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

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

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

Subject to the condi employees, as heretofore Sacramento Northern Rail

F. D. No. 19254 - Sheet 3

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

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

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

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

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

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

F. D. No. 19284 - Sheet 5

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

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

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CERTIFICATE AND ORDER

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

Finance Docket No. 19284

SACRAMENTO NORTHERN RAILWAY TRACKAGE RIGHTS, ETC.

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

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

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

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

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

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

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

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

By the Commission,

(SEAL)

-2-

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

By the Commission, division 4.

(SEAL)

HAROLD D. MCCOY,
Secretary.

R.B. Dec #2475

605
THIS INDENTURE made this 22nd day of December,
1958, by and between SACRAMENTO NORTHERN RAILWAY, hereinafter design-
ated as grantor, and the (SACRAMENTO AND SAN JOAQUIN DRAINAGE
DISTRICT,) a public agency, hereinafter designated as grantee,

W I T N E S S E T H :

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

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

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

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



3045

RECORDED AT REQUEST OF Yuba County Title Guarantee Co.Jan. 7 1959 AT 2:55 P M. BOOK 267 PAGE 509

OFFICIAL RECORDS, YUBA COUNTY

MILDRED TAPLEY RECORDER BY M. Supter DEP.

No Fee

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

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

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

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

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

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

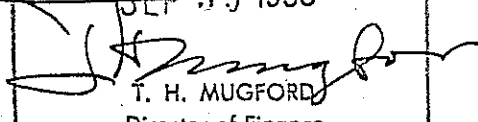
PARCEL 5: A strip of land 150.0 feet in width, being 90.0 feet wide on the westerly side and 60.0 feet wide on the easterly side of the following described centerline:

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

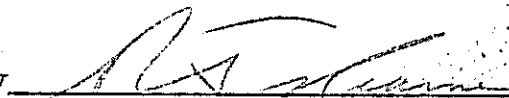
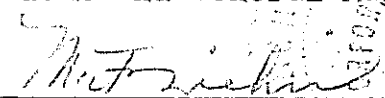
PARCEL 6: Beginning at a point, said point being the most northerly corner of the land conveyed to William C. McIntyre and Glenn E. Clarridge by deed recorded January 7, 1958, in Volume 251 of Official Records, page 283, Yuba County Records, said point also being South $17^{\circ} 29'$ east, a distance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

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

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

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

SACRAMENTO NORTHERN RAILWAY

By 
President and General ManagerAttest: 
Secretary

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

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

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

PARCEL 1:

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

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

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

PARCEL 2:

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

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

PARCEL 3:

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

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

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

PARCEL 4:

A strip or tract of land as hereinafter

AGENDA ITEM 4B ATTACHMENT H

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

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

PARCEL 5:

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

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

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

PARCEL 6:

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

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

AGENDA ITEM 4B
ATTACHMENT H

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

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

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

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


Secretary of
SACRAMENTO NORTHERN RAILWAY



R E S O L U T I O N

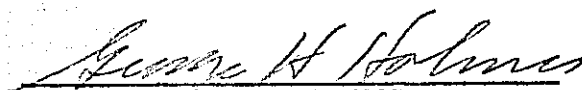
PASSED AND ADOPTED BY THE RECLAMATION BOARDAT MEETING HELD MAY 21, 1947

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

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

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

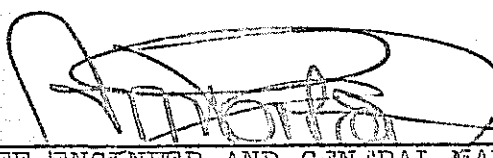
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of The Reclamation Board, this 18th day of December, 1958.


 GEORGE H. HOLMES
 Secretary
 The Reclamation Board

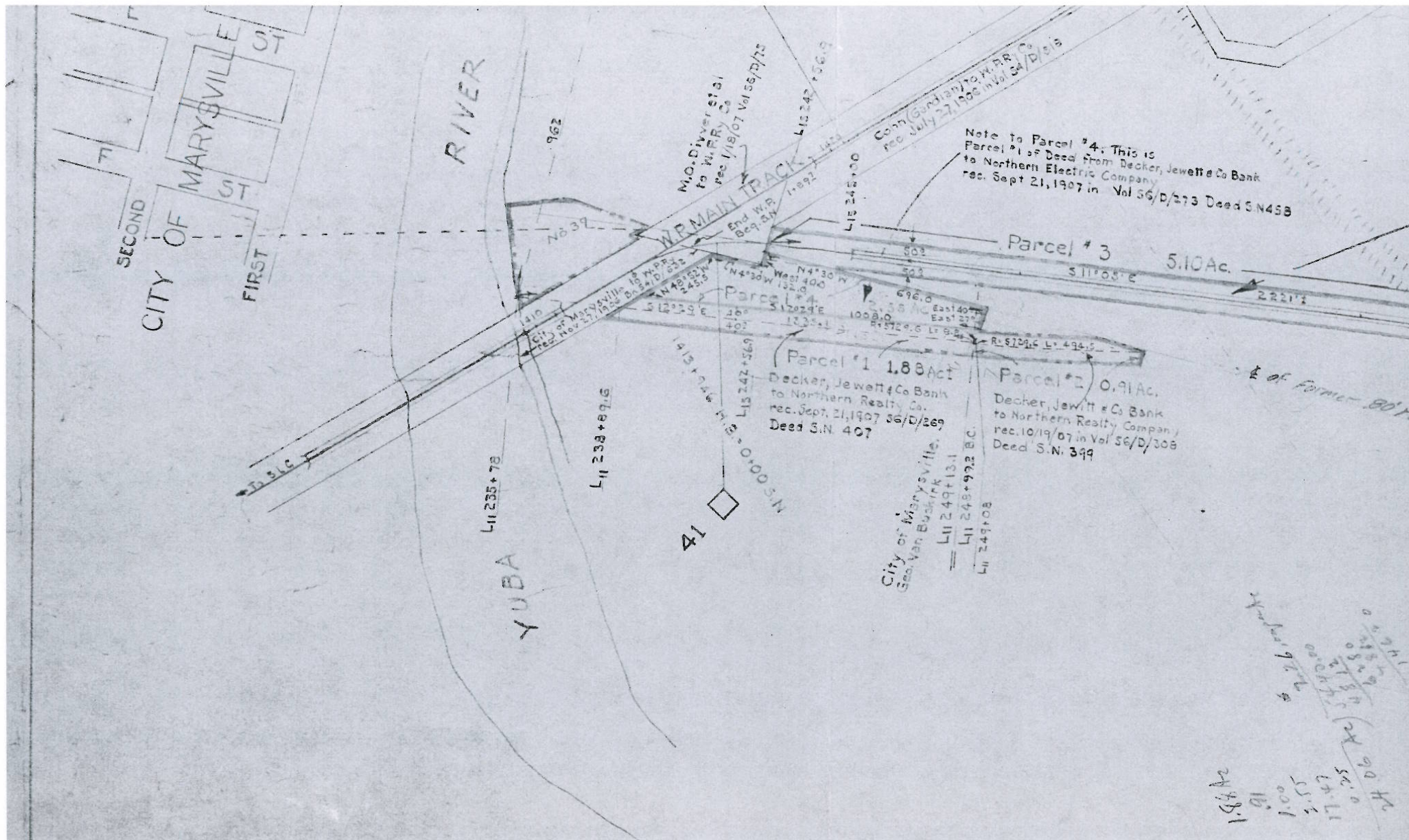
STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO) SS.

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

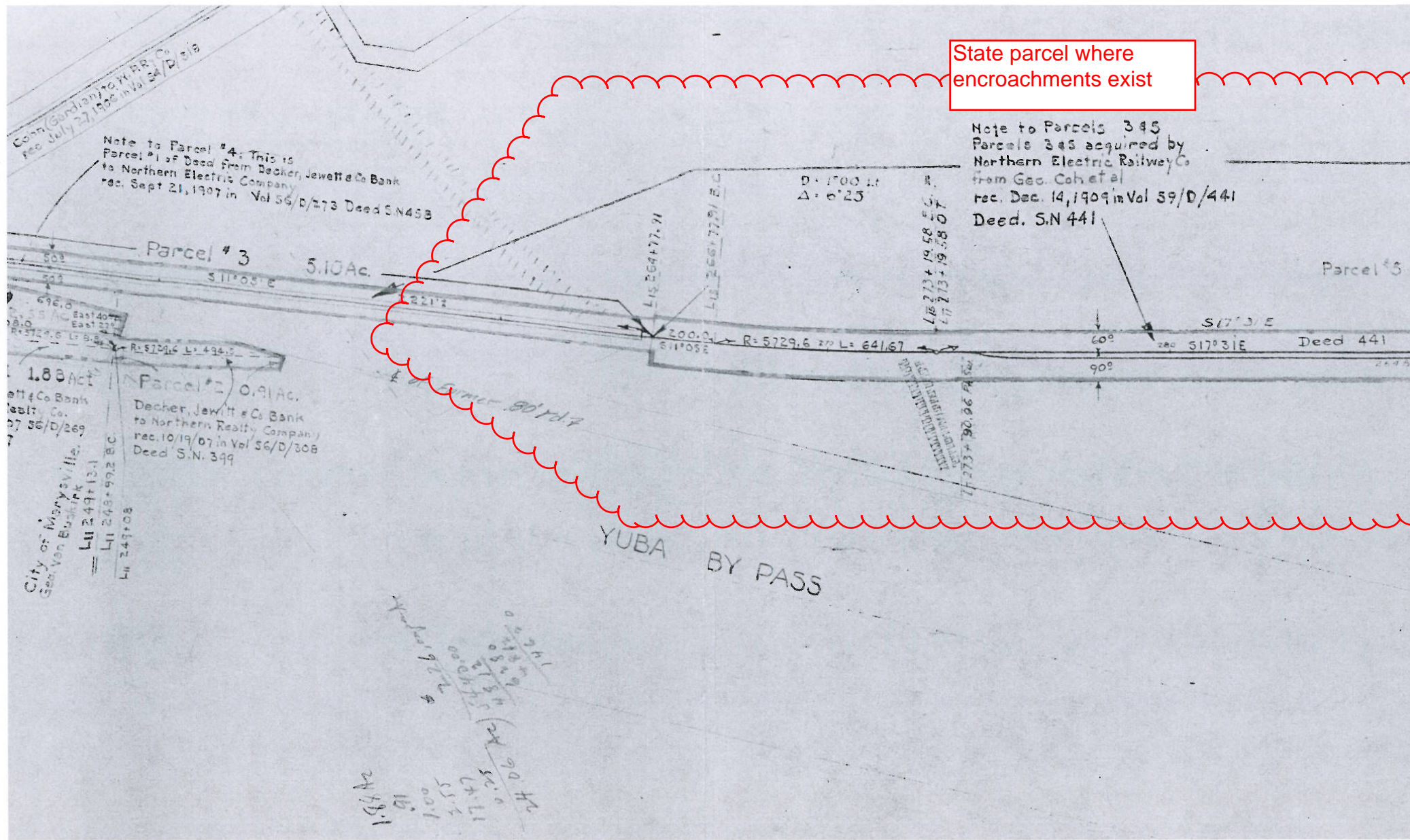
DATED: December 22, 1958.


 CHIEF ENGINEER AND GENERAL MANAGER,
 The Reclamation Board

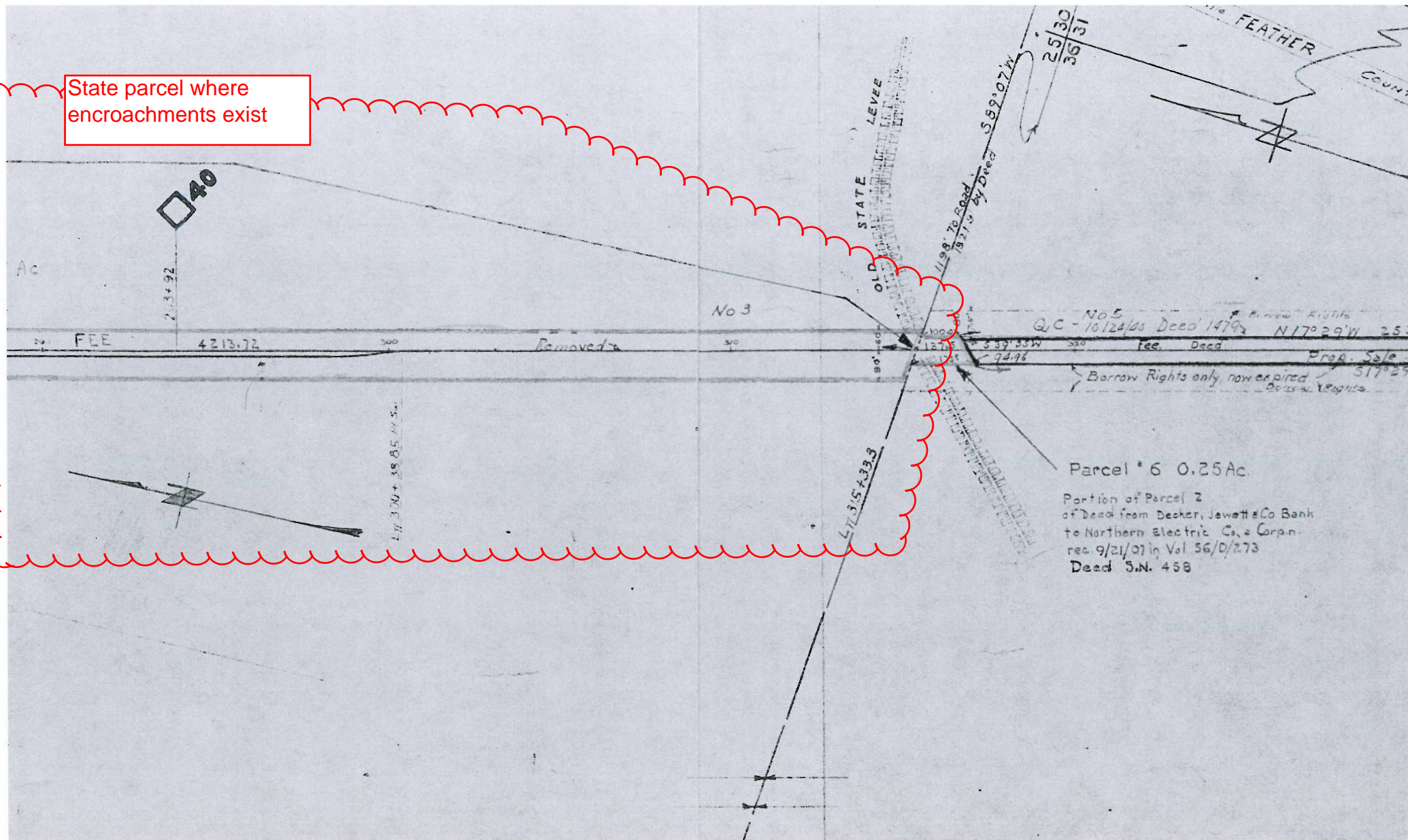
AGENDA ITEM 4B
ATTACHMENT H, EXHIBIT A



AGENDA ITEM 4B
ATTACHMENT H, EXHIBIT A



AGENDA ITEM 4B
ATTACHMENT H, EXHIBIT A



5N. R3E. / 5N. R3E.



AGENDA ITEM 4B
ATTACHMENT H, EXHIBIT A

SACRAMENTO NORTHERN RAILWAY
M.P. 39 to M.P. 41

PROPOSED SALE TO
CALIF. STATE RECLAMATION BOARD
DISTRICT 784.

Office of Chief Engr
Scale 1"=300'

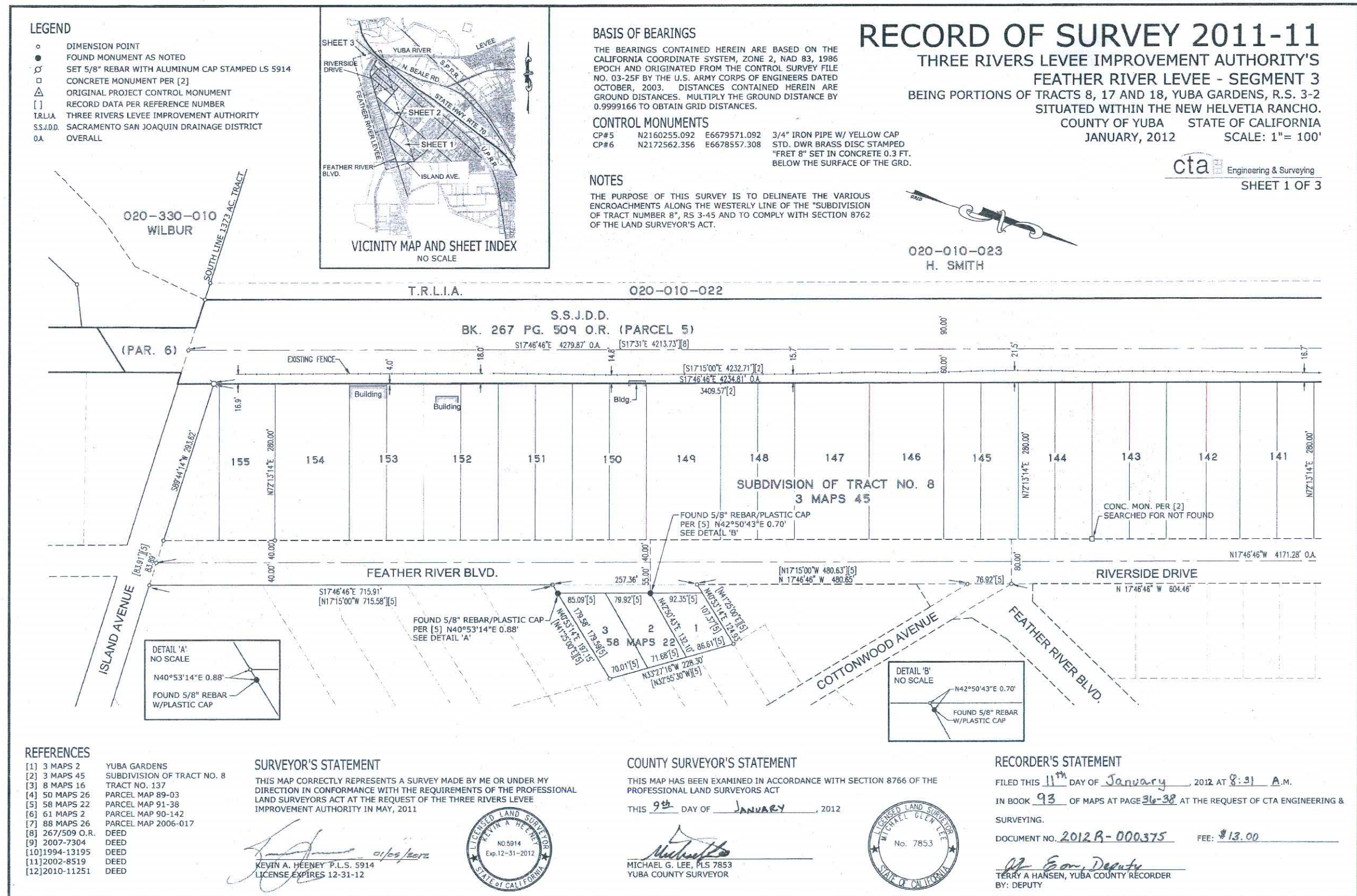
San Francisco Calif.
April 16, 1954.
Rev Oct 23, 1957
Jan. 7, 1958

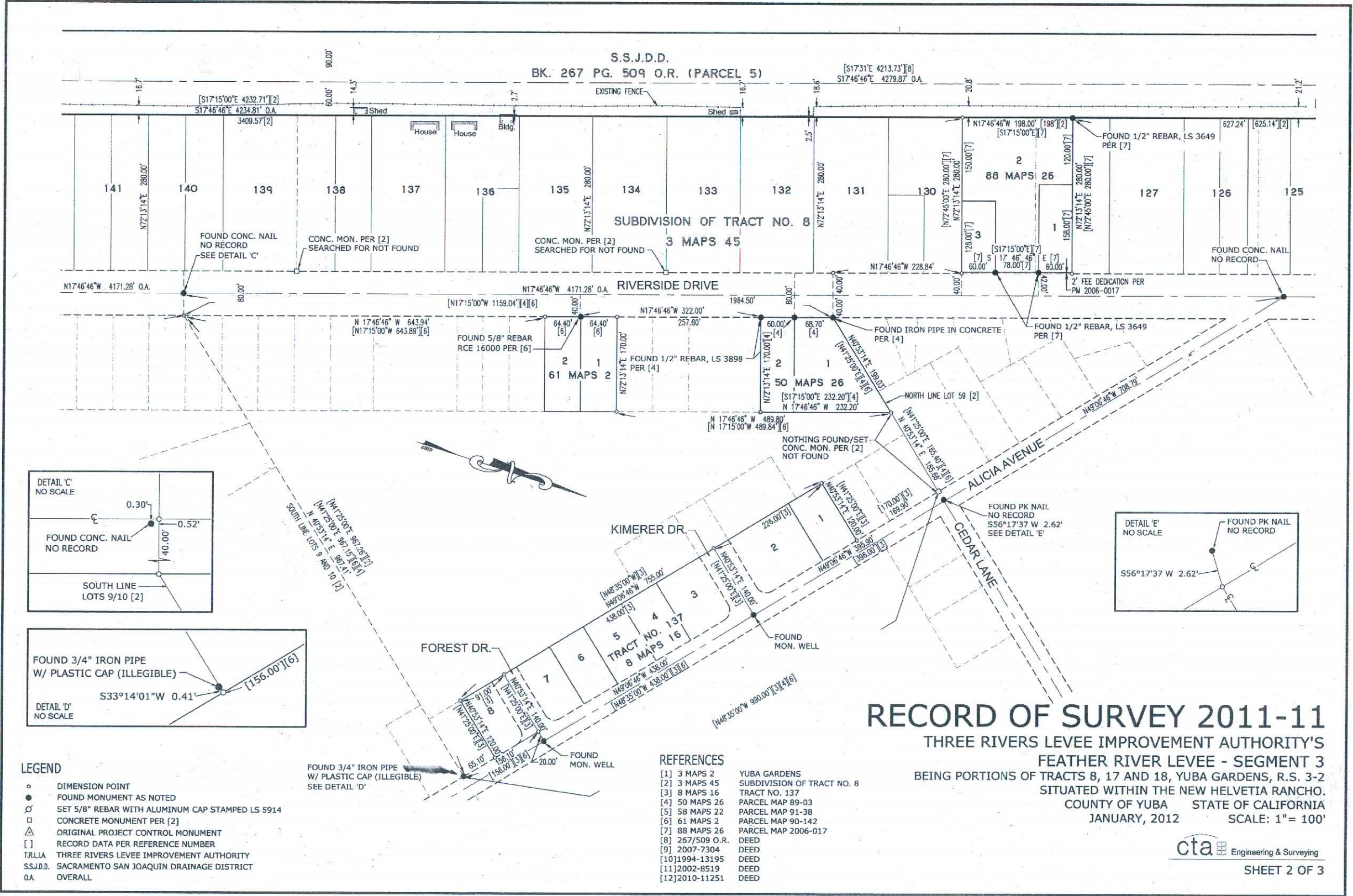
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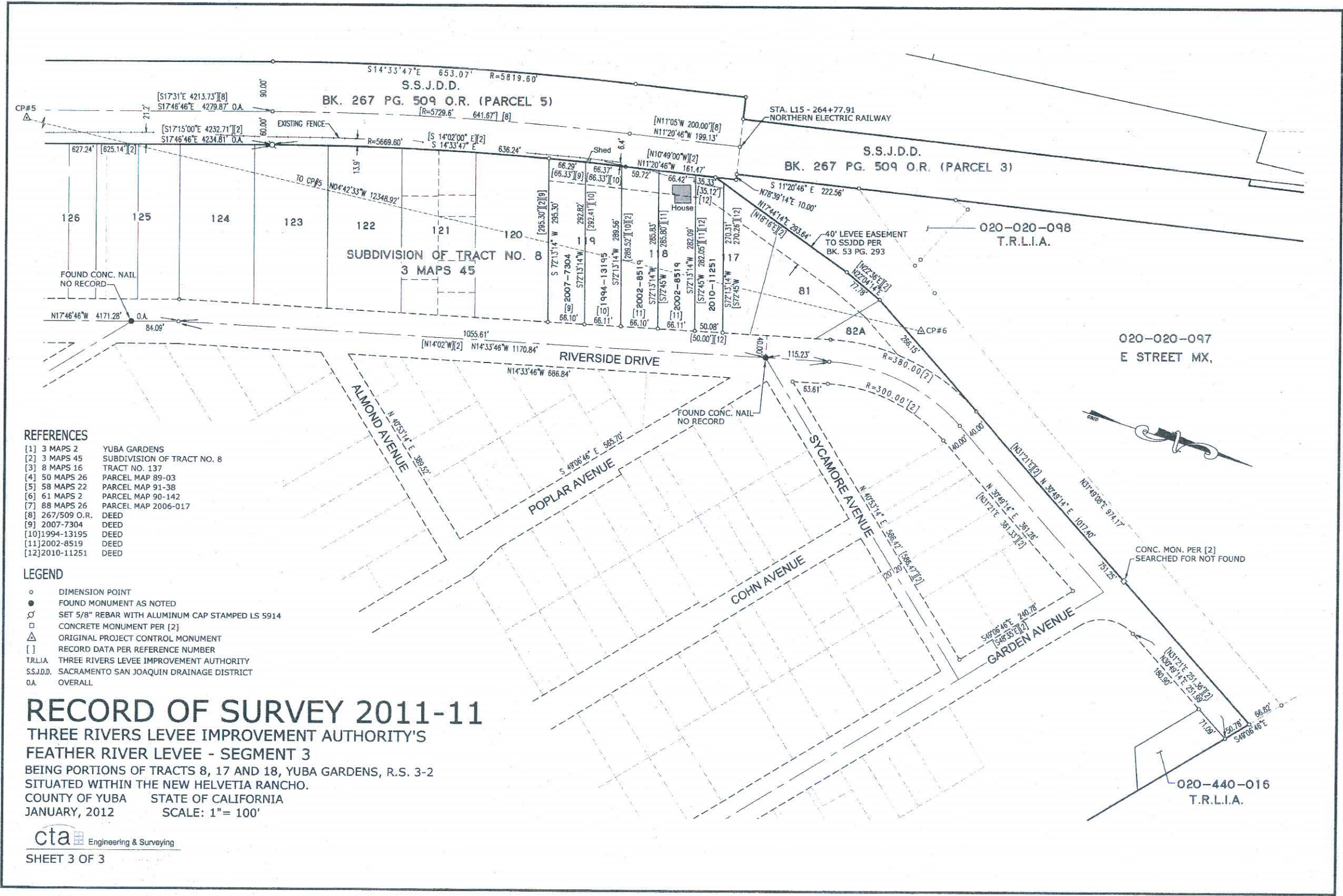
W.P. MAIN TRAIL

N 4° 30' W
S 12° 33' E
L 15° 42' + 56.9'





BK 93 PG 37



BK 93 PG 38

Meeting of the Central Valley Flood Protection Board

January 26, 2012

Staff Report - Hearing

Michael King, CA in Yuba County

1.0 – ITEM

Enforcement hearing concerning a notice of violation issued to Michael King ordering the removal of a private fence and portion of a permanent structure located on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from December 2, 2011.

Consider Resolution No. 12-06 (Attachment A) to:

1. Authorize removal of a private fence on State land.
2. Grant license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Authorize a structure on parcel 020-121-021, owned by Michael King, to remain on State land subject to permitting.
4. Rescind the notices of violation subject to voluntary compliance with this resolution.

2.0 – RESPONDENT/PROPERTY OWNERS

Mr. Michael King
5722 Riverside Drive. A
Olivehurst, California 95961
Assessor's Parcel Number (APN) 020-121-021

3.0 – LOCATION

Figures 1 & 2 show the vicinity and an aerial view of the property at 5722 Riverside Dr., respectively.



Figure 1- Vicinity Map of property at 5722 Riverside Dr., West Linda, CA (Source: Google Maps)

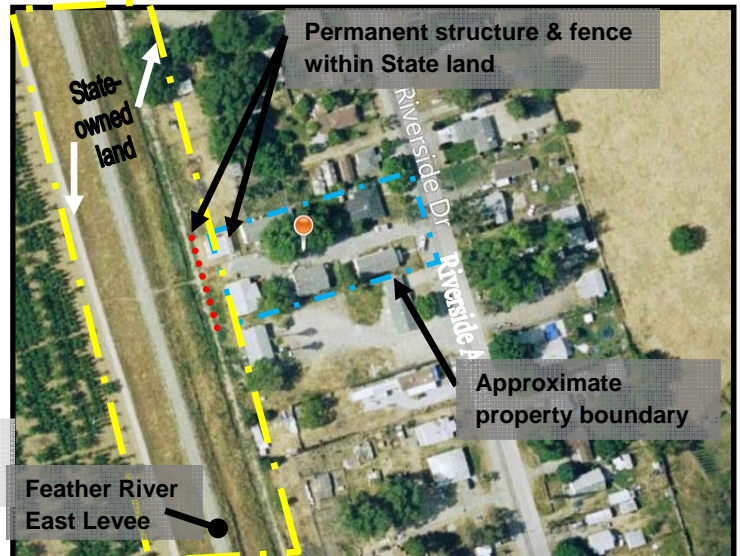


Figure 2- Aerial Map of the property at 5722 Riverside Dr., West Linda CA (Source: Bing Maps)

4.0 – APPLICABLE LAWS AND REGULATIONS**AGENDA ITEM 4B
ATTACHMENT J****4.1 – California Water Code**

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

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

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

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

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

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

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

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

5.0 – STAFF ANALYSIS**AGENDA ITEM 4B
ATTACHMENT J****5.1 – Background**

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

5.2 – Real Estate

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

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

AGENDA ITEM 4B ATTACHMENT J

Continued Hearing (King)

Agenda Item No. 8B

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

5.3 – Proposed Alternative

The original proposal presented at the December 2, 2011 was to install the new fence at the State property line. This option would provide more than the necessary 20-ft wide O&M corridor and require removal of private fences, vegetation and portion of 2 permanent structures within State land. Following the December 2, 2011 meeting and Board's direction, staff met with DWR and TRLIA representatives to develop an alternative that would meet the Board's directions. At Michael King's property, the existing fence and permanent structure is located approximately 15.9-ft and 2.5-ft inside State property, respectively. Therefore, a 20-ft wide corridor can be provided at Mr. King's parcel, with some remaining land. The proposed real estate alternative is to install the new fence approximately 20-ft from the levee toe; issue revocable license to Mr. King to use and maintain the remaining State land until needed for a public purpose and issue a Board permit for the existing structure located on State land. See Figure 3 and Section 5.4 for a legal analysis on the proposed alternative. On January 10, 2012, this alternative was presented to the residents at a community held in Olivehurst, California. At this meeting, Michael King's sister was present on his behalf and supported the presented alternative.

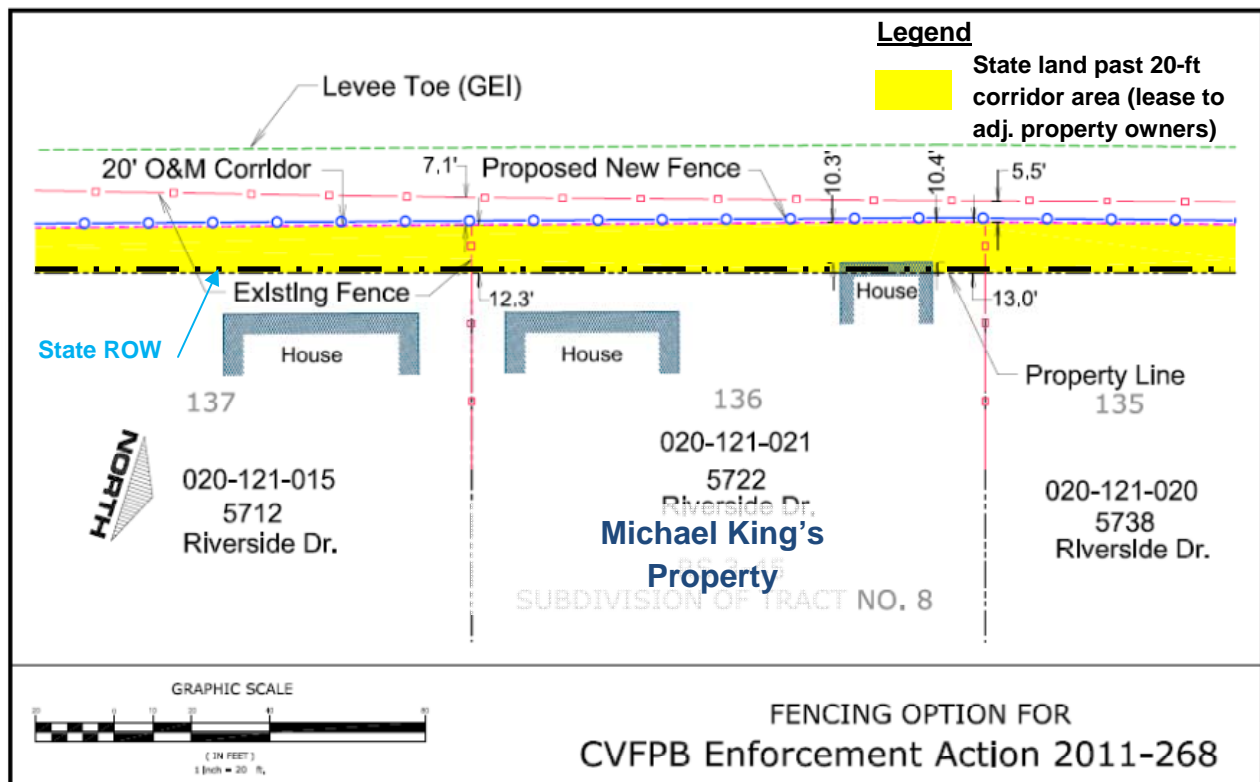


Figure 3- Exhibit prepared by CTA dated 01/16/2012

**AGENDA ITEM 4B
ATTACHMENT J****5.4 – Legal Analysis of Proposed Alternative**

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

6.0 – PROPOSED CEQA FINDINGS

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

7.0 – STAFF RECOMMENDATION

The purpose of this enforcement action resolution is to protect the levee from illegal off road vehicles accessing the levee through private parcels and uncontrolled access points. Off-road vehicles have eroded the levee which weakens its slope stability. The corridor will provide sufficient space for two construction vehicles to pass each other during levee patrols and flood fight repairs. Staff's recommendation is for the Board to approve the proposed resolution that authorizes: removal of the private fence and encroachments obstructing the 20 foot wide levee toe maintenance corridor, issue a revocable license to Mr. King for use and maintenance of State land between the corridor and his property, and issue a Board permit for the existing structure on State land. For these reasons and those stated on this staff report, Board staff recommends the Board adopt Resolution No. 12-06 (Attachment A).

8.0 – LIST OF ATTACHMENTS

- A. Resolution No. 12-06
- B. December 2, 2011 Official Transcript for Agenda Items 10 A-D
- C. December 2, 2011 Staff Report without attachments for Agenda Item 10B
- D. Deed recorded on Book 59, Page 441 (December 14, 1909)
- E. Yuba Gardens survey map (Book 3 of Surveys 2, November 8, 1921)
- F. Yuba Gardens Subdivision Map (Tract No. 8, Book 3 of Surveys Page 45)
- G. Interstate Commerce Commission decision dated April 27, 1956
- H. Deed 2475 recorded on Book 267 Page 509 (December 12, 1958)
Exhibit A – SSJDD Acquisition Map dated January 7, 1958
- I. Record of Survey 2011-11 (Book 93 of Surveys Page 36, January 11, 2012)

AGENDA ITEM 4B ATTACHMENT K

MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
ITEMS 8A-E

YUBA COUNTY GOVERNMENT CENTER
BOARD CHAMBERS
915 8TH STREET
MARYSVILLE, CALIFORNIA

THURSDAY, JANUARY 26, 2012
9:10 A.M.

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

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PROCEEDINGS

PRESIDENT CARTER: All right. Ladies and gentlemen, we're going to move in to Item 8, Hearings and Decisions. This is an item that's been continued from our December 2nd meeting. I would like to call the hearing to order that is agendized under Item 10 -- excuse me, 8A.

This is a proposed resolution for 48 Notices of Violation issued for the removal of unauthorized encroachments and fences on State property adjacent to the Feather River East Levee in West Linda, in Yuba County. And this is to authorize the removal of private fences and miscellaneous obstructions on State land, to grant licenses to adjacent private parcel owners for the use and maintenance of a portion of State land adjoining the Feather River East Levee, and rescind the Notices of Violation subject to voluntary compliance with this resolution.

Ms. Caliso, good morning. Welcome.

(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER CALISO: Good morning, President Carter, Members of the Board.

PRESIDENT CARTER: And for those of you who are not familiar with the Board's hearing process, we will ask staff to present the facts of the case, and their

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recommendation. We will invite the respondents to come up and address the Board and present their evidence. And then we will invite members of the public or anyone else who wishes to address the Board on this particular item. And then we will close the public testimony and the Board will deliberate and confer. And at that time, both the staff and the respondents will have an opportunity to respond to the Board's proposed action, and then the Board will take action. So that's the process.

Ms. Caliso, if you would proceed.

STAFF ENGINEER CALISO: Thank you.

Just a quick overview of the breakdown for the benefit of those present here this morning and not at the previous Board meeting. This first presentation will be addressing the first 48 parcels. And the remaining three hearings this afternoon will address three additional parcels that are part of the adjacent properties on State land, but they be broken down accordingly. And then the last hearing in the evening will be addressing -- or the afternoon will be addressing the actual permanent construction of the fence.

--o0o--

STAFF ENGINEER CALISO: A brief recap of the December 2nd meeting. On December 2nd, the Board voted that to note that encroachments exist on State land, that

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the staff was -- and directed staff to go back and work with TRLIA, and the landowners and develop an alternative plan that would develop the 20-foot corridor; and, also present a real estate solution for any remaining State land that was not necessary for the corridor.

The resolution before you this morning for this item is Resolution number 12-03, which is requesting the authorization to remove the private fences and miscellaneous obstructions on State land, granting revocable licenses to the 48 adjacent parcel owners for the use and maintenance of the State land that is adjoining the Feather River East Levee, and rescinding the Notice of Violations subject to voluntary compliance with this resolution.

--o0o--

STAFF ENGINEER CALISO: A vicinity map of where these encroachments are located for this action. This is a map of the City of Marysville up at the center of the screen, Feather River to the west, and the Yuba River coming in from the east. The red lines on the screen identify the project levees. The City of West Linda is towards the bottom of the screen denoted just south of the Highway 80. And the 48 properties, part of this action, are identified in the shaded red area.

--o0o--

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STAFF ENGINEER CALISO: Once again, the need for this project came about as TRLIA completing \$400 million levee improvement projects, that is intended to increase flood protection for the Cities of Linda, Arboga, Olivehurst, and Plumas Lake.

Part of these levee improvements require that a 20-foot corridor is constructed or provided. And this in accordance with DWR's Urban Levee Design Criteria, which provides -- which would provide adequate room for maintenance, operations, inspections during a high water event, and in the event of flood fighting.

This is also in accordance with Senate Bill 5, which requires the urban and urbanizing areas within the Board's jurisdiction to provide a 200-year level of protection by the year 2025. And TRLIA intends to pursue 200-year level of flood protection, so 20-foot corridor would be -- would become necessary.

In addition, this project would allow the clearing of private encroachments and prevent unauthorized access and off-roading onto the levee that had been causing some damage and erosion to the flood control facility there.

--o0o--

STAFF ENGINEER CALISO: Some of the applicable laws and regulations important to this action before you

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includes Water Code Section 8534, which states that the Board has the authority to enforce, "The erection, maintenance, and protection of such levees, embankments, and channel rectification as in will" -- "as will, in its judgment, best serve the interests of the State".

Water Code Section 8708, in which the Board -- the Board has given assurances to the Army Corps of Engineers for operating and maintaining the flood control facilities in accordance with federal law.

8709, which states that the Board has the authority to commence a suit against a respondent if they fail to remove any unauthorized encroachments.

And 8710, which states that the Board must approve any encroachments that are having constructed into the Adopted Plan of Flood Control. In this case, it would be the Sacramento River, which includes the Feather and the Yuba Rivers.

--o0o--

STAFF ENGINEER CALISO: Title 23, Code of Regulations applicable here would be Section A, which requires approval of the Board for any work near or within an area where there's an adopted plan of flood control.

Section 4(a)(4), under the regulations, which identify that an adopted plan of flood control means a flood control or reclamation strategy for a specific area

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that has been adopted by the Board, which includes 10 feet from the levee toe, except where there's an operation and maintenance annual in accordance with federal law or where real property rights acquired by the Board specifically provide otherwise.

Section 19 of the regulations identifies that no encroachments may be constructed or maintained within lands that are owned in fee by the Sacramento-San Joaquin Drainage District, unless they are specifically approved, either through a license, a revocable lease, an easement or another agreement that is executed between the landowner or the District, in this case being the Board.

Section 20(a) granting the authority to the Executive Officer to initiate an enforcement proceeding against work that is not -- or that is in violation of the Board's regulations.

--o0o--

STAFF ENGINEER CALISO: Quick background on the case. Starting back in July 29th, 2011, many landowners -- TRLIA sent out notices to the adjacent landowners notifying them of the encroachments that were within State land.

Following on August 5th, the State issued a total of 51 Notices of Violation to these property owners with the unauthorized encroachments. Out of those 51, two

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requested hearings, that being Ms. LaGrand and Ms. Miller. And those are being addressed through separate hearings later this morning.

On August 22nd, a community meeting was held by TRLIA here in Olivehurst to discuss the project. On December 2nd, the Board conducted the hearings down in Sacramento, in which the Board voted, by a majority, that -- to note that encroachments exist on State land, and then directed staff to come back and work with TRLIA and the landowners to come back with an alternative solution that would provide a 20-foot corridor and minimize the impact to the adjacent landowners.

December 16th, all the property owners were notified of the Board's decision via letter that was sent out to them.

On January 10th, a community meeting was held here in Olivehurst to present to the landowners the alternative that is being presented to you today. This alternative was supported by the landowners present at the meeting.

Then following on January 19th, the staff reports were all distributed and posted on the website.

--o0o--

STAFF ENGINEER CALISO: Quick, a timeline on the property that is owned by the State that is subject -- or

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AGENDA ITEM 4B ATTACHMENT K

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1 that is adjacent to the 48 parcels. This is all covered
2 under the staff reports under Section 5.2, but I'll go
3 through it quickly to give you a quick glimpse on how the
4 property came about to being owned by the State.

5 In December 14th of 1909, the property, the
6 parcel that is in question here, was purchased by Northern
7 Electric Company from a private landowner, that being
8 Isaac Cohn. And this is recorded on Deed 59 of page
9 441 -- excuse me, page 441.

10 November 8th, 1921, the Yuba Gardens, which is
11 this area where the subdivision was created, survey map
12 was created, and they recorded at the county recorder's
13 office and that's in Book 3 of page two.

14 Then in June 14th, 1939, so roughly 30 years
15 later, the subdivision -- the parcels that are adjacent to
16 the State-owned land was created and recorded at the
17 county recorder's office. And this was done in Book 3
18 of -- Book 3, page 45.

19 And then following in 1956, the Interstate
20 Commission -- I can't remember the name, but ICC issued a
21 decision essentially to abandon a portion of the railroad
22 that ran along the properties where the State property
23 currently ran out -- is adjacent to the parcels that are
24 subject to the enforcement.

25 And then in 1958, the State eventually purchased

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1 that land from Sacramento Northern Railway. This was
2 recorded through a deed on Book 267, page 509. And on
3 January 11th, 2012, the record of survey that has been
4 used or that was prepared by CTA Engineering has been
5 recorded at the Yuba County Recorder's Office, and that
6 has been done through Book 93 of Surveys page 36. All
7 these are attachments to the staff reports, and they're
8 all noted on the screen.

9 --o0o--

10 STAFF ENGINEER CALISO: The alternative that --
11 after several meetings with -- internally with DWR, TRLIA,
12 legal counsel, and real estate representatives, the
13 alternative that we thought would -- was a -- would meet
14 the Board's desires and direction from the last Board
15 meeting, and would remain in be allowed within State law,
16 was to place the new fence at the 20-foot -- at the edge
17 of the 20-foot corridor. And this would be accomplished
18 and placed at all 48 properties.

19 The existing fences would be removed. And the
20 real estate solution to address the -- any remaining
21 land -- State land, would be for the Board to grant
22 revocable licenses to each of the 48 landowners with
23 specific conditions. One of them being restricting future
24 development on that State parcel, and revoking this
25 license if the need for a public purpose arose in the

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1 future. And all these licenses would be recorded against
2 the title of each company. I mean, I'm sorry, against the
3 title of each property.

4 --o0o--

5 STAFF ENGINEER CALISO: So this is an exhibit of
6 what that -- of what it would look like for a typical
7 property adjacent to State-owned land. So this map here
8 shows -- the shaded light brown area shows the State
9 parcel at the top of the screen. The levee toe identified
10 there in the green dashed line at the top. The 20-foot
11 corridor, as you can see there, identified in green, a
12 shade of green, shows the -- how the corridor could be
13 accomplished.

14 And inside the corridor, the existing fence
15 identified in the red line, you can see is clearly inside
16 that 20-foot corridor. So that's why it would be required
17 to be removed.

18 The distance from the existing fence to the edge
19 of the corridor varies from about zero feet to -- up to 14
20 feet throughout the 48 properties. The new fence would be
21 located at the edge of that corridor, and it would be done
22 in accordance with the Application 18690, which would be
23 addressed later on this afternoon.

24 The yellow shaded area on the screen shows the
25 approximate area that -- the State land that would be

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1 passed the 20 -- required 20-foot for the corridor. That
2 area varies from 0.8 feet on the south land to about 13.2
3 feet in the middle, and then eventually tapers back out at
4 the north end of the subdivision 20 to the State right of
5 way.

6 --o0o--

7 STAFF ENGINEER CALISO: So this is just an
8 overview of the property. So starting on the left-hand
9 side of the screen at the south end near Island Avenue.
10 So the State property is here at the top of the screen.
11 You can see this dark solid line that defines the State
12 right of way. The project -- the levee toe -- so the
13 levee toe identified there in green. So you can see --
14 the main thing that I want to point out here is you can
15 see the -- it's hard to tell, but there's a yellow shaded
16 area in between the State right of way and the edge of the
17 20-foot corridor that runs along all the parcels.

18 And as you can see at the south end being near
19 Island Avenue, that area is -- or the edge of the 20-foot
20 corridor is -- it almost matches the location of the right
21 of way -- State right of way. And as you move forward or
22 as you move up north, that area increases. As you can
23 see, it continues to be -- increase further as you
24 continue moving up. And this is very similar, so just
25 continue moving forward.

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AGENDA ITEM 4B ATTACHMENT K

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1 So once again, this area continues and it stays
2 steady. But at one point here, this parcel -- the
3 existing fence actually comes back and it's actually
4 matching the State right of way, which is one of the
5 unique properties that actually has the fence at the State
6 right of way.

7 Then from there on, there's an existing -- there
8 will still be some remaining land that would be under
9 State-owned control, but it would be -- the adjacent
10 parcel owners would be allowed use of that through the
11 revocable licenses.

12 --o0o--

13 STAFF ENGINEER CALISO: And then finally, at the
14 very north end, this -- the shaded area kind of tapers
15 into the State right of way. So all of this notice -- all
16 of these properties, the last Notice of Violation that was
17 issued was for the parcel here, 119, noting that there was
18 this existing fence that is inside State right of way,
19 inside State land.

20 Please note that from this point further north,
21 those properties are in negotiations with TRLIA to acquire
22 additional land to provide the corridor. And those are
23 going to be addressed -- that is going to be addressed as
24 part of the application. Those properties were not part
25 of this 51 properties that are being subject -- that are

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1 part of the Notice of Violations that were issued

2 --o0o--

3 STAFF ENGINEER CALISO: Both Three Rivers Levee
4 Improvement Authority and RD 784 support the presented
5 alternative.

6 --o0o--

7 STAFF ENGINEER CALISO: CEQA analysis. The Board
8 staff has prepared the following CEQA determination:

9 And the Board acting as a CEQA lead agency has
10 determined that the project is categorically exempt in
11 accordance with CEQA guidelines. 15321 under Class 21,
12 which covers the actions of regulatory agencies to enforce
13 standards, and a Class 2 categorical exemption under CEQA
14 guidelines 15302, covering the replacement or
15 reconstruction of existing structures and facilities.

16 --o0o--

17 STAFF ENGINEER CALISO: With all that said,
18 staff's recommendation is for the Board to adopt
19 Resolution number 12-03, which would authorize the removal
20 of existing private fences and other miscellaneous
21 obstructions on State land, granting revocable licenses to
22 the 48 adjacent private parcel owners that are identified
23 on the staff report, Attachment B, for the use and
24 maintenance of the portion of the State land, and
25 rescinding the Notice of Violations subject to the

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1 voluntary compliance with this resolution, and finally
2 directing staff to notice -- file a Notice of Exemption
3 with the State Clearinghouse.

4 And this concludes my presentation.

5 PRESIDENT CARTER: Very good. Are there any
6 questions for Ms. Caliso at this point?

7 Ms. Suarez.

8 BOARD MEMBER SUAREZ: Thank you, Mr. President.

9 Ms. Caliso, number one, very well done.

10 Excellent staff report.

11 STAFF ENGINEER CALISO: Thank you.

12 BOARD MEMBER SUAREZ: And I really liked all the
13 statutory authority you cited in support of your proposal.
14 So that's always very helpful to know that we have the
15 authorities and where they come from.

16 I have just a quick question. Your staff report
17 you make a reference to DWR's legal counsel still
18 reviewing the matter regarding the validity of our ability
19 to do licensing in this -- in this case, but I don't see
20 any comments from the Board's own attorney on this.

21 Can you --

22 STAFF ENGINEER CALISO: Yes. And I actually
23 would like to defer that question. I think it's going to
24 be addressed later on by both TRLIA and their team and our
25 legal counsel who's also present. So I'll let them -- I

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1 think that's a question that they can answer. I'll defer
2 that to them to answer.

3 BOARD MEMBER SUAREZ: Okay. Thank you. Because
4 I think it's important for the record to show that there
5 is a different opinion regarding this matter.

6 VICE-PRESIDENT RIE: President Carter, question.

7 PRESIDENT CARTER: One moment. So, Ms. Smith,
8 you're prepared to address Ms. Suarez's question --

9 LEGAL COUNSEL SMITH: I'm prepared to --

10 PRESIDENT CARTER: -- on behalf of the Board as
11 opposed to the Board staff.

12 LEGAL COUNSEL SMITH: Yes, of course. I'm not
13 sure I understand exactly what the question is.

14 BOARD MEMBER SUAREZ: Well, I can clarify.

15 According to the staff report, DWR's legal team appears to
16 believe that they need to research the question of whether
17 the licenses are valid. And according to reports that I
18 have received from you, that issue has been addressed by
19 your analysis, and you don't believe that there is a legal
20 problem regarding us -- our ability to provide licensing
21 regarding these properties. So that's what I need
22 addressed to make sure that the record is complete.

23 LEGAL COUNSEL SMITH: The one thing I would add
24 to that is that my recommendation is that any license that
25 is issued should require the landowners to relinquish any

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1 legal right they may have to the property. I think that's
2 a key element of the license.

3 And in addition, I would also recommend that it
4 contain -- because we're granting a license to use our
5 land, that if that's what the Board decides to do, that it
6 also contain indemnification and hold harmless language,
7 which I don't believe was addressed by staff.

8 BOARD MEMBER SUAREZ: Is it your opinion that
9 providing a license in this -- in these circumstances
10 constitutes a gift of public lands or public resources?

11 LEGAL COUNSEL SMITH: No.

12 BOARD MEMBER SUAREZ: Thank you.

13 PRESIDENT CARTER: Ms. Rie.

14 VICE-PRESIDENT RIE: Yes. Mrs. Caliso, in the
15 resolution, there's some recommendations. And what they
16 basically say is, "Subject to permitting". What does that
17 mean, "Subject to permitting", and what's the process, and
18 what's the timeline?

19 STAFF ENGINEER CALISO: Sure. I think what
20 the -- the first hearing -- this first hearing for the
21 first 48 does not hold the -- does not have that specific
22 clause under the resolution. That subject to permitting
23 is only applicable to those two -- to the two parcels that
24 contain permanent structures, and those would be addressed
25 at a later hearing this morning.

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1 VICE-PRESIDENT RIE: Okay. So for these -- was
2 it 51 -- 48. For these 48, we don't anticipate issuing
3 any encroachment permits?

4 STAFF ENGINEER CALISO: Correct.

5 VICE-PRESIDENT RIE: Just license agreements.

6 STAFF ENGINEER CALISO: Exactly, yeah. So the
7 resolution would allow that the fences that are currently
8 within the area of the 20-foot corridor that's necessary,
9 those would be removed, and the area would be cleared out
10 to provide the 20-foot corridor. There's no other

11 permanent structures in that area, so the license would
12 essentially be allow them to use -- remain use of that
13 State land, but they -- there's no need for an actual
14 permit for them, because there are no structures there.

15 VICE-PRESIDENT RIE: Okay. And as far as the
16 licenses, will those be issued before TRLIA is issued a
17 permit and before they remove the fences?

18 STAFF ENGINEER CALISO: I believe the permit this
19 afternoon will be addressing that. And it will
20 be subject -- subjecting the permit to obtaining this
21 resolution and this agreement signed by the landowners.

22 SUPERVISING ENGINEER TARAS: There's a
23 correction.

24 PRESIDENT CARTER: Let's limit our discussion to
25 the 48 parcels that we're talking about here, in which, I

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1 assume, we're not talking about permits. We're talking
2 about licenses.

3 STAFF ENGINEER CALISO: Right. So the plan is
4 the licenses, because this has been presented to the
5 landowners at the January 10th meeting. And they'd --
6 after some discussions back and forth, they seemed to
7 approve the presented alternative.

8 So the plan is that every -- the landowners are
9 aware of what is being presented this morning, and they
10 have agreed to what was presented. So therefore, we don't
11 see an issue getting those licenses executed and recorded,
12 so that TRLIA can begin the work.

13 VICE-PRESIDENT RIE: So the question is, do you
14 anticipate the licenses being executed prior to the fence
15 being relocated?

16 STAFF ENGINEER CALISO: It may be a concurrent
17 thing, but the main thing that we're -- what may happen is
18 that the licenses may take time to proceed and get them
19 recorded. But in the meantime, if the Board gives the
20 authorization to proceed with the permit, that TRLIA will
21 initiate -- as the licenses are getting recorded, that
22 TRLIA can begin the clearing and removal of the area, so
23 that the project is not delayed any further. So it may be
24 concurrent, but we are proposing that the permit is not
25 subject to obtaining the licenses and getting them

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1 recorded.

2 VICE-PRESIDENT RIE: Okay. Thank you.

3 PRESIDENT CARTER: Any other questions for Ms.
4 Caliso?

5 BOARD MEMBER VILLINES: Yes.

6 PRESIDENT CARTER: Mr. Villines.

7 BOARD MEMBER VILLINES: So the community met and
8 agreed to this, and they were good with that?

9 I see waving in the back, so maybe somebody will
10 testify later.

11 Who will be paying for the removal of the fence
12 and the putting back up?

13 STAFF ENGINEER CALISO: TRLIA would be covering
14 the cost for the removal and the replacement of the fence.
15 And I'll let TRLIA maybe speak a little bit more on that
16 on how the funding is being set up. But as far as -- we
17 know it's TRLIA is putting up the cost to do this work.

18 BOARD MEMBER VILLINES: Thank you.

19 PRESIDENT CARTER: If there are no other
20 questions, thank you very much. I'm going to invite TRLIA
21 or RD 784 to come up and present their evidence on this
22 particular item, these 48 parcels and the fence.

23 MR. BRUNNER: Good morning. I'm Paul Brunner,
24 the Executive Director for Three Rivers.

25 And I don't have a presentation today, but I do

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1 have some comments. And I'll keep them brief, and then
2 I'm sure there will be questions.

3 We do support the plan that was proposed today.
4 During the December 2nd meeting, I think the Board did
5 make your desires known as to what you wanted to do and
6 move forward on.

7 So we've been -- from the Three Rivers point of
8 view, RD 784, have been working with the State to try to
9 come up with an equitable plan. I think what was shown
10 here is an equitable plan to move forward, to try to meet
11 the community and to do what's best for them.

12 I know my Board has been really pushing for that
13 also to move forward. The characterization of the January
14 10th meeting, where the community was asked to approve the
15 action -- I led the meeting -- we didn't ask them to
16 approve the action. What we asked them to do was to
17 review what we presented and provide their feedback and
18 comments. You all approved the action as to what's going
19 on in that regard.

20 So we did get some acceptance from the community.
21 I mean, there are always some members in the community,
22 I'm sure you'll hear them today, that had some
23 reservations about where we are and where we're going. I
24 did encourage them to support the action today to come
25 forward, and that's up to them whether or not they do that

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1 or not.

2 One of the key points I'd like to get across to
3 the Board here is that my Board is really very committed
4 to making this happen. And one of the things that is
5 happening, when we talked about costs just a second ago on
6 that, and I'll go over that -- go into that in a little
7 bit more detail about the construction in a second.

8 But the -- this additional step to really
9 document that yellow area that Angeles was showing you on
10 her slides, and to allow the people to use that with the
11 licenses and that, and then recording the documents, comes
12 at some cost, as we work through that.

13 And there is some -- well, from DWR, they have
14 chosen so far not to support that cost-share on that. I
15 went twice to my Board and to have that discussion. One,
16 is for local share. And then later on support the action
17 to move forward, so we can have a resolution to this.

18 My Board voted unanimously to move forward. And
19 then if we needed to, do all at a local cost, move this
20 project forward, to get it done, and for the resident's
21 sake to fund it.

22 Our cost for that work was around \$150,000 to do
23 this work. The documentation -- not the fence work, but
24 just the documentation, the surveying, and how we're going
25 to proceed with that. I did bring my surveyor here, and

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1 legal team to address how we'd do that, how we'd record,
2 if that was necessary for the Board, if not during this
3 hearing, maybe in a subsequent hearing today, that we go
4 through that.

5 So I think that's significant that we're
6 committed to moving forward, take that step and go
7 forward. So we put resolution to this, and I think a step
8 forward for us to work with the community.

9 Now, let me address the construction activities
10 that we have on the project. The timing -- our goal is
11 still to try to get out there this spring or summer to
12 make this happen, and put the fence in. There will be
13 some construction activities that will take place. We're
14 not going to be tearing into the levee.

15 But along the levee toe we have to do some
16 regrading and placing and removing some shrubs, moving the
17 fences back and then installing the new fence. This
18 opportunity to let the people use this portion of the
19 property really doesn't end up saving us some cost,
20 because we will not be clearing that small swath of land
21 from trees and other things that might be in that area, as
22 we move forward.

23 So what I would expect to happen from this is
24 that if we do get your concurrence on all the various
25 actions today, and there's five of them that you have, we

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1 would then take steps to go and start doing two things
2 really kind of simultaneously.

3 I committed at the January 10th meeting that we
4 would go back and do the design. I put our design team on
5 hold. The designer is GEI, the ones who did the levee
6 design on all the improvements we did. But to go and
7 start to layout the grading -- and it's not complex, but
8 the grading and what we're going to remove, prepare those
9 drawings, so we can go to construction.

10 And I think there are some tweaks and different
11 things as we go through this, where is the levee toe. We
12 had GEI come in to plot that green line that you saw
13 there. Some of it is theoretical, because it isn't right
14 at the levee toe where you walk out there and look down,
15 because there's a lot of overburden that's been built over
16 the years. There's a railroad berm and other things that
17 all kind of overlay into the system of which the -- and
18 some portions of it, the levee toe actually, we believe,
19 is embedded inside the structure, not right at the far end
20 that is almost at, in some cases, at the edge of the State
21 property now where it is. So we'll work through that.

22 I committed at the January 10th meeting to have
23 interactive meetings with the community as we do that
24 design, so we can get their feedback on it. There is a
25 drainage issue out there. My project doesn't address

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1 drainage, per se, but if we can try to work through that
2 and help somehow, we'll try to do that in what we do on
3 our project.

4 So we'll start the design aimed at trying to get
5 out there this spring or summer to do this work.
6 Simultaneously, the license agreements we will go through,
7 and work with the folks to get those license agreements
8 with them. We ask later on that when you get to that
9 point that you think about the construction time on that
10 and not make it where they tie together on it, because
11 there is a need - we're working on State property - to put
12 a fence in on it, as to what we do out there.

13 So we'll work with the folks simultaneously to
14 get those license agreements, explain the project to them,
15 and then implement the project as we go forward. I did
16 bring my legal counsel here too to speak to the license
17 and other issues that, Ms. Suarez, you had some comments
18 about that. They could come forward and speak to the
19 legal issues too, if you'd like for them to do that.

20 PRESIDENT CARTER: I think we're -- we'll reserve
21 that option for a little later.

22 MR. BRUNNER: Okay.

23 PRESIDENT CARTER: Any questions for Mr. Brunner?
24 Mr. Hodgkins.

25 SECRETARY HODGKINS: Mr. Brunner, I'm not sure

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1 this is for you or for staff, but as part of the license,
2 what conditions are we placing on the applicant's use of
3 this property with respect to alteration, planting, those
4 kind of things? Have we thought that through?

5 MR. BRUNNER: Maybe we should -- and I will ask
6 Scott McElhern from Downey Brand to come up and to speak
7 to that, and -- because we had to give some thought to it,
8 and -- so, Scott, if you could come up.

9 MR. McELHERN: Thank you. My name is Scott
10 McElhern. I'm with Downey Brand. I'm outside counsel for
11 TRLIA. And the question was what type of limitations
12 would be in the license?

13 There would be no structures would be able to be
14 built in that area. The area could have vegetation, a
15 garden or something of that nature, but no permanent
16 structures is what we're intending to do by way of the
17 license.

18 PRESIDENT CARTER: Ms. Caliso, did you want to
19 add anything to that?

20 STAFF ENGINEER CALISO: Yes. I just wanted to
21 clarify for the -- as far as modifications or alterations
22 to the existing structures, those would be addressed at a
23 later hearing, and they would be addressed as part of the
24 permit that would be issued to the landowner for that
25 structure that would remain on State land.

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1 PRESIDENT CARTER: For the two structures that
2 are under separate hearings, but as far as the 48 parcels
3 that have no permanent structures?

4 STAFF ENGINEER CALISO: It would just be like
5 Scott just mentioned, just restrictions to no permanent
6 structures, excavations. Just -- mainly just use of the
7 land.

8 PRESIDENT CARTER: Pools?

9 STAFF ENGINEER CALISO: Excavations would be one,
10 yeah.

11 PRESIDENT CARTER: Thank you. Okay. Any other
12 questions for Mr. Brunner?

13 SECRETARY HODGKINS: I have one last one. Paul,
14 you said there's a drainage issue. Is there a drainage
15 issue now or is there going to be one when we're done?

16 MR. BRUNNER: There's a drainage issue currently.
17 Some of the lots are lower than others, and so it ponds.
18 And there is drainage issues now that the residents have.
19 So it's a -- it's been there for a long, long time.

20 SECRETARY HODGKINS: Okay. I do think it should
21 be clear whether or not there is a drainage issue in the
22 license, and that it's fixed or it's not fixed, and just
23 long term.

24 VICE-PRESIDENT RIE: Mr. Brunner, how will -- are
25 you planning to put in an access road at the toe of the

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1 levee on the land side?

2 MR. BRUNNER: Yes. The purpose of the landside
3 toe access corridor is to have a -- really a roadway of
4 which you'd have vehicles that could pass on to do flood
5 fighting and RD 784 to do maintenance in the area on it.
6 And the -- so we will be putting in a roadway. It's not
7 an asphalt roadway, but it's -- it might have some rock
8 base or something depending upon --

9 VICE-PRESIDENT RIE: And how will that -- the
10 road, how will the levee slope and the road drain? Is it
11 going to drain onto the private property that is low? Are
12 you going to put in a drainage system?

13 MR. BRUNNER: Yeah. Well, currently the levee
14 structure drains into the adjacent properties. The levee
15 is higher, so water runs off the levee into the adjacent
16 properties. What happens is that the -- as the water
17 flows from the adjacent properties on the low spots, in
18 some of these lots, the property that the owners have is
19 lower in their backyard than the street. And the levee is
20 in their backyard, or right along the backyard, so it
21 naturally just drains from their property to the levee,
22 and then drains off the levee into the area and it ponds.

23 VICE-PRESIDENT RIE: So is there any plan to
24 address the drainage problem?

25 MR. BRUNNER: Not within the Three Rivers levee

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1 project. I mean currently we have improved the area for
2 the levee structure, and we're doing our levee toe access
3 corridor, but our project would not improve the drainage
4 in the area. That would be a county drainage issue that
5 they would work or -- to resolve the drainage problem.
6 VICE-PRESIDENT RIE: Will the construction of the
7 access road make it worse?
8 MR. BRUNNER: I don't think so. The -- and
9 that's one of the reasons why we want to work
10 cooperatively with the residents, that if we can blend
11 what we're doing to somehow make it better for them, we'll
12 try to do that.
13 VICE-PRESIDENT RIE: Okay.
14 PRESIDENT CARTER: Thank you, Mr. Brunner.
15 MR. BRUNNER: Thank you.
16 PRESIDENT CARTER: At this time, I'd like to
17 invite any of the 48 respondents to come up and address
18 the Board?
19 Yes, sir.
20 MR. HECKER: I have pictures too, if you'd like
21 to see them.
22 My name is Monty Hecker. My place is 5548. I
23 would request, if they didn't mind, if they'd put the
24 slide up here, slide number 12, so I can identify what
25 we're talking about.

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1 And I'd like to thank you guys for coming up here
2 to have the meeting. This is great. And all of the 48
3 want to help. Let me clarify something, we did not vote
4 as -- and he did great, Mr. Brunner. They showed us.
5 There was an option one and an option two. We agreed with
6 the option one overall, because we've got to do something.
7 And nobody down there wants us to flood, and anything we
8 can do to help, but this has been a 50-year thing.
9 My office is right here. Okay. Can somebody
10 tell me what the green line is?
11 STAFF ENGINEER CALISO: The levee toe.
12 MR. HECKER: That's the levee toe. The fence
13 line then is the red one?
14 STAFF ENGINEER CALISO: The existing fence.
15 PRESIDENT CARTER: Mr. Hecker, if you wouldn't
16 mind, I think the mouse works on the computer. And if you
17 could point using the mouse, that will show up on the
18 large screen and it will also enable us to get an accurate
19 recording of the --
20 MR. HECKER: There you go.
21 And then there's the green, and then the existing
22 fence is there. Okay.
23 The reason I brought pictures, and I brought it
24 to their attention -- is it appropriate to hand these --
25 to just hand them down or I don't have a way to...

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1 This is in '86, okay. And this place floods all
2 the time. Again, we've had this property, everybody, the
3 48, for over 50 years. No one has ever come in until June
4 and told us we were encroaching. We got active with it.
5 I would love to work with TRLIA to make sure we do the
6 drainage. Right there at Island, on the opposite side,
7 they built a great big drainage area, but nobody ever put
8 a pipe in, which it wouldn't go that way anyway, because
9 all of our property runs this way.
10 You'll be looking at this property today. That's
11 Susan's. Mine is down front where she's actually at --
12 let me get back here. Well, my house left. Oh, there it
13 is.
14 That's my office, these two spaces and my
15 building, and my other building that you see right here.
16 Where I'm going to run into some problems is water. And
17 if you come down here, this is where Carol's is, and
18 that's the water. And we have to have it pumped out.
19 We've got to take the pumps, put them over the side of the
20 levee, and then pump them out, or you have to bring in, as
21 I do, I have a water truck, so I can pump my own water
22 out.
23 We don't utilize the area in the wintertime
24 because of the flood. How they're going to take trucks
25 and run down that is beyond me. The minute that they take

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1 and dig the dirt out, that water is going to all group up
2 there and my little building that you see right here will
3 be filled with water, and you can't drive on it.
4 We have a current road that's -- again, where's
5 my mouse. Does this mouse work?
6 PRESIDENT CARTER: It's down in the legend, the
7 left corner -- lower left corner, your mouse or it was.
8 There you go.
9 MR. HECKER: Okay. I know it's not your job to
10 go and look at the levee. I've done that. I had the
11 surveyor out there. Well, he couldn't answer the
12 question. We used to have two railroad tracks there. And
13 I agree with the way they're doing this. But our toe on
14 these properties that you're looking at right here, and
15 the fence line, if you stand back and look at it, it
16 should run straight.
17 There's a road existing that's above ground,
18 almost four foot, so that they can drive it. When they
19 move this, they're going to drop down four foot to go to
20 my property, to where all this water backs up. There's no
21 way, in this last storm, they could even drive through
22 there, because they'll get stuck.
23 And that's what I wanted to bring up. I do -- I
24 think when you have your other meetings, option one is
25 what we agreed to, because we didn't feel we wanted to

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1 move any properties and stuff with the pictures. I really
2 think that needs to be addressed, on the drainage. And I
3 appreciate TRLIA bringing that up today, because that was
4 my question when the rain came.

5 That's my main concern. I'm more than willing to
6 work with them. I'd like this to be the forum too, that
7 if you guys ever come back up for that to please come up.
8 And I'd like to work with TRLIA along with the other
9 people.

10 Arnold owns the place right next to me, that's
11 the 5528, big place. He would have been here. He's a
12 senior citizen, and he's in pretty bad shape, and he
13 didn't have the time to come and air his concern because
14 of the same thing, the flooding problem and that all the
15 water -- who's going to take care of it. And if it's not
16 addressed now before we go into this, I think we're going
17 to have problems later down the road, if it's not
18 addressed.

19 PRESIDENT CARTER: Mr. Hecker, just one question.
20 The drainage that you're speaking of, this is surface
21 runoff after rain storms --

22 MR. HECKER: After rain storms yes, sir.

23 PRESIDENT CARTER: -- that comes from the levee,
24 our property, and your property and accumulates there at
25 the toe of the levee?

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1 MR. HECKER: Yes, everything down there, all of
2 the properties as you go down, they -- it all backs up on
3 their back edge. You'll have a lot of people that's piled
4 cement and that back there and that, so that you can step
5 high enough out of the water. But, yeah, we definitely
6 have a major drainage problem that I think needs addressed
7 before we go cutting roads and stuff.

8 PRESIDENT CARTER: And that problem has been in
9 existence for decades?

10 MR. HECKER: Fifty years, at least. And there's
11 a road there, but again because of their toe line that
12 they're showing here, it's on the other side of that green
13 line of what they say is the toe. So they don't even put
14 on there that there's a road there, that they can drive
15 all the way down. As they get to Carol's place, for some
16 reason, and we can't understand and the surveyor couldn't
17 explain to me, why it jumps from the right side of the
18 road that's above it, it jumps to the left side. That
19 means that all -- they wouldn't even have to go to my
20 property.

21 If you look down that line, it should be
22 straight. I took pictures, but it's such a distance. At
23 the top of the levee, it's a straight shot. The people
24 are here that can address it. The surveyor is here,
25 Larry, right, that I took out and showed him. We asked

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1 him. He felt we were being argumentative. Nobody is
2 being argumentative.

3 The other person that's going to speak, he was
4 there with us. And we were asking why does it make this
5 jog?

6 My concern is, is at the top of the levee you
7 have a distance down to the bottom of the toe, but because
8 we have a road there in this, our end is wider. The more
9 you go up, the wider it goes. You walk straight down that
10 road, and you get past Carol's, all of the toes jump over
11 to the opposite side. That's why these people all have
12 yellow that you're looking up there at.

13 We don't. Why?

14 Because they jump to the other side of the road.
15 When you drive down the road at my place or Carol's, the
16 line is on the right side. You go past Carol's, it jumps
17 to the middle of the road. And just past it, it jumps to
18 the left side. Now you drive down the road, all these
19 lines are on the left side of the road.

20 And I hope I'm explaining it well enough, because
21 it's so frustrating. I was so upset, because at the
22 meeting, that was our concern. Please guys, go out, mark
23 your lines, so us as property owners know what we're
24 talking about. It's not pie in the sky. And I appreciate
25 them going out and marking it. But once I had Larry show

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1 up, we didn't get nowhere, because nobody could say why
2 these residents -- there's approximately six of them
3 there -- we're -- our line is on the right side, not in
4 the straight line as everybody else. We're talking about
5 six out of forty something.

6 So that was my main concern I wanted to bring to
7 you guys. If you ever had a chance to look at it, I think
8 you'd automatically say the same thing, why is orange on
9 the right side, not all of them in a straight line that
10 runs down the same road you'll drive down.

11 VICE-PRESIDENT RIE: Mr. Hecker, I have to ask
12 this question. So we're moving the fence back so that we
13 can have more room for flood fighting and patrolling. Is
14 that even possible with all this surface water out there
15 ponding?

16 MR. HECKER: Honestly, no. It's not. That's
17 what's not making any sense. And these guys are -- even
18 the surveyor, ask him the depth we're talking. We're
19 talking four foot.

20 VICE-PRESIDENT RIE: Four feet of water?

21 MR. HECKER: When they came out just from this
22 last rain storm, I took pictures. The Appeal-Democrat
23 came out. I've got a creek flowing through. Now, if it
24 rains for two, three days, you ain't getting back there.
25 We don't even utilize the area. I park -- as in the

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1 paper, you've seen the cars. We put cars that we don't
2 use, because you can't get back there to work. And it's
3 all easily seen. I mean, I could have brought more
4 pictures of this area that floods, and that was just from
5 the two days.

6 PRESIDENT CARTER: Mr. Hecker, do we have your
7 permission to keep these or can we make photocopies of
8 them so that we enter them into the record?

9 MS. MILLER: Do what?

10 PRESIDENT CARTER: Make copies.

11 MS. MILLER: Yeah.

12 PRESIDENT CARTER: All right.

13 MR. HECKER: It's Carol's pictures though. My
14 pictures that I had, I ended up leaving them.

15 PRESIDENT CARTER: Ms. Woertink, would you be
16 sure that we get copies of these before we leave today?

17 MR. HECKER: And I think it's something we really
18 need to look at before we go tearing down a fence, put in
19 another fence that's going to do something. It's -- a
20 fence ain't going to hold in water.

21 And they have to take the ground down. I've got
22 an oak tree back there, that's over 50 -- probably a
23 hundred years old. It's huge, and it's right at the toe
24 of the levee, because we've always worked back there. My
25 cement on my property goes to the red line.

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1 VICE-PRESIDENT RIE: Mr. Hecker, does the oak
2 tree need to be removed to relocate the fence?

3 MR. HECKER: If you're going to drive a vehicle
4 down it, if they can -- they're going to have to go wider
5 to go around that oak tree. I would think they'd have to.

6 VICE-PRESIDENT RIE: Do you happen to know if
7 it's a protected oak tree?

8 MR. HECKER: Oh, I -- no, ma'am, I --

9 VICE-PRESIDENT RIE: You don't know.

10 MR. HECKER: -- didn't --

11 VICE-PRESIDENT RIE: We'll ask our staff.

12 PRESIDENT CARTER: Thank you very much.

13 MR. HECKER: Okay. Again, thank you for coming
14 up here. I know a lot of people wanted to make it here.
15 I know Arnold wanted to be here, and he said thanks for
16 coming up and taking a listen to us.

17 PRESIDENT CARTER: Thank you. Mrs. Hofman, would
18 you like to address the Board.

19 MS. HOFMAN: Good morning. Thank you very much
20 for the opportunity to speak. I do not loan -- own any
21 land that you're speaking of, but I do know about levees.

22 When you look at the 1930 quad sheets, it shows
23 that a lot of the levee construction went through open
24 land. One of the problems with this area is the levee has
25 cutoff the natural drainage. The higher you build the

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1 levee, the more you compact it, the more water you put on
2 your neighbor.

3 The road is out there, if you want a road,
4 because I have almost a mile and a half of levee, we have
5 red dirt, and there's swales. The last rain on basically
6 flat land, no gravel, just flat land, there was 10 to 14
7 inches of water where 784 has dispensed on my property.
8 Absolutely impossible, unless you have a cat, or a
9 four-wheel drive tractor.

10 My question to the Board is, don't ignore the
11 drainage. It has to be solved, not only for the
12 landowners, it has to be solved in a real flood fight. If
13 you want to use that road, do a flood fight. Let's not
14 just go out there and grade it and put six inches of
15 gravel over the top, which won't do, excuse the
16 expression, a damn bit of good.

17 You can have all the engineers you want. I
18 welcome you to come out and try to drive on the dirt on my
19 ranch. It's a problem that needs to be addressed. This
20 is a problem that should have been addressed when the
21 original levee design was done on the levee.

22 And if you research the old, old deeds, you will
23 see that part of the right of way that the State of
24 California had was granted originally by the City of
25 Marysville, and it was to be fenced, because there was a

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1 railroad track going in with crossings.

2 All I'm saying is we need to address the
3 drainage, not for the landowners only, but for the -- if
4 you want to call that a road -- an area to use for a flood
5 fight, you've got to do something. If you want it handy
6 for 784 to run around in the summertime, then so call it
7 that, and limit it to that. Don't give your people that
8 are fighting floods an area to work on that they're
9 expected to use, unless it's a cat road in the wintertime.

10 Thank you very much for the opportunity.

11 PRESIDENT CARTER: Thank you.

12 MS. HOFMAN: Is there any questions?

13 I'm sorry.

14 PRESIDENT CARTER: Thank you.

15 Is there anyone else that wishes to address the
16 Board?

17 Yes, sir.

18 MR. MILLER: Yeah. My name is Phillip Miller,
19 and I own one of the properties on Riverside. I got the
20 map up.

21 We keep talking about the toe of the levee.
22 Well, the toe of the levee has moved, changed, and all
23 that, as I said at the last meeting, if you'll remember.

24 Oh, where's the arrow on that map.

25 I'm sorry.

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1 Anyway, where it says -- the green line is the
2 toe of the levee. Okay, when -- in 1905, Sacramento
3 Northern bought that property. They measured it. They
4 surveyed it. They surveyed it from the center line of the
5 railroad, not the toe of the levee. Now, if you go by
6 their survey, they had a strip 120 feet, 60 feet on each
7 side of that railroad. There was one levee there, that
8 was the railroad levee.

9 Some time in history, somebody built a levee next
10 to it. They still -- the railroad still owned 60 feet on
11 one side of the levee, the housing side of the levee.
12 That didn't change.

13 Now, if you go out and measure approximately
14 where the center line of that railroad was, where the --
15 about two feet over the fence line, what TRLIA -- which
16 TRLIA wants, and I have no problem with, they will come up
17 with a fence line, where the fence line should be.

18 Where the problem is, this Board wants to take
19 more than that, and I'm saying take. They don't own it.
20 They never have owned it. If you measure that -- and we
21 have a surveyor here. And I asked at the last -- at the
22 last meeting if anybody had surveyed the middle of that --
23 of where the tracks were. And I didn't get an answer at
24 that time, and I still haven't got an answer. We keep
25 talking about the toe. The toe is not a measurement, but

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1 the center track of that railroad is a measurement, and
2 that's what was used to establish that railroad was the
3 center line.

4 And I would -- for one, I would like an answer.
5 Maybe that would clear up my problem with this situation,
6 is to get an answer to that question.

7 And, like I say, this goes back into history.
8 This goes back to 1909 this is -- was stated earlier. And
9 you have to remember that there was one levee. That's why
10 they got what -- that's why the railroad received what
11 they did, bought what they did.

12 Thank you for your patience. I know I'm not a
13 good speaker.

14 PRESIDENT CARTER: Thank you, Mr. Phillip -- Mr.
15 Miller, I'm sorry.

16 Thank you.

17 Is there anyone else that wishes to address the
18 Board on these 48?

19 Yes, sir.

20 Yes, ma'am.

21 MS. MILLER: My name is Carol Miller and that was
22 my brother that just spoke. And I am supposed to be at
23 one o'clock, so I don't know, do I get time at one o'clock
24 or --

25 PRESIDENT CARTER: Yes, you do.

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1 MS. MILLER: Okay. Then I'll hold my --

2 PRESIDENT CARTER: And we'd prefer to keep these
3 separate.

4 MS. MILLER: Okay. Thank you.

5 PRESIDENT CARTER: Thank you.

6 Sir.

7 MR. CURRIER: My name is Scott Currier. I own
8 two properties that are affected by this project.

9 Overall, I'm not opposed to the project and
10 improvement of a road. There is a road that exists, in
11 part. You could get some kind of a vehicle on it. And
12 it's not at the bottom of the levee.

13 I'm confused saying that -- I'm confused by some
14 of the public comments about you can't get vehicles behind
15 there. You can get vehicles behind there. It's just not
16 a very usable access. It needs to be improved.

17 If I can make a note. I'm an old dirt mover, a
18 CB. If I can get this cursor to work here. Am I doing
19 this -- okay.

20 I'm over here at 51 -- did I move that over. I'm
21 at -- no. Could somebody help me with this? I do a mouse
22 better than a -- go this way. So I'm at 51 right there,
23 and I have another property further north.

24 The levee -- let me just back up and say the
25 levee material used was apparently material used from

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1 Feather River Boulevard and they downcut toward where the
2 levee is, so if the drainage from Feather River Boulevard
3 going downward to the levee is the cause of some of the
4 drainage.

5 Most of it's open soil, except for the gentleman
6 that spoke about his building there. That used to be a
7 nursery. There's a lot of concrete in there, so that
8 water drainage from that facility is rather abrupt at
9 times. You can get water come down to the lowest part of
10 that drainage area, and then proceed toward the property
11 that I own. So there is a drainage issue.

12 I don't know how that can be mitigated, solved.
13 But in the event of a rain storm, two or three inches
14 within a couple days, we see water flowing down there. It
15 doesn't collect for long, but it can collect. That would
16 be somewhat of a concern.

17 I believe that the option that TRLIA has proposed
18 accommodates the people with the buildings. And I think
19 it was a good effort on their part to move the project
20 along.

21 And I believe that the project should go forward.
22 Drainage can be an issue. I don't think the process of
23 putting in the road makes the drainage any worse. There's
24 a drainage problem already there. I don't believe it
25 makes it worse. I believe it will help if we have access

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1 to the levees, so they can expect, possibly repair.
2 So I'm in support of the project. I also was
3 interested in when the road was to be put there, that they
4 would put grade stakes and locations of the final
5 elevation of the road. That would be very helpful, so
6 that any retaining walls necessary, especially toward this
7 back building, would be necessary, so that there's -- it's
8 maintainable, and it's not an abrupt drop-off. It
9 definitely can't be two to one or three to one slope, but
10 it looks like at these locations some of them -- so that
11 was my concern.
12 So is there any questions?
13 PRESIDENT CARTER: Thank you, Mr. Currier.
14 Ms. Suarez.
15 BOARD MEMBER SUAREZ: Just a quick one. Were you
16 at the January 7th meeting?
17 MR. CURRIER: Locally I was in the -- on
18 Riverside, I was at that meeting.
19 BOARD MEMBER SUAREZ: Is that -- I'm sorry, do I
20 have the right date, the January 7th meeting, the TRLIA
21 community meeting, were you at that meeting?
22 MR. CURRIER: Yes.
23 BOARD MEMBER SUAREZ: Okay. Thank you.
24 PRESIDENT CARTER: I think it was January 10.
25 BOARD MEMBER SUAREZ: Oh, I'm sorry, January 10.

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1 Thank you.
2 PRESIDENT CARTER: Thank you very much.
3 Are there any other members of the public that
4 wish to address this item before the Board?
5 Very good.
6 Then what we'll do, ladies and gentlemen, we're
7 going to close the public testimony portion of the
8 hearing, and we're going to take a brief recess, let's --
9 10 minutes. And then we'll reconvene for Board
10 discussion, deliberation, and moving forward.
11 (Thereupon a recess was taken.)
12 PRESIDENT CARTER: Ladies and gentlemen, if I
13 could ask you to take your seats, we'll continue with the
14 hearing.
15 As you recall, prior to our break, we were on
16 Item 8A. We had entertained staff and proponent and
17 respondent testimony. We're now moving on to the
18 discussion/deliberation phase of the hearing. So with
19 that, I'm going to open it up to the Board. Are there any
20 questions -- additional questions the Board has with
21 respect to what the testimony that they had heard earlier
22 this morning of staff, of the respondents?
23 Ms. Rie.
24 VICE-PRESIDENT RIE: This question is for TRLIA
25 and for our staff. We saw photographs of flooding in the

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1 area where we're going to relocate the fence. So my
2 question is, how will we be able to flood fight and patrol
3 the levee during the winter with four feet of ponded
4 water? Now, I would imagine it's not everywhere, but you
5 probably have to cross the ponded water at some point.
6 So I'm just wondering how are we going to patrol
7 and flood fight with ponding water in this area?
8 MR. BRUNNER: Paul Brunner from Three Rivers,
9 Executive Director.
10 The -- maybe if we could pull up the graphic, I
11 could speak to it better again. And I'll try the mouse on
12 it. The area that we're talking about for flood fighting,
13 where the biggest issues are, is really in the south end
14 of the project close to Island Avenue, so it affects
15 several parcels, but not most of them, I believe.
16 SUPERVISING ENGINEER TARAS: Is this the slide
17 you wanted?
18 MR. BRUNNER: That works, Curt. Thank you.
19 As you look through here -- there we go. I'll
20 use this one here -- is that Island Avenue is the end of
21 the project, and it ramps up to the top of the levee. And
22 then along through here there's an access road that comes
23 down from the top of the levee that kind of runs parallel
24 through here, and then it just kind of keeps going through
25 here. But it is elevated in through here along the side

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1 bank of the levee on it, so it isn't down at ground
2 surfaces.
3 And I would imagine, as when we do our design for
4 the project, is this area down by Island Avenue through
5 Parcels 153, 54, 153, maybe 152 and in that area, the road
6 in that 20-foot area will be elevated somewhat into the
7 bank, like on top of a stability berm or what -- that's
8 currently really kind of their now, but that we would
9 elevate. And they're not going to be driving through this
10 water situation.
11 Now there are two, three parcels -- and I could
12 be off on the numbering -- 151, could be one of them and
13 that -- that naturally the lot is lower in the back. It
14 is lower than 153 and say 150. So when the subdivision
15 was built, I think the railroad tracks and that were there
16 at least most likely when the subdivision was. The lots
17 were not drained to the street, so they drained to the
18 back and they pond.
19 So there are some lots that naturally will pond,
20 because of adjacent parcels being higher and definitely
21 the levees higher in the back on it. So for those
22 situations -- some of the parcels very close to the end
23 154, 155, they do have some drainage issues there.
24 Potentially, one could go through -- and what I
25 was trying to let the Board know is part of our design as

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1 we work through this and work with the folks, recognizing
2 we're not a drainage project, but a levee project, is how
3 do we address that?

4 Well, potentially, if we don't disrupt the
5 contours of the drainage today, one could put a culvert
6 through on Island Avenue to let it drain for those areas.
7 So some of those lots would make -- alleviate the drainage
8 issue. Under certain high flow conditions, you might have
9 some -- just volume of water that you're going to have
10 problems anyway, but to let it drain.

11 That doesn't solve some of the lower parcels that
12 are farther north, like say 151 that's lower than the
13 adjacent parcels. I think the only way that those ever
14 get really solved is for the property owner to really
15 raise the back of his yard up, so it drains to the street,
16 and drains out. And that takes a volume of soil to do
17 that, so that it drains around.

18 And just normally when you have a subdivision and
19 that when they've built homes, you've got a lot that
20 they -- that your backyard drains to the street. And the
21 homes are there and you cut your drainage around, so that
22 you don't flood your home as that's happening, but you
23 drain to the street. And some of these parcels don't do
24 that, they just pond.

25 So I think the long-term solution for those homes

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1 would be to do that. That does cost money.
2 Unfortunately, that's not part of the flood control
3 project that I currently have to try to do that. If we
4 can work with them to try to make that better somehow and
5 do that, we'll try to do that moving forward.

6 So did that answer your question?

7 VICE-PRESIDENT RIE: Partially. Who's
8 responsible for the drainage at the landside of the levee?
9 Is the reclamation district responsible for pumping that
10 water out and ensuring proper drainage, because I can't
11 imagine that it would be good to have water sitting at the
12 toe of the levee?

13 MR. BRUNNER: Well, in this particular case,
14 who's -- let me answer the question that you asked first,
15 who's responsible?

16 Directly who's responsible here, it's either
17 Reclamation District 784 had some drainage issues in their
18 areas or Yuba County. In this particular area, I'm not
19 sure. Steve Fordice is here. Steve could come forward
20 and speak to who has the drainage in the street and
21 working with that for his area.

22 As far as the levee toe goes, I think part of our
23 improvements that we have on our project that we go with
24 the corridor program is that we would improve that, so
25 that we don't have drainage issues at the toe of the

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1 levee. We're going to elevate that road through there, so
2 that we don't have an issue for our project.

3 BOARD MEMBER BROWN: Yeah. That was my question,
4 is it reasonable to bring in fill along the road at the
5 toe of the slope to where access is feasible, and it
6 solves the drainage problem as far as ponding is concerned
7 too, with interference with the road?

8 MR. BRUNNER: I'm not quite sure I'm following
9 the question. Is it reasonable to bring fill in?

10 BOARD MEMBER BROWN: Yes, to grade a road at the
11 toe of the slope and to bring in enough fill to where it
12 covers the low areas, and would not pond and create a
13 problem for driving on it during periods of storm.

14 MR. BRUNNER: For the levee toe, the access
15 corridor that we have, yeah, I think it's reasonable that
16 we could bring in fill in those areas. You're not talking
17 about a huge area, and do it contouring within the
18 corridor to make it happen.

19 If the question goes to trying to solve the
20 drainage issue in that local community --

21 BOARD MEMBER BROWN: No. No, not -- I think our
22 concern, of course, is with access and...

23 MR. BRUNNER: I think it's very viable. And like
24 what I was talking about earlier, is that we will have our
25 design team go and meet with the folks to work with them

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1 to show them what we're doing and how we're going to do
2 the drainage. We haven't gone out and done the topo work
3 to do the design on it. Once we get -- if we get the
4 okay, we'll go forward and start doing that. And I don't
5 mind coming back and sharing with you all what we're doing
6 on it to go forward with it.

7 But the -- it's -- can we do that? Yeah, I think
8 so. And it will be a lot better for RD 748 to do this, so
9 that they would be able to work the project in that and be
10 able to maintain that levee. You know, it's interesting
11 that -- why this came about that we're involved in these
12 projects, is that one of the goals for Three Rivers has
13 been is to implement this levee toe access corridor
14 program across all our levee systems, be it under Phase 2,
15 from prior -- well, many years ago and go forward, but to
16 really leave RD 784 with a levee corridor program where we
17 have all access issues resolved. They have their
18 corridors, and it really is what I think you want, is a
19 system where you're -- the folks, RD 748, can maintain
20 their system.

21 And before we ever stop what we're doing, we end
22 up going through and doing everything that's in our
23 permits and the various interim criteria, but to make it
24 happen.

25 And that's one of my goals that I've asked the

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1 team to do, and my Board said that's great to go do that.
2 But we can -- as an engineer, I think we do it. We
3 haven't done it yet, but I think we can do it, John.

4 BOARD MEMBER BROWN: Good.

5 PRESIDENT CARTER: Thank you.

6 MR. BRUNNER: Thank you.

7 VICE-PRESIDENT RIE: I have one more question,
8 President Carter.

9 PRESIDENT CARTER: Okay. And we do need to move
10 along here.

11 Ms. Rie.

12 VICE-PRESIDENT RIE: Mr. Brunner, one more
13 question for you. Mr. Hecker mentioned that an oak tree
14 on his property may need to be removed so the fence can be
15 relocated. And I just wanted to see if that was the case.
16 And if so, are you going to have to mitigate 10 to 1 for
17 the removal of that tree?

18 MR. BRUNNER: Well, you know, I heard the
19 question. And I know we have done our initial CEQA review
20 for this permit and go through with that, and we didn't
21 find any findings as far as an oak tree being a problem.

22 I made a mental note and a note to go back and
23 check as to where are we at on that oak tree. Based upon
24 our environmental documentation for the project so far, I
25 would say it's not one that we have to mitigate for, but I

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1 would go back and check. And if it is, then we'd have to
2 work through and adapt. I don't know the specific lay,
3 unless one of my team -- Larry, would you know?

4 MR. DACUS: Larry Dacus, Three Rivers Design
5 Manager. Oak trees are not protected in Yuba County, so
6 there's no mitigation required for removal of an oak tree.

7 VICE-PRESIDENT RIE: Okay. Thank you.

8 MR. BRUNNER: And I see Steve Fordice from RD 784
9 would like to make a comment, if that's okay.

10 PRESIDENT CARTER: Please.

11 MR. FORDICE: President Carter, members of the
12 Board, my name is Steve Fordice, General Manager of
13 Reclamation District 784.

14 To answer the question concerning internal
15 drainage in the neighborhood is actually the
16 responsibility of Yuba County. Once the water gets to us
17 into our major laterals, then we get it out of the
18 District.

19 And directly to the south of Island Road ramp, we
20 have a detention basin and a pump station. And it's more
21 than capable of dealing with any water that's delivered to
22 us should it come from that particular area.

23 VICE-PRESIDENT RIE: Okay. Thank you.

24 PRESIDENT CARTER: Any other questions?

25 I have one. I believe it was Mr. Miller

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1 mentioned or raised a question with regard to the survey,
2 and he claims that the center line of the railroad was
3 used to define the railroad ownership. I'd like the
4 surveyor to come and respond to that, if they came across
5 that survey when they did their research, why they used
6 the positioning hubs or the locations to conduct their
7 survey?

8 MR. HEENEY: Thank you. Kevin Heeney, CTA
9 Engineering and Surveying. TRLIA surveyor.

10 Earlier you saw a slide that kind of gave you
11 chronologically where we are today -- how we got here.
12 The original grant deed was, I believe, in 1909 to the
13 railroad. 1921 followed up with a subdivision of the Yuba
14 Gardens area that created several large tracts of land.
15 That subdivision map specifically excludes all railroads,
16 highways, and levees shown on that map.

17 The subsequent subdivision that we're discussing
18 today is a subdivision of Tract number 8. Tract number 8
19 lies between two railroads. As part of our due diligence
20 research, not only do we survey the other surveys that
21 were in this block area, in these -- adjacent to these
22 lots, we further went out on Highway 70 and beyond to
23 check surveys over there to confirm the location of the
24 easterly railroad, measured the distance across to the
25 westerly railroad, and found those to be in conformance

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1 with what we had found other surveyors had set along
2 Riverside and Feather River Boulevard.

3 With that information, in my professional
4 opinion, the best evidence was the prior work done by
5 other surveyors in those blocks, the subdivision map for
6 these lots, designates their depth to be 280 feet deep.

7 All of the deeds for these people are granted the
8 lots as shown on the map. Therefore, that property line
9 was established from those blocks that we found within the
10 streets agreeing with prior surveys. And the evidence
11 also showed that that survey was bounded on both sides by
12 the railroad, the railroad that was later then granted to
13 the State.

14 Does that answer your question?

15 PRESIDENT CARTER: Well, did you come across a
16 survey by the railroad that defined their ownership as the
17 60 feet on either side of the center line?

18 MR. HEENEY: They have right of way plats that
19 show their land was 60 feet on one side, 90 feet on the
20 other side of a center line. It should also be noted that
21 the center line shown on right-of-way maps on old railroad
22 plans are not necessarily always the center line of the
23 railroad. Many times, there's two rails. Many times the
24 rails have spirals and other types of curves that are in
25 it, that the right of way does not.

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1 So to try and make the correlation that the
2 center of an old railroad that's no longer there should be
3 the basis for defining this right of way is not always
4 correct. That evidence is gone, so we went to the next
5 best evidence that we could find, being the maps and the
6 work that other surveyors had done.

7 PRESIDENT CARTER: Okay. Thank you.

8 Any other questions?

9 Ladies and gentlemen, what is your pleasure?

10 BOARD MEMBER BROWN: Mr. Chairman, I like staff's
11 recommendation. And to get it moving, I'll move that we
12 adopt the reclamation that staff has presented.

13 PRESIDENT CARTER: Okay. So we have a motion to
14 adopt the staff recommendation, which, Ms. Caliso, could
15 you please review that for us again, please.

16 STAFF ENGINEER CALISO: I apologize. I'm trying
17 to find the last --

18 BOARD MEMBER SUAREZ: While she does that, may I
19 ask Mr. Brown if he would consider that the motion include
20 deleting the whereas on page two that makes reference
21 to -- let me put my glasses on -- DWR's Office of Chief
22 Counsel is reviewing the granting of licenses and so our
23 own Board attorney has already provided us with her
24 opinion.

25 So, Mr. Brown, would you consider removing that

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1 part of the -- as part of your motion, removing that
2 whereas on page two of the resolution?

3 BOARD MEMBER BROWN: I'm sorry. I was showing
4 the advantages of having it in print, as opposed to on the
5 computer. And if you don't mind repeating that with my
6 apologies.

7 BOARD MEMBER SUAREZ: Absolutely. There is a
8 whereas on the resolution that addresses the DWR's Office
9 of Chief Counsel reviewing the issue of the license.
10 Since our own Board attorney has already provided us with
11 her opinion, that it is unlikely to result in a gift of
12 public property. I would like to remove that, since it's
13 unnecessary, and actually contrary to what our own Board
14 staff is telling us.

15 BOARD MEMBER BROWN: I will add that to my
16 motion.

17 BOARD MEMBER SUAREZ: Okay. Thank you.

18 PRESIDENT CARTER: Any -- so the staff
19 recommendation is to approve Resolution number 12-03,
20 authorize the removal of the private fences and
21 miscellaneous obstructions on State land, grant licenses
22 to 48 adjacent private property owners identified in
23 Attachment B of the staff report for use and maintenance
24 of a portion of the State lands adjoining the Feather
25 River East Levee, rescind the Notices of Violation subject

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1 to voluntary compliance with this resolution, and direct
2 staff to file a Notice of Exemption with the State
3 Clearinghouse.

4 Everybody understand that?

5 I have one question. I was unable to find the
6 draft license language, but these licenses will include
7 language that ask the signatories to relinquish any claim
8 to the property, and also indemnify the State, in terms of
9 the use of State property as advised by our counsel.

10 STAFF ENGINEER CALISO: We will make sure those
11 are reflected on that.

12 PRESIDENT CARTER: Okay. All right. Any other
13 questions or comments?

14 Is there a second on the motion?

15 BOARD MEMBER SUAREZ: I second it.

16 PRESIDENT CARTER: Okay. We have a second from
17 Ms. Suarez.

18 BOARD MEMBER DOLAN: Mr. Chairman.

19 PRESIDENT CARTER: Ms. Dolan.

20 BOARD MEMBER DOLAN: I'll state the obvious.
21 This is my first meeting, so I was not present as a Board
22 meeting on December 2nd. But I would like to state that I
23 read all the transcripts, so I have a flavor of how you
24 have your discussions that I'm going to be joining in, and
25 was provided quite a bit of background from the staff

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1 about prior meetings that had been held, both here and in
2 the community. So I did my homework. I don't feel that I
3 am as fully informed as all of you who have been involved
4 personally, but I feel confident to participate in this
5 vote.

6 PRESIDENT CARTER: Thank you.

7 Mr. Hodgkins.

8 SECRETARY HODGKINS: I'd like to ask the motioner
9 to consider an amendment that would include in the
10 approval a Condition E, that, in effect, directs Three
11 Rivers to correct the drainage problems on the property
12 here, to the extent that they can be corrected without
13 going onto private property. I don't want you guys to
14 have to go do grading on anybody's lot. But to the -- and
15 you'll have to figure out what you can do when you get the
16 details. Would that work okay for you, Paul?

17 SUPERVISING ENGINEER TARAS: This is Curt Taras,
18 Chief of Permitting and Enforcement. My suggestion is to
19 condition the permit with that requirement rather than the
20 resolution. The permit will come before you as Item E
21 later this afternoon, and you can add those specifics
22 about the permit for the fence and the work that TRLIA
23 will do. This is mostly to address real estate matters,
24 which I believe might confuse the matter by adding another
25 resolution item.

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1 SECRETARY HODGKINS: I accept that as
2 constructive.
3 SUPERVISING ENGINEER TARAS: I'll let Mr. Brunner
4 address anything about the ability of TRLIA to correct
5 drainage.
6 MR. BRUNNER: For the -- you want me to address
7 that one point now or later? I'll be here later.
8 SECRETARY HODGKINS: I'll leave that to the
9 Chair.
10 PRESIDENT CARTER: Let's do that as part of the
11 permit discussion, if you wouldn't mind.
12 MR. BRUNNER: All right.
13 PRESIDENT CARTER: Thank you.
14 LEGAL COUNSEL SMITH: Mr. President, I have a
15 couple of comments on the resolution.
16 PRESIDENT CARTER: Ms. Smith.
17 LEGAL COUNSEL SMITH: I think a couple of things
18 could and should be clarified in the resolution. And on
19 3a it says, so that everyone understands what exactly the
20 Board is voting for today, it says, "Authorize removal of
21 private fences and miscellaneous obstructions on State
22 land". It's not clear who is going to do the removal,
23 when that's going to be done. And also it's a little
24 unclear what the miscellaneous obstructions refers to.
25 And then also, I would recommend that in 3b, that

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1 the licenses be to the satisfaction of the Board. And
2 that would address any of those concerns that you had
3 raised.
4 PRESIDENT CARTER: Okay. Is the motioner and
5 seconder, are you --
6 BOARD MEMBER SUAREZ: Yes.
7 PRESIDENT CARTER: -- comfortable with that? You
8 accept those recommendations?
9 BOARD MEMBER BROWN: Yes.
10 PRESIDENT CARTER: And yes?
11 BOARD MEMBER SUAREZ: Yes.
12 PRESIDENT CARTER: Okay.
13 VICE-PRESIDENT RIE: Question on that. Ms.
14 Smith, when you say, "to the satisfaction of the Board",
15 are you suggesting that the licenses come back to the
16 Board for approval?
17 LEGAL COUNSEL SMITH: No. No. I believe -- I
18 thought that the resolution gave -- delegated to the
19 Executive Officer the authority to execute those. But if
20 not, that should be added as well.
21 VICE-PRESIDENT RIE: I don't see that in here.
22 LEGAL COUNSEL SMITH: That should be added, I
23 would recommend, so that it doesn't have to come back to
24 the Board.
25 VICE-PRESIDENT RIE: And I would suggest that

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1 when we delegate, because I don't see that in here, to the
2 Executive Officer that Board President Carter review those
3 and concur with the language in the license before it gets
4 executed.
5 PRESIDENT CARTER: Okay. So you want to delegate
6 to the Executive Officer the authority to approve the
7 grant licenses subject to the Board President's review and
8 concurrence.
9 VICE-PRESIDENT RIE: Yes.
10 PRESIDENT CARTER: Okay. Understand.
11 VICE-PRESIDENT RIE: And we should probably just
12 delete 3A. Ms. Smith, what do you think about just
13 deleting A, because I thought the removal of the fences
14 was going to be discussed under a separate permit.
15 LEGAL COUNSEL SMITH: Well, actually because
16 these -- the way -- procedurally, these are coming before
17 you are as an enforcement action, so the Board needs to
18 make some order -- you can't force a private party to
19 enter into an agreement. And if the parties don't enter
20 into these agreements, my understanding is that 3a -- the
21 purpose for 3a was to address the situation where those
22 agreements are not entered. But it's not clear who's
23 doing the removal.
24 You know, typically in an Enforcement Order, the
25 Board would give the property owner an opportunity to do

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1 that, a certain amount of time. And if not, the Board
2 could order TRLIA or someone else to do that removal.
3 BOARD MEMBER SUAREZ: But, Mr. President, if I
4 may?
5 I believe our regulations address that, so why
6 can't it be as per our regulations?
7 LEGAL COUNSEL SMITH: Well, that's what the
8 regulations say, is that in the order the Board shall
9 describe.
10 BOARD MEMBER SUAREZ: Right. So it seems to me
11 that we don't need to make any additional references
12 within what our regulations prescribe, that's what we
13 follow.
14 LEGAL COUNSEL SMITH: The regulations don't state
15 the -- they leave it open to the Board to determine who,
16 when, how the removal shall be done. So the Board still
17 would need to make that decision.
18 BOARD MEMBER SUAREZ: Under the new regulations?
19 VICE-PRESIDENT RIE: But wouldn't it make sense
20 to deal with that, if we need to deal with it, at a
21 separate hearing?
22 LEGAL COUNSEL SMITH: That's up to the Board. If
23 you want to reserve that till later, that -- you can do
24 that, but it might require an additional step, and it may
25 prevent TRLIA from moving forward.

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1 PRESIDENT CARTER: I think we ought to endeavor
2 to not revisit this issue in the future. And so to the
3 extent that we can be as clear as possible, and in our
4 intentions and actions going forward today, we ought to do
5 that. And if it requires us authorizing Three Rivers or
6 784 to remove the fences by a certain date, that's
7 what -- I'd welcome that language, if that's what it
8 requires.

9 I don't want to -- if there are fences out there
10 that the property owners want to keep or replace at the
11 20-foot line, and the property owners wish to deal with
12 that, I would hope that TRLIA would work with the property
13 owners and allow them that opportunity, so that we don't
14 just have a dozer out there destroying somebody's fence,
15 that they hold a lot of value in.

16 STAFF ENGINEER CALISO: If I may, Mr. President.
17 I think a clarification could be added to Item A could be
18 that to authorize the removal of private fences and
19 miscellaneous obstructions on State land in accordance
20 with the Permit 18690, which would be this afternoon. And
21 that would identify who is doing the work, the replacing
22 of the new fence, and the specific conditions of how that
23 work is to be done. Would that --

24 PRESIDENT CARTER: Would that satisfy, everyone,
25 Ms. Smith?

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1 BOARD MEMBER BROWN: Just add "as permitted".
2 Can you do that?

3 STAFF ENGINEER CALISO: Sure.

4 PRESIDENT CARTER: Ms. Smith.

5 LEGAL COUNSEL SMITH: My only concern is we
6 haven't heard the permit item yet, so it's conditioning
7 something on an action that hasn't been taken. But if the
8 Board's comfortable with that, you can proceed in that
9 way.

10 BOARD MEMBER SUAREZ: I'm comfortable.

11 PRESIDENT CARTER: Ladies and gentlemen?

12 BOARD MEMBER BROWN: I'm all right, Mr. Chairman,
13 and ready to call for the question.

14 PRESIDENT CARTER: Okay. Very good. Any other
15 discussion?

16 I want to give this opportunity to the staff to
17 comment on the Board's proposed action. Do you have any
18 comments?

19 STAFF ENGINEER CALISO: No, we don't. We agree
20 that the action that the Board is taking before this is a
21 good resolution to this matter.

22 PRESIDENT CARTER: Okay. And Three Rivers or
23 784, do you have any comments with respect to the Board's
24 proposed decision?

25 MR. BRUNNER: Three Rivers is fine.

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1 PRESIDENT CARTER: Three Rivers is fine.

2 MR. FORDICE: As is 784.

3 PRESIDENT CARTER: And 784 is fine.

4 The respondents, the property owners, anyone out
5 there wish to express any concerns or any thoughts on the
6 Board's proposed decision for these 48?

7 MR. MILLER: The fence -- I'm sorry.

8 PRESIDENT CARTER: If you could please approach.

9 MR. MILLER: Yes. Phillip Miller, property owner
10 on Riverside. I would like this Board to make the
11 decision on who replaces the fence, who does the cleanup,
12 and that type of thing, because I think this -- well,
13 let's leave it at that.

14 Thank you.

15 PRESIDENT CARTER: Okay. Thank you.

16 Please.

17 MS. HECKER: There's two issues. One, is --

18 PRESIDENT CARTER: Could you please introduce
19 yourself for the record.

20 MS. HECKER: I'm sorry. Debra Hecker.

21 PRESIDENT CARTER: Debra Hecker, thank you.

22 MS. HECKER: My husband spoke earlier.

23 One issue is if you build up your levee road to
24 make it accessible, and it affects the drainage on the
25 homeowner's side, who's responsible, because you've

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1 changed landscape on your side?

2 The second issue is you're talking about the
3 fence lines and the cleanup, we were told by TRLIA they
4 were doing it. So why aren't they standing up and saying
5 we've taken responsibility for that? We were told it was
6 at no cost to us.

7 Thank you.

8 PRESIDENT CARTER: Thank you. I think -- before
9 we get into the permitting question, I think that's the
10 intention. I think that TRLIA does intend to do this at
11 no cost to the landowners. The -- and the State is cost
12 sharing in the removal and reconstruction of the new
13 fence. We want to certainly give property owners the
14 opportunity if they have -- if they want to go out and do
15 it at their expense, they are welcome to do it. But if
16 they don't, TRLIA and the State will take care of it.

17 So any other questions, comments?

18 Okay. Everyone understands we're approving
19 Resolution number 12-03 with the deletion of the whereas
20 referring to the DWR legal review on page two, and
21 addition of a delegation to the Executive Officer to sign
22 the licenses, subject to concurrence by the President, and
23 authorize removal of the private fences and miscellaneous
24 obstructions on State land in 3a subject to the Permit
25 number 18690.

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1 Any questions?
2 VICE-PRESIDENT RIE: Didn't Mr. Hodgkins have a
3 modification?
4 PRESIDENT CARTER: No. He -- my understanding is
5 you asked the question and it was going to be addressed as
6 we -- when we consider Permit number 16980 later on.
7 VICE-PRESIDENT RIE: Okay.
8 PRESIDENT CARTER: All right. Mr. Punia, would
9 you call the roll.
10 EXECUTIVE OFFICER PUNIA: Board Member Mike
11 Villines?
12 BOARD MEMBER VILLINES: Aye.
13 EXECUTIVE OFFICER PUNIA: Board Member Emma
14 Suarez.
15 BOARD MEMBER SUAREZ: Before I vote, I just want
16 to take an opportunity to thank the staff, the TRLIA --
17 Mr. Brunner, please express to your Board our sincere
18 thanks for working so hard and willing to put money and
19 effort to fix this complicated problem. I want to thank
20 the homeowners and the property owners for trying to work
21 with us. It's a difficult situation for you, as it is for
22 us. And I want to take the opportunity to thank Board
23 President, Mr. Carter, and Ms. Rie. I know they've been
24 working very hard on behalf of the staff and -- of the
25 Board to get this resolved.

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1 So with all those things, yea.
2 EXECUTIVE OFFICER PUNIA: Board Member Butch
3 Hodgkins?
4 SECRETARY HODGKINS: Aye.
5 EXECUTIVE OFFICER PUNIA: Board Member Jane
6 Dolan?
7 BOARD MEMBER DOLAN: Aye.
8 EXECUTIVE OFFICER PUNIA: Board Member John
9 Brown?
10 BOARD MEMBER BROWN: Aye.
11 EXECUTIVE OFFICER PUNIA: Board Vice-President
12 Teri Rie?
13 VICE-PRESIDENT RIE: I'm going to vote aye with
14 the understanding that it's no cost to the private
15 residents out there, and it's at TRLIA's cost.
16 Thank you.
17 EXECUTIVE OFFICER PUNIA: Board President Ben
18 Carter?
19 PRESIDENT CARTER: Aye.
20 So the motion carries unanimously.
21 Ladies and gentlemen, thank you very much. I
22 want to do a quick process check. We're running about an
23 hour behind schedule.
24 And is Mr. King in the audience? He's our next
25 hearing under Item 8B.

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1 Okay. The Board scheduled this hearing. It was
2 not at the request of Mr. King, but his property does have
3 a structure, and so we wanted to handle that separately
4 from the others.
5 What we'll do is let's go ahead and -- the other
6 question is Mrs. Miller or Mrs. LaGrand, do you have any
7 severe time constraints for the afternoon, if we're
8 running behind?
9 MS. MILLER: No.
10 PRESIDENT CARTER: Okay. Hearing none, then what
11 we'll do, let's go ahead and break for lunch. We take an
12 hour. The Board is going to be meeting in closed session
13 over lunch, and then we will reconvene here at one
14 o'clock. Thank you very much.
15 (Thereupon the meeting recessed
16 into closed session at 12:04.)

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1 AFTERNOON SESSION
2 (Thereupon the meeting reconvened
3 open session at 1:08 p.m.)
4 PRESIDENT CARTER: Ladies and gentlemen, if I
5 could ask you to take your seats, we'll go ahead and
6 continue with our meeting. I want to inform the public
7 that the Board did meet in closed session over the lunch
8 hour as agendized. The Board listened to staff counsel
9 and directed staff accordingly on those issues.
10 So we are on Item 8B on our agenda today. And
11 I'd like to call the hearing to order. This is an
12 Enforcement Hearing as requested by the Board concerning a
13 Notice of Violation ordering the removal of a private
14 fence and a portion of a permanent structure located on
15 State land adjacent to the Feather River East Levee in
16 West Linda, California.
17 This Resolution 12-06 is to authorize the removal
18 of a private fence on State land, grant license to Michael
19 King for the use and maintenance of a portion of State
20 land adjoining the Feather River East Levee, authorize a
21 structure on parcel 020-121-021 owned by Michael King to
22 remain on State land subject to permitting, and then
23 rescind the Notice of Violation subject to voluntary
24 compliance with the Resolution 12-06.
25 With that, we will follow the same process we did

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1 with our first hearing before the lunch hour, and I will
2 turn it over to Ms. Caliso to present the staff findings.

3 (Thereupon an overhead presentation was
4 presented as follows.)

5 STAFF ENGINEER CALISO: Thank you, President
6 Carter. In the essence of time, I know we're running a
7 little behind, would you like me to run through the entire
8 presentation with the background that is essentially
9 similar to the previous or would you like me to skip to
10 the specifics on this case?

11 PRESIDENT CARTER: What I would do is ask you to
12 include the relevant information that is duplicate from
13 the last hearing in your testimony, and be sure that it's
14 included as evidence as part of this hearing, and then we
15 can go on with the additional evidence that you'd like to
16 supply.

17 STAFF ENGINEER CALISO: Okay. Perfect. Will do.
18 Angeles Caliso, Board staff, once again
19 presenting a brief overview on what happened at the
20 December 2nd meeting, which the Board heard these items
21 before.

22 At the December 2nd meeting, the Board voted to
23 note that encroachments existed on State land. The
24 staff -- and directed staff to come back and work with
25 TRLIA and the landowners to come back with a plan that

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1 would provide the corridor and a real estate plan that
2 would allow the residents to use any remaining land under
3 State control.

4 The Resolution 12-06 that's presented to you is,
5 as President Carter indicated, authorizing the removal of
6 the fences on State land. And this would be subject to
7 Permit number 18690. So I've modified my slides slightly
8 to reflect the change from the earlier presentation.

9 Granting a license to Mr. Michael King for the
10 use and maintenance of the State land that is adjoining
11 the Feather River East Levee; authorizing a structure that
12 is located on Parcel 020-121-021 that is owned by Michael
13 King to remain on State land, subject to permitting by the
14 Board; rescinding the Notice of Violation subject to
15 compliance with this resolution; and authorizing the
16 Executive Officer to execute the revocable licenses
17 subject to concurrence from the Board President.

18 --o0o--

19 STAFF ENGINEER CALISO: Once again, this property
20 is located just south of Marysville. This map on the
21 screen shows Marysville at the center of the screen. West
22 Linda, the City of West Linda, at the bottom of this
23 screen. The location -- approximate location of the
24 property is identified in the star.

25 This is an aerial view of the property. The

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1 approximate property boundaries are identified there in
2 red. The property is bounded by Riverside Drive to the
3 east and the levee, which includes the State-owned
4 property, to the west. The location of the unauthorized
5 encroachments is noted here, so I'll give you -- this is
6 a -- there's a photo that shows -- oh, this is a mistake.

7 I apologize. That's incorrect. I thought I had
8 a photo, but I obviously didn't have the right photo on
9 that one.

10 Moving on. The TRLIA is completing the \$400
11 million levee project -- improvement project to increase
12 the flood protection in the Cities of Linda, Arboga,
13 Olivehurst, and Plumas Lake. Part of that levee
14 improvement require a 20-foot corridor that is in
15 accordance with DWR's urban levee design criteria that was
16 developed in accordance with Senate Bill 5. And this
17 20-foot corridor is intended to provide adequate room for
18 maintenance, inspection, and flood fighting during high
19 water events.

20 In addition, TRLIA intends to pursue 200-year
21 levels of cert -- 200-year level of certification. And
22 the -- moving forward with this project, it would allow
23 the unauthorized access to the levee, which currently
24 has -- there's been issues with vehicles accessing the
25 levee through unauthorized access points and causing

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1 damage to the levee.

2 --o0o--

3 STAFF ENGINEER CALISO: The applicable laws and
4 regulations pertinent here would be 80 -- Water Code
5 Section 8534, which grants the Board the authority to
6 enforce quote, "The erection, maintenance, and protection
7 of such levees, embankments, and channel rectifications as
8 will, in its judgment, best serve the interests of the
9 State", end quote.

10 Pursuant to Water Code Section 8708, in which the
11 Board has granted assurances to the Army Corps of
12 Engineers for maintaining flood control facilities in
13 accordance with federal law.

14 Water Code Section 8709, in which the Board
15 retains the rights to commend a suit -- commence a suit,
16 if the respondent fails to remove an encroachment. The
17 Water Code Section 8710, which the State -- the Board --
18 it states that the Board must approve any encroachments
19 that are located within an adopted plan of flood control.
20 This would include the Sacramento River Flood Control
21 Project. And this project includes the Feather and the
22 Yuba Rivers.

23 --o0o--

24 STAFF ENGINEER CALISO: Title 23, Code of
25 Regulations also is pertinent to this action. That would

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1 be Section 6(a), which states that the Board approval is
2 required for any work that is within or near an area where
3 there is an adopted plan of flood control.

4 An adopted plan of flood control is defined in
5 our regulations under Section 4(a)(4), which defines it as
6 a means of a flood control or reclamation strategy for a
7 specific area that has been adopted by the Board, that
8 includes a 10-foot from the levee toe, except where an O&M
9 manual has been furnished or real property rights acquired
10 by the Board specifically provide otherwise.

11 Water -- Section 19 of the California Code of
12 Regulations, which states that no encroachments may be
13 constructed or maintained on lands that are owned by the
14 Sacramento-San Joaquin Drainage District, unless they're
15 expressly approved by or permitted by the Board via a
16 revocable license, a lease or an agreement between the
17 Board and the adjacent landowner.

18 Section 20(a), which allows the Executive Officer
19 to commence an enforcement action against the landowner
20 that maintains encroachments that are not consistent with
21 the Board's regulations.

22 --o0o--

23 STAFF ENGINEER CALISO: Just a quick summary on
24 the background that is also related to this case, similar
25 to the one earlier this morning.

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1 On July 29, letters from TRLIA were mailed,
2 including this property owner, notifying them of the
3 encroachments. August 5th, the Notice of Violation was
4 issued on behalf of the State, noting the unauthorized
5 encroachments. August 22nd, TRLIA conducted a community
6 meeting. December 2nd, the Board conducted hearings.
7 And, at that hearing, the Board noted that the
8 encroachments exist on State land, directing staff to work
9 with TRLIA and the landowners and come back with a plan,
10 that provided the 20-foot corridor and minimize the impact
11 to the adjacent landowners.

12 Then December 16, all the landowners were
13 notified of the Board's decision. And January 10th, the
14 alternative -- the proposed alternative, that's being
15 presented here to you today, was presented to the
16 landowners at a community meeting.

17 After some discussion, the landowners by majority
18 did vote -- didn't vote, but did agree that this was
19 the -- supported the preferred -- this as the preferred
20 alternative.

21 On January 19th, the staff reports were all
22 posted and distributed to the applicable parties.

23 --o0o--

24 STAFF ENGINEER CALISO: A timeline on the
25 property that is owned by the State, that is adjacent to

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1 the parcels, the private parcel here.

2 Starting back in 1909, the purchase -- the
3 property was purchased by Northern Electric Company from a
4 private individual. And this was recorded at the county's
5 office in Book 59, page 441.

6 On November 8th, 1921, a survey map was prepared
7 and it was recorded at the county's office on Book 3, page
8 two.

9 PRESIDENT CARTER: Ms. Caliso?

10 STAFF ENGINEER CALISO: Yes.

11 PRESIDENT CARTER: Since -- is this all the same
12 as the --

13 STAFF ENGINEER CALISO: Essentially, yes.

14 PRESIDENT CARTER: Could we stipulate for the
15 record that all of these facts are the same as in our
16 prior hearing under Item 8A, heard earlier this morning,
17 and move along.

18 BOARD MEMBER BROWN: Yes, sir.

19 PRESIDENT CARTER: Is everyone okay with that?

20 Let's do that. That will save you some -- save
21 some of your voice.

22 STAFF ENGINEER CALISO: Okay. So the proposed
23 alternative for this property, it would be to place -- the
24 new fence would be placed at the edge of the 20-foot
25 corridor.

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1 SECRETARY DOHERTY: It would -- existing fences
2 that are located in the corridor would be -- the existing
3 fence located there would be to -- would need to be
4 removed.

5 The solution -- the real estate solution allowing
6 for the remaining State land would be to issue Mr. Michael
7 Grand a revocable license for the use of that land; and
8 allowing the existing structure that is located on the
9 parcel to remain, and this would be subject to a Board
10 permit that would come before you at a future meeting;
11 restricting the development -- the license would restrict
12 the future development on the parcel. That would include
13 permanent structures, excavations and that type of work.

14 And the license could be revocable if the need
15 for a public purpose arises. And once again, it would
16 also be recorded against the title of each company --
17 title of the property.

18 --o0o--

19 STAFF ENGINEER CALISO: This is an exhibit
20 showing the particular parcel. The assigned line shows
21 the approximate limits of Mr. King's -- the southern
22 portion is not reflected. The property goes further
23 south. But at the right-hand side of the screen, you'll
24 see that the residence that is on State land is identified
25 there in light -- in the blue -- with the blue label.

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1 This State-owned parcel is identified in the
2 shaded brown area. Those are the limits of the
3 State-owned parcel. The existing fence is identified in
4 the red line. That is within State land.

5 The corridor that is being proposed would be --
6 is the one shade on the screen that is showing in green.
7 And as you can see that the corridor -- the edge of the
8 corridor was to be far enough from the existing structure,
9 so it wouldn't require removal of that said structure.

10 The shaded blue -- the shaded yellow area, once
11 again, would be that area that would be allowed to be used
12 by the landowner under the license. And that area varies
13 from approximately 12.3 feet on the left-hand side of the
14 screen, so that would be on the south side, to about 13
15 feet on the right-hand side.

16 --o0o--

17 STAFF ENGINEER CALISO: Once again, the comments
18 of the Three Rivers Levee Improvement Authority and RD 784
19 support the presented alternative.

20 --o0o--

21 STAFF ENGINEER CALISO: And the CEQA findings for
22 this are noted in staff report Section 6.0. It would
23 essentially mimic the previous findings on the earlier
24 presentation.

25 --o0o--

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1 STAFF ENGINEER CALISO: Therefore, staff's
2 recommendation is that the Board adopt Resolution number
3 1206 and this resolution is -- or this recommendation is
4 reflecting the changes from the earlier -- from the
5 morning.

6 It would include the deletion of the six --
7 sentence of the sixth whereas on the resolution on page
8 two reflecting; authorizing the removal of the fence on
9 State land subject to Permit 18690; granting the revocable
10 license to Mr. King for the use and maintenance of the
11 portion of State land that is adjoining the Feather River
12 East Levee; authorizing the structure that is located on
13 parcel with an APN number 020-121-021, owned by Mr. King
14 to remain on State land, subject to a Board permit; and
15 rescinding the Notice of Violation, which was number
16 2011-268 subject to voluntary compliance with this
17 resolution; directing staff to file a Notice of Exemption
18 with the State Clearinghouse; and authorizing the
19 Executive Officer to execute the revocable licenses,
20 subject to concurrence from Board President.

21 And that concludes my presentation.

22 PRESIDENT CARTER: Okay. Any questions for Ms.
23 Caliso?

24 Ms. Suarez.

25 BOARD MEMBER SUAREZ: I would like to take this

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1 opportunity to ask again, Ms. Smith, to, for the record,
2 answer the question of whether or not granting a license,
3 in her legal opinion, constitutes a gift of public funds
4 or public property?

5 LEGAL COUNSEL SMITH: I do not believe so, so
6 long as the landowners relinquish any legal right they may
7 have to challenge the property line.

8 BOARD MEMBER SUAREZ: Thank you.

9 VICE-PRESIDENT RIE: Question.

10 PRESIDENT CARTER: Ms. Rie.

11 VICE-PRESIDENT RIE: Ms. Caliso, going back to an
12 earlier question on the previous permit. In this
13 particular hearing, you reference, "subject to
14 permitting". Can you explain what that means, what's the
15 process, and does that permit need to come back to the
16 Board and what's the timing on that?

17 STAFF ENGINEER CALISO: Yes. So, correct, the
18 subject of permitting on the resolution is referring to
19 the structure. So the plan is that we would process a
20 encroachment permit application for the structure that is
21 on State land. This would be in addition to the revocable
22 license. This permit would come before the Board for
23 approval at a future meeting, potentially at the next
24 Board meeting.

25 And so this -- the permit would place

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1 restrictions, typical restrictions, that we have used in
2 the past for development, future expansion of the
3 structures and other sorts.

4 VICE-PRESIDENT RIE: Now, are you going to
5 prepare that permit on behalf of Mr. King or --

6 STAFF ENGINEER CALISO: We would be coordinating
7 with Mr. King, yes. We would ask that he -- I mean, there
8 would be certain endorsements that would need to get done.
9 So we would be coordinating, following our application
10 process to proceed with this one as well.

11 VICE-PRESIDENT RIE: Are you going to ask him to
12 apply for this permit or are you going to assist with the
13 preparation of the permit and any necessary attachments or
14 analysis? Are you going to help him with that?

15 STAFF ENGINEER CALISO: We would ask that he
16 submit an application, and we would try to assist him with
17 the completion of the application. As far as preparation
18 of exhibits, I think those exhibits are available. I'm
19 not sure what additional support you're referring to.

20 VICE-PRESIDENT RIE: Well, description of the
21 property, any survey data, legals and plats, is all of
22 that going to be provided or are you going to put that
23 burden on Mr. King?

24 STAFF ENGINEER CALISO: Well, I think this -- a
25 lot of this information has already been prepared by Three

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1 Rivers Levee Improvement Authority. A lot of the
2 exhibits, the survey map has been prepared. This parcel
3 is one of the 51 along that area, so it covers this
4 particular parcel. So I would think that he can use some
5 of the exhibits that are already available and that have
6 been recorded to present and submit for his application.

7 VICE-PRESIDENT RIE: I think it would be
8 appropriate for the staff to put this together and assist
9 him with this effort.

10 STAFF ENGINEER CALISO: Okay. We can do that.

11 PRESIDENT CARTER: Any other questions?

12 Very good. Thank you, Ms. Caliso.

13 Does Three Rivers or 784 wish to address the
14 Board at this time?

15 MR. BRUNNER: Paul Brunner, the Executive
16 Director for Three Rivers. Very similar to last time --
17 last hearing, but to be on record, the -- we do support
18 the plan that's laid out before you. The only difference,
19 I believe, is the Encroachment Permit for the structure,
20 between this one and the last hearing that we just went
21 through.

22 On this particular case, Three Rivers is willing
23 to prepare the documents for the real estate license and
24 surveying, and just as last time, and bear that cost. The
25 construction schedule is very similar, where we go through

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1 the design, work with the person, Mr. King, and make sure
2 that we address whatever issues that he has on his plot.
3 And I want to defer any discussion about drainage and that
4 to really the permit discussion that we have, which is
5 Item 8E on the agenda.

6 I believe that's it that I'd like to address
7 here.

8 Is there any questions for me?

9 PRESIDENT CARTER: Will you be able to work with
10 staff, assist staff, and the applicant to complete the
11 Encroachment Permit necessary to allow -- to submit a
12 permit application for the structure?

13 MR. BRUNNER: Yes. Yeah, we have already
14 provided all the -- many of the exhibits and the drawings
15 and the survey information. So whatever the State staff
16 needs or Mr. King needs, we'll be glad to provide.

17 During our discussions that we led up to this,
18 one of the things I think from my recollection of
19 discussions is that the State would help Mr. King do this
20 and put it together.

21 PRESIDENT CARTER: Yes. Okay. Very good. Yeah,
22 we don't want him to have to recreate a lot of things that
23 are already -- have already been created, either by you or
24 by our staff and help him through this process.

25 MR. BRUNNER: Oh, absolutely. We've already

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1 prepared a lot of the documentation. So if we have it, he
2 should definitely be able to use it, or staff.

3 PRESIDENT CARTER: Thank you.

4 VICE-PRESIDENT RIE: And, Mr. Brunner, this
5 would -- all of this assistance would be at no cost to Mr.
6 King, I'm assuming?

7 MR. BRUNNER: Yes. So far, all the various work
8 that we've done has really not been a burden on any of the
9 residents that are there. We have paid for our costs on
10 surveying and real estate work so far through our local
11 levee funds that we've got to do the project. When we go
12 later on to do the construction of a fence and work on the
13 grading in the area, that is State cost shared under our
14 EIP agreement, 70/30 ratio. But direct charges to the
15 residences would be -- we don't plan to do that or don't
16 see the need to do that.

17 VICE-PRESIDENT RIE: Okay. Thank you.

18 PRESIDENT CARTER: Any questions for Mr. Brunner?

19 MR. BRUNNER: Thank you.

20 PRESIDENT CARTER: Thank you very much.

21 Is Mr. King here?

22 Are there any members of the public that wish to
23 address the Board on this particular item?

24 MS. HOFMAN: I think I turned a card in.

25 PRESIDENT CARTER: I'm sorry, Mrs. Hofman, I

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1 didn't get it. Please go ahead approach.

2 Oh, I'm sorry. You did turn in a card, and I
3 overlooked the fact that it says 8A, B, C, and D.

4 MS. HOFMAN: I was trying to save our trees by
5 only using one card.

6 PRESIDENT CARTER: And I appreciate that.

7 Please proceed.

8 MS. HOFMAN: I thank you for the opportunity.

9 And, Board Member Mr. Hodgkins, I agree with you on the
10 drainage issue. At the lunch break, I went home and I
11 looked at the quad sheets, and I looked at some notes that
12 was prepared a long time ago by another engineer. The
13 original railroad tracks in this area was put on the
14 center line. That center line, according to the deed that
15 Dan Fua provided for me, varied in width from 40 feet
16 center line with 40 on each side, some with 60 feet.

17 There's one that is 60 and 90. In the discussion
18 today, I only hear of the one, and the State was required
19 to fence that. And as my understanding from the older
20 engineer, who has now passed, that the levee was built
21 alongside of the railroad track. When the railroad track
22 was built, they did it with horses. So consequently, the
23 borrow was rather close. So most of the original railroad
24 tracks in Yuba County, according to his statement, was
25 that there was a borrow area or a depression, a ditch.

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1 And when it came to a swale or a drainage, there was a
2 trestle put in, so that allowed the water to flow in its
3 natural pattern. It also kept the water away from the
4 railroad track.

5 And in the discussion, I heard the engineer say
6 that the levee -- I thought I heard him say -- the levee
7 was put on one side of the railroad track not over the
8 top, alongside it. So -- and I heard the engineer say
9 that he basically surveyed from another railroad track,
10 and done a lot of figuring and got the location.

11 And I would like to be able to verify with your
12 staff, at their convenience, that the document that Dan
13 Fua gave me is the one that we're discussing today.

14 And my concern is drainage. There is going to
15 be, number one, the State built something different than
16 the original property owner, was a railroad track. I know
17 from the experience on my ranch, there is more drainage
18 coming off of the levee than bare ground. I know that
19 you're supposed to have 90 percent compaction on your
20 levee. You're supposed to have a hard surface at the top,
21 which means that there's no water coming off.

22 So there is additional drainage coming to the
23 landowner's side with the construction of the levee. Now,
24 we're going to construct another road alongside of it.
25 TRLIA's responsibility when they were granted the permit

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1 to reconstruct the levee system to provide with an
2 easement right of way for a maintenance -- operation and
3 maintenance.

4 The levee has been built, and suddenly we don't
5 have enough room. This is something that the -- I'm
6 speaking to the Board that buildings don't appear
7 instantaneously, that this is something that should have
8 been considered in the construction process. This is
9 something that should be considered not at the end of the
10 project, before it starts.

11 And I believe -- I don't own any land there. I
12 do own land next to a levee. I believe that it is
13 important that there be proper drainage, both for the
14 levee system and the landowner.

15 If you're building a system, I heard TRLIA say,
16 "We're not having anything to do with the landowner. He's
17 got to drain the other way". The problem being is you
18 shouldn't block your neighbor. And if the quad sheets
19 show a swale drainage towards the river, Three Rivers
20 should be required to provide a drainage system to get
21 that water that they're blocking to get to the river.

22 I'm just a landowner. And as farmers, we're not
23 allowed to block our neighbor. If we leveled a piece of
24 land that's going to affect him, we have to provide him
25 with drainage in Yuba County.

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1 And I feel that the cost to draining this small
2 amount of land cannot be astronomical. And since it was
3 large budgets for TRLIA, this is something that should
4 have been budgeted in in the beginning.

5 And if you have any questions, I'd be glad to
6 answer them. And I thank you very much for the time.

7 PRESIDENT CARTER: Thank you.

8 Anyone else wish to address the Board on this
9 item?

10 Okay. I am going to close the public testimony
11 portion of the hearing.

12 Ladies and gentlemen, discussion.

13 LEGAL COUNSEL SMITH: Mr. President, since Mr.
14 King is not here, I think it would be wise for staff to
15 affirm that he was given proper notice of this hearing.

16 STAFF ENGINEER CALISO: Angeles Caliso, Board
17 staff. You are correct, the -- Mr. King was present at
18 the January 10th -- or I take that back. His sister was
19 present at the community meeting on behalf of Mr. King who
20 is currently ill. And she was present during the briefing
21 and presented the alternatives, and she supported the
22 alternative.

23 On January 19th, an overnight package was sent
24 out to Mr. King at the address that we have on record.
25 And that provided him with a copy of the staff report and

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1 notification of the meeting.

2 PRESIDENT CARTER: All right. Any questions,
3 discussion, thoughts, motions?

4 VICE-PRESIDENT RIE: President Carter.

5 PRESIDENT CARTER: Ms. Rie.

6 VICE-PRESIDENT RIE: I know when we discussed the
7 last permit, we discussed the drainage. And I know Mr.
8 Hodgkins had a proposal on how to deal with the drainage.
9 Can you refresh my memory, what did we decide to do?

10 SECRETARY HODGKINS: I think Mr. Carter
11 suggested, and I agreed that the condition for dealing
12 with the drainage is appropriately apart of TRLIA's permit
13 to construct the fence. And I think that makes sense.

14 VICE-PRESIDENT RIE: And what was your proposal
15 again?

16 SECRETARY HODGKINS: My proposal fundamentally
17 would be that TRLIA fix -- eliminate trapped water to the
18 maximum extent feasible without having to do any work on
19 private property. So to the extent they can get it out of
20 here within the State's right of way and the highways on
21 either side, they would be asked to do it.

22 In those instances where there may be ground
23 that's just too low, and the only alternative would be to
24 fill not only our easement, but the property itself, I am
25 not asking TRLIA to do that.

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1 VICE-PRESIDENT RIE: Okay. But the plan is to
2 address this with the actual permit to TRLIA's permit that
3 they're requesting?
4 SECRETARY HODGKINS: Yeah, I would propose to do
5 that.
6 VICE-PRESIDENT RIE: Okay.
7 PRESIDENT CARTER: Which we will do later on this
8 afternoon as part of 8E.
9 Any other questions, discussion?
10 Ms. Suarez.
11 BOARD MEMBER SUAREZ: I have just a quick
12 comment. And again, this to me is to help clarify. We
13 have heard a couple times already mentioned that the
14 property owners affected participated in the January
15 meeting, and they supported an option. And I just want
16 the property owners to understand that I understand from a
17 perspective of some of them, that supporting an option is
18 probably too strong of a word. That I can understand that
19 some of them feel like they don't have a lot of options.
20 And we -- I think everybody here understands
21 that. So I just wanted to kind of caution, for the
22 record, that I think, at least this Board member and I
23 believe others, understand that support is not the best of
24 words. That maybe more in terms of realization that there
25 are few options for all of us. And the ones -- the one

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1 before us might be the one that keeps everybody out of a
2 courtroom.
3 PRESIDENT CARTER: Okay. Any other comments,
4 questions, motions, ladies and gentlemen?
5 SECRETARY HODGKINS: I'll move approval of
6 staff's recommendation.
7 PRESIDENT CARTER: Okay. We have a motion to
8 approve staff's recommendation.
9 Is there a second?
10 BOARD MEMBER SUAREZ: Second.
11 PRESIDENT CARTER: And we have a second.
12 Any further discussion?
13 VICE-PRESIDENT RIE: Well, the staff
14 recommendation that was put up on the PowerPoint is
15 different than what's in the resolution.
16 BOARD MEMBER SUAREZ: Correct.
17 PRESIDENT CARTER: Ms. Caliso, could you bring
18 that up for everyone to see, please.
19 So the staff recommendation has been modified
20 since our hearing, prior to lunch, to reflect the Board's
21 desires deleting the sixth whereas, which refers to DWR
22 legal reviewing the validity of the -- of granting
23 licenses; authorize the removal, subject to -- of the
24 private fence, subject to Permit number 18690; grant a
25 revocable license to Mr. King for the use of the State

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1 property; authorize a structure owned by Mr. King to
2 remain on State property, subject to permitting; rescind
3 the Notice of Violation; direct staff to file a Notice of
4 Exemption; and authorize the Executive Officer to execute
5 the licenses subject to the concurrence from the Board
6 President.
7 VICE-PRESIDENT RIE: And I think we should add
8 one more thing. I think the Board should direct staff to
9 assist in the preparation of the permit application.
10 PRESIDENT CARTER: Okay. Does the motioner and
11 the seconder, are they -- they agree with that?
12 SECRETARY HODGKINS: The change is to direct
13 staff to assist in the preparation of the application for
14 the permit?
15 VICE-PRESIDENT RIE: Yes.
16 SECRETARY HODGKINS: Is that what it was?
17 VICE-PRESIDENT RIE: Yes.
18 SECRETARY HODGKINS: I'm okay with that.
19 PRESIDENT CARTER: Seconder?
20 BOARD MEMBER SUAREZ: I'm okay with that too.
21 PRESIDENT CARTER: Okay. The motioner and
22 seconder accept that amendment --
23 VICE-PRESIDENT RIE: Thank you.
24 PRESIDENT CARTER: -- addition.
25 Any other comments, suggestions?

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1 Staff, do you have any comments or suggestions on
2 the Board's proposed action?
3 STAFF ENGINEER CALISO: No, we don't.
4 SUPERVISING ENGINEER BUTLER: I do.
5 PRESIDENT CARTER: Mr. Butler.
6 SUPERVISING ENGINEER BUTLER: Thank you. I think
7 it would benefit staff if you could clarify, since we are
8 about to have Tier 1B come into play, do you -- are you
9 requesting of them that they must bring any subsequent
10 permits back to you publicly, or if it meets the
11 delegation requirements of Tier 1B, and we come back at
12 the point at which they're in place, do they -- can they
13 go ahead and authorize those under delegated authority
14 that you subsequently may provide? I think that clarity
15 might be beneficial.
16 BOARD MEMBER SUAREZ: I can take a stab.
17 PRESIDENT CARTER: Ms. Suarez.
18 BOARD MEMBER SUAREZ: I think it's premature for
19 us to make that determination. Put together a permit, go
20 through the criteria, and if the staff determines that
21 based on the criteria it's one the Executive Officer can
22 proceed with.
23 PRESIDENT CARTER: Although, we haven't delegated
24 that authority to the Executive Officer yet, I don't
25 believe. We haven't -- the Board hasn't taken formal

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1 action to -- in terms of his delegation to do that.
2 EXECUTIVE OFFICER PUNIA: That's correct.
3 SUPERVISING ENGINEER BUTLER: I'm not asking
4 that.
5 PRESIDENT CARTER: So it would have to come back
6 before the Board until that delegation is granted.
7 SUPERVISING ENGINEER BUTLER: Correct.
8 PRESIDENT CARTER: It can come back as a consent
9 item.
10 SUPERVISING ENGINEER BUTLER: I understand.
11 PRESIDENT CARTER: We don't have to hear it
12 again, unless there are some other extenuating
13 circumstances.
14 SUPERVISING ENGINEER BUTLER: Okay.
15 SECRETARY HODGKINS: But on the other hand, if we
16 delegate the authority, and after you prepare the permit
17 it's one that would fall under that authority, the Board
18 has no objection to your pursuing it as a delegated
19 permit.
20 PRESIDENT CARTER: Correct.
21 BOARD MEMBER SUAREZ: I'm sorry. I think that's
22 what the regulations do is delegate under certain
23 circumstances.
24 SUPERVISING ENGINEER BUTLER: That's correct.
25 BOARD MEMBER SUAREZ: So once they -- yes, once

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1 the regulations become effective, you can -- and this
2 permit, if it's after that point, you can go through the
3 analysis. And if it doesn't fit the delegated authority,
4 then it comes to us. But the regulations, that's what
5 they do, they delegate.
6 PRESIDENT CARTER: Okay,
7 SUPERVISING ENGINEER BUTLER: Yes.
8 VICE-PRESIDENT RIE: But can we delegate the
9 authority now to issue the permit?
10 SUPERVISING ENGINEER BUTLER: I'm sorry. I
11 didn't mean to sidebar this that far.
12 BOARD MEMBER SUAREZ: I think it's premature.
13 SUPERVISING ENGINEER BUTLER: I simply was
14 looking for clarity -- since the permits will be related
15 to some fairly complex hearings, I was merely looking for
16 clarification as to whether or not you wanted to, in
17 advance, say, by the way, bring back any permits related
18 to this publicly. That was my question.
19 BOARD MEMBER SUAREZ: It's probably premature.
20 That's a great idea. It's a good thing to start
21 remembering, since soon you'll have that authority, but we
22 haven't even heard -- it's not even finalized yet.
23 SUPERVISING ENGINEER BUTLER: Correct. We expect
24 it to be.
25 PRESIDENT CARTER: Any doubt, bring it back to

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1 the Board.
2 SUPERVISING ENGINEER BUTLER: Okay. Thank you.
3 PRESIDENT CARTER: Okay. So does everybody
4 understand the motion at this point?
5 The motion is to approve the staff's
6 recommendation as you see on the screen, with the addition
7 that the staff assist the property owner in the
8 preparation and processing of the Encroachment Permit for
9 the structure.
10 Any questions?
11 Does anybody from the public or the TRLIA or RD
12 784 have any comments on the Board's proposed action?
13 MR. BRUNNER: No.
14 PRESIDENT CARTER: TRLIA does not.
15 784 does not?
16 MR. FORDICE: Correct.
17 PRESIDENT CARTER: Okay. Members of the public?
18 Hearing none.
19 Mr. Punia, would you call the roll.
20 EXECUTIVE OFFICER PUNIA: Board Member Jane
21 Dolan?
22 BOARD MEMBER DOLAN: Aye.
23 EXECUTIVE OFFICER PUNIA: Board Member John
24 Brown?
25 BOARD MEMBER BROWN: Aye.

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1 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
2 VICE-PRESIDENT RIE: Aye.
3 EXECUTIVE OFFICER PUNIA: Board Member Mike
4 Villines?
5 BOARD MEMBER VILLINES: Aye.
6 EXECUTIVE OFFICER PUNIA: Board Member Emma
7 Suarez?
8 BOARD MEMBER SUAREZ: Aye.
9 EXECUTIVE OFFICER PUNIA: Board Member Butch
10 Hodgkins?
11 SECRETARY HODGKINS: Aye.
12 EXECUTIVE OFFICER PUNIA: Board President Ben
13 Carter?
14 PRESIDENT CARTER: Aye.
15 The motion carries unanimously.
16 Then this hearing is adjourned, and we will right
17 away transition into Item 8C.
18 So I call the enforcement hearing for Carol
19 Miller to order. This is an enforcement hearing as
20 requested by the respondent concerning a Notice of
21 Violation ordering the removal of a private fence located
22 on State land adjacent to the Feather River East Levee in
23 West Linda.
24 We are here to consider approval of Resolution
25 number 12-05 to authorize the removal of a private fence

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AGENDA ITEM 4B

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1 on State land, grant a license to Carol Miller for the use
2 and maintenance of a portion of State land adjoining the
3 Feather River East Levee, rescind the Notice of Violation.

4 And, Ms. Caliso, I think to the extent that we
5 don't need to re-present what we have heard in the last
6 two hearings, to the extent that those are -- those facts
7 are identical, just so state for the record, and then
8 proceed with the additional evidence.

9 (Thereupon an overhead presentation was
10 Presented as follows.)

11 STAFF ENGINEER CALISO: Thank you, President
12 Carter. So once again, this presentation -- or this item
13 is for Resolution 12-05 as read by President Carter. And
14 this would be for the removal of the fence, subject to
15 Permit number -- once again, this proposed change reflects
16 the two previous hearings, so it would be the first item.

17 Remove -- authorize the removal of the private
18 fence subject to Permit number 18690; granting the license
19 to Carol Miller for the use of State land -- the use and
20 maintenance of State land that is adjoining the Feather
21 River East Levee; rescinding the Notice of Violation,
22 subject to compliance; and authorizing the Executive
23 Officer to execute the revocable license subject to
24 concurrence and review from the Board President.

25 --o0o--

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1 STAFF ENGINEER CALISO: Once again, this one
2 parcel is located in the same vicinity. This is an aerial
3 map of that property. The property boundary is shown in
4 red. And the property is bounded by Riverside to the east
5 and the project levee to the west. The unauthorized
6 encroachments are identified there. And they essentially
7 consist of minor vegetation and a parallel fence.

8 --o0o--

9 STAFF ENGINEER CALISO: The purpose of this
10 action is the same as that it was for the previous hearing
11 for Agenda Item 8A and B, so I will skip through that, but
12 I want to make sure that goes on the record.

13 --o0o--

14 STAFF ENGINEER CALISO: The applicable codes and
15 regulations that are pertinent to this action as well will
16 also reflect the previous two hearings. And that would
17 include the Water -- California Water Code Section 8534,
18 allowing the Board to take enforcement actions, authorize
19 the Board to enforce the maintenance and protection of the
20 levees in a way that it best serves the benefits of the
21 State.

22 Water Code Section 8708, where the Board has
23 granted assurances to the Army Corps of Engineers.

24 8709, authorizing -- allow the Board to commence
25 a suit if the respondent fails to comply with the unauth

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1 -- comply with the Board's direction.

2 And 8710, stating that any encroachment must come
3 before and for approval from the Board before it takes
4 place. And this would be any encroachment on the adopted
5 plan of flood control, including the Sacramento River,
6 which includes the Feather and Yuba Rivers in this case.

7 --o0o--

8 STAFF ENGINEER CALISO: Once again, the
9 California Code of Regulations that are also applicable to
10 this case would be the Section 6A, requiring approval from
11 the Board for any encroachments on -- where there is an
12 adopted plan of flood control.

13 Section 4(a)(4), which specifically defines what
14 a flood control -- adopted plan of flood control is, and
15 that being -- I'll read it for the record. It's defined
16 as, "A means for a flood control or a reclamation strategy
17 for a specific area that has been adopted by the Board,
18 including the 10-feet of the levee toe, except where an
19 O&M manual has been furnished or real property rights have
20 been acquired by the Board".

21 Section 19, essentially not allowing any
22 permanent -- any encroachments to be maintained on
23 State-owned land, unless they're specifically approved by
24 the Board via license, revocable lease, or another
25 agreement between the Board and the private owner.

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1 And Section 20, allowing the Executive Officer to
2 initiate enforcement action.

3 --o0o--

4 STAFF ENGINEER CALISO: The background is, for
5 this case, essentially the same as the previous two
6 hearings. So I will skip through that and just make
7 mention that it will refer to Agenda Item 8A and B.

8 The only difference in this -- with this
9 background would include the date of August 25, 2011, in
10 which the respondent requested a hearing in response to
11 the Notice of Violation that was mailed on August 5th.
12 The remaining dates are -- match the previous hearings, so
13 I'll skip through those.

14 --o0o--

15 STAFF ENGINEER CALISO: The Section 5.2 of the
16 staff report, which was also noted and read for the record
17 at the earlier presentations are also the same. It
18 remains the same for this hearing, so I will skip through
19 that.

20 --o0o--

21 STAFF ENGINEER CALISO: That brings us to the
22 presented alternative -- the proposed alternative for this
23 particular parcel. And that would be to locate the fence
24 at the 20-foot -- at the edge of the 20-foot corridor. It
25 would require the removal of an existing private fence on

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1 State land. And the real estate solution for that would
2 be to grant the revocable license to Ms. Carol Miller for
3 the use and maintenance of the State land; restricting
4 development on that State land, and that would include
5 structures and other features; and the license could be
6 revocable if the public purpose arises in the future; and
7 it would be recorded against the title of the property.

8 --o0o--

9 STAFF ENGINEER CALISO: This is a screen shot of
10 what that property looks -- the property is. So Ms.
11 Miller's property is identified in the sion color on the
12 screen. The shaded -- light shaded brown corresponds to
13 the State-owned parcel and the limits. The corridor is
14 defined in the shaded green. And the existing fence --
15 it's hard to tell, but it's behind the green -- is
16 identified there in the light green, so it's clearly
17 within that 20-foot corridor.

18 The area that would be allowed to be used for Ms.
19 Miller's property would be that one shaded in yellow. And
20 the approximate limits at her property would be
21 approximately 10.8 feet from the edge of the corridor to
22 the State right of way.

23 --o0o--

24 STAFF ENGINEER CALISO: Both TRLIA and the
25 Reclamation District 784 support this alternative.

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1 --o0o--

2 STAFF ENGINEER CALISO: The CEQA findings remain
3 the same as those noted in the previous two hearings.
4 Those were also noted on staff report Section 6.0

5 --o0o--

6 STAFF ENGINEER CALISO: Therefore, staff's
7 recommendation would be -- is to -- for the Board to adopt
8 Resolution number 12-05; to authorize the removal of a
9 private fence on State land, subject to Permit number
10 18690; granting a revocable license to Carol Miller for
11 the use and maintenance of a portion of State land that is
12 adjoining the Feather River East Levee; rescinding the
13 Notice of Violation, that would be number 2011-272, that
14 is subject to voluntary compliance with this resolution;
15 directing staff to file a Notice of Exemption with the
16 State Clearinghouse; and authorizing the Executive Officer
17 to execute a revocable license that is subject to the
18 review and concurrence from Board President.

19 And that concludes my presentation.

20 PRESIDENT CARTER: Thank you. Any questions for
21 Ms. Caliso?

22 Thank you.

23 I'd like to invite TRLIA or 784 to come up and
24 address the Board. Do you have any traditional evidence
25 you'd like to present?

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1 MR. BRUNNER: Paul Brunner, the Executive
2 Director for Three Rivers. Evidence is the same, just for
3 the record, as that. We do support the plan. There is no
4 cost to the residents for this action. And we will pay
5 for the real estate documents, and go forward, as I stated
6 before, and we'll continue to work with them. And if
7 there's any questions I'll be glad to respond.

8 PRESIDENT CARTER: Any questions for Mr. Brunner?
9 Thank you very much.

10 MR. FORDICE: President Carter, members of the
11 Board, Steve Fordice, General Manager, RD 784. We also
12 concur and support this plan.

13 PRESIDENT CARTER: Thank you very much.
14 Any questions for Mr. Fordice?
15 Thank you very much.

16 Okay. I'd like to invite Ms. Miller, if she
17 would like to come up and present evidence.

18 MS. MILLER: Good afternoon, Board, and thank you
19 for coming to Marysville. I have an indenture here
20 between Decker-Jewett and Bank Company to the Northern
21 Electric, which goes from the north -- the southeast
22 corner of Lot 6 to the Bear River. It shows the exact
23 boundary lines. It shows that it was surveyed from the
24 east bank of the Feather River.

25 The only time they use the west side to survey

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1 was to use the county road and that was it, which is what
2 they're using Island Road as now. And this indenture is
3 very explicit and it does specify fences going north and
4 south and east and west. So if you'd like to have this,
5 I'll be glad to give it to you. I have a copy on my
6 computer.

7 And then also at the last meeting, we were
8 supposed to have defined the toe of the levee. Now, the
9 toe of the levee has never been defined at all, so what I
10 did I pulled up the Sacramento River glossary, and the
11 definition of the toe of the levee is the outer edge of
12 the levee base where it meets the levee grade. So that's
13 another thing to take into consideration when you're --
14 when this process is -- when we're going through this
15 process.

16 And then also on the easement, it states, "A
17 Notice of Intent to preserve an interest in real property
18 shall be in writing and signed and verified by or on
19 behalf of the claimant. This notice to be filed in the
20 county recorder's office of the county the easement is
21 located".

22 Now, that has to happen at the time or within 20
23 years of the abandonment.

24 I'm getting a little bit nervous, excuse me.

25 PRESIDENT CARTER: Please, take your time.

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1 MS. MILLER: Okay. Now, if it doesn't happen
2 within 20 years, and if it's not filed in the county that
3 the easement is located, then easement is deemed
4 terminated. The property reverts to the property owners.
5 The easement has been located within the fence since 1947
6 that I know of. And we're also a mile and a half from the
7 city limit sign, so we're not in a municipality, so it
8 doesn't go back to a municipality either. It goes back to
9 the landowners.
10 So that's what I have. And the part of the
11 Oliver Tract that was abandoned does include our part of
12 the tract, and that was finalized April 17th, 1956.
13 So 1976, if the county recorder didn't receive
14 it, they would have removed the easement, because it
15 didn't have any intent to preserve it. And that's what I
16 have.
17 I have more, but I don't want to bring it up
18 right now.
19 PRESIDENT CARTER: All right.
20 VICE-PRESIDENT RIE: President Carter.
21 PRESIDENT CARTER: Yes.
22 VICE-PRESIDENT RIE: Can we look at the document?
23 Would it be okay for us to --
24 PRESIDENT CARTER: Yes.
25 VICE-PRESIDENT RIE: -- pass it around.

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1 PRESIDENT CARTER: I think Ms. Miller has agreed
2 to supply it.
3 MS. MILLER: Yeah -- oh, my voice.
4 PRESIDENT CARTER: No, your document you called
5 it the indenture. Your document that has the survey
6 coming to the east bank of the Feather River.
7 MS. MILLER: Yes. This was in 1907 with the
8 bank.
9 PRESIDENT CARTER: Okay.
10 MS. MILLER: With Northern Electric and the bank.
11 PRESIDENT CARTER: And you can supply us -- or
12 can you give that to us?
13 MS. MILLER: Yes.
14 PRESIDENT CARTER: Okay.
15 BOARD MEMBER BROWN: Mr. Chairman, has TRLIA had
16 a chance to see those documents where they're surveying
17 them.
18 PRESIDENT CARTER: We'll have to ask.
19 So questions?
20 BOARD MEMBER SUAREZ: Thank you. Ms. Miller,
21 were you at the January 10th meeting that TRLIA organized?
22 MS. MILLER: No.
23 BOARD MEMBER SUAREZ: Did you know about the
24 January -- do I have the date right, January 10th?
25 PRESIDENT CARTER: Yes.

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1 MS. MILLER: Well, I only had five days to get
2 back up here, and I couldn't get a flight, and I was
3 really sick at that time.
4 BOARD MEMBER SUAREZ: So neither you or a
5 representative --
6 MS. MILLER: No, neither one of us were there.
7 BOARD MEMBER SUAREZ: Were you aware of the
8 options that were presented by TRLIA?
9 MS. MILLER: No, I was not. They talked about
10 option one, option two and I don't know which --
11 BOARD MEMBER SUAREZ: You haven't been briefed on
12 that?
13 MS. MILLER: No.
14 PRESIDENT CARTER: Mr. Brunner, does that sound
15 consistent with your recollection?
16 PRESIDENT CARTER: I think let --
17 MR. BRUNNER: Yes. I don't remember Ms. Miller
18 being at that meeting.
19 PRESIDENT CARTER: Let's -- okay.
20 BOARD MEMBER SUAREZ: Thank you.
21 PRESIDENT CARTER: Other questions for Ms.
22 Miller?
23 BOARD MEMBER DOLAN: Yes. I cannot remember what
24 the date of that document that you call an indenture is?
25 MS. MILLER: 1907.

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1 BOARD MEMBER DOLAN: 1907.
2 MS. MILLER: That's when the indenture was made
3 between the bank and Northern Electric.
4 BOARD MEMBER DOLAN: We have one from 1958 as
5 Attachment H, but --
6 (Laughter.)
7 MS. MILLER: I don't mind my age.
8 BOARD MEMBER DOLAN: I don't know if it
9 supersedes it or not.
10 PRESIDENT CARTER: Are there questions for Ms.
11 Miller?
12 Mr. Hodgkins.
13 SECRETARY HODGKINS: Ms. Miller, I'm trying to be
14 sure --
15 PRESIDENT CARTER: Your mic.
16 SECRETARY HODGKINS: I'm trying to be sure I
17 understand what you're trying to tell us. I think, first
18 of all, you're trying to tell us that you don't agree that
19 we have properly located the boundary of the State's land?
20 MS. MILLER: Correct.
21 SECRETARY HODGKINS: And then in addition to
22 that, are you trying to tell us that even if we did, it's
23 not the State's land, because when the railroad right of
24 way was abandoned, it should have reverted to --
25 MS. MILLER: After 20 years, if the intent is not

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1 filed with the county -- intent to -- intent to preserve
2 an interest in the easement.
3 SECRETARY HODGKINS: Okay, but you understand
4 that this was not an easement to begin with.
5 MS. MILLER: It's right of way.
6 SECRETARY HODGKINS: No, the railroad purchased
7 the land in fee in 1907.
8 MS. MILLER: Right.
9 SECRETARY HODGKINS: So they owned it.
10 MS. MILLER: Correct.
11 SECRETARY HODGKINS: That's different than an
12 easement or a right of way, and I want to be sure you
13 understand that.
14 MS. MILLER: Okay. No, I do understand, but they
15 were using both the easement and the purchase. Now, the
16 purchase of the property is there, and it shows the exact
17 survey between the bank and northern electric.
18 SECRETARY HODGKINS: Okay. Well, let me ask a
19 question --
20 MS. MILLER: And then most of the land was on the
21 river side not on the land side.
22 SECRETARY HODGKINS: Let me ask a question of the
23 surveyor.
24 PRESIDENT CARTER: We're going to get to the
25 surveyor issue, I think, and the difference between what

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1 he has come up with and this in a moment. But let's try
2 and wrap up -- or let's continue with Ms. Miller.
3 Mr. Villines.
4 BOARD MEMBER VILLINES: Ms. Miller, just a
5 question. Have -- because maybe I misunderstood what you
6 just said, do you -- has anybody briefed you since today
7 being in here where you're just listening to what the
8 options are, on, you know, sort of option one and two?
9 MS. MILLER: No, nobody has briefed me. I didn't
10 know there was option one or two. I just saw what was on
11 my packet.
12 BOARD MEMBER VILLINES: Okay. So I get -- just
13 my own process, it would be tough to take a vote unless we
14 had an idea of what you were thinking on those two
15 options, and what others have agreed to, because it seems
16 like we've hit a pretty amicable solution many times. And
17 I'm wondering if that might not be to you as well. I
18 understand that you have an issue about the property line.
19 But I wonder -- I don't really know how we get
20 around that, but I sure wish we had a chance for you to
21 have a better understanding of what the proposals are,
22 because it may be that there's a chance for a win-win
23 here, because -- I think, right?
24 Right now, what you're saying is it's a dispute
25 over the property line, but maybe there's a way to work it

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1 out.
2 MS. MILLER: No, but I haven't had an option to
3 see what the options were. I mean, nobody's told me what
4 the options were on -- and I saw revocable in there. If
5 it said irrevocable, I wouldn't mind.
6 PRESIDENT CARTER: Okay. Any other questions for
7 Ms. Miller?
8 Thank you very much.
9 MS. MILLER: Okay. Thank you for your time.
10 PRESIDENT CARTER: Thank you. All right. So now
11 we can move on. There were several questions.
12 Mr. Brunner, you're queued. We're going to need
13 to get your surveyor queued as well, because there are
14 questions there.
15 Go ahead.
16 MR. BRUNNER: Sure. I would like to, as Kevin
17 comes forward to talk surveying items, the designs about
18 options, we did notice everyone to come to the community
19 meeting. Not everyone made it to the community meeting.
20 It's difficult for 51 areas to get here.
21 The two options to know is -- I mean, the best
22 option was the one that we presented here to come forward
23 with the people get the use of the property. The other
24 option that was presented was to put the fence on the
25 State property line, where no one got benefit of any of

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1 the property from the State, and we just kinked around the
2 structures.
3 Those were the two options. So the best option I
4 think was presented for the residents. So I think it
5 would have been -- if this option didn't work out, I don't
6 think the other one would have been a win-win.
7 PRESIDENT CARTER: So this question of notice, we
8 just need to resolve. Staff, everyone was properly
9 noticed on this particular hearing? Everyone got the
10 staff reports timely? There were staff recommendations
11 timely?
12 MR. BRUNNER: Yeah. Well, this particular
13 hearing was your staff's responsibility. I'm talking
14 about the January 10th meeting, the community meeting
15 which was a TRLIA meeting that we held to try to get
16 people to come and explain what we were doing in moving
17 forward.
18 So your staff did attend that meeting, along with
19 a DWR representative, but it was our outreach effort on
20 January 10th, and we did notice everyone.
21 PRESIDENT CARTER: Okay. Thank you.
22 Ms. Caliso, could you go on the record.
23 STAFF ENGINEER CALISO: Absolutely. Angeles
24 Caliso, Board staff. The December 16th meeting -- letter
25 that went out to the residents that notified them of the

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1 Board decision from the December 2nd meeting, it also
2 notified them the Board was to continue and have the --
3 was going to conduct the meeting -- the conduct -- the
4 continuation of the meeting would be held here in
5 Marysville and that an agenda would be published at that
6 point in time.

7 So there's a copy of this letter that was mailed
8 out to all the residents -- a copy of the letter was
9 mailed out to all the residents notifying them of the
10 Board's decision, and that was December 16th. Once the
11 agenda was finalized, a copy of the agenda was mailed out
12 and distributed as well to the residents.

13 PRESIDENT CARTER: So this letter stated that
14 the --

15 STAFF ENGINEER CALISO: Let me bring it up on the
16 screen.

17 PRESIDENT CARTER: Okay.

18 STAFF ENGINEER CALISO: So this letter on the
19 screen here, it's dated December 16 from our office. And
20 it's essentially a generic letter that went out to
21 everyone of the 51 landowners, which at the bottom of the
22 first paragraph, it identifies -- towards the bottom it
23 says, "The meeting..." -- sorry. "The Board has directed
24 staff to present this plan at the January 26th, 2011
25 Central Valley Flood Protection Board meeting. The

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1 meeting will be held in Marysville at the following
2 address:", and then it provides the Yuba County Government
3 Center with the address. "Additional details of this
4 meeting will be provided when the agenda is finalized".

5 BOARD MEMBER SUAREZ: Specific question. The
6 staff report specifically outlines the proposal. When did
7 Ms. Miller get the staff report?

8 STAFF ENGINEER CALISO: The staff report was
9 mailed out on December 19th via an overnight package.

10 BOARD MEMBER SUAREZ: So that this staff report
11 that I'm looking at she received on December 19th.

12 STAFF ENGINEER CALISO: That's correct, yes.

13 BOARD MEMBER SUAREZ: And again to --

14 PRESIDENT CARTER: Overnight package, so it
15 probably was received January 20th.

16 BOARD MEMBER SUAREZ: I'm sorry. So say that
17 again. It wasn't December.

18 STAFF ENGINEER CALISO: It was January 19th when
19 a copy of the January staff report that is presented to
20 you today was mailed out via overnight to Ms. Miller.

21 BOARD MEMBER SUAREZ: So that was a week go
22 roughly?

23 STAFF ENGINEER CALISO: Um-hmm.

24 BOARD MEMBER SUAREZ: And it included Item 5.3,
25 proposed alternative.

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1 STAFF ENGINEER CALISO: That's correct. The
2 staff report that she received is the staff report that
3 was posted on our website, which also is the staff report
4 that was part of your packages.

5 BOARD MEMBER SUAREZ: Okay. Thank you.

6 PRESIDENT CARTER: Okay.

7 VICE-PRESIDENT RIE: Just to follow up on that,
8 that's only six days. Not to be technical or anything,
9 but I believe the requirement is seven.

10 STAFF ENGINEER CALISO: You're correct. We were
11 running on a crunched timeline. The January 10th meeting
12 was -- all the landowners were notified at the community
13 meeting. And so the plan was that at the community
14 meeting with the landowners present, we would have -- if
15 we had a concurrence on the two alternatives presented, we
16 could move forward. But you are correct, we weren't able
17 to meet the seven-day requirement because of the holiday.

18 SUPERVISING ENGINEER TARAS: No, there's seven
19 days between the 19 and the 26th.

20 BOARD MEMBER VILLINES: I think when it's
21 received.

22 VICE-PRESIDENT RIE: Yes.

23 PRESIDENT CARTER: Okay. Thank you. All right.
24 So we -- I think we've established notice, at this point,
25 and timing. Now, the question of the surveys and

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1 ownership. So what I'd like to do -- Ms. Miller, we'll
2 give you an opportunity in a moment.

3 MS. MILLER: Okay. Because I was going to
4 clarify the timeline. I live in San Pedro.

5 PRESIDENT CARTER: We'll give you an opportunity
6 in a moment.

7 Okay. So Mr. Brunner, I guess the question is --
8 and Ms. Miller presented evidence of this 1907 indenture
9 between the bank and Northern Electric showing the survey
10 from the east bank of the Feather River. Can you give us
11 an explanation as to if and how that was incorporated in
12 the -- your survey, and how you established the property
13 lines?

14 MR. BRUNNER: Sure. We'll work to address that.
15 We looked at many documents. Could we actually see the
16 document and -- as Kevin looks at it and responds to the
17 question as to what -- which one we're talking about
18 specifically?

19 PRESIDENT CARTER: Who has the copy?

20 MR. BRUNNER: Well, Kevin, why don't you look at
21 it first.

22 MR. HEENEY: I do believe this is one that we've
23 looked at in the past. The names ring a bell. Some of
24 the older -- calls to some old survey maps are in the same
25 area. Specifically, how it affects this, I'd have to

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1 review it a little deeper. I've reviewed probably a stack
2 an inch or two deep of similar documents. I don't know
3 though that it's really relevant.

4 The subdivision, as I tried to explain earlier,
5 that was done in 1921 excluded all the levees, highways,
6 and railroads that are shown thereon. These lots that
7 we're talking about today were further subdivided from a
8 chunk of that subdivision.

9 If their contention is that we have not located
10 this property line properly, then the measurements of
11 those prior surveyors and engineers and the other ones
12 that I've cited would also all have to be wrong.

13 As a surveyor, I have to look for the best
14 evidence available. The center line of the railroad is no
15 longer there, so the best evidence is what others before
16 me have done. That's what my survey reflects. That's why
17 I'm not real sure how pertinent this might be.

18 My recollection, this particular grantor was for
19 most properties either north or south of here. But again,
20 I'd have to review the details. There's several
21 descriptions in here, but I'm not sure it's still
22 relevant.

23 PRESIDENT CARTER: Questions?

24 Thank you very much.

25 BOARD MEMBER BROWN: I have no questions, Mr.

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1 Chairman, but it would seem to me like it is possibly
2 relevant. And to that degree, we need to determine if it
3 is or isn't.

4 PRESIDENT CARTER: Okay. Any other questions?
5 Thank you, Mr. Brunner.

6 I'd like to -- Ms. Miller, if you would want to
7 come up and rebut or add to.

8 MS. MILLER: I wanted to come up and say the
9 timeline now. I never received anything for the
10 resolutions, but I did receive the packet for the -- for
11 this meeting. And I received that this Tuesday, because I
12 have been going back and forth from San Pedro to here.
13 And then I had -- I was sick for two weeks, and I didn't
14 receive anything, so I had my mail forwarded to here. And
15 then when I get back home, I'll take care of that part of
16 it. But so far, I've been receiving everything, except
17 this one packet on time.

18 PRESIDENT CARTER: And the one packet that you
19 did not receive on time was --

20 MS. MILLER: Was this last one of this meeting,
21 but I didn't receive anything from the meeting of January
22 10th.

23 PRESIDENT CARTER: You did not receive?

24 MS. MILLER: I did not.

25 PRESIDENT CARTER: So you did not receive

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1 anything for the meeting on January 10th and you did
2 not --

3 MS. MILLER: From the meeting.

4 PRESIDENT CARTER: Oh, from the meeting.

5 MS. MILLER: Yeah, right. I received the letter
6 that we were going to have the meeting January 10th, but
7 that was the time frame where I was sick, and I couldn't
8 make it up here, so -- but I did receive this packet, but
9 I received it on Tuesday, because it was forwarded to me.

10 PRESIDENT CARTER: All right. Very good.

11 MS. MILLER: That's what I wanted to say.

12 PRESIDENT CARTER: Thank you for clarifying that.
13 Any other questions?

14 Ms. Smith pointed out to me, reading from Title
15 23, Section 21, regarding hearings, 21(d), "Written notice
16 of the hearing shall be mailed to the respondent and each
17 other party at least 10 days prior to the date of the
18 hearing. Respondents and other parties shall be mailed a
19 copy of any staff report or recommendations on enforcement
20 proceedings at least 10 days prior to the hearing".

21 That's what our regulations state. That's Title 23,
22 Section 21, Items (d) and (e). I just want that to go on
23 the record and for everybody to be aware of that.

24 So ladies and gentlemen, any further discussion?

25 VICE-PRESIDENT RIE: I move to continue this

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1 hearing.

2 PRESIDENT CARTER: Okay. We have a motion to
3 continue the hearing.

4 BOARD MEMBER DOLAN: I'll second that.

5 PRESIDENT CARTER: And there's a second.

6 Any discussion?

7 BOARD MEMBER SUAREZ: Sure. What's the
8 rationale?

9 PRESIDENT CARTER: Ms. Rie, do you want to tell
10 us why you want to continue the hearing?

11 VICE-PRESIDENT RIE: Because Mrs. Miller has not
12 had a time -- has not had an opportunity to review her
13 options, and she did not receive the staff reports before
14 10 days.

15 PRESIDENT CARTER: Okay.

16 BOARD MEMBER SUAREZ: My question then becomes is
17 this a defect of all the actions that we have before us?
18 Did all the staff reports go out late?

19 PRESIDENT CARTER: That's a question for staff.

20 STAFF ENGINEER CALISO: All staff reports were
21 mailed out on -- and distributed on January 19th.

22 BOARD MEMBER SUAREZ: Ms. Caliso, did they go out
23 within the 10 days or not?

24 STAFF ENGINEER CALISO: They met the seven days.

25 SUPERVISING ENGINEER TARAS: President Carter,

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1 this is Curt Taras, Chief of Enforcement, which Section
2 are you referring to in Title 23, is it 21(d)?
3 PRESIDENT CARTER: Section 21 (d) and (e).
4 SUPERVISING ENGINEER TARAS: Okay. Because the
5 evidence shows that written notice of the hearing was
6 mailed in December, as well as the previous staff report
7 that was also mailed in December that contained a lot --
8 BOARD MEMBER SUAREZ: The staff report that this
9 Board is considering today, when was that mailed?
10 SUPERVISING ENGINEER TARAS: January 19th.
11 PRESIDENT CARTER: January 19th.
12 BOARD MEMBER SUAREZ: And that's the case for all
13 the actions before us?
14 SUPERVISING ENGINEER TARAS: The Board's
15 Executive Committee approved the agenda, I believe, on the
16 18th, and the reports were mailed on the 19th.
17 PRESIDENT CARTER: Okay. So the answer to the
18 question is January 19th. And if the question is did it
19 meet the 10-day notice period for the regulations? The
20 answer would be no, is that correct?
21 STAFF ENGINEER CALISO: If I may just add one
22 thing to that. I did have Email communication with Ms.
23 Miller. I don't have printed PDFs of the emails that I
24 did send to her, but I know that they were before the --
25 before the January 19th deadline, in which I sent --

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1 distributed to her and Ms. LaGrand and Mr. Monty Hecker
2 were all included in that email notifying them of the
3 Board -- the meeting and the Board's decision and the
4 distribution of the staff reports.
5 So I wanted to make sure that, yes, you are
6 correct. We didn't meet the 10-day deadline for the staff
7 reports, but we did meet the seven days for distribution
8 for all 51. So all 51 staff reports were mailed out on
9 the 19th.
10 PRESIDENT CARTER: I don't know where you're
11 getting the seven days. Where does that come up in the
12 regulations under Hearings?
13 VICE-PRESIDENT RIE: That's probably my fault,
14 because I quoted seven days 20 minutes ago incorrectly.
15 PRESIDENT CARTER: 21(e) says, "Respondents and
16 other partners shall be mailed a copy of any staff report
17 or recommendation on enforcement proceedings at least 10
18 days prior to the hearing". I don't see a reference to
19 seven days.
20 LEGAL COUNSEL SMITH: The seven day requirement
21 is in Section 13, which relates to permits.
22 PRESIDENT CARTER: Permits. Okay.
23 SUPERVISING ENGINEER TARAS: President Carter,
24 staff would like to propose, because the respondent has
25 gone to the expense to fly up from southern California,

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1 that perhaps they'd like to have the hearing conclude
2 today with the full evidence and vote on it. It's their
3 option, but they may have an input into that to avoid
4 having to return for a future hearing.
5 PRESIDENT CARTER: Well, let's hear from the
6 respondent in that regard.
7 Ms. Miller.
8 MS. MILLER: Yes.
9 PRESIDENT CARTER: There's a motion before the
10 Board right now to continue the hearing because the notice
11 requirements in our regulations were not met properly.
12 That means that we did not supply you sufficient notice
13 for you to be able -- a 10-day notice for you to be able
14 to review the documents, the staff recommendations and
15 whatnot that we are considering in this hearing.
16 And the Board is considering continuing the
17 hearing, which means that it would -- we would continue
18 the hearing and then come back in a month's time and
19 rehear the same evidence we've heard, along with any
20 additional evidence that comes to light between now and
21 then. And so that is one option.
22 The other option is, if you would prefer that we
23 conclude the hearing today, at your -- you can tell us
24 that and we will continue.
25 MS. MILLER: I would prefer to continue.

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1 PRESIDENT CARTER: You'd prefer to continue the
2 hearing today or wait and revisit it in a month?
3 MS. MILLER: Wait in another month, yes.
4 PRESIDENT CARTER: Okay.
5 MS. MILLER: I would rather do -- I'd rather wait
6 for another month, so I can see what my options are.
7 PRESIDENT CARTER: Okay. That's fine. That will
8 give the surveyor a chance to review the documents that
9 Ms. Miller provided. And we would appreciate any evidence
10 that you supply today or any additional evidence you'd
11 like to supply, please supply that to the staff, so that
12 all parties are aware of it, ahead of the hearing.
13 MS. MILLER: Okay. I can do -- can I do that
14 over the Internet, like --
15 PRESIDENT CARTER: Absolutely. Absolutely.
16 MS. MILLER: Okay. That will be fine.
17 PRESIDENT CARTER: Okay. So ladies and
18 gentlemen, we have a motion and a second before us. The
19 motion is to continue this hearing.
20 Any discussion?
21 BOARD MEMBER SUAREZ: I'd like a quick
22 discussion.
23 PRESIDENT CARTER: Okay.
24 BOARD MEMBER SUAREZ: It seems to me that, as a
25 matter of fairness, the way we treat Ms. Miller needs to

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1 be the way we treat everybody else. So I'd like to have
2 some discussion then what do we do with the action we did
3 earlier today, and the action -- the remainder of the
4 actions before us?

5 PRESIDENT CARTER: So our options are to vacate
6 the decision that we made earlier, with respect to Items
7 8A and 8B, and then rehear those at the same time we
8 rehear the Items 8C and 8D at a future date, should the
9 Board choose to continue, or we can let those stand. Are
10 there any other options that you're aware of?

11 BOARD MEMBER VILLINES: Mr. President, is it an
12 option to -- the ones that were done today to simply move
13 to a consent agenda item for next month? Could that be
14 done? Not in the case of Mrs. Miller who wants to have a
15 hearing. But for the other actions that we took, we would
16 move it and just put it onto the Consent Agenda, so that
17 we're not actually having the hearings, because we've
18 heard them. I mean -- and then, of course, during that
19 month if the decisions we've made, if somebody opposes
20 them, they can be pulled.

21 So at least we're not setting up a series of
22 hearings, that I think that maybe nobody wants to have,
23 because I do believe we actually got to a win-win on this
24 through the process, but --

25 PRESIDENT CARTER: That's a legal question. It

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1 depends on -- well, Ms. Smith, could you weigh in on that,
2 please.

3 LEGAL COUNSEL SMITH: I question the idea of
4 putting an enforcement hearing on consent. I don't think
5 that would be wise. However, at least the first decision
6 the Board made, the notice issue was not raised and
7 therefore it was waived. So that decision can stand,
8 unless the Board wants to reopen it. I have a concern
9 about the second item, because Mr. King was not present.

10 BOARD MEMBER VILLINES: Correct, but even on the
11 first one, did they waive it?

12 BOARD MEMBER SUAREZ: She didn't --

13 BOARD MEMBER VILLINES: I mean, we don't know
14 that they waived it.

15 BOARD MEMBER SUAREZ: I raised the issue here.

16 BOARD MEMBER VILLINES: Yeah.

17 BOARD MEMBER SUAREZ: Not Ms. Miller.

18 BOARD MEMBER VILLINES: So they could bring it
19 back up and say well, we weren't informed either.
20 That's -- it wasn't waived. Nobody waived it, and nobody
21 received the packet in the timeline that you stipulated.

22 PRESIDENT CARTER: Our counsel is just saying
23 that potentially we could let the first one stand. That's
24 at the discretion of the Board.

25 Any other comments, questions?

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1 VICE-PRESIDENT RIE: President Carter, I would
2 recommend that we let the two items 8A and 8B stand, but
3 leave open the possibility that someone could come back
4 and ask for reconsideration. And if, at that time,
5 someone did ask for reconsideration, we could rehear
6 either one of those items next month.

7 PRESIDENT CARTER: Okay.

8 VICE-PRESIDENT RIE: But I don't think that
9 knowing that we don't have proper notice, I don't see how
10 we can proceed with the remainder of the items.

11 PRESIDENT CARTER: Okay. Other comments?

12 BOARD MEMBER VILLINES: Just to clarify, because
13 I like the solution you came up with, I just want to make
14 sure I understand it, so I can vote appropriately. What
15 you're saying is, is that we would notice the folks that
16 we've already voted on saying -- I mean, somehow we have
17 to inform, so if they do want to have it pulled, they
18 could, not that they will. I think they'll agree, but
19 that way at least we've noticed them. And then we're
20 not -- because what I don't want to do personally is vote
21 to just say yes to what we've done today and then not this
22 one. I do want to make sure that we, like you, articulate
23 it are going to say well those will stand. The ones that
24 we can say stand, but we need to notify them that somehow
25 that the packet didn't come in time and is that a problem

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1 for them.

2 BOARD MEMBER DOLAN: Mr. Chairman.

3 PRESIDENT CARTER: Ms. Dolan.

4 BOARD MEMBER DOLAN: I think there's another
5 distinction with this one, if I might. I'm kind of
6 reluctant at my first meeting to be accused of having done
7 something unfair in the last half hour.

8 Mrs. Miller has brought forward a document that
9 appears to be new to us and to the surveyor. It also
10 appears to be remarkably similar to documents that are
11 attached to ours, except that it doesn't have exactly the
12 same names. It has the same year, same descriptions, I
13 think. And the surveyor said "looks like it", "likely",
14 "might be". Those are a little more vague than what he
15 said before of some more -- some more certainty, so she
16 brought them forward.

17 The other distinction is for a variety of
18 reasons, Mrs. Miller has not been involved. And everyone
19 else said I was at this meeting and I did this, I went
20 there, I got talked to. Maybe, it's her own personal
21 circumstance. I think -- from my perspective, I think all
22 of the things that I've seen, read, the transcriptions,
23 the efforts, the staff reports, the analysis show we
24 probably are going to make the similar decision. And I'll
25 tell you that, unless you come up with something that's

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1 like a Ah-ha.
2 But just in the abundance of fairness, because
3 she has not been involved as the others are, let's just
4 have a chance for the surveyor to read this one new
5 indenture that probably got resubdivided and changed with
6 future ones, but just give him that chance. And I think
7 that's a distinction of the previous two hearings.
8 PRESIDENT CARTER: So --
9 BOARD MEMBER DOLAN: So I agree with Ms. Rie, let
10 those stand and continue this one.
11 PRESIDENT CARTER: Let those stand and continue
12 this one.
13 VICE-PRESIDENT RIE: Okay. Let me withdraw that
14 motion and make a new motion. I move that we continue
15 Mrs. Miller's hearing, and in consideration of hearing 8A
16 and 8B, we let those stand, but as Mr. Villines
17 recommended, we should provide notice to those 48
18 respondents and Mr. King that we have made a decision.
19 However, if they would like us to reconsider those
20 decisions, we could certainly do that. And I think that
21 was it.
22 BOARD MEMBER DOLAN: Rehear.
23 VICE-PRESIDENT RIE: Pardon me?
24 BOARD MEMBER DOLAN: I would second that, if
25 you'd say rehear rather than reconsider.

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1 VICE-PRESIDENT RIE: Rehear.
2 PRESIDENT CARTER: The enforcement process calls
3 for a -- actually, it's a reconsideration process, as it's
4 stated in the regs, and so I --
5 VICE-PRESIDENT RIE: Reconsider.
6 PRESIDENT CARTER: -- think reconsideration is
7 the -- or reconsider is the appropriate word.
8 BOARD MEMBER DOLAN: All right.
9 VICE-PRESIDENT RIE: Reconsider.
10 BOARD MEMBER DOLAN: Okay. Thank you.
11 PRESIDENT CARTER: All right. So Ms. Rie has
12 withdrawn her original motion and put forward another
13 motion. Is there a second for that one?
14 BOARD MEMBER DOLAN: Yes.
15 PRESIDENT CARTER: Ms. Dolan seconds. Okay.
16 Discussion.
17 BOARD MEMBER SUAREZ: Yeah, and then what do we
18 do with LaGrand, same defect, same problem? Are we
19 continuing that one, is that part of your motion also, Ms.
20 Rie.
21 PRESIDENT CARTER: That would be a postponement,
22 not a continuation, I guess.
23 BOARD MEMBER SUAREZ: So we'll deal with it that
24 way.
25 VICE-PRESIDENT RIE: And if I could add that we

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1 postpone --
2 PRESIDENT CARTER: Actually, it's continued from
3 December 2nd, so it would be continued again, you're
4 right. I'm sorry.
5 VICE-PRESIDENT RIE: That we further continue
6 Item 8C, Carol Miller, as well.
7 BOARD MEMBER SUAREZ: And LaGrand.
8 PRESIDENT CARTER: Carol Miller and Susan
9 LaGrand.
10 VICE-PRESIDENT RIE: I'm sorry. Continue the
11 enforcement hearing for Susan LaGrand as well.
12 PRESIDENT CARTER: Okay. So that's the motion.
13 Is there -- and do you agree with that modification, Ms.
14 Dolan?
15 BOARD MEMBER DOLAN: Yes.
16 PRESIDENT CARTER: Okay. Just as a point of
17 reference, Ms. LaGrand, do you -- does postponing the
18 hearing or continuing your hearing present a hardship for
19 you, postponing it for another month?
20 MS. LaGRAND: It shouldn't no.
21 PRESIDENT CARTER: Just for the record, Ms.
22 LaGrand said it shouldn't -- "it shouldn't, no".
23 MS. LaGRAND: It should not.
24 PRESIDENT CARTER: Okay. Very good. Any other
25 question, discussion?

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1 Mr. Hodgkins.
2 SECRETARY HODGKINS: Item 8A, while it's not
3 listed as an enforcement item, it is in Resolution 41
4 Notices of Violation, is it okay?
5 LEGAL COUNSEL SMITH: I believe it's defensible,
6 because the issue was not raised during the hearing, and
7 that's a requirement. You need to exhaust your arguments
8 before the Board, and that was not done.
9 SECRETARY HODGKINS: Okay.
10 PRESIDENT CARTER: Okay. Any other questions,
11 discussion from the Board?
12 Sir, would you like to address the Board?
13 MR. HECKER: Sure.
14 PRESIDENT CARTER: Please approach.
15 MR. HECKER: And I have another person here who
16 couldn't make it this morning because of his age and that
17 and his health, Mr. Arnold Craft.
18 PRESIDENT CARTER: Can you identify?
19 MR. HECKER: My name is Monty Hecker, and I was
20 here this morning. And, no, it didn't come up. You know
21 why it didn't come up? Because we didn't know it was an
22 issue. I think it all should be set for another month,
23 only because it's the right thing to do. And if this
24 paperwork turns out, we can address it at the same time.
25 That's all I have.

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1 PRESIDENT CARTER: Thank you. Is there anyone
2 else from the public that wishes to address the Board?
3 Okay. Ladies and gentlemen, we have a motion
4 before us. The motion is to continue the enforcement
5 hearing for Carol Miller and Susan LaGrand, and for
6 clarification let the Board's decision on Item 8A, 48
7 Notices of Violation, and 8B, the resolution enforcement
8 for Mr. Michael King to stand with staff notifying them
9 that they have an opportunity to -- for reconsideration of
10 the Board's decision.
11 Did I miss anything?
12 VICE-PRESIDENT RIE: No. But, Ms. Smith, since
13 we now know that we have a request for a reconsideration,
14 would you recommend that we change our motion?
15 PRESIDENT CARTER: Well -- okay.
16 LEGAL COUNSEL SMITH: You know, actually there is
17 something that I'm having a bit of a second thought on
18 this, in that I don't know if a court would find that a
19 waiver is proper when notice wasn't properly given in the
20 first place.
21 BOARD MEMBER VILLINES: Right.
22 PRESIDENT CARTER: So, Ms. Rie, would you like to
23 amend your motion?
24 VICE-PRESIDENT RIE: Yes. I'm going to withdraw
25 the last motion, and I move to vacate Enforcement Hearing

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1 8A, the 48 Notices of Violation, 8B, the Enforcement Order
2 for Michael King, postpone and continue the enforcement
3 hearing for Carol Miller, postpone and continue the
4 enforcement hearing for Susan LaGrand.
5 PRESIDENT CARTER: Okay. Is there a second for
6 that motion?
7 BOARD MEMBER VILLINES: Second.
8 PRESIDENT CARTER: We have a second from Mr.
9 Villines.
10 All right, any other discussion?
11 BOARD MEMBER SUAREZ: Mr. President, if we could
12 clarify that all the respondents understand that our next
13 meeting will be in Sacramento, so we will not -- it would
14 be likely that we'd be here in Marysville for those
15 hearings, and the issue of hardship that -- you understand
16 the next time we meet we'll be in Sacramento, not here.
17 PRESIDENT CARTER: That's not fixed in stone, but
18 that's a distinct and very real possibility.
19 Any other questions, comments from the Board?
20 Staff, do you have any comments?
21 Staff does not.
22 Mr. Punia.
23 EXECUTIVE OFFICER PUNIA: I just want to
24 apologize that I think we -- due to this not properly
25 noticing, we wasted a lot of public and the Board's time,

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1 so we'll make sure it doesn't happen again.
2 PRESIDENT CARTER: Okay. Any comments from the
3 public on the Board's proposed decision?
4 MS. LaGRAND: It's not on your decision. It's on
5 something else.
6 PRESIDENT CARTER: Is it -- does it relate to
7 this?
8 MS. LaGRAND: It relates to this.
9 PRESIDENT CARTER: Thank you.
10 MS. LaGRAND: Hi. I'm Susan LaGrand. I'd like
11 to thank you for coming here, first off. What my comment
12 was about when you first approved the 48, the proposal,
13 this gentleman right here held a paper up, turned around
14 to the man in the herringbone jacket, fist pumped, mouthed
15 Woohoo, then a few seconds put the paper up again and
16 mouthed Woohoo again.
17 Now, I might have done that if the 49ers had won
18 Sunday, but I found that behavior immature,
19 unprofessional, and just rude. And I think he demands --
20 or I think we should all get an apology from him.
21 Thank you.
22 SUPERVISING ENGINEER TARAS: Ms. LaGrand, I -- if
23 there was any -- I -- if there was any other witnesses to
24 a fist pump, I apologize for any misconstruing that I
25 looked back at the Section Chief and -- I did not, but I

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1 did look back at this other Section Chief.
2 MS. LaGRAND: Yes, you did, sir.
3 SUPERVISING ENGINEER TARAS: Okay. I apologize
4 for anything that might have been done or said.
5 Thank you.
6 PRESIDENT CARTER: Okay. We have a motion and a
7 second before us.
8 Mr. Punia, would you call the roll.
9 EXECUTIVE OFFICER PUNIA: Board Member Mike
10 Villines?
11 BOARD MEMBER VILLINES: Aye.
12 EXECUTIVE OFFICER PUNIA: Board Member Emma
13 Suarez?
14 BOARD MEMBER SUAREZ: Aye.
15 EXECUTIVE OFFICER PUNIA: Board Member Butch
16 Hodgkins?
17 SECRETARY HODGKINS: Aye.
18 EXECUTIVE OFFICER PUNIA: Board Member Jane
19 Dolan?
20 BOARD MEMBER DOLAN: Aye.
21 EXECUTIVE OFFICER PUNIA: Board Member John
22 Brown?
23 BOARD MEMBER BROWN: Aye.
24 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
25 Board Member Teri Rie?

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VICE-PRESIDENT RIE: Aye.

EXECUTIVE OFFICER PUNIA: Board President Ben Carter?

PRESIDENT CARTER: Aye.

Motion carries unanimously. I think that this should stand as a reminder that the Board wants to follow its regulations, and it is appropriate to follow its regulations accordingly, and we take those things very seriously. So that's a message for both our staff as well as the public. And, Mr. Punia, we accept your apology, but we expect better from the staff in the future.

All right. So Mrs. Hofman, you said that you wanted to address Item 8E, we're going to be doing that right now. So I will give you that opportunity.

Let's take a 10-minute recess, and we will then reconvene on Item 8E, the Permit Number 18690.

Thank you.

(Thereupon a recess was taken.)

PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats, we'll go ahead and continue with our meeting.

We are on to Item 8E. This is Permit number 18690 Three Rivers Levee Improvement Agency. Consider approval of Resolution 11-31, granting authorization of protested Permit number 18690 to install a chain link

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fence, K-rails as agendized.

Ladies and gentlemen of the Board, I would suggest that since we have continued the hearings that preceded this, Items 8A, B, C, and D -- actually vacated A and B -- that we postpone this to the date at which we hear the hearings that we had before us. So that would be my proposal.

BOARD MEMBER SUAREZ: Mr. President, I would support that.

PRESIDENT CARTER: Okay. Does the applicant have any objections to postponing this particular item?

MR. BRUNNER: The applicant does not.

PRESIDENT CARTER: So for the record, the applicant does not have any objections to postponing this particular item.

Mrs. Hofman, did leave me a card. She has --

SUPERVISING ENGINEER BUTLER: She's left for the day.

PRESIDENT CARTER: She left. Okay. She did want to speak on this. Ladies and gentlemen, if there are no objections, then we will go ahead and postpone this item to a future date. Are there no objections from the Board?

All right. We will move on then.

Also, let the record reflect that Ms. Rie had to leave early for a personal matter, so she's no longer with

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us here.

(Thereupon the hearings on Items 8A, B, C, D, and E concluded.)

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CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of February, 2012.

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

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CENTRAL VALLEY FLOOD PROTECTION BOARD

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



February 6, 2012

Subject: Feather River Levee Fence Enforcement Hearings – January 26, 2012 Board Decision

To whom it may concern:

You are identified as an adjacent landowner to State-owned property where private encroachments exist along the landside of Feather River East Levee in West Linda, California (Yuba County). On January 26, 2012, the State of California, Central Valley Flood Protection Board ("Board") voted 7-0 to approve the Staff recommendation for Agenda Items 8A and 8B. However, these two decisions were later vacated to provide a 10-day staff report notification requirement. In addition, Agenda Items 8C, 8D and 8E were continued for a future meeting. All five of these items will be heard by the Board on Friday, March 2, 2012. The meeting will be held at: Yuba County Government Center, Board Chambers, 915 Eight Street, Marysville, California 95901. Additional details for this meeting will be available when the agenda is finalized and posted on our website at www.cvfpb.ca.gov.

If you have any documents you would like to have included in the Board packet, please submit them to our office no later than Friday, February 10, 2012. If you wish to address the Board concerning this matter please plan to attend the Board meeting on Friday, March 2, 2012.

If you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,

Jay S. Punia
 Executive Officer

cc: Mr. Paul Brunner, Executive Director
 Three Rivers Levee Improvement Authority

Mr. Steve Fordice, General Manager
 Reclamation District 784

Ms. Robin Brewer, Office of the Chief Counsel
 Mr. Ward Tabor, Office of the Chief Counsel
 (Department of Water Resources)

Debbie Smith
 Attorney General's Office

CENTRAL VALLEY FLOOD PROTECTION BOARD

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February 14, 2012

Subject: Continued hearings from December 2, 2011 for unauthorized encroachments on State land adjacent to Feather River East Levee in West Linda CA (Agenda Items 4A through 4E)

To whom it may concern:

This letter is to notify you of a public hearing to consider a proposed resolution for the removal of existing unauthorized encroachments located within State land and the proposed fence relocation along the landside of the Feather River levee and Yuba River levee in West Linda California.

Hearing Date: Friday March 2, 2012, First Hearing (4A) starting at 9:10 AM.

Hearing Location: Yuba County Government Center
Board Chambers
915 Eighth Street
Marysville, CA 95901

Attached is a copy of the Agenda for the meeting with additional details. During the hearing the public will be provided an opportunity to speak for or against the proposed action. Attendance at the hearing is optional. A staff report and supporting documents for the proposed action will be available at www.cvfpb.ca.gov at least 10 days prior to the Board meeting. To request a hard copy of the supporting documents, please contact our office.

If you have any questions or need assistance, please contact Staff Engineer Angeles Caliso at (916) 574-2386 or via E-mail at acaliso@water.ca.gov.

Sincerely,

Jay S. Punia
Executive Officer

CENTRAL VALLEY FLOOD PROTECTION BOARD

California Natural Resources Agency – State of California

3310 El Camino Avenue, Room 151

Sacramento, California 95821

Phone (916) 574-0609 – Fax (916) 574-0682

<http://www.cvfpb.ca.gov>

BOARD MEMBERS

Ben Carter, President
Teri Rie, Vice-President
Emma Suarez, Member
Mike Villines, Member
Jane Dolan, Member
Bill Edgar, Member
Tim Ramirez, Member
Jared Huffman, Ex Officio Member
Fran Pavley, Ex Officio Member

BOARD STAFF

Jay Punia, Executive Officer
Len Marino, Chief Engineer
Eric Butler, Supervising Engineer
Curt Taras, Supervising Engineer
Lorraine Pendlebury, Staff Analyst
Amber Woertink, Staff Assistant

BOARD COUNSEL

Deborah Smith, Legal Counsel

AGENDA

CENTRAL VALLEY FLOOD PROTECTION BOARD MEETING

Friday, March 2, 2012 – 9:00 AM

Yuba County Government Center, Board Chambers

915 Eighth Street, Marysville, CA 95901

NOTE: THE BOARD WILL CONSIDER TIMED ITEMS AS CLOSE AS POSSIBLE TO THE LISTED TIME, BUT NOT BEFORE THE TIME SPECIFIED. UNTIMED ITEMS MAY BE HEARD IN ANY ORDER.

- 1. ROLL CALL**
- 2.* APPROVAL OF AGENDA**
- 3. PUBLIC COMMENTS** (non-agendized items only)
- 4.* HEARINGS AND DECISIONS**

- A. Proposed resolution for 48 notices of violation issued for the removal of unauthorized encroachments and fences on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from December 2, 2011. (Angeles Caliso)
- 9:10 AM

Consider approval of Resolution No. 2012-03 to:

1. Authorize removal of private fences and miscellaneous obstructions on State land.
2. Grant revocable licenses to adjacent private parcel owners for the use and maintenance of a portion of State land adjoining the Feather River East levee.

***action item**

Anyone may upon request obtain a copy of background or other material on an agenda item that has been distributed to the Members of the Board. A fee covering the cost of the provision of such materials may be charged. If you need reasonable accommodations due to a disability, or need language assistance, please contact the Equal Opportunity Management Investigations Office at (916) 653-6952, or TDD (916) 653-6934 at least a week prior to the meeting.

3. Rescind the notices of violation subject to voluntary compliance with this resolution.

B. Proposed resolution for Michael King (Enforcement No. 2011-268) continued from December 2, 2011. (Angeles Caliso) – **9:40 AM**

Enforcement hearing as requested by Board concerning a notice of violation ordering the removal of a private fence and portion of permanent structure located on State land adjacent to the Feather River East levee in West Linda, CA (Yuba County).

Consider approval of Resolution No. 2012-06 to:

1. Authorize removal of a private fence on State land.
2. Grant a revocable license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Authorize a structure on parcel 020-201-021, owned by Michael King, to remain on State land subject to permitting.
4. Rescind the notice of violation (2011-268) subject to voluntary compliance with this resolution.

C. Enforcement Hearing for Carol Miller (Enforcement No. 2011-272) continued from December 2, 2011. (Angeles Caliso) – **10:20 AM**

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

Consider approval of Resolution No. 2012-05 to:

1. Authorize removal of a private fence on State land.
2. Grant a revocable license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Rescind the notice of violation (2011-272) subject to voluntary compliance with this resolution.

D. Enforcement Hearing for Susan Lagrand (Enforcement No. 2011-287) continued from December 2, 2011. (Angeles Caliso) – **11:00 AM**

Enforcement hearing as requested by respondent concerning a notice of violation ordering the removal of a private fence and portion of permanent structure located on State land adjacent to the Feather River East levee in West Linda, CA (Yuba County).

Consider approval of Resolution No. 2012-04 to:

1. Authorize removal of a private fence on State land.

2. Grant a revocable license to Susan Lagrand for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Authorize a structure on parcel 020-201-001, owned by Susan Lagrand, to remain on State land subject to permitting.
4. Rescind the notice of violation (2011-287) subject to voluntary compliance with this resolution.

LUNCH BREAK

E. Permit No. 18690 Three Rivers Levee Improvement Agency (Alison Tang) – **1:00 PM**

Consider approval of Resolution No. 2011-31 granting authorization of protested Permit No. 18690 to install chain link fencing, K-rails, and a maintenance road on State of California property, adjacent to the Feather River east levee and Yuba River south levee in West Linda, CA. (Yuba County)

6. INFORMATIONAL BRIEFINGS

- A. Introduction of the maintenance and use agreements for the RD 784 levee access corridor and an easement policy to avoid landlocked properties (Paul Brunner, TRLIA)

7. BOARD COMMENTS AND TASK LEADER REPORTS

8. FUTURE AGENDA

9. ADJOURN

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



Sent via Overnight Mail

February 17, 2012

Mr. Michael King
960 Meadow Oakes Drive
Auburn, California 95602

Subject: March 2, 2012 Agenda Item 4B Staff Report
Property Owner: Mr. Michael King (APN: 020-121-021)
Property Address: 5722 Riverside Dr. A, Olivehurst, California 95961

Dear Mr. King:

Attached is a copy of the Staff Report for the enforcement hearing scheduled to be heard by our Board on Friday March 2, 2012 at 9:40 AM. For future reference, these documents are also publicly available on our website at www.cvfpb.ca.gov.

Should you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386, or by e-mail at acaliso@water.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jay S. Punia".

Jay S. Punia
Executive Officer

Attachments: As referenced above

Project Memo

To: Angeles Caliso
Water Resources Engineer
Central Valley Flood Protection Board
Encroachment Control & Land Use Section

From: Kevin A. Heeney

Date: February 14, 2012

Re: Surveying issues raised by Miller and Hecker

In response to the claims and questions raised by the Miller's and the Hecker's, I provide the following information and responses:

Book 56 of Deeds, Page 273 – the document Carol Miller brought forward at the hearing on January 26, 2012, claiming it describes an 80' strip measured from the East side of the Feather River and extends all the way to the Bear River.

- We in fact had reviewed that document and had a copy in our files. It describes two parcels or strips of land that are North of the encroachment area and several strips of land which begin at Island Avenue and extend Southeasterly to Highway 70 and beyond. It does not describe any strip of land adjacent to the encroachment areas. Please see the attached Exhibit 'A' which shows some of these parcels. The parcels not shown on Exhibit 'A' are located further to the South.
- Ms. Miller is incorrect regarding calls to the East side of the Feather River being used to locate the railroad parcels/strips. Those calls are used to describe the larger parcels from which the railroad parcels/strips are a portion thereof. Those calls are not used to specifically locate the alignment of the railroad parcels/strips. Please refer to Exhibit 'B' which is a copy of this deed. I have underlined in green, only those portions describing the railroad parcels/strips.

The claim that the area between the existing fence and the subdivision boundary does not belong to the State, as though there may be some gap between the State property (formerly the railroad) and the subdivision lots.

- The railroad was originally deeded the property in 1909. In 1921, Yuba Gardens Corporation filed a subdivision map entitled "Yuba Gardens", which was recorded in Yuba County in Book 3 of Maps at Page 2. On that subdivision plat, the various tracts of land are shown and described (and certified by the engineer who prepared the map, Jason R. Meek) as being "bounded by existing County and State Highways, Railroads, the Yuba River and levees adjacent thereto". Please refer to Exhibit 'C' which identifies that statement and shows "Tract 8" as being enclosed within the boundaries of a County Road, the Western Pacific Railroad, the Sacramento Northern Railroad and a levee.

- Tract 8 is further subdivided in 1939 by a subdivision plat entitled “Subdivision of Tract Number 8 of Yuba Gardens” which was recorded in Yuba County in Book 3 of Maps at Page 45. This plat also shows the subdivision bounded by the Western Pacific Railroad, the Sacramento Northern Railroad, Feather River Boulevard and Island Avenue.
- That portion of the deed to the State, recorded in Book 267, Page 509 which is adjacent to the encroachment area is attached hereto as Exhibit ‘D’. It cites a centerline curve radius of 5,729.6 feet. Taking into account the strip of land described extends 60 feet to the inside of that curve, would give that Easterly boundary a radius of 5,669.6 feet. That is identical to the data shown on the 1939 subdivision. Please refer to Exhibit ‘E’ attached hereto.

A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit ‘E’ shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.
- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46’46”E. Above that bearing we show [S17°15’00”E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.
- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.
- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15’00”E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence.

Hecker’s question as to “why are you surveying the property surrounding the property in question and not that specific property?”

- We did make an effort to survey the boundary of the State property, making an extensive search of record data and evidence in the field. Finding no evidence in the form of right of way monuments or

property corner monuments in the field, we then began to search for the “Best available” evidence. That proved to be, in my professional opinion, the adjacent subdivision. I believe we have shown with the information provided above and our attached exhibits that the intent of the original subdivider in 1921 was to create various tracks of land abutting the railroads and highways. Our evidence also shows that certain record information (the curve radius and centerline offsets) between the deeds and the maps, do in fact correspond with one another.

- It has been argued several times that because the deed to the State refers to the railroad centerline, that we must somehow prove the location of the tracks. I do not believe that to be the case. The centerline referred to in the deed is the line staked out and located in the field sometime back before 1909 and would have been the basis for subsequent railway design thereafter. This may or may not refer to the actual centerline of the railroad tracks. There is evidence that at one time there were two tracks within this area, yet with no reference to their location relative to the described centerline.

The exhibit prepared by Hecker showing my June 2011 survey vs. my Recorded Survey of January, 2012, attached hereto as Exhibit ‘F’

- The June 2011 copy was a draft copy of our Record of Survey, prepared to give the DWR Cadastral staff some of the information we had found in our research and field investigations. At that point it was not in final form for submittal to the County as a Record of Survey. Our final Record of Survey was not submitted until August 30, 2011. With that review, the County Surveyors’ office supplied us with review comments, requests for additional information and minor drafting revisions. The differences shown in the Hecker exhibit reflect:
 - We added the offset distances (60’ and 90’) on either side of the described centerline of the State property.
 - We added an overall bearing and distance on the common boundary line.
 - A vicinity map and other required information was added prior to recording.

The newly found monument photographed by the Hecker’s attached hereto as Exhibit ‘G’

- This monument does not appear, in my professional opinion, to be a record monument relating to any property boundary or corner. I believe it to be a reference or control monument, established some time ago by the Corps of Engineers or one of their contractors. The markings “USA” lead me to believe this to be a federal agency monument. The markings 1+00 would indicate to me a stationing reference to some line, either a control line or centerline of levee. The marking 67’ may reference an offset distance. The markings ‘C’ and ‘2’ are likely some designation number. The monument does not have the markings of any licensed land surveyor or civil engineer, which would be the standard practice and requirement of a property corner marker or reference point.
- While we did not locate this specific monument, I have been told it is near the South end of the encroachment area. We did find another similar monument some 4600 feet North marked the same, but with station markings of 47+00. Again, it is my opinion that these are reference monuments to the levee centerline or some control line previously established.

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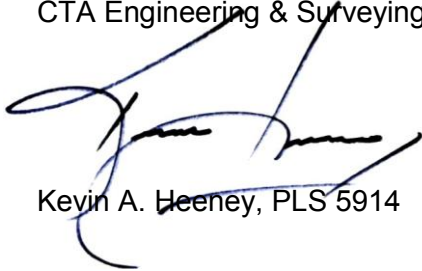


3233 Monier Circle
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Email: kheenev@ctaes.net

In closing, I would like to reiterate the point I tried to make at the January 26, 2012 hearing. My survey is consistent with the 1921 Yuba Gardens Subdivision, the 1939 Subdivision of Tract Number 8, the railroad maps and the Grant Deed. It is also consistent with at least 5 other maps of record, independently prepared by other surveyors or engineers. For our survey to be incorrect, as is alleged, then all those surveys would be as well. I have seen no evidence presented thus far to lead me to believe those surveys are wrong.

Respectfully submitted,

CTA Engineering & Surveying



Kevin A. Heeney, PLS 5914



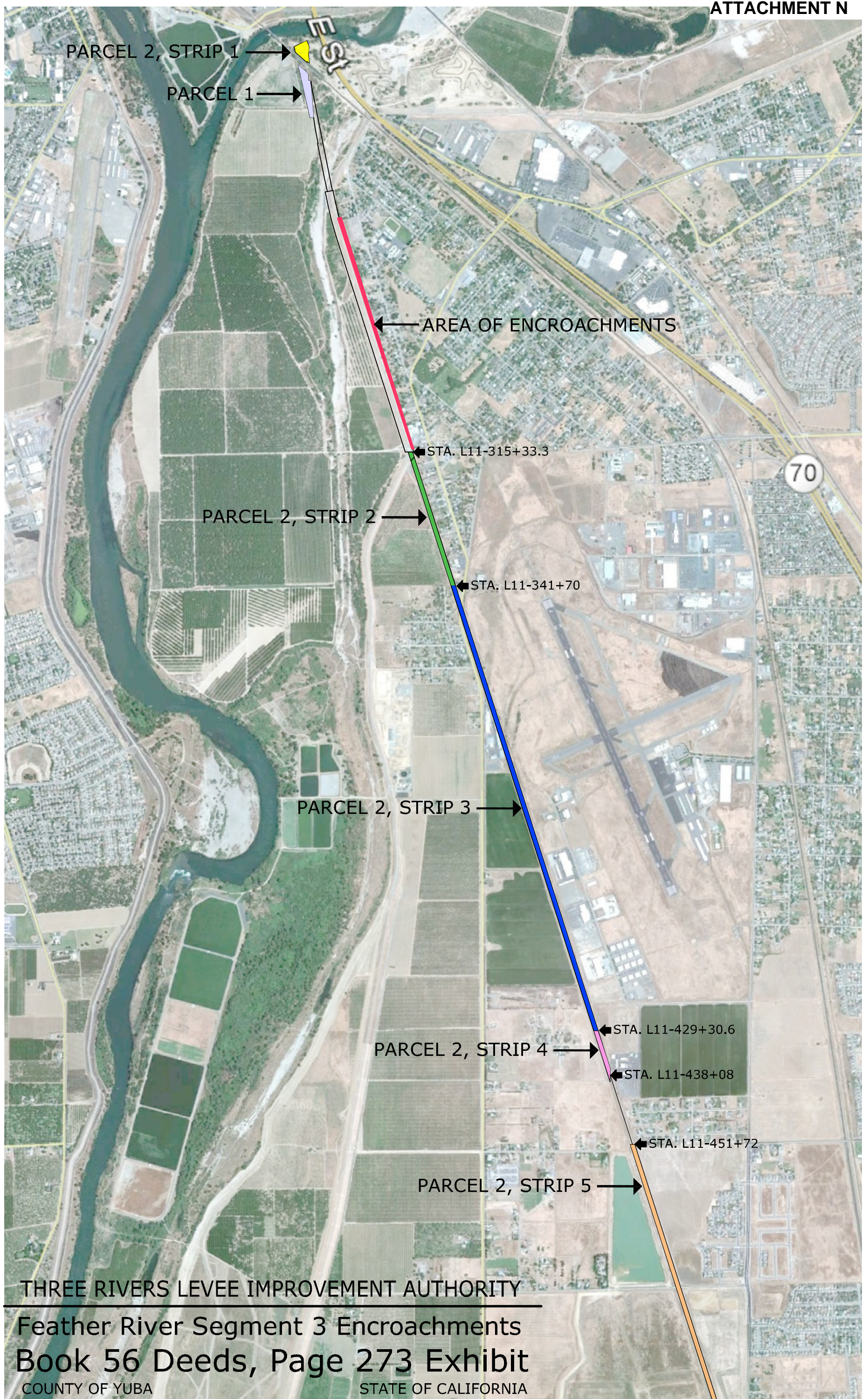


EXHIBIT 'B'

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AGENDA ITEM 4B
ATTACHMENT N



Decker Jewett & Co Bank .By A.C.Bingham Cash.

STATE OF CALIFORNIA)
) SS
COUNTY OF YUBA)

On this 19th day of September in the year one thousand nine hundred and seven, before me, C.F.Aaron a Notary Public in and for the said County of Yuba, State of California, personally appeared A.C.Bingham, known to me to be the Cashier of the corporation described in and that executed the within instrument and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal at my office in the said County of Yuba, in this certificate first above written. C.F.Aaron (SEAL) Notary Public in and for the County of Yuba, State of California. Recorded at the Request of Geo. E. Springer September 21st A.D. 1907, at 19 min.past 10 o'clock A.M.

S. A. Bingham RECORDER.

Decker Jewett & Co Bank THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord one thousand nine hundred nine hundred and seven between DECKER, JEWETT AND CO. BANK, a corporation, organized under the laws of the State of California, and having its principal place of business in the City of Marysville, County of Yuba, State of California, the party of the first part herein, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of California, the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin to it in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, the following described strips or tracts of land situate in the County of Yuba, State of California, namely:

1st STRIP OR TRACT:

PARCEL NO 1. A strip or tract of land as hereinafter described being situate on each side of the located center line of the Northern Electric Company's line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast

1373

corner of Lot Six (6) of the One Thousand Three hundred Seventy-three acre tract of the New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East forty (40) feet to a point on the center line of said road; thence North 4° 30' West along said center line of abandoned road six hundred ninety-six (696) feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West forty (40) feet along said line to a point on the West line of the abandoned Sacramento Road; thence North 4° 30' West one hundred thirty-two (132) feet along westerly line of said road, being also the division line between lands owned by the City of Marysville and lands now or formerly owned by the Western Pacific Railway, to a point on the southerly right of way line of Western Pacific Railway; thence North 48° 52' West along said southerly right of way ^{line} of the Western Pacific Railway two hundred forty-five and five tenths (245.5) feet to a point on the easterly line of right of Way of Northern Electric Company; thence South 12° 29' East one thousand and eight (1008) feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the lands of the City of Marysville and lands now or formerly owned by George Van Buskirk; thence east along said division line twenty seven (27) feet to point of beginning. Containing two and fifty-five hundredths (2.55) acres, more or less.

PARCEL NO. 2. A strip or tract of land as hereinafter described, being situate on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast corner of Lot six (6) of the One Thousand Three Hundred Seventy-three (1373) acre tract of New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road, as same is established by the County Surveyor of Yuba County, running thence North 4° 30' West, one thousand and sixty (1060) feet, more or less, along said West line of abandoned road, to a point on the northerly line of the right of way of the Western Pacific Railway, being above mentioned point of beginning; thence South 48° 52' East, fifty-seven (57) feet along said northerly line of right of way of Western Pacific Railway to a point in the center line of the abandoned Sacramento Road; thence North 4° 30' West one hundred eighty (180) feet to an angle point in the center line of abandoned Sacramento Road; thence North 5° 00' East, seventy-eight (78) feet along said center line of abandoned road to a point ninety (90) feet at right angle easterly from Engineer Station L15-236+90.37 of the Northern Electric Company's survey;

thence on a curve to the left of one thousand five hundred twenty-two and sixty-nine hundredths (1522.69) feet radius, sixty (6)) feet to a point ninety (90) feet easterly at right angles from Engineer Station L15-236+30.27 B.C. of the Northern Electric Company's survey; thence North 24° 16' West on a line ninety (90) feet easterly from and parallel to the Northern Electric Company's survey, a distance of one hundred twenty (120) feet, more or less, to a point ninety (90) feet easterly at right angles from Engineer Station L15-235+10, being a point on the South bank of the Yuba River; thence South 65° 30' West, two hundred thirty-four (234) feet, more or less, along said South bank of Yuba River to a point on the East line of the Northern Electric Company's right of way; thence South 12° 29' East, one hundred fourteen (114) feet along said East right of way line of Northern Electric Company to a point on the Northerly line of the right of way of the Western Pacific Railway; thence South 48° 52' East along said Northerly right of way line of the Western Pacific Railway two hundred ninety-nine (299) feet, more or less, to a point on the West line of the abandoned Sacramento Road, as same is established by County Surveyor of Yuba County; thence North 4° 30' West along said West line of road twenty (20) feet to point of beginning. Containing one and sixty-one hundredths (1.61) acres more or less.

2nd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: A parcel of land as per deed of Mrs. Alicia Dufficy, widow, to Mrs. Jane Tomb, recorded in Deed Book 35, at page 62, records of Yuba County, California. " Also that other tract of land in said Yuba County, described as beginning at a post on the East bank of Feather River, marked C.O. designating the Southwest corner of Lot No. Nine (9), as said corner is described on a map entitled Partition of One thousand three hundred seventy-three (1373) acres of land situated South of Marysville, in said Yuba County, into nine (9) subdivisions, for J.M. Ramirez, et al. which map is recorded in Deed Book 12, at page 569; and running thence due East, following the South line of said tract of land so described on said map of partition, one hundred and twenty (120) chains to a post marked C.O., being the Southeast corner of Lot No. One (1) as marked and described on said map of partition; thence running at right angles due South, thirty-seven and seventy-three hundredths (37.73) chains; thence at right angles due West in a straight line to the East bank of said Feather River; thence up and following the meanderings of said Feather River to the place of beginning." The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the

boundary line between the property of Mrs. Jane Tomb, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owned by J.G. Cohn Estate; said point being one thousand three hundred twenty-one and nine tenths (1321.9) feet, more or less, westerly along said boundary line from the westerly line of the Northerly and Southerly County Road and being at Engineer Station L11-315+33.3 of the located center line of the Northern Electric Company's Survey; thence South 17° 31' East two thousand and six hundred and thirty-six and seven tenths (2636.7) feet, more or less to Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey, said point being on the boundary line between the property of Mrs. Jane Tomb and the property now or formerly owned by John Q. Packard and westerly along said boundary line one hundred and sixty-five (165) feet, more or less, from the West line of Northerly and Southerly County Road. Said strip or tract of land containing four and eighty-four hundredths (4.84) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land: Two strips each seventy-five (75) feet in width, lying one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-315+33.3 to L11-341+70, containing nine and eight hundredths (9.08) acres, more or less.

3rd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad as the same is staked out and located over and across the following described parcel of land, to-wit: (Deed of Edwards Woodruff's Estate by Executor to John Q. Packard, recorded in Deed Book 48, at Page 334, records of the County of Yuba, State of California) All that certain real property on the South side of the Yuba River about 2 1/2 miles South of the City of Marysville, commonly known as the Eliza Ranch, and bounded on the North by the land of Mrs Jane Tomb, on the East by the lands of Edwards Woodruff and of Packard and Woodruff and on the South by the lands of Josephine C. Englund (now D.C. Jenkins), and on the West by the Feather River. (Deed of Edwards Woodruff's estate by Executor to John Q. Packard, recorded in Deed Book 48, at page 449, records of the County of Yuba, State of California.) All those certain lots, pieces and parcels of land described "beginning at the Northwest corner of the Northeast quarter of Section Seven (7) in Township Fourteen (14) North of Range Four (4) East, M.D.M., said corner being also the Northwest corner of the land owned by Wm. Nutley (now Edward McGowan); thence East along the fence dividing the land of Wm. Nutley (now McGowan) from the land herein described and conveyed, twenty (20) chains, more or

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less, to the line of fence dividing the land herein described and conveyed from the land lately owned by Burkhardt Humdler and afterwards by the Estate of Edwards Woodruff, deceased thence North forty (40) chains, more or less, to the line of fence dividing the land herein described from the land formerly owned by M.C. Dufficy and afterwards by the estate of Edwards Woodruff, deceased; thence along said fence West thirty-one and seventy hundredths (31.70) chains, more or less, to the line of fence dividing said land of Dufficy on the West from the land of Packard and Woodruff; thence due South forty-seven (47) chains, more or less, to the line of fence dividing the land of Josephine C. Englund (now D.C. Jenkins) from the land of Packard and Woodruff; thence East along said last mentioned fence eleven and seventy hundredths (11.70) chains, more or less, to the Northeast corner of said land of Josephine C. Englund (now D.C. Jenkins); thence North seven (7) chains, more or less, to the place of beginning, containing one hundred thirty-six (136) acres. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit:-----

BEGINNING at a point on the boundary line between the property of John Q. Packard, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owned by Mrs. Jane Tomb, said point being one hundred and sixty-five (165) feet, more or less, westerly along said boundary line from the West line of the Northerly and Southerly County Road and being at Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, eight thousand seven hundred and sixty and six tenths (8760.6) feet, more or less, to Engineer Station L11-429+30.6 of the located center line of the Northern Electric Company's survey; said point being in the boundary line between the property of John Q. Packard and the property now or formerly owned by D.C. Jenkins and westerly along said boundary line two hundred and seventy-five and three tenths (275.3) feet, more or less, from the common corner of the property of John Q. Packard and the properties now or formerly owned by Edward McGowan and D.C. Jenkins. Said strip or tract of land containing sixteen and nine hundredths (16.09) acres, more or less.

Also the right to use for borrow purposes the following described strips or tracts of land; Two strips each seventy-five (75) feet in width, lying one on each side of and adjacent and parallel to the above described strip of land from Engineer Station L11-341+70 to L11-429+30.6, containing thirty and sixteen hundredths (30.16) acres, more or less.-----

4th STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: That certain piece or parcel of land situate in

the County of Yuba, State of California, bounded and particularly described as follows Beginning on the East bank of Feather River where the South line of the tract of land known as the City of Eliza touches said river; thence Southerly along the line of said river one mile to the Northwest corner of the Eldorado tract, so called; thence in an Easterly direction one mile; thence in a Northerly direction one mile and thence West-erly one mile to the place of Beginning. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit:-----

BEGINNING at a point on the boundary line between the property of D.C. Jenkins,
situated in Section (7) Township Fourteen (14) North, Range Four (4) East, M.D.B. and M
in the County of Yuba, State of California, and the property now or formerly owned by
J.Q. Packard, said point being two hundred and seventy-five and three tenths (275.3)
feet, more or less, Westerly along said boundary line from the common corner of the
property of D.C. Jenkins and the properties now or formerly owned by J.Q. Packard and
Edward McGowan, and said point being at Engineer Station L11-429+30.6 of the located
center line of the Northern Electric Company's survey; thence South 17° 31' East,
eight hundred seventy-seven and four tenths (877.4) feet, more or less, to Engineer
Station L11-438+08, being a point on the boundary line between the property of D.C.
Jenkins and the property now or formerly owned by Edward McGowan, said point being one
thousand three hundred and thirty-six and four tenths (1336.4) feet, more or less,
Southerly along the said boundary line from the Northwest corner of the Edward Mc-
Gowan property, said strip or tract of land containing one and sixty-one hundredths
(1.61) acres, more or less. Also the right to use for borrow purposes the following
described strips or parcels of land: Two strips each thirty-five (35) feet in width,
lying one on each side of and adjacent and parallel to the above described strip or
tract, containing one and forty-one hundredths (1.41) acres, more or less.-----

5th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The West half (1/2) of the Southwest quarter (1/4) of Section Seventeen (17), East half (1/2) of Section Eighteen (18) and South East quarter (1/4) of Section Seven (7), all in Township Fourteen (14) North, Range Four (4) East, The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING At a point in the boundary

line between the James Clark property situated in Section Seven (7), Township Fourteen (14) North, Range Four (4) East, M.D.M., in the County of Yuba, State of California, and the property now or formerly owned by Edward McGowan, said point being four hundred thirty and five tenths (430.5) feet Easterly along said boundary line from the Southwest corner of the Edward McGowan property, being at Engineer Station L11-451+72 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East eight thousand two hundred forty-nine (8249) feet, more or less, to Engineer Station L11-534+21, said point being on the boundary line between the James Clark property and the property now or formerly owned by W.R. Anderson, three hundred and sixteen and five tenths (316.5) feet more or less, along said Easterly boundary line from the intersection of the center line of the North and South County Road and East and West County Road. Said strip or tract of land containing fifteen and fifteen hundredths (15.15) acres, more or less. Also the right to use for borrow purposes the following described strips or parcels of land; Two Strips of land each thirty (30) feet in width, one on each side of and adjacent and parallel to the above described located center line from Engineer Station L11-451+72 to Engineer Station L11-534+21. Containing eleven and thirty-six hundredths (11.36) acres, more or less. Also for the purpose of road change a strip or tract of land sixty (60) feet in width, lying adjacent and parallel to the above described center line from Engineer Station L11-524+80 to L11-533+81. Containing one and twenty-four hundredths (1.24) acres, more or less.

6th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: West half of Northwest quarter and North half of Southwest quarter of Section Twenty (20) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of W.R. Anderson, situated in Section Twenty (20), Township Fourteen (14) North, Range Four (4) East, M.D.B. and M. in the County of Yuba, State of California, and the property now or formerly owned by James Clark, said point being three hundred and sixteen and five tenths (316.5) feet, more or less, Easterly along said boundary line from the intersection of the center lines of the North and South County and East and West County Road, said point being at Engineer Station L11-534+21 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, four thousand one hundred and fifty-two (4152) feet, more

or less, to Engineer Station L11-575+73 of the located center line of the Northern Electric Company's survey, being a point on the boundary line between the property of W. R. Anderson and the property now or formerly owned by M.C. Lazear. Said strip or tract of land containing seven and sixty-three hundredths (7.63) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land. Two strips of land each twenty (20) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-534+2 to L11-561+00. Said strip or tract of land containing two and forty-six hundredths (2.46) acres, more or less. Two strips ^{or tracts} of land each sixty (60) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-561+00 to L11-568+00, containing one and ninety-three hundredths (1.93) acres, more or less. Two strips or tracts of land each one hundred and fifty (150) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-568+00 ^{to L11-575+73} containing five and thirty-two hundredths (5.32) acres, more or less.-----

7th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: Northeast quarter (1/4) of Section Thirty-two (32) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of (Julia A. Tift) situated in the Northeast quarter of Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, and the property now or formerly owned by M.C. Lazear, said point being one thousand ^{and} hundred fifty-one (1651) feet, more or less, measured westerly along said boundary line from the center of the County Road, being Engineer Station L11-644+64 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, two thousand seven hundred sixty-two (2762) feet, more or less to Engineer Station L11-672+26 of the located center line of the Northern Electric Company's survey; said point being on the boundary line between the Julia A. Tift property and the property now or formerly owned by Sarah Metcalfe, said point being eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured westerly along said

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boundary line from the center of the County Road North of the jog at said boundary line.

Said strip or tract of land containing five and seven hundredths (5.07) acres, more or less

Also the right to use for borrow purposes the following described strips or tracts of land

Two strips of land each Forty (40) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land. Containing four and fifty-two hundredths (4.52) acres, more or less.

8th STRIP OR TRACT:

A strip or tract of land one hundred forty-eight (148) feet in width, being seventy-four (74) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The South one-half (1/2) of Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.M. The center line of said strip or tract of land hereby conveyed being particularly described as follows to-wit: BEGINNING at a point on the boundary line between the Sarah A.E.Metcalf property, situated in Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M. D.B. and M., in the County of Yuba, State of California, and the property now or formerly owned by Mrs Julia A. Tifft, said point being Engineer Station L11-672426 of the located center line of the Northern Electric Company's survey, and eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured westerly along said boundary line from the center of the County Road, North of the jog at said boundary line; thence South 17°31' East, one thousand nine hundred eleven and forty-one hundredths (1911.41) feet to Engineer Station L11-691437⁴¹ B.C. of the located center line of the Northern Electric Company's survey; thence to the right on a tangent Searles Spiral of three (3) thirty-three (33) foot chord lengths, ninety-nine (99) feet to Engineer Station L11-691436.41 E.S. B.C. of said survey; thence to the right on a tangent curve of two thousand eight hundred sixty-four and nine tenths (2864.9) feet radius, eight hundred thirty-three and six tenths (833.6) feet to a point on the boundary line between the Sarah A.E.Metcalf property and the property now or formerly owned by Cline Bull, said point being Engineer Station L11-699471 of the Northern Electric Company's survey, and seventy-nine (79) feet, more or less, westerly along said boundary line from a point on the West line of the County Road, said point being the Southeast corner of the Sarah A.E.Metcalf property. The strip or tract of land containing nine and thirty-three hundredths (9.33) acres, more or less.

9th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side

of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Five (5), Township Thirteen (13) North, Range Four (4) East M.D.M. The said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at the Northeast corner of the property of Cline Bull, situated in Section Five (5) Township Thirteen (13) North, Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, being the Southeast corner of the property now or formerly owned by Sarah Metcalfe, said corner being seventy-nine (79) feet, more or less, Easterly along the boundary line of the Cline Bull and the Sarah Metcalfe properties from Engineer Station L11-699+71 of the located center line of the Northern Electric Company's survey; thence Westerly along said boundary line one hundred nineteen (119) feet, more or less; thence to the right on a tangent curve of two thousand eight hundred twenty-four and nine tenths (2824.9) feet radius in a Southerly direction forty (40) feet from and parallel to the located center line of the Northern Electric Company's survey, one hundred fifty-one and eight tenths (151.8) feet to Engineer Station L11-701+22.08; thence South 0° 13' West forty (40) feet from and parallel to said center line five thousand one hundred twenty-three and ninety-two hundredths (5123.92) feet to a point on the boundary line between the Cline Bull property and the property now or formerly owned by Robert Johnston, said point being forty (40) feet measured Westerly along said boundary line from Engineer Station 752+46 of said survey; thence Easterly along said boundary line one hundred three and five tenths (103.5) feet, more or less, to the Westerly line of the County Road at the Southeast corner of the said Cline Bull property; thence Northerly along the West line of the County Road five thousand two hundred seventy-five (5275) feet, more or less, to the point of beginning, said strip or tract of land containing thirteen and forty-seven hundredths (13.47) acres, more or less. Also the right to use for borrow purpose the following described strips or tracts of land: A strip or tract of land sixty (60) feet in width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-699+71 to Engineer Station L11-707+00. Said strip or tract of land containing one (1.00) acre, more or less. A strip or tract of land one hundred and forty (140) feet in width on the West side of and adjacent to the above described strip or tract of land from Engineer Station L11-707+00 to Engineer Station L11-752+46. Said strip or tract of land containing fourteen and sixty one hundredths (14.61) acres, more or less.

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10th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Eight (8) and all that portion of the East quarter of Section Seventeen (17), in Township Thirteen (13) North of Range Four (4) East, M.D.M., which lies in Yuba County, State of California. The said strip or tract of land hereby conveyed being particularly described as follows to-wit: BEGINNING at the Northeast corner of the Robert Johnston property, situated in Section Eight (8), Township Thirteen (13) North Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, being eleven (11) feet Westerly from the Southeast corner of the property now or formerly owned by Cline Bull, said corner being fifty-two and six tenths (52.6) feet measured Easterly along the boundary line between the Robert Johnston property and the property now or formerly owned by Cline Bull from Engineer Station L11-752+46 of the located center line of the Northern Electric Company's survey: thence Westerly along said boundary line ninety-two and six tenths (92.6) feet; thence South $0^{\circ} 13'$ East forty (40) feet from and parallel to the center line of the Northern Electric Company's survey, nine thousand and twenty-four (9024) feet to a point on the North bank of the main channel of Bear River, said point being forty (40) feet West of Engineer Station L11-842+70 of said survey; thence East eighty (80) feet; thence North $0^{\circ} 13'$ East, forty (40) feet from and parallel to said survey, one thousand three hundred twenty-four (1324) feet to a point South $89^{\circ} 47'$ East of Engineer Station L11-829+46, said point being on the boundary line between the Robert Johnston property and the property now or formerly owned by Mrs E.A. Rogers; thence Westerly along said boundary line eight and seven tenths (8.7) feet, more or less, to a point on said boundary line thirty-one and threetenths (31.3) feet Easterly at right angles to Engineer Station L11-829+46 of said survey thence Northerly along the said boundary line seven thousand seven hundred (7700) feet to the point of beginning. Said strip or tract of land containing seven teen and seventy-five hundredths (17.75) acres more or less.

Also the right to use for borrow purposes the following described strips or tracts of land:

A strip or tract of land one hundred and forty (140) feet in width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-752+46 to Engineer Station L11-778+88. Said strip or tract of land containing eight and forty-nine hundredths (8.49) acres, more or less. A strip or tract of land one hundred thirty (130) feet wide on the West side of, adjacent and parallel to the above

described strip or tract of land from Engineer Station L11-778+88 to Engineer Station L11-790+00 of the above described strip or tract of land. Said strip or tract of land containing three and thirty-two hundredths (3.32) acres, more or less. A Strip or tract of land three hundred forty (340) feet wide on West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-790+00 to Engineer Station L11-808+00. Said strip or tract of land containing fourteen and five hundredths (14.05) acres, more or less. A strip or tract of land two hundred and sixty (260) feet wide on the West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-808+00 to Engineer Station L11-829+46 of the above described strip or tract of land. Said strip or tract of land containing twelve and eighty-one hundredths (12.81) acres, more or less.-----

A strip or tract of land one hundred sixty (160) feet wide on the West side of, adjacent and parallel to the (above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70 of the above described strip or tract of land. (Said strip or tract of land containing four and eighty-six hundredths (4.86) acres, more or less. A strip or tract of land one hundred forty (140) feet wide at the North end and sixty (60) feet wide at the South end, the East boundary of said strip or tract of land being coincident with the East boundary of the Robert Johnston property and the West boundary being coincident with the East boundary of the above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70. Said strip or tract containing three and four hundredths (3.04) acres, more or less. for the purpose of *laying* down, erecting, maintaining, repairing and operating a single or double track railroad, to be operated by electricity, compressed air or other motive power, in, over, along and across said lands upon said strip of land hereby conveyed, together with all necessary and convenient means of ingress, egress and regress to and from said right of way for the purpose of erecting, maintaining, protecting and operating said railroad and all privileges necessary and convenient therefor. TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.-----

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenance unto the said party of the second part and to its successors and assigns forever.-----

IN WITNESS WHEREOF, the said party of the first part, in pursuance of a resolution of its Board of Directors, duly passed and adopted has caused these presents to be ex-

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executed and its corporate name and seal hereunto affixed the day and year first above
written. Reference is hereby made to Volume "3" of Miscellaneous Records at page 150 in
the office of the County Recorder of the County of Yuba, State of California.

Decker Jewett & Co Bank By A.C.Bingham, Cash.

STATE OF CALIFORNIA,)
)SS
County of Yuba,)

On this 19th day of September, in the year one thousand nine
hundred seven, before me, C.F.Aaron, a Notary Public in and for the said County of Yuba,
State of California, personally appeared A.C.Bingham, known to me to be the Cashier of the
corporation described in and that executed the within instrument and also known to me to be
the person who executed it on behalf of the corporation herein named, and he acknowledged
to me that such corporation executed the same. IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my official seal at my office in the said County of Yuba, in this certi-
ficate first above written. C.F.Aaron (SEAL) Notary Public in and for the County of Yuba,
State of California. Recorded at the Request of Geo. E. Springer September 21st, 1907,
at 20 min.past 10'o'clock A.M.

S. O. Gunning

RECORDER.

Decker Jewett & Co Bank
To
Northern Electric Co

THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord
one thousand nine hundred and seven between DECKER JEWETT AND CO. BANK, a corporation, or-
ganized under the laws of the State of California, and having its principal place of busi-
ness in the City of Marysville, County of Yuba, State of California, the party of the first
part, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and exist-
ing under and by virtue of the laws of the State of Nevada and doing business in the State
of California the party of the second part, WITNESSETH: That the said party of the first
part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin,
to it in hand paid by the said party of the second part, at or before the ensealing and
delivery of these presents, the receipt whereof is hereby acknowledged, has granted, barg-
ained and sold, conveyed and confirmed, and by these presents, does grant, bargain and sell
convey and confirm unto the said party of the second part, and to its successors and
assigns, forever, the following described strip or tract of land situate in the County of
Yuba, State of California, namely: A strip or tract of land as hereinafter described, being
on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad

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State of California
County of Yuba

We, Tom E. Bevan and L. B. Cook respectively County Assessor and County Surveyor of the County of Yuba, State of California, do hereby certify that we have examined every lot in the Subdivision shown herein, and the same are suitable for commercial purposes, and we hereby recommend the acceptance of this map.

Tom E. Bevan, County Assessor
L. B. Cook, County Surveyor

Map of Lands belonging to "Yuba Gardens" Corporation

Situated within boundaries of "New Helietta Rancho" and known as the "Yuba Gardens"

Surveyed by

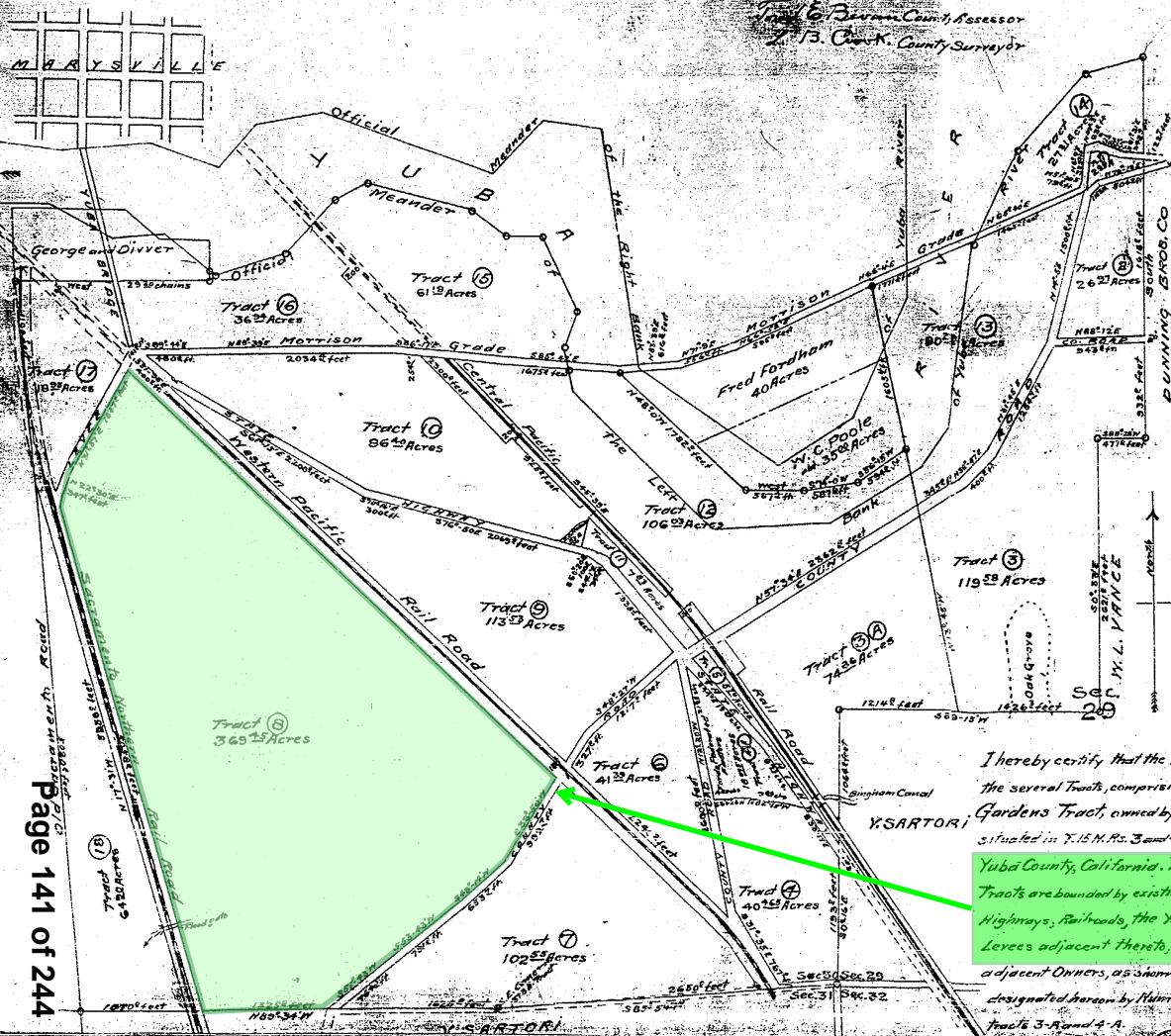
Scale: 1 inch = 40 chains (as noted) J. R. M. C. B.

The Map of "Yuba Gardens" shown hereon, having been presented to the Board of Supervisors of Yuba County by Clive Bull, for "Yuba Gardens" Incorporated, lands shown except those Tracts shown as belonging to other owners as follows, George and Divret, F. Gleason, Fonda Fenderson, Fonda Fenderson and W. C. Poole, is hereby received, and declared to be the Official Map of the "Yuba Gardens" Marysville 5th day of November, A.D. 1921

W. J. Miller	Supervisor 2	Dist
B. L. Smith	" 3	"
A. J. Dorris	" 4	"
W. J. Miller	" 5	"
G. E. Smith	Chairman	"
W. J. Miller	Clerk of Yuba County	"
J. H. Collins	Deputy	"

I hereby certify that the Map hereon, shows the several Tracts, comprising the Yuba Gardens Tract, owned by "Yuba Gardens" Corporation, situated in T. 15 N. R. 3 and 4 E. M. D. 2 and 4, Yuba County, California. That the said several Tracts are bounded by existing County and State Highways, Railroads, the Yuba River, and Levees adjacent thereto, and by lands of adjacent Owners, as shown hereon, and are designated hereon by Numbers 1 to 20, inc. and Tracts 3 and 4-A.

Records & Request
of Cases of Name between
Gene and 1922
F. J. Smith
Recorder
Yuba Co. Calif.



AGENDA ITEM 4B ATTACHMENT N

EXHIBIT 'D'

267 PAGE 511

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

Beginning at the southeast corner of Lot 6 of the 1373 acre tract of the New Helvetia Grant south of the Yuba River, being a portion on the west line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East 40.0 feet to a point on the centerline of said road; thence North 4° 30' West along said centerline of abandoned road 696.0 feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West 40.0 feet along said line to a point on the west line of the abandoned Sacramento Road; thence North 4° 30' west 132.0 feet along westerly line of said road, being also the division line between land owned by the City of Marysville and land now or formerly owned by the Western Pacific Railway to a point on the southerly right of way line of Western Pacific Railway; thence North 45° 52' west along said southerly line of right of way of the Western Pacific Railway 245.5 feet to a point on the easterly line of right of way of Northern Electric Company; thence south 12° 29' east 1008.0 feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the land of the City of Marysville and land now or formerly owned by George Van Buskirk; thence east along said division line 27.0 feet to the point of beginning, containing 2.55 acres, more or less.

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

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

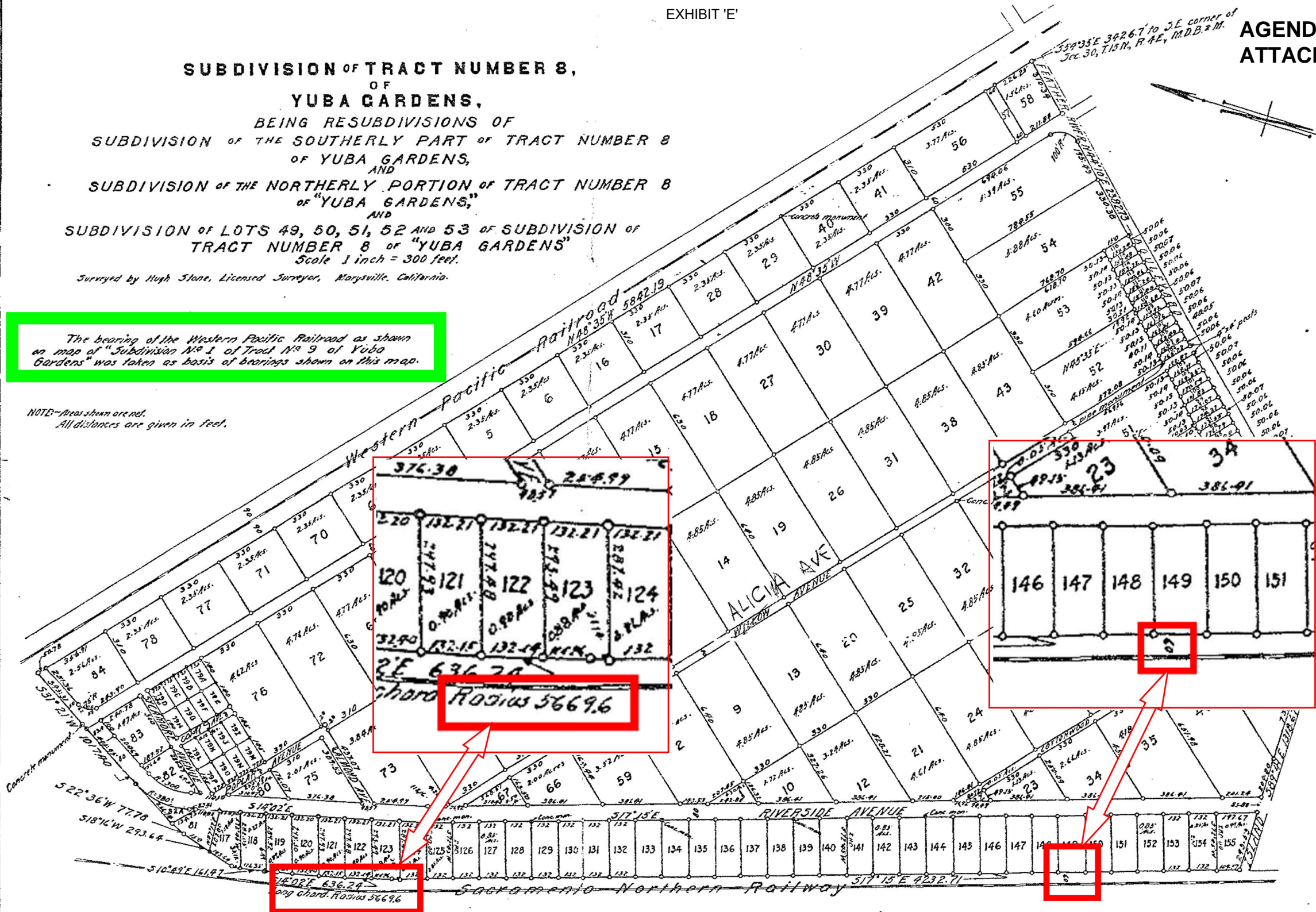
PARCEL 6: Beginning at a point, said point being the most northerly corner of the land conveyed to William C. McIntyre and Glenn E. Clarridge by deed recorded January 7, 1958, in Volume 251 of Official Records, page 283, Yuba County Records, said point also being South 17° 29' east, a distance of 100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

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

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

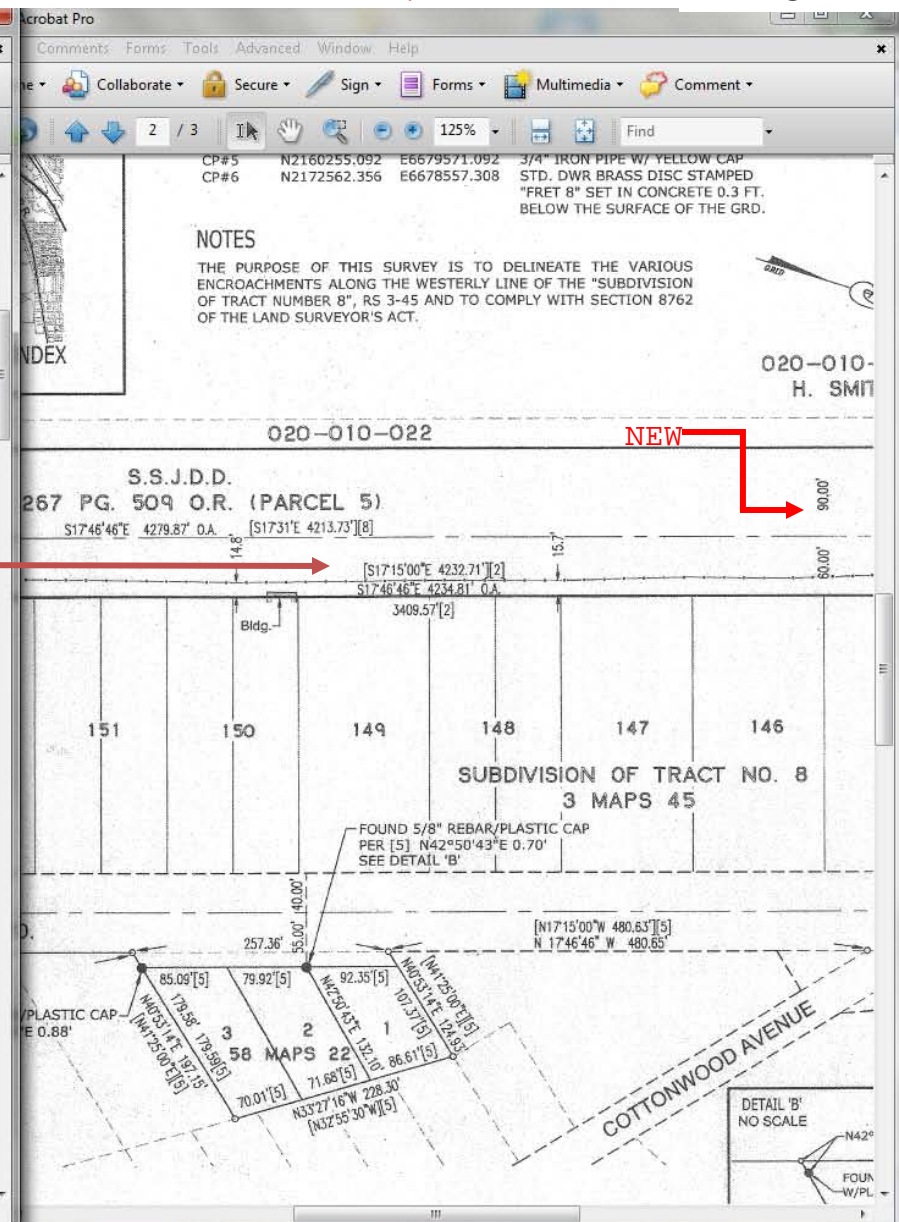
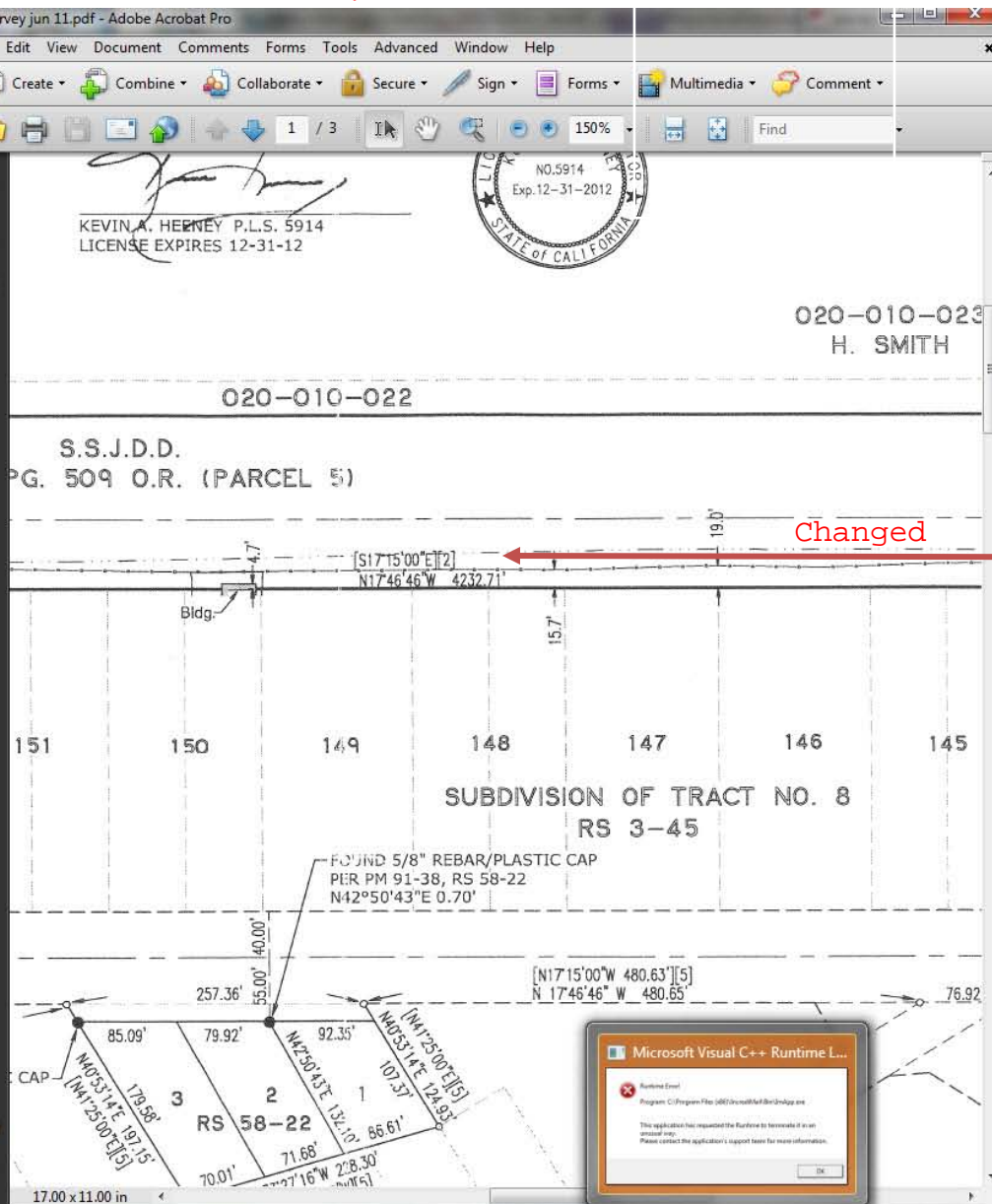
The bearing of the Western Pacific Railroad as shown
on a map of "Subdivision No 1 of Tract No 9 of Yuba
Gardens" was taken as basis of bearings shown on this map.

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



Survey filed June 2011

Survey filed Jan 2012



**Marker found at north corner of Feather River Levee
North of Island Avenue - was completely covered when
found 1-17-2012**

EXHIBIT 'G'

**AGENDA ITEM 4B
ATTACHMENT N**



CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



February 16, 2012

Subject: **CVFPB Staff Response to letters from Susan Lagrand and Carol Miller dated January 29, 2012 and February 10, 2012, respectively**

The purpose of this letter is to respond to several questions/issues raised by letters submitted by Susan Lagrand and Carol Miller. These letters are incorporated into the staff report as Attachment O.

I. Letter from Susan Lagrand submitted via email on January 29, 2012

- A. In 1922 US Congress enacted 43 U.S.C. 912 in which if the railway ceased using land granted for railroad purposes, the land would go back to the landowner for which the railroad traversed unless it was turned into a public highway within 1-year of abandoning the railroad.

Staff Response: 43 U.S.C. 912 dealt with public land of the United States that was granted to a railroad company for use as a right-of-way. The right-of-way across the land was sometimes granted as an easement for railway use, and in these cases, when the Railroad abandoned such use the easement would have reverted back to the owners of the servient estate (the property owner in this situation).

For the parcel in question, the Sacramento Northern Railway purchased the land itself from a private owner. It was not an easement granted by the U.S. Government. Therefore, there was not an easement to extinguish, because the Railroad Company owned the land. Sacramento Northern Railway abandoned the tracks but not the land under the 1956 filing with the Interstate Commerce Commission. Following the abandonment of the tracks, Sacramento Northern Railway continued to own the underlying fee title to the land until it was purchased by the State in 1958.

- B. CFR 43 was saved as appendix of CFR 43 in which two federal courts have ruled that Government grant right of ways belong to the abutting property owners not the Government or Railroads.

Staff Response: The law provided relates to situations in which a railroad right-of-way easement is abandoned due to non-use. When these easements are abandoned, the property reverts back to the servient owner (the property owner in this situation). In this situation however, Sacramento Northern Railway owned not only a right-of-way across the land, but also the underlying fee title to the land. There is no evidence of an easement. If there was an easement, it would have merged with Sacramento Northern Railway's fee interest, rather than transferring to abutting property owners upon non-use. Even after the Sacramento Northern Railway trackage was officially abandoned, the Sacramento Northern continued to own the underlying fee title to the land until it was purchased by the State in 1958 for \$5,440.

II. Letter from Carol Miller dated February 10, 2012

- A. Exhibit A is showing the 1373 Acres of Land and the 9 Subdivision or Lots Situated South of the City of Marysville. The original Survey was from East to West using the Feather River East Bank. The 1907 In-Denture of The Strip of Land, Exhibit B, beginning at the Southeast Corner of Lot or

Subdivision 6 and ending at the Southeast Corner of Subdivision 9 is stating the Survey used the Feather River East bank and the Abandon Sacramento Road, which was on the water side of the Levee, to the East to the Centerline of the Northern Electric Railway then 60ft was measured from the Centerline of the Railway to the East. The Strip of Land was purchased from Farmers and Ranchers who had fenced properties. When Northern Electric surveyed the Strip of Land as stated in their In-Denture, Official Records Book 251 page 273 – 285, the In-Denture states lot or subdivision 6, 2 ½ miles South of Marysville, 1 Mile East of the East Bank of the Feather River along each Property Owner's fence line. The Survey was from East to West. Each Strip of Land in the 1907 In-Denture states "The rights to use for borrow purposes the described strips or tracts of land".

Staff Response: The referenced Deed (Books 251 Page 273-285) is not pertinent to the State property where the existing private encroachments exist. Staff Report Attachment E shows the correct Deed for the State parcel where private encroachments exist (Book 59 Page 441). The last statement is unfounded as there is no notation on the plat indicating a "direction" of the survey. This is further supported by Professional Land Surveyor Kevin Heeney in his review of this deed presented at the January 26, 2012 hearings.

Book 56 of Deeds, Page 273 – the document Carol Miller brought forward at the hearing on January 26, 2012, claiming it describes an 80' strip measured from the East side of the Feather River and extends all the way to the Bear River.

- We in fact had reviewed that document and had a copy in our files. It describes two parcels or strips of land that are North of the encroachment area and several strips of land which begin at Island Avenue and extend Southeasterly to Highway 70 and beyond. It does not describe any strip of land adjacent to the encroachment areas. Please see the attached Exhibit 'A' which shows some of these parcels. The parcels not shown on Exhibit 'A' are located further to the South.
- Ms. Miller is incorrect regarding calls to the East side of the Feather River being used to locate the railroad parcels/strips. Those calls are used to describe the larger parcels from which the railroad parcels/strips are a portion thereof. Those calls are not used to specifically locate the alignment of the railroad parcels/strips. Please refer to Exhibit 'B' which is a copy of this deed. I have underlined in green, only those portions describing the railroad parcels/strips.

Source: CTA Memo, Staff Report Attachment N

- B.** 1908 According to Attachment D, Deed of G. Cohn and Northern California Electric Railway Co., page 443 reads "will build and maintain good and sufficient FENCES on each side of said strip of land, a flood-gate sufficient to permit the passage of all surface and drainage waters (exclusive of flood and overflow waters) coming thereto". The Survey of this Deed is from East to West and the Fence was built by Northern Electric Railway on each side of said strip of Land. The Fence Description is for Lots or Subdivisions 5 and 4. The paragraph above the Fence Line states reversion and reversions, remainder and remainders.

Staff Response: Staff is aware of the local drainage issue where water ponds during heavy rains at the backyard of the properties adjacent to State land. The proposed permit will include a condition requiring a Storm water Management Plan to address the water runoff from the Levee and the corridor. Details of this permit condition are described in Application 18690.

- C.** The Deed to Sacramento-San Joaquin Drainage District, Exhibit C your attachment H, refers to the 1907 In-Denture, for the exact description of the Strip of Land purchased by Northern Electric from Decker, Jewett and Co. Bank. This In-Denture specifies Existing Fences and the Exact Measurement of 60ft on the east side of the levee which was measured using the Centerline of the railway from East to West and can be located using this In-Denture and the Survey by Northern Electric. The Levee itself is not in a straight line, because the Survey contoured the East Bank of

the Feather River. When Sacramento Northern sold the strip of land for the right to borrow to Sacramento-San Joaquin Drainage District both parties knew there was an Existing Fence, all properties were enclosed with the Existing Fence Line. Neither Sacramento Northern nor Sacramento-San Joaquin Drainage District, within 3 years plus one day or for 104 years according to the 1908 Deed, asked any of the property owners to move the Existing Fence, no public utilities were added to the Strip of Land and the County of Yuba is not showing an Encroachment on this Strip of Land and because the Fence was built by Northern Electric Railway on each side of said strip of land. Then Civil Code 1007 does not apply. Northern Electric Built the Fence on each side of the strip of land, which would be the boundary or property line.

Staff Response: Pursuant to Civil Code Section 1007 *"no possession by any person, firm, or corporation no matter how long continued of any land, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or **owned by the state** or any public entity, shall ever ripen into any title, interest or right against the owner thereof."* The property was purchased by the State on December 12, 1958 from the Sacramento Northern Railway and in accordance with Civil Code Section 1007 above, no adjacent landowner can acquire prescriptive rights to land owned by the State.

Furthermore, Civil Code 1624 requires any real estate agreements to be in writing. No documents have been submitted that establish a written agreement between the parties changing the property line from what is provided on the Deed to the existing location of the fence.

- D. 1939 When Yuba Gardens Subdivision was surveyed, Exhibit D your attachment F, from East to West the Fence was South 17 degrees 15 minutes East and CTA's Recorded Survey 2011-11, Exhibit E your attachment I, is North 17 Degrees 46 Minutes 46 Seconds West. The existing Fence has been there for over 104 years according to the 1908 Deed. Sacramento Northern added Barbed Wire to the Levee side of the Existing Fence, Exhibit F. TRLIA and CTA's Survey is shifting our Existing Boundary line or Fence Line on the right and left of the homes, slightly South and shifting our 280Ft to the East. Yuba County has and is retaining an Easement that is in our Front Yards, Exhibit G1-4, our 280ft cannot be set inside this Easement because we will be losing our 0.424242 Acres and change our existing Deeds, Exhibit H and I. CTA's Survey is moving all Fences to North, South, East and West.

Staff Response: This paragraph claims there are numerical differences in bearings on the survey plats. The record of survey prepared by CTA has been reviewed and recorded by the County. In addition, the boundary information shown on the CTA survey is consistent with 5 other recorded maps prepared by independent surveyors. Miller Exhibit G1-4 appears to be from Yuba County GIS data which is less accurate than field survey using instruments and benchmarks.

- E. 1939 Before Homes were built, Feather River Blvd and Riverside Dr. were constructed; the County of Yuba Surveyor added an 80ft Easement to the front of all properties for the roads and public utilities. The 80ft Easement is still in existence. Yuba County Surveyor does show an Easement in the front but no Encroachment for the Railroad in the back. Feather River Blvd and Riverside Dr. were constructed in the Middle of the Easement. The Easement is still a matter of record with the Yuba County Surveyor and the Easement includes all Front Fences. The County Surveyor stated that if the County needs the property inside the Easement the property owners will be notified.

1950 the Flood washed away most of Feather River Blvd and Riverside Dr. These roads were again surveyed and re-constructed on the east side of the Easement. This does not show on the Survey by CTA. The painted white line in the Middle of Feather River Blvd and Riverside Dr. cannot be used in the front of the properties as a survey point from West to East, because it is not in the Middle of the Easement.

Staff Response: The CTA survey shows the 80 foot road right-of-way is established from monuments set from prior surveys. The street centerline striping does not represent the right-of-way centerline and was not used to establish property boundaries.

- F. As shown in our Deed and Declaration of Homestead, Exhibit H and I reads South 72 Degrees 45 Minutes West along the Northerly side, 280ft; thence South 17 Degrees 15 minutes East along the westerly side, 66ft the same as shown in the Yuba Gardens Survey. The Description of the 1939 Survey Map is the same Description as our Deed. The CTA Survey is backwards from this and has changed the minutes and seconds of the Co-ordinates and in some places changed the Degrees, which will change Acres and complete Descriptions of some current Deeds and property. The 1939 Survey of Subdivision of Tract 8 of Yuba Gardens was from East to West and Surveyed according to the 1907 In-Denture of Northern Electric and the Survey of CTA of this area is from West to East. CTA's Recorded Survey and the Survey that was given to all property owners in June of 2011 are not the same. The Recorded Survey does not show the toe of the Levee, but the Survey of May 2011 does show the toe of the Levee, Exhibit J.

Staff Response: A statement about the bearing degrees used in the survey is addressed in the CTA memo dated February 14, 2012 (Staff Report Attachment N, see below).

A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit 'E' shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.
- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46'46"E. Above that bearing we show [S17°15'00"E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.
- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.
- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15'00"E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence.

Source: CTA Memo, Staff Report Attachment N

III. Questions from Letter from Carol Miller dated February 10, 2012

1. Were There 2 Survey Maps and if so Why?

Staff Response: Survey 2011-11 prepared by CTA is the only survey that has been prepared. The June 2011 and August 2011 versions were drafts of the survey. The survey was first submitted to the County on August 30, 2011. Due to the County's backlog, Mr. Heeney did not receive comments from the County until November 2, 2011. On January 6, 2012, Mr. Heeney's final submittal was hand delivered to the County and the Survey map was recorded on January 11, 2012. This question was also answered in Kevin Heneey's memo as shown below:

The exhibit prepared by Hecker showing my June 2011 survey vs. my Recorded Survey of January, 2012, attached hereto as Exhibit 'F'

- The June 2011 copy was a draft copy of our Record of Survey, prepared to give the DWR Cadastral staff some of the information we had found in our research and field investigations. At that point it was not in final form for submittal to the County as a Record of Survey. Our final Record of Survey was not submitted until August 30, 2011. With that review, the County Surveyors' office supplied us with review comments, requests for additional information and minor drafting revisions. The differences shown in the Hecker exhibit reflect:
 - We added the offset distances (60' and 90') on either side of the described centerline of the State property.
 - We added an overall bearing and distance on the common boundary line.
 - A vicinity map and other required information was added prior to recording.

Source: CTA Memo, Staff Report Attachment N

2. The difference in co-ordinates would it be the way the Recorded Survey was taken, West to East, or should it have been Surveyed to the Original Survey which was East to West?

Staff Response: The CTA survey is consistent with prior surveys and proper diligence has been exercised in the preparation of the document.

3. Why was the toe of the Levee left off the Recorded Survey of January 2012?

Staff Response: Topographic information such as levee embankment (toe, crown, etc), vegetation and other existing features are not part of Records of Survey. A record of Survey is intended to establish a property boundary in accordance with Professional Land Surveyors Act Section 8762.

4. The Recorded Survey is showing that the 60ft of the strip of land is ending at the Existing Fence Line, does this mean that this is the actual property line?

Staff Response: The dimension shown on the Survey map (sheet 2, above Lot 136), represents the dimension from the centerline to the State right-of-way not to the existing fence.

5. Since Northern Electric Railway built the Fence at the side of the strip of land, wouldn't the fence be on the boundary or property line?

Staff Response: As previously mentioned, Civil Code 1624 requires any real estate agreements to be in writing. No documents have been submitted that establish a written agreement between the

parties changing the property line from what is provided on the Deed to the existing location of the fence.

6. Because of the easement in the front, by the County of Yuba, how is it justified to move our properties into the easement?

Staff Response: The Survey map has not changed any existing recorded easements or property boundaries. The CTA survey clearly shows the 80' right of way and each adjacent lot being 280' deep, as described in their deed and shown on the map.

7. Why are the properties being moved from North to South, slightly?

Staff Response: The Survey map has not changed any existing recorded easements or property boundaries.

8. By Law can you change our 0.424242 Acres or 280ft that is stated in our Deed?

Staff Response: The Survey map has not changed any existing recorded easements or property boundaries. The CTA survey clearly shows the 80' right of way and each adjacent lot being 280' deep, as described in their deed and shown on the map. Furthermore, if there was a conflict between adjoining deeds, and based on junior/senior rights, it is possible to find that the 280' was incorrect. However, this is not the case and the CTA Survey shows lots as 280' deep.

9. Why are we still finding monuments and markers concerning the Levee and Land that are not part of CTA Certified Survey of this area? The Yuba County Surveyor Field Books have been missing since January 2009, we cannot check to find answers.

Staff Response: Monuments related to property boundary information have been identified and are shown on the Survey. Other monuments may exist for the levee construction or related improvements, but these have no bearing on the property boundary.

10. The rocks that are being added to the land side of the levee will cause a waterfall effect, wouldn't the runoff water from this be the responsibility of the Central Valley Flood Control Board or TRLIA?

Staff Response: Any rocks (rip-rap) added during the construction of the corridor is intended to prevent erosion to the levee embankment and will not cause a "waterfall effect". Surface drainage from the corridor will be addressed as part of Application 18690.

11. The runoff water from the Levee will stagnate in the back of the Fence, but it has been said, that the drainage is the property owner's problem, how can we, as property owner's get in back of the Fence to take care of the problem and does this not make it the State of California's problem?

Staff Response: Staff is aware of the local drainage issue where water ponds during heavy rains at the backyard of the properties adjacent to State land. The proposed permit will include a condition requiring a Storm water Management Plan to address the water runoff from the Levee and the corridor. Details of this permit condition are described in Application 18690.

12. There are covers on the Levee that have electrical lines, IMG_0209 through IMG_0216, can these be explained? How far do they go into the Levee? Will these weaken the levee?

Staff Response: The electrical lines in the vaults at the crown of the levee are connected to measuring devices installed in wells at the toe of the levee. These electrical lines travel through a

small diameter (1.25 inch) PVC conduit installed 2 feet below the landside slope of the levee and then down a well at the toe of the levee to measuring devices, approximately 34 to 40 feet in the foundation of the levee. The purpose of these measuring devices is to measure water pressure in sandy layers in the foundation to determine if pressures are reaching a critical level. This will also provide information on the effectiveness of a cutoff wall installed in the levee. These conduits and measuring devices do not weaken the levee.

13. Will the well pumps at the end of the Levee weaken the Levee?

Staff Response: It is assumed the pumps in question are the pumps associated with Pump Station 9, which is located just south of Island Avenue. Pump Station 9 is one of 5 pumping stations located along the levees surrounding RD 784. Their purpose is to pump interior runoff from within RD 784, over the levee and to rivers on the waterside of the levee. These pump stations keep interior runoff from ponding to damaging levels on the landside of the levee. The discharge pipes from the pumps are placed outside of the design levee prism with the pipe bottom at the crown of the levee above the design flood elevation in accordance with State levee design standards. This pump station was constructed in 1988 and was permitted by the Board. The pumps and the associated discharge pipes do not weaken the levee and serve to reduce flood risk due to interior runoff.

February 10, 2012

Central Valley Flood Protection Board
3310 El Camino Ave Room 151
Sacramento, CA 95821

Attn: Ms. Angeles Caliso

Subject: Three Rivers Levee Project - Permit Application 18690

Exhibit A is showing the 1373 Acres of Land and the 9 Subdivision or Lots Situated South of the City of Marysville. The original Survey was from East to West using the Feather River East Bank.

The 1907 In-Denture of The Strip of Land, Exhibit B, beginning at the Southeast Corner of Lot or Subdivision 6 and ending at the Southeast Corner of Subdivision 9 is stating the Survey used the Feather River East bank and the Abandon Sacramento Road, which was on the water side of the Levee, to the East to the Centerline of the Northern Electric Railway then 60ft was measured from the Centerline of the Railway to the East. The Strip of Land was purchased from Farmers and Ranchers who had fenced properties. When Northern Electric surveyed the Strip of Land as stated in their In-Denture, Official Records Book 251 page 273 – 285, the In-Denture states lot or subdivision 6, 2 ½ miles South of Marysville, 1 Mile East of the East Bank of the Feather River along each Property Owner's fence line. The Survey was from East to West. Each Strip of Land in the 1907 In-Denture states "The rights to use for borrow purposes the described strips or tracts of land".

1908 According to Attachment D, Deed of G. Cohn and Northern California Electric Railway Co., page 443 reads "will build and maintain good and sufficient FENCES on each side of said strip of land, a flood-gate sufficient to permit the passage of all surface and drainage waters (exclusive of flood and overflow waters) coming thereto". The Survey of this Deed is from East to West and the Fence was built by Northern Electric Railway on each side of said strip of Land. The Fence Description is for Lots or Subdivisions 5 and 4. The paragraph above the Fence Line states reversion and reversions, remainder and remainders.

The Deed to Sacramento-San Joaquin Drainage District, Exhibit C your attachment H, refers to the 1907 In-Denture, for the exact description of the Strip of Land purchased by Northern Electric from Decker, Jewett and Co. Bank. This In-Denture specifies Existing Fences and the Exact Measurement of 60ft on the east side of the levee which was measured using the Centerline of the railway from East to West and can be located using this In-Denture and the Survey by Northern Electric. The Levee itself is not in a straight line, because the Survey contoured the East Bank of the Feather River. When Sacramento Northern sold the strip of land for the right to borrow to Sacramento-San Joaquin Drainage District both parties knew there was an Existing Fence, all properties were enclosed with the Existing Fence Line. Neither Sacramento Northern nor Sacramento-San Joaquin Drainage District, within 3 years plus one day or for 104 years according to the 1908 Deed, asked any of the property owners to move the Existing Fence, no public utilities were added to the Strip of Land and the County of Yuba is not showing an Encroachment on this Strip of Land and because the Fence was built by Northern Electric Railway on each side of said strip of land. Then Civil Code 1007 does not apply. Northern Electric Built the Fence on each side of the strip of land, which would be the boundary or property line.

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Questions:

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There are covers on the Levee that have electrical lines, IMG_0209 through IMG_0216, can these be explained? How far do they go into the Levee? Will these weaken the levee?

Will the well pumps at the end of the Levee weaken the Levee?

The last pictures are showing the width of the Levee and the existing maintenance road. (IMG_0207 – 0209 and 0219)

Regards,

Carol Miller
2110 Virgilia Lane
Olivehurst CA 95961

e-mail olidar45@yahoo.com

EXHIBIT A

DEEDS BK 12 PAGE 569

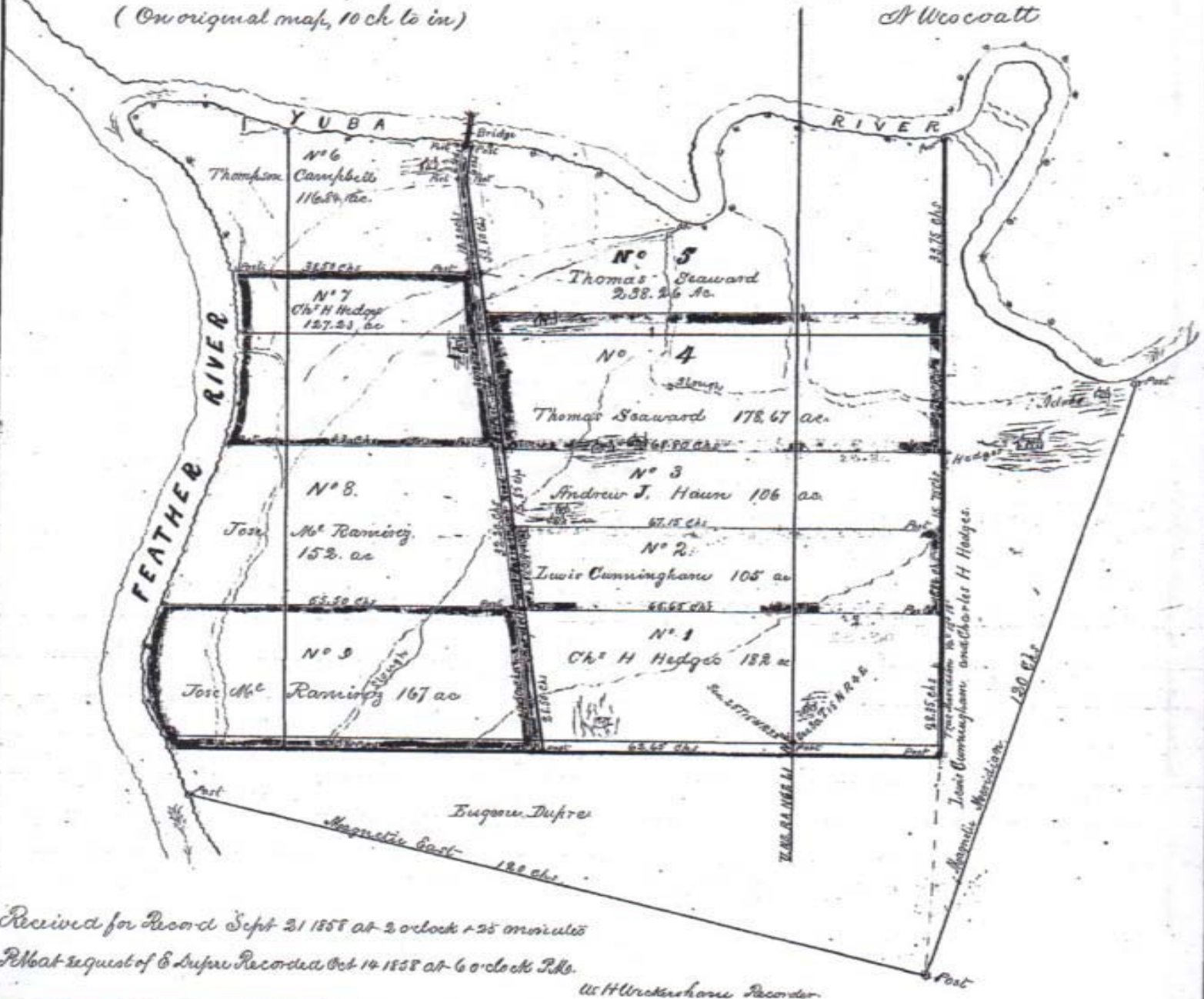
Partition

Of 1273 ac. of Land Situated South of the City of Marysville Yuba Co Cal.
into nine subdivisions for J. Mc. Ramirez Et al.

April 16th 1858. Scale 20 chains per in.

(On original map, 10 ch to in)

St Wacoatt



Received for Record Sept 21 1858 at 2 o'clock & 25 minutes
At request of E Dupre Recorded Oct 14 1858 at 6 o'clock P.M.

W H Wicks Recorder

AGENDA ITEM 4B
ATTACHMENT O

Decker Jewett & Co Bank By A.C.Bingham Cash.

STATE OF CALIFORNIA)
) ss
COUNTY OF YUBA)

On this 19th day of September in the year one thousand nine hundred and seven, before me, C.F. Aaron a Notary Public in and for the said County of Yuba, State of California, personally appeared A.C. Bingham, known to me to be the Cashier of the corporation described in and that executed the within instrument and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal at my office in the said County of Yuba, in this certificate first above written. C.F. Aaron (SRAL) Notary Public in and for the County of Yuba, State of California. Recorded at the Request of Geo. E. Springer September 21st A.D. 1907, at 19 min. past 10 o'clock A.M.

L. A. Bingham RECORDER.

Decker Jewett & Co Bank THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord one thousand nine hundred nine hundred and seven between DECKER, JEWETT AND CO. BANK, a corporation, organized under the laws of the State of California, and having its principal place of business in the City of Marysville, County of Yuba, State of California, the party of the first part herein, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of California, the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin to it in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, the following described strips or tracts of land situated in the County of Yuba, State of California, namely:-----

1st STRIP OR TRACT:

PARCEL NO 1 - A strip or tract of land as hereinafter described being situate on each side of the located center line of the Northern Electric Company's line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast

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corner of Lot Six (6) of the One Thousand Three hundred Seventy-three¹³⁷³ acre tract of the New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East forty (40) feet to a point on the center line of said road; thence North 4° 30' West along said center line of abandoned road six hundred ninety-six (696) feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West forty (40) feet along said line to a point on the West line of the abandoned Sacramento Road; thence North 4° 30' West one hundred thirty-two (132) feet along westerly line of said road, being also the division line between lands owned by the City of Marysville and lands now or formerly owned by the Western Pacific Railway, to a point on the southerly right of way line of Western Pacific Railway; thence North 48° 52' West along said southerly right of way^{line} of the Western Pacific Railway two hundred forty-five and five tenths (245.5) feet to a point on the easterly line of right of way of Northern Electric Company; thence South 12° 29' East one thousand and eight (1008) feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the lands of the City of Marysville and lands now or formerly owned by George Van Buskirk; thence east along said division line twenty seven (27) feet to point of beginning. Containing two and fifty-five hundredths (2.55) acres, more or less.

PARCEL NO. 2. A strip or tract of land as hereinafter described, being situate on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast corner of Lot six (6) of the One Thousand Three Hundred Seventy-three (1373) acre tract of New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road, as same is established by the County Surveyor of Yuba County, running thence North 4° 30' West, one thousand and sixty (1060) feet, more or less, along said West line of abandoned road, to a point on the northerly line of the right of way of the Western Pacific Railway, being above mentioned point of beginning; thence South 48° 52' East, fifty-seven (57) feet along said northerly line of right of way of Western Pacific Railway to a point in the center line of the abandoned Sacramento Road; thence North 4° 30' West one hundred eighty (180) feet to an angle point in the center line of abandoned Sacramento Road; thence North 5° 00' East seventy-eight (78) feet along said center line of abandoned road to a point ninety (90) feet at right angle easterly from Engineer Station L15-236+90.37 of the Northern Electric Company's survey;

AGENDA ITEM 4B ATTACHMENT O

thence on a curve to the left of one thousand five hundred twenty-two and sixty-nine hundredths (1522.69) feet radius, sixty (6) feet to a point ninety (90) feet easterly at right angles from Engineer Station L15-236+30.27 B.C. of the Northern Electric Company's survey; thence North 24° 16' West on a line ninety (90) feet easterly from and parallel to the Northern Electric Company's survey, a distance of one hundred twenty (120) feet, more or less, to a point ninety (90) feet easterly at right angles from Engineer Station L15-235+10, being a point on the South bank of the Yuba River; thence South 65° 30' West, two hundred thirty-four (234) feet, more or less, along said South bank of Yuba River to a point on the East line of the Northern Electric Company's right of way; thence South 12° 29' East, one hundred fourteen (114) feet along said East right of way line of Northern Electric Company to a point on the Northerly line of the right of way of the Western Pacific Railway; thence South 48° 52' East along said Northerly right of way line of the Western Pacific Railway two hundred ninety-nine (299) feet, more or less, to a point on the West line of the abandoned Sacramento Road, as same is established by County Surveyor of Yuba County; thence North 4° 30' West along said West line of road twenty (20) feet to point of beginning. Containing one and sixty-one hundredths (1.61) acres more or less.

2nd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: A parcel of land as per deed of Mrs. Alicia Dufficy, widow, to Mrs. Jane Tomb, recorded in Deed Book 35, at page 62, records of Yuba County, California. " Also that other tract of land in said Yuba County, described as beginning at a post on the East bank of Feather River, marked C.O. designating the Southwest corner of Lot No. Nine (9), as said corner is described on a map entitled Partition of One thousand three hundred seventy-three (1373) acres of land situated South of Marysville, in said Yuba County, into nine (9) subdivisions, for J.M. Ramirez, et al. which map is recorded in Deed Book 12, at page 569; and running thence due East, following the South line of said tract of land so described on said map of partition, one hundred and twenty (120) chains to a post marked C.O., being the Southeast corner of Lot No. One (1) as marked and described on said map of partition; thence running at right angles due South, thirty-seven and seventy-three hundredths (37.73) chains; thence at right angles due West in a straight line to the East bank of said Feather River; thence up and following the meanderings of said Feather River to the place of beginning." The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the

boundary line between the property of Mrs. Jane Tomb, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owned by J.S. Cohn Estate; said point being one thousand three hundred twenty-one and nine tenths (1321.9) feet, more or less, westerly along said boundary line from the westerly line of the Northerly and Southerly County Road and being at Engineer Station L11-315+33.3 of the located center line of the Northern Electric Company's Survey; thence South 17° 31' East two thousand and six hundred and thirty-six and seven tenths (2636.7) feet more or less to Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey, said point being on the boundary line between the property of Mrs. Jane Tomb and the property now or formerly owned by John Q. Packard and westerly along said boundary line one hundred and sixty-five (165) feet, more or less, from the West line of Northerly and Southerly County Road, said strip or tract of land containing four and eighty-four hundredths (4.84) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land: Two strips each seventy-five (75) feet in width, lying one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-315+33.3 to L11-341+70, containing nine and eight hundredths (9.08) acres, more or less.

3rd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad as the same is staked out and located over and across the following described parcel of land, to-wit: (Deed of Edwards Woodruff's Estate by Executor to John Q. Packard, recorded in Deed Book 48, at Page 334, records of the County of Yuba, State of California) All that certain real property on the South side of the Yuba River about 2 1/2 miles South of the City of Marysville, commonly known as the Eliza Ranch, and bounded on the North by the land of Mrs. Jane Tomb, on the East by the lands of Edwards Woodruff and of Packard and Woodruff and on the South by the lands of Josephine C. Englund (now D.C. Jenkins), and on the West by the Feather River. (Deed of Edwards Woodruff's estate by Executor to John Q. Packard, recorded in Deed Book 48, at page 449, records of the County of Yuba, State of California.) All those certain lots, pieces and parcels of land described "beginning at the Northwest corner of the Northeast quarter of Section Seven (7) in Township Fourteen (14) North of Range Four (4) East, M.D.M., said corner being also the Northwest corner of the land owned by M. Nutley (now Edward McGowan); thence East along the fence dividing the land of M. Nutley (now McGowan) from the land herein described and conveyed, twenty (20) chains, more or

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less, to the line of fence dividing the land herein described and conveyed from the land lately owned by Burkhardt Humwiler and afterwards by the Estate of Edwards Woodruff, deceased thence North forty (40) chains, more or less, to the line of fence dividing the land herein described from the land formerly owned by M.C. Dufficy and afterwards by the estate of Edwards Woodruff, deceased; thence along said fence west thirty-one and seventy hundredths (31.70) chains, more or less, to the line of fence dividing said land of Dufficy on the west from the land of Packard and Woodruff; thence due South forty-seven (47) chains, more or less, to the line of fence dividing the land of Josephine C. Englund (now D.C. Jenkins) from the land of Packard and Woodruff; thence East along said last mentioned fence eleven and seventy hundredths (11.70) chains, more or less, to the Northeast corner of said land of Josephine C. Englund (now D.C. Jenkins); thence North seven (7) chains, more or less, to the place of beginning, containing one hundred thirty-six (136) acres. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of John Q. Packard, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owned by Mrs. Jane Tomb, said point being one hundred and sixty-five (165) feet, more or less, westerly along said boundary line from the West line of the Northerly and Southerly County Road and being at Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey; thence South $17^{\circ} 31'$ East, eight thousand seven hundred and sixty and six tenths (8760.6) feet, more or less, to Engineer Station L11-429+30.6 of the located center line of the Northern Electric Company's survey; said point being in the boundary line between the property of John Q. Packard and the property now or formerly owned by D.C. Jenkins and westerly along said boundary line two hundred and seventy-five and three tenths (275.3) feet, more or less, from the common corner of the property of John Q. Packard and the properties now or formerly owned by Edward McGowan and D.C. Jenkins. Said strip or tract of land containing sixteen and nine hundredths (16.09) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land; Two strips each seventy-five (75) feet in width, lying one on each side of and adjacent and parallel to the above described strip of land from Engineer Station L11-341+70 to L11-429+30.6, containing thirty and sixteen hundredths (30.16) acres, more or less.

4th STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: That certain piece or parcel of land situate in

the County of Yuba, State of California, bounded and particularly described as follows
Beginning on the East bank of Feather River where the South line of the tract of land
known as the City of Eliza touches said river; thence Southerly along the line of said
river one mile to the Northwest corner of the Eldorado tract, so called; thence in an
Easterly direction one mile; thence in a Northerly direction one mile and thence West-
erly one mile to the place of Beginning. The center line of said strip or tract of
land hereby conveyed being particularly described as follows, to-wit:-----

BEGINNING at a point on the boundary line between the property of D.C. Jenkins,
situated in Section (7) Township Fourteen (14) North, Range Four (4) East, M.D.B. and M
in the County of Yuba, State of California, and the property now or formerly owned by
J.Q. Packard, said point being two hundred and seventy-five and three tenths (275.3)
feet, more or less, Westerly along said boundary line from the common corner of the
property of D.C. Jenkins and the properties now or formerly owned by J.Q. Packard and
Edward McGowan, and said point being at Engineer Station 111-429+30.6 of the located
center line of the Northern Electric Company's survey; thence South 13° 31' East,
eight hundred seventy-seven and four tenths (877.4) feet, more or less, to Engineer
Station 111-438+08, being a point on the boundary line between the property of D.C.
Jenkins and the property now or formerly owned by Edward McGowan, said point being one
thousand three hundred and thirty-six and four tenths (1336.4) feet, more or less,
Southerly along the said boundary line from the Northwest corner of the Edward Mc-
Gowan property, said strip or tract of land containing one and sixty-one hundredths
(1.61) acres, more or less. Also the right to use for borrow purposes the following
described strips or parcels of land: Two strips each thirty-five (35) feet in width,
lying one on each side of and adjacent and parallel to the above described strip or
tract, containing one and forty-one hundredths (1.41) acres, more or less.-----

5th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40)
feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC
COMPANY'S line of railroad, as the same is staked out and located over and across the
following described parcel of land, to-wit: The West half (1/2) of the Southwest
quarter (1/4) of Section Seventeen (17), East half (1/2) of Section Eighteen (18) and
South East quarter (1/4) of Section Seven (7), all in Township Fourteen (14) North,
Range Four (4) East, The center line of said strip or tract of land hereby conveyed
being particularly described as follows, to-wit: BEGINNING At a point in the boundary

line between the James Clark property situated in Section Seven (7), Township Fourteen (14) North, Range Four (4) East, M.D.M., in the County of Yuba, State of California, and the property now or formerly owned by Edward McGowan, said point being four hundred thirty and five tenths (430.5) feet Easterly along said boundary line from the Southwest corner of the Edward McGowan property, being at Engineer Station L11-451472 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East eight thousand two hundred forty-nine (8249) feet, more or less, to Engineer Station L11-534421, said point being on the boundary line between the James Clark property and the property now or formerly owned by W.R. Anderson, three hundred and sixteen and five tenths (316.5) feet more or less, along said Easterly boundary line from the intersection of the center line of the North and South County Road and East and West County Road. Said strip or tract of land containing fifteen and fifteen hundredths (15.15) acres, more or less. Also the right to use for borrow purposes the following described strips or parcels of land: Two Strips of land each thirty (30) feet in width, one on each side of and adjacent and parallel to the above described located center line from Engineer Station L11-451472 to Engineer Station L11-534421. Containing eleven and thirty-six hundredths (11.36) acres, more or less. Also for the purpose of road change a strip or tract of land sixty (60) feet in width, lying adjacent and parallel to the above described center line from Engineer Station L11-524480 to L11-533481. Containing one and twenty-four hundredths (1.24) acres, more or less.

6th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: West half of Northwest quarter and North half of Southwest quarter of Section Twenty (20) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of W.R. Anderson, situated in Section Twenty (20), Township Fourteen (14) North, Range Four (4) East, M.D.B. and M. in the County of Yuba, State of California, and the property now or formerly owned by James Clark, said point being three hundred and sixteen and five tenths (316.5) feet, more or less, Easterly along said boundary line from the intersection of the center lines of the North and South County and East and West County Road, said point being at Engineer Station L11-534421 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, four thousand one hundred and fifty-two (4152) feet, more

or less, to Engineer Station L11-575+73 of the located center line of the Northern Electric Company's survey, being a point on the boundary line between the property of R. Anderson and the property now or formerly owned by M.C. Lazear. Said strip or tract of land containing seven and sixty-three hundredths (7.63) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land. Two strips of land each twenty (20) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-534+21 to L11-561+00. Said strip or tract of land containing two and forty-six hundredths (2.46) acres, more or less. ^{or tracts} Two strips of land each sixty (60) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-561+00 to L11-568+00, containing one and ninety-three hundredths (1.93) acres, more or less. Two strips or tracts of land each one hundred and fifty (150) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-568+00 ^{to L11-575+73} containing five and thirty-two hundredths (5.32) acres, more or less.

7th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: Northeast quarter (1/4) of Section Thirty-two (32) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of Julia A. Tift 3-ft situated in the Northeast quarter of Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, and the property now or formerly owned by M.C. Lazear, said point being one thousand ~~and~~ hundred fifty-one (1651) feet, more or less, measured westerly along said boundary line from the center of the County Road, being Engineer Station L11-644+64 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, two thousand seven hundred sixty-two (2762) feet, more or less to Engineer Station L11-672+26 of the located center line of the Northern Electric Company's survey; said point being on the boundary line between the Julia A. Tift property and the property now or formerly owned by Sarah Metcalfe, said point being eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured westerly along said

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boundary line from the center of the County Road North of the jog at said boundary line.

Said strip or tract of land containing five and seven hundredths (5.07) acres, more or less

Also the right to use for borrow purposes the following described strips or tracts of land

Two strips of land each Forty (40) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land. Containing four and fifty-two hundredths (4.52) acres, more or less.

8th STRIP OR TRACT:

A strip or tract of land one hundred forty-eight (148) feet in width, being seventy-four (74) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The South one-half (1/2) of Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.M. The center line of said strip or tract of land hereby conveyed being particularly described as follows to-wit: BEGINNING at a point on the boundary line between the Sarah A.E. Metcalfe property, situated in Section Thirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, and the property now or formerly owned by Mrs Julia A. Tifft, said point being Engineer Station L11-672426 of the located center line of the Northern Electric Company's survey, and eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured westerly along said boundary line from the center of the County Road, North of the jog at said boundary line; thence South 17°31' East, one thousand nine hundred eleven and forty-one hundredths (1911.41) feet to Engineer Station L11-691437 ⁴¹ B.C. of the located center line of the Northern Electric Company's survey; thence to the right on a tangent Searles Spiral of three (3) thirty-three (33) foot chord lengths, ninety-nine (99) feet to Engineer Station L11-691436.41 E.S./B.C. of said survey; thence to the right on a tangent curve of two thousand eight hundred sixty-four and nine tenths (2864.9) feet radius, eight hundred thirty-three and six tenths (833.6) feet to a point on the boundary line between the Sarah A.E. Metcalfe property and the property now or formerly owned by Cline Bull, said point being Engineer Station L11-699471 of the Northern Electric Company's survey, and seventy-nine (79) feet, more or less, westerly along said boundary line from a point on the West line of the County Road, said point being the Southeast corner of the Sarah A.E. Metcalfe property. The strip or tract of land containing nine and thirty-three hundredths (9.33) acres, more or less.

9th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side

of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Five (5), Township Thirteen (13) North, Range Four (4) East M.D.M. The said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at the Northeast corner of the property of Cline Bull, situated in Section Five (5) Township Thirteen (13) North, Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, being the Southeast corner of the property now or formerly owned by Sarah Metcalfe, said corner being seventy-nine (79) feet, more or less, Easterly along the boundary line of the Cline Bull and the Sarah Metcalfe properties from Engineer Station L11-699+71 of the located center line of the Northern Electric Company's survey; thence Westerly along said boundary line one hundred nineteen (119) feet, more or less; thence to the right on a tangent curve of two thousand eight hundred twenty-four and nine tenths (2824.9) feet radius in a Southerly direction forty (40) feet from and parallel to the located center line of the Northern Electric Company's survey, one hundred fifty-one and eight tenths (151.8) feet to Engineer Station L11-701+22.08; thence South 0° 13' West forty (40) feet from and parallel to said center line five thousand one hundred twenty-three and ninety-two hundredths (5123.92) feet to a point on the boundary line between the Cline Bull property and the property now or formerly owned by Robert Johnston, said point being forty (40) feet measured Westerly along said boundary line from Engineer Station 752+46 of said survey; thence Easterly along said boundary line one hundred three and five tenths (103.5) feet, more or less, to the Westerly line of the County Road at the Southeast corner of the said Cline Bull property; thence Northerly along the West line of the County Road five thousand two hundred seventy-five (5275) feet, more or less, to the point of beginning, said strip or tract of land containing thirteen and forty-seven hundredths (13.47) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land: A strip or tract of land sixty (60) feet in width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-699+71 to Engineer Station L11-707+00. Said strip or tract of land containing one (1.00) acre, more or less. A strip or tract of land one hundred and forty (140) feet in width on the West side of and adjacent to the above described strip or tract of land from Engineer Station L11-707+00 to Engineer Station L11-752+46. Said strip or tract of land containing fourteen and sixty one hundredths (14.61) acres, more or less.

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10th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad., as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Eight (8) and all that portion of the East quarter of Section Seventeen (17), in Township Thirteen (13) North of Range Four (4) East, M.D.M., which lies in Yuba County, State of California. The said strip or tract of land hereby conveyed being particularly described as follows to-wit: BEGINNING at the Northeast corner of the Robert Johnston property, situated in Section Eight (8), Township Thirteen (13) North Range Four (4) East, M.D.B. and M., in the County of Yuba, State of California, being eleven (11) feet Westerly from the Southeast corner of the property now or formerly owned by Cline Bull, said corner being fifty-two and six tenths (52.6) feet measured Easterly along the boundary line between the Robert Johnston property and the property now or formerly owned by Cline Bull from Engineer Station L11-752746 of the located center line of the Northern Electric Company's survey; thence Westerly along said boundary line ninety-two and six tenths (92.6) feet; thence South $0^{\circ} 13'$ West forty (40) feet from and parallel to the center line of the Northern Electric Company's survey, nine thousand and twenty-four (9024) feet to a point on the North bank of the main channel of Bear River, said point being forty (40) feet West of Engineer Station L11-842770 of said survey; thence East eighty (80) feet; thence North $0^{\circ} 13'$ East, forty (40) feet from and parallel to said survey, one thousand three hundred twenty-four (1324) feet to a point South $89^{\circ} 47'$ East of Engineer Station L11-829746, said point being on the boundary line between the Robert Johnston property and the property now or formerly owned by Mrs E.A. Rogers; thence Westerly along said boundary line eight and seven tenths (8.7) feet, more or less, to a point on said boundary line thirty-one and threethirds (31.5) feet Easterly at right angles to Engineer Station L11-829746 of said survey thence Northerly along the said boundary line seven thousand seven hundred (7700) feet to the point of beginning. Said strip or tract of land containing seven teen and seventy-five hundredths (17.75) acres more or less.

Also the right to use for borrow purposes the following described strips or tracts of land & strip or tract of land one hundred and forty (140) feet in width, on the West side of said adjacent and parallel to the above described strip or tract of land from Engineer Station L11-752746 to Engineer Station L11-778788. Said strip or tract of land containing eight and forty-nine hundredths (8.49) acres, more or less. A strip or tract of land one hundred thirty (130) feet wide on the West side of, adjacent and parallel to the above

described strip or tract of land from Engineer Station L11-776+88 to Engineer Station L11-790+00 of the above described strip or tract of land. Said strip or tract of land containing three and thirty-two hundredths (3.32) acres, more or less. A Strip or tract of land three hundred forty (340) feet wide on West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-790+00 to Engineer Station L11-808+00. Said strip or tract of land containing fourteen and five hundredths (14.05) acres, more or less. A strip or tract of land two hundred and sixty (260) feet wide on the West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-808+00 to Engineer Station L11-829+46 of the above described strip or tract of land. Said strip or tract of land containing twelve and eighty-one hundredths (12.81) acres, more or less.

A strip or tract of land one hundred sixty (160) feet wide on the West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70 of the above described strip or tract of land. Said strip or tract of land containing four and eighty-six hundredths (4.86) acres, more or less. A strip or tract of land one hundred forty (140) feet wide at the North end and sixty (60) feet wide at the South end, the East boundary of said strip or tract of land being coincident with the East boundary of the Robert Johnston property and the West boundary being coincident with the East boundary of the above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70. Said strip or tract containing three and four hundredths (3.04) acres, more or less. for the purpose of laying down, erecting, maintaining, repairing and operating a single or double track railroad, to be operated by electricity, compressed air or other motive power, in, over, along and across said lands upon said strip of land hereby conveyed, together with all necessary and convenient means of ingress, egress and regress to and from said right of way for the purpose of erecting, maintaining, protecting and operating said railroad and all privileges necessary and convenient therefor. TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenance unto the said party of the second part and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part, in pursuance of a resolution of its Board of Directors, duly passed and adopted has caused these presents to be ex-

Dead

Not

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executed and its corporate name and seal hereunto affixed the day and year first above
written. Reference is hereby made to Volume "3" of Miscellaneous Records at page 150 in
the office of the County Recorder of the County of Yuba, State of California.

Decker Jewett & Co Bank By A.C.Bingham, Cash.

STATE OF CALIFORNIA,)
)SS
County of Yuba,)

On this 19th day of September, in the year one thousand nine
hundred seven, before me, C.F.Aaron, a Notary Public in and for the said County of Yuba,
State of California, personally appeared A.C.Bingham, known to me to be the Cashier of the
corporation described in and that executed the within instrument and also known to me to be
the person who executed it on behalf of the corporation herein named, and he acknowledged
to me that such corporation executed the same. IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my official seal at my office in the said County of Yuba, in this certifi-
cate first above written. C.F.Aaron (SEAL) Notary Public in and for the County of Yuba,
State of California. Recorded at the Request of Geo. R. Springer September 21st, 1907,
at 20 min. past 10 o'clock A.M.

S. O. Gunning

RECORDER.

Decker Jewett & Co Bank THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord
for one thousand nine hundred and seven between DECKER JEWETT AND CO. BANK, a corporation, or-
Northern Electric Co ganized under the laws of the State of California, and having its principal place of busi-
ness in the City of Marysville, County of Yuba, State of California, the party of the first
part, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and exist-
ing under and by virtue of the laws of the State of Nevada and doing business in the State
of California the party of the second part, WITNESSETH: That the said party of the first
part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin,
to it in hand paid by the said party of the second part, at or before the sealing and
delivery of these presents, the receipt whereof is hereby acknowledged, has granted, barg-
ained and sold, conveyed and confirmed, and by these presents, does grant, bargain and sell
convey and confirm unto the said party of the second part, and to its successors and
assigns, forever, the following described strip or tract of land situate in the County of
Yuba, State of California, namely: A strip or tract of land as hereinafter described, being
on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad

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

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

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

IN WITNESS WHEREOF, the said party of the first part, as executor as aforesaid, has hereunto set his hand and seal the day and year first herein written. Roger R. Vair. - - (SEAL) Executor of the Will of Matthew Remond, deceased State of California)
City and County of San Francisco) On this 20th day of November A.D.

ATTACHMENT D

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. Henry B. Lister (SEAL), Notary Public in and for the City and County of San Francisco, State of California. - - - Recorded at the Request of

Amie Matti, December 13th, A. D. 1909, at 5 min. past 3 o'clock P. M. Recorder, By *China E. Jennings* Deputy.

Space & Return

et al.

To

*William S. Bellinger
Electric Railway Co.*

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

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

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

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

Beginning at a point on the boundary line between the land of the Western Pacific Railway Company, formerly owned by the P. George Estate, and the land owned by the estate of Mrs Rebecca G. Cohn, et al., said point being distant sixty and four tenths (60.4) feet east and North 4° 30' West six hundred ninety-six (696) feet from the southeast corner of lot six (6) of the one thousand three hundred seventy-three (1373) acre tract in the New Helvelia Grant, County of Yuba, State of California, said point being Engineer Station L15 - 242 plus 56.9 of the located center line of the Northern Electric Railway Company's Survey; thence South 21° 05' East, two thousand two hundred twenty-one (2221) feet, more or less, to Engineer Station L15 - 264 plus 77.91 of the located center line of the Northern Electric Railway Company's survey, said strip or tract of land containing 5.10 acres.

Also a strip or tract of land one hundred thirty (130) feet in width being ninety (90) feet in width on the westerly side of and sixty (60) feet in width on the easterly side of, and adjacent and parallel to the following described center line which said center line is a continuation of the first described center line and begins at the aforesaid Engineer Station L15-264 plus 77.91 of the located center line of the Northern Electric Railway Company's survey; thence South 11° 05' East two hundred (200) feet, to beginning of curve at Engineer Station L15-266 plus 77.91; thence in a southeasterly direction on a tangent curve to the left of five thousand seven hundred and twenty-nine and six tenths (5729.6) feet radius six hundred forty-one and sixty-seven hundredths (641.67) feet to end of curve at Engineer Station L15-273 plus 19.56 = L14-273 plus 19.56; thence south 17° 31' East four thousand two hundred thirteen and seventy-two hundredths (4213.72) feet more or less to a point on the boundary line between the property of Estate of Mrs R. G. Cohn et al and the property now or formerly owned by Mrs Jane Toab. Said strip or tract of land containing seventeen and forty-seven hundredths (17.47) acres, more or less. For the purpose of laying down, erecting, maintaining, repairing and operating a single or double track railroad, to be operated by electricity, compressed air, or other motive power, in, over, along and across said lands upon said strip of land hereby conveyed, together with all necessary and convenient means of ingress, egress and regress to and from said right of way for the purpose of erecting, maintaining, protecting and operating said railroad and all privileges necessary and convenient therefor.

TOGETHER with all and singular the tenements, hereditaments

ATTACHMENT D

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

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part and to its successors and assigns forever.

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

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written, Amy Hyman, Henry Hyman, Isaac G. Cohn, Hugo Cohn By Isaac G. Cohn, his Attorney in Fact., Sam G. Simonson, By Isaac G. Cohn, her Attorney in Fact., Helene Cohn By Isaac G. Cohn, her Attorney in Fact., Rose Cohn By Isaac G. Cohn, her Attorney in Fact., George Cohn Son of Simon Cohn, By Isaac G. Cohn, his Attorney in Fact., Siegfert Cohn, By Isaac G. Cohn his Attorney in Fact., George Cohn, Son of David G. Cohn, By Isaac G. Cohn, his Attorney in Fact.,

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

On this 30th day of November in the year One Thousand and Nine hundred and -- before me, Anne E. Hasty, a Notary Public, in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared, Amy Hyman and Henry Hyman known to me to be the person described in, whose names are subscribed to and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. Anne E. Hasty (SEAL) Notary Public in and for the City and County of San Francisco, State of California.

State of California)
County of Yuba) ss.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written. Maude Lunford (S&L)
Notary Public in and for the County of Yuba, State of California.

State of California)
County of Yuba) ss.

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

SIMONSON, HELENE COHN, ROSA COHN, GEORGE COHN (son of Simon G. Cohn), STEPHEN COHN, GEORGE COHN (son of David Cohn), and acknowledged to me that he subscribed the names of Hugo Cohn, Emma G. Simonson, Helene Cohn, Rosa Cohn, George Cohn (son of Simon G. Cohn), Stephen Cohn and George Cohn (son of David Cohn) thereby as principals and his own name as attorney-in-fact.

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

Maude Lunford (S&L) Notary Public in and for the County of Yuba, State of California. - - - Recorded at the Request of Thomas Carlin, December 14th A. D. 1909, at 45 minutes past 3 o'clock P.M. - - -

John L. Henry
Recorder; By *Alvin E. Cunningham* Deputy.

THIS INSTRUMENT, made by and between John O. Curry of the County of Yuba, State of California, the party of the first part, and CALIFORNIA MIDLAND RAILROAD COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, State of California, the party of the second part, - - -

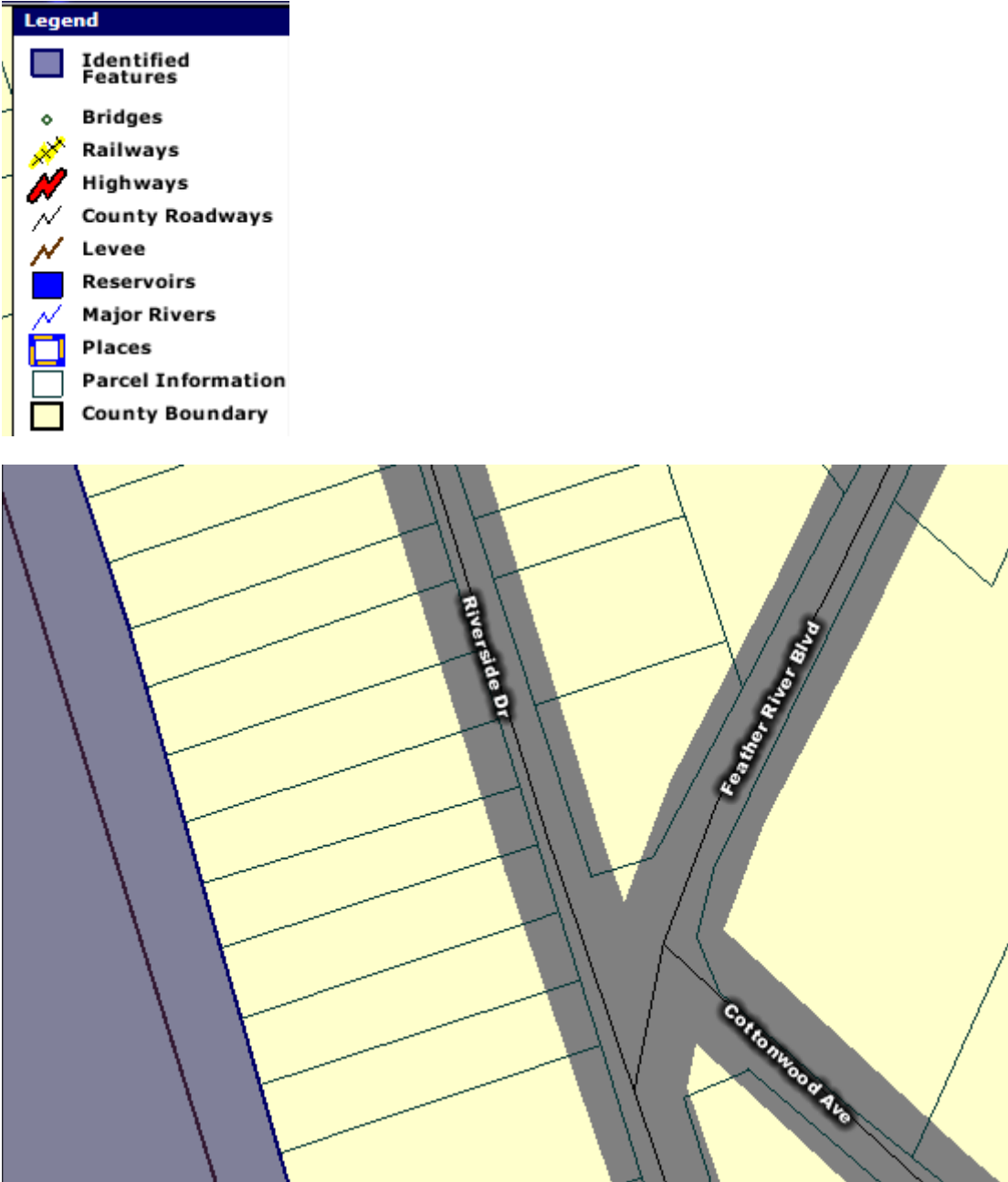
WITNESSETH, that said party of the first part, for and in consideration of the sum of ten (10) dollars in gold coin of the United States of America, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged does hereby Grant, bargain and sell unto the said party of the second part, its successors and assigns, that certain parcel or strip of land situate in

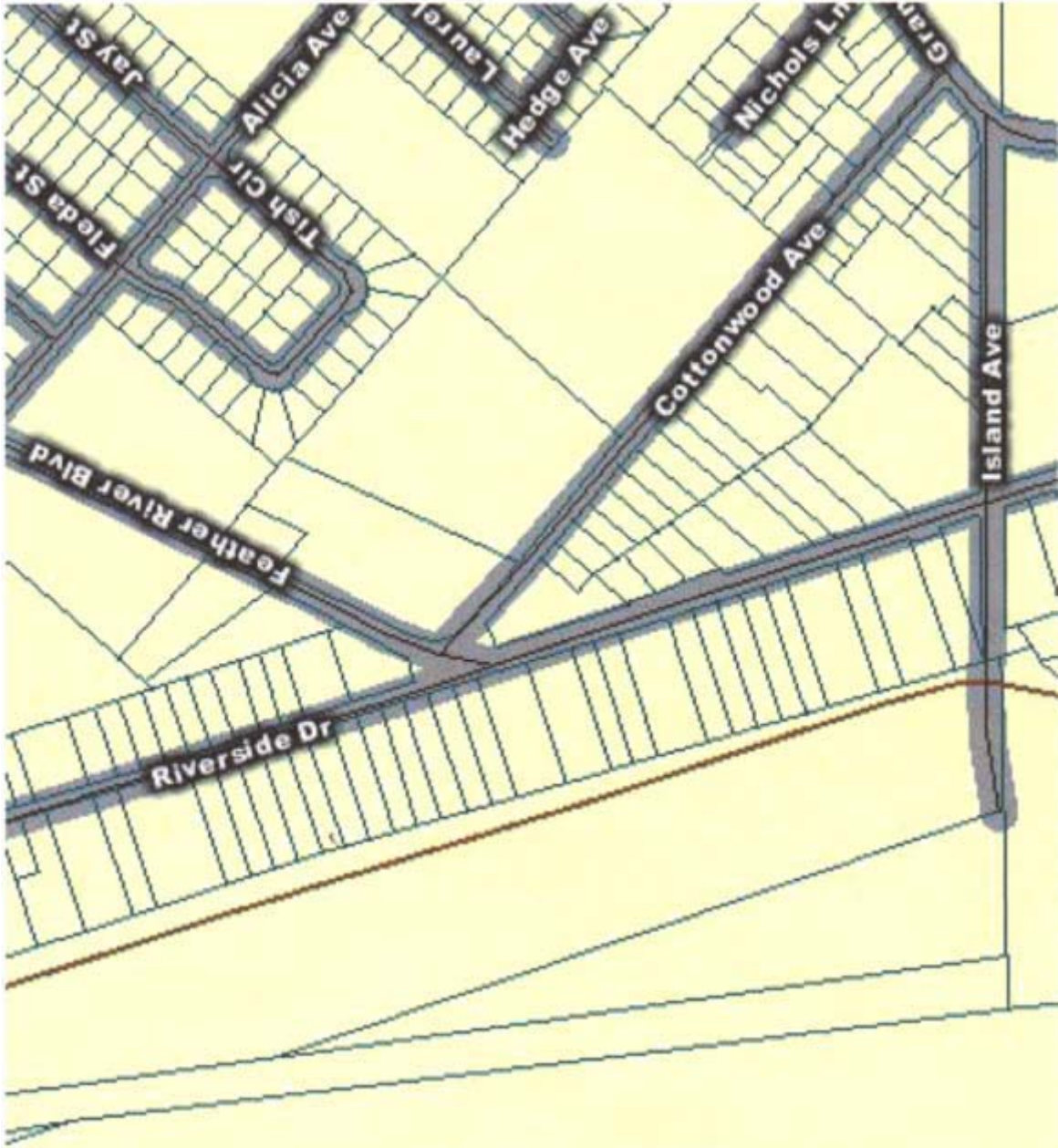
ATTACHMENT D

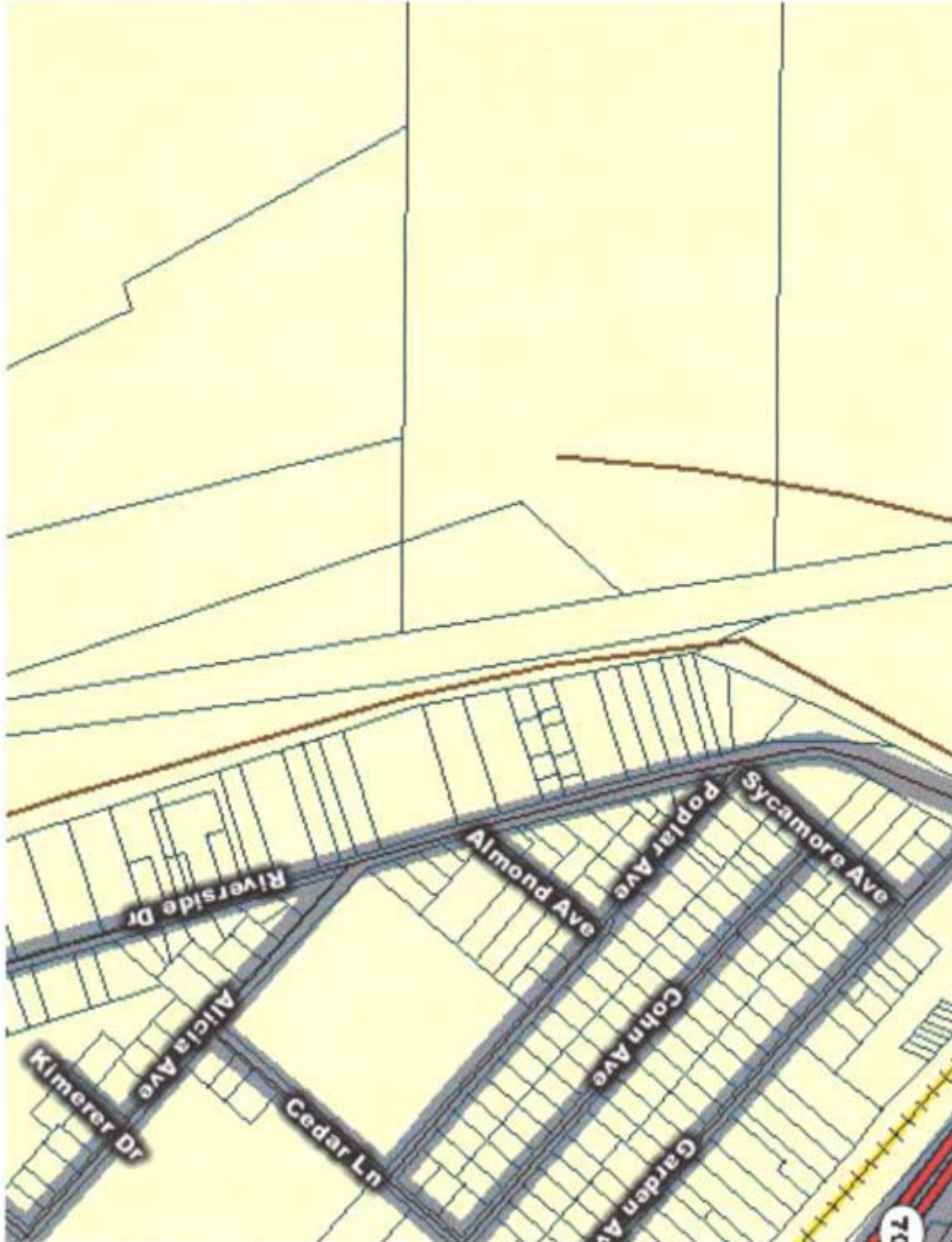
the County of Yuba, State of California, and more particularly bounded and described as follows: - - -
viz.: - A strip of land one hundred (100) feet in width, lying fifty (50) feet on each side of the center line of a certain route which has been surveyed and definitely located and marked upon the ground by the said California Midland Railroad Company under the direction of its Chief Engineer, by means of stakes driven at intervals of approximately one hundred (100) feet, and marked and numbered consecutively from Engineer's Station "g" 2095 x 77 to Engineer's Station "g" 2157 x 30 and extending along said route, up to, over and across the lands of the said part of the First part situated in the North East quarter (N. E. 1/4) and the West one half (W. 1/2) of Section Eleven (11), Township fifteen (15) North Range four (4) East Mount Diablo Base and Meridian; said strip having a length of six thousand one hundred and fifty three (6153) feet, more or less, and containing an area of nine and fifty three hundredths (9 53/100) acres. The said center line, which the said cross-section the said lands of the part - - of the first part, is described as follows, viz.: - -
Beginning at Engineer's Station No. "g" 2093 x 77, which is situated on the Eastern boundary of said Section Eleven (11) from which the quarter corner between Sections Eleven and Twelve bears south 3319 feet distant; thence by a straight course south 46° 46' West 603 1/2 feet to Engineer's Station "g" 2104 x 30 1/2; thence 330 feet by a curve to the right the rate of curvature of which changes 0° 15' for each 30 feet to Engineer's Station "g" 2105 x 10 1/2; thence by a 3° curve to the right 477 5 feet to Engineer's Station "g" 2109 x 67 2; thence by a 2° 15' curve to the right 414 5 feet to Engineer's Station "g" 2114 x 02 1/2; thence by a curve to the right the rate of curvature of which changes 0° 15' for each 30 feet, 240 feet to Engineer's Station "g" 2116 x 42 1/2; thence by a straight course south 78° 05' West 321 feet to Engineer's Station "g" 2119 x 63 1/2; thence by a 3° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 1110 1/2 feet to Engineer's Station "g" 2130 x 74 1/2; thence by a straight course South 54° 40' West 372 2 feet to Engineer's Station "g" 2134 x 46 1/2; thence by a 0° 30' curve to the right 413 feet to Engineer's Station "g" 2138 x 59 2; thence by a straight course South 55° 44' West 117 7 feet to Engineer's Station "g" 2159 x 76 1/2; thence by a 1° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 433 2 feet to Engineer's Station "g" 2144 x 60 1/2; thence a straight course south 52° 48' West 1042 4 feet to Engineer's Station "g" 2155 x 02 1/2; thence by a curve to the left the rate of curvature of which changes 0° 15' for each 30 feet 21 feet to Engineer's Station "g" 2157 x 30 at the westerly boundary of Section Eleven. - - -
The westerly side or end of said strip or parcel of land is bounded on the

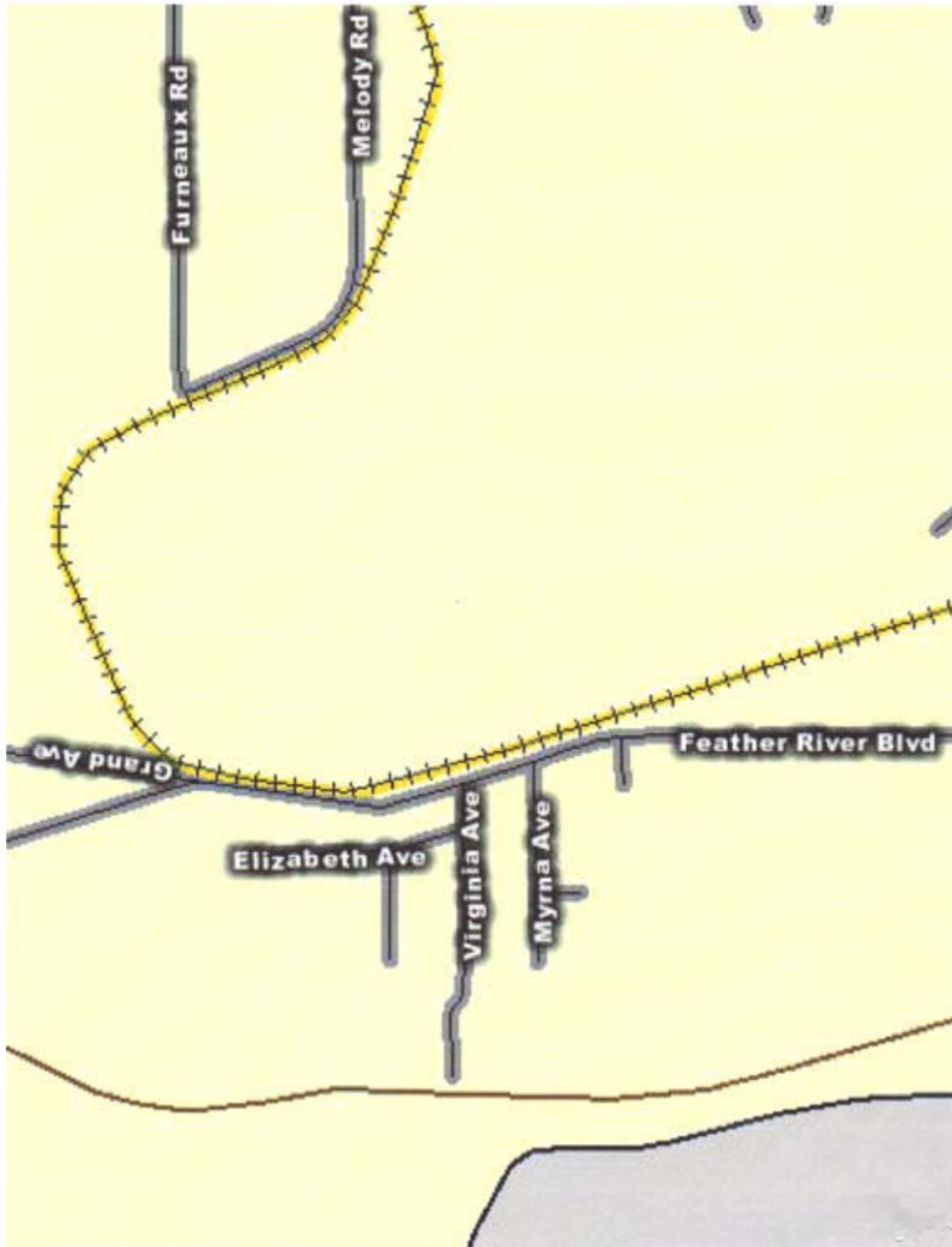
EXHIBIT G 1-4

YUBA COUNTY EASEMENT MAP AS OF 2011









R.S. Dec #2475

THIS INDENTURE made this 22nd day of December,

1958, by and between SACRAMENTO NORTHERN RAILWAY, hereinafter designated as grantor, and the (SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT,) a public agency, hereinafter designated as grantee,

W I T N E S S E T H :

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

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

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

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



3045

RECORDED AT REQUEST OF Yuba County Title Guarantee Co.

Jan 7 1959 AT 2:55 P.M. BOOK 267 PAGE 509

OFFICIAL RECORDS, YUBA COUNTY

MILDRED TAPLEY RECORDER BY M. Dwyer DEP.

No Fee

PARCEL 2: A strip of land 80.0 feet in width, being 40.0 feet on each side of, and parallel with the located centerline of the Northern Electric Company line of railroad as the same is staked out and over and across the following described parcel of land: Fractional South one-half of Lot 6, and North one-half of Lot 7 of the 1373 acre tract of the New Helvetia Grant, South of the Yuba River, containing 60 acres more or less. The centerline of said strip or tract of land hereby conveyed being described as follows: Beginning at a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by the City of Marysville; said point being 4 feet, more or less, North and 74 feet, more or less, West of the southeast corner of Lot 6 in the 1373 acre tract in the New Helvetia Grant in the County of Yuba, and being at Engineer Station L11-249+08 of the located centerline of the Northern Electric Company survey; thence in a southeasterly direction on a tangent curve to the left of 5729.5 foot radius 494.5 feet, more or less, to a point on the boundary line between the property of George Van Buskirk and the property now or formerly owned by J. G. Cohn, said point being the centerline of the abandoned Marysville and Sacramento road and 496 feet, more or less, South 6° 00' East along said centerline of road from the southeast corner of Lot 6 of the above-mentioned tract and being at Engineers Station L11-254+02.5 E.C. of the located centerline of the Northern Electric Company survey, said strip or tract of land containing 0.91 acre, more or less.

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

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

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

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

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

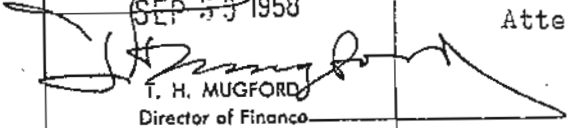
PARCEL 5: A strip of land 150.0 feet in width, being 90.0 feet wide on the westerly side and 60.0 feet wide on the easterly side of the following described centerline:

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

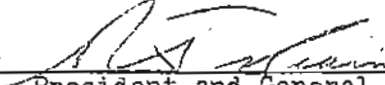
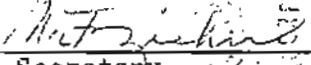
PARCEL 6: Beginning at a point, said point being the most northerly corner of the land conveyed to William C. McIntyre and Glenn E. Clarridge by deed recorded January 7, 1958, in Volume 251 of Official Records, page 283, Yuba County Records, said point also being South 17° 29' east, a distance of 100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

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

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

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

SACRAMENTO NORTHERN RAILWAY

By 
President and General ManagerAttest: 
Secretary

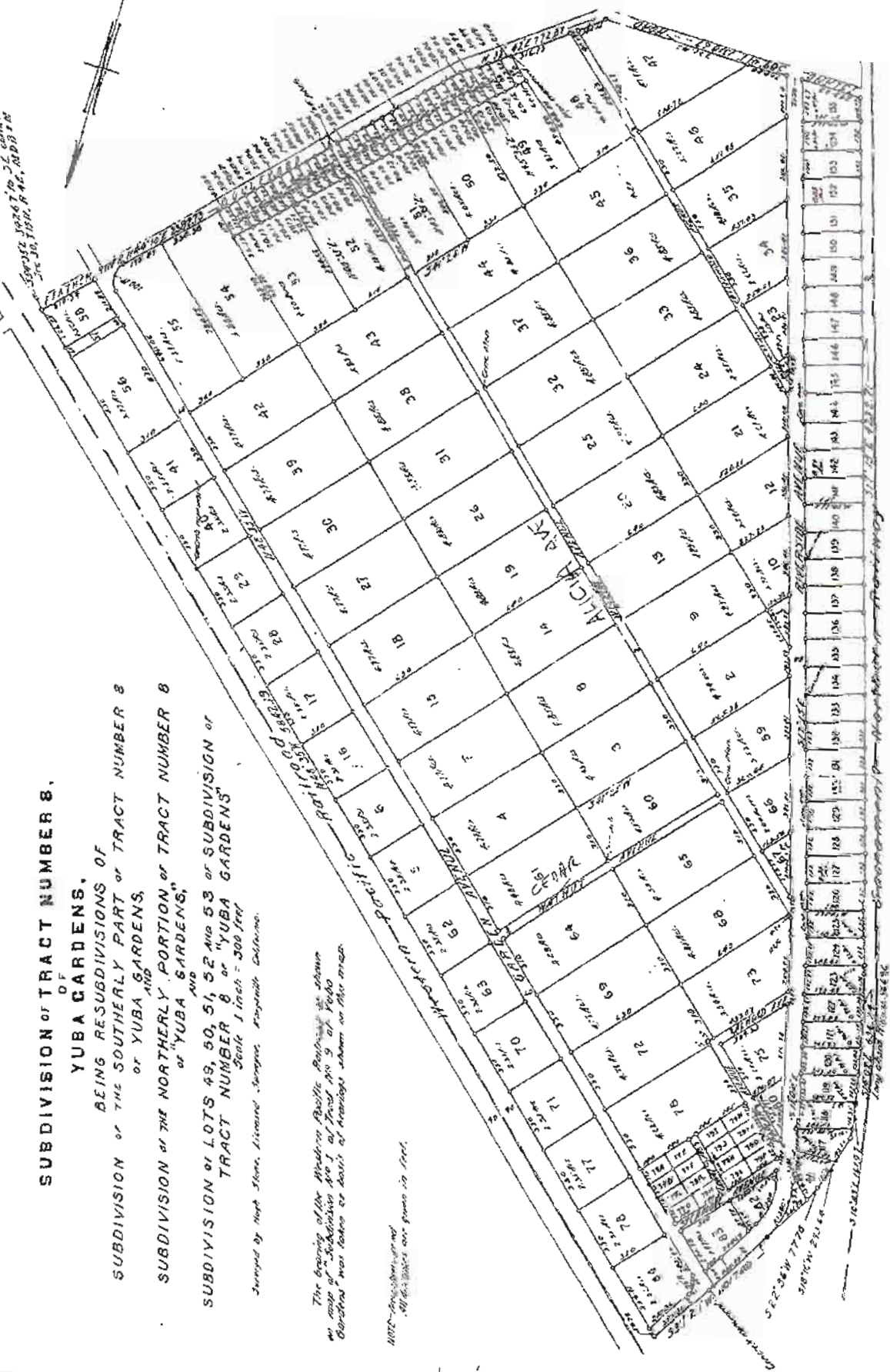
ATTACHMENT F

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

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

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

NOTES:—The dimensions
of the lots are given in feet.



SHEET 1 OF 2 SHEETS



EXHIBIT H

GRANT DEED (Individual)

21676-2

For value received T. D. CLARK and LOIS L. CLARK, his wife

GRANT.....to CHARLES MILLER and SUSAN MILLER, his wife,
as Joint Tenants

all that real property situate in the

County of Yuba, State of California, described as follows:

Portion of Lot No. 141, as shown upon the map entitled,
"Subdivision of Tract 8 of Yuba Gardens," on file in
the office of the County Recorder of the County of Yuba,
State of California, in Book 3 of Maps, page 45, and more
particularly described as follows:

Beginning at the Northeasterly corner of said Lot 141;
thence South 72° 45' West along the Northerly side of
said Lot 141, 280 feet; thence South 17° 15' East along
the Westerly side of said Lot 141, 66 feet; thence North
72° 45' East and parallel with the Northerly side of said
Lot 141, 280 feet; thence North 17° 15' West along the
Easterly side of said Lot 141, along the Westerly side
of that certain County Road known as Riverside Avenue,
66 feet to point of beginning.



WITNESS our hands this 22nd day of June, 1950

T. D. Clark
Lois L. Clark.

For Recorder's Use Only

STATE OF CALIFORNIA

County of Yuba } ss.
On June 22, 1950, before me,
Suzette Shanahan a Notary Public, in and for said
County and State, personally appeared T. D. Clark and Lois
L. Clark, his wife,
known to me to be the person s whose name s are subscribed to the within
instrument, and acknowledged to me that they executed the same.

Suzette Shanahan
Notary Public
My commission expires July 29, 1953

FORM 84C 15M 1-49

EXHIBIT I

BOOK 193 PAGE 61

Declaration of Homestead
JOINT DECLARATION BY HUSBAND AND WIFE

Know All Men by These Presents: That we, Charles Miller
HUSBAND

and Susan Miller
WIFE, do certify and declare that we are husband and wife and we do now, at the time of making this Declaration, actually reside on the land and premises hereinafter described; that the said land and premises on which we reside are bounded and described as follows, to-wit:

Lying and being in the County of Yuba,
State of California, and particularly described as follows:

Portion of Lot No. 141, as shown upon the map entitled "Subdivision of Tract 8 of Yuba Gardens," on file in the office of the County Recorder of the County of Yuba, State of California, in Book 3 of Maps, page 45, and more particularly described as follows:

Beginning at the Northeasterly corner of said Lot 141; thence South 72° 45' West along the Northerly side of said Lot 141, 280 feet; thence South 17° 15' East along the Westerly side of said Lot 141, 66 feet; thence North 72° 45' East and parallel with the Northerly side of said Lot 141, 280 feet; thence North 17° 15' West along the Easterly side of said Lot 141, along the Westerly side of that certain County Road known as Riverside Avenue, 66 feet to point of beginning.

OFFICE OF THE COUNTY RECORDER
COUNTY OF YUBA, CALIFORNIA

Said Premises consist of a lot of land and the dwelling house thereon. No former Declaration of Homestead has been made by us or either of us or if any such Declaration has been made it has been abandoned.

It Is Our Intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon and its appurtenances, as Homestead, and we do hereby select and claim the same as a Homestead.

We Estimate the actual cash value of the premises above described to be \$5,000.00



Said Premises consist of a lot of land and the dwelling house thereon. No former Declaration of Homestead has been made by us or either of us or if any such Declaration has been made it has been abandoned.

It Is Our Intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon and its appurtenances, as Homestead, and we do hereby select and claim the same as a Homestead.

We Estimate the actual cash value of the premises above described to be \$5,000.00

In Witness Whereof, we have hereunto set our hands and seals, this 12th day of June,
in the Year of Our Lord One Thousand Nine Hundred and Fifty-four.

Charles Miller
Charles M. Miller (Seal)

Susan Miller (Seal)

STATE OF CALIFORNIA, }
COUNTY OF Butte } ss.

Charles Miller and Susan Miller

being each duly sworn, each for himself and herself, says: That they are the persons who are the declarants in the within Declaration of Homestead and the persons who executed the same; and that the matters therein stated are true of their own knowledge, and each knows said matters to be true of his or her own knowledge.

Subscribed and sworn to before me this 12th day of June 19 54.

Charles L. King
Notary Public in and for the County of Butte, State of California.

Charles Miller
Susan Miller

INDEXED 4808 COMPARED

Declaration of Homestead of Charles Miller and Susan Miller, his wife Claimant

DATED June 12 19 54

FOR RECORDER'S STAMP

RECORDED AT REQUEST OF *Susan Miller*

June 14 1954 AT 5.45 MIN. PAST 2 O'CLOCK A.M. IN BOOK 193, PAGE 1

OFFICIAL RECORDS, YUBA CO.

MILDRED TAPLEY RECORDER BY *M. Tapley* DEPUTY

DO NOT WRITE IN THIS SPACE

See 190. p. 1

P.O. Box 1301 Mills

In and for said County of Butte, State of California

Charles L. King
Notary Public

In this certificate first above written.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year instrument, and they acknowledged to me that they executed the same.

BOOK 193 PAGE 62

State of California

} ss.

County of Butte

On this 12th day of June A. D. One Thousand
Nine Hundred and Fifty-four, before me, Charles L. King,
A Notary Public, in and for the County of Butte
State of California, residing therein, duly commissioned and sworn, personally
appeared Charles Miller and Susan Miller

known to me to be the persons described in and whose names are 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
in this certificate first above written.

Charles L. King

Notary Public

In and for said

County of

Butte

State of California

Exhibit

Water Side of Levee Ending at the west side of the Levee picture take from top of 2nd Levee



Land Side of the Levee



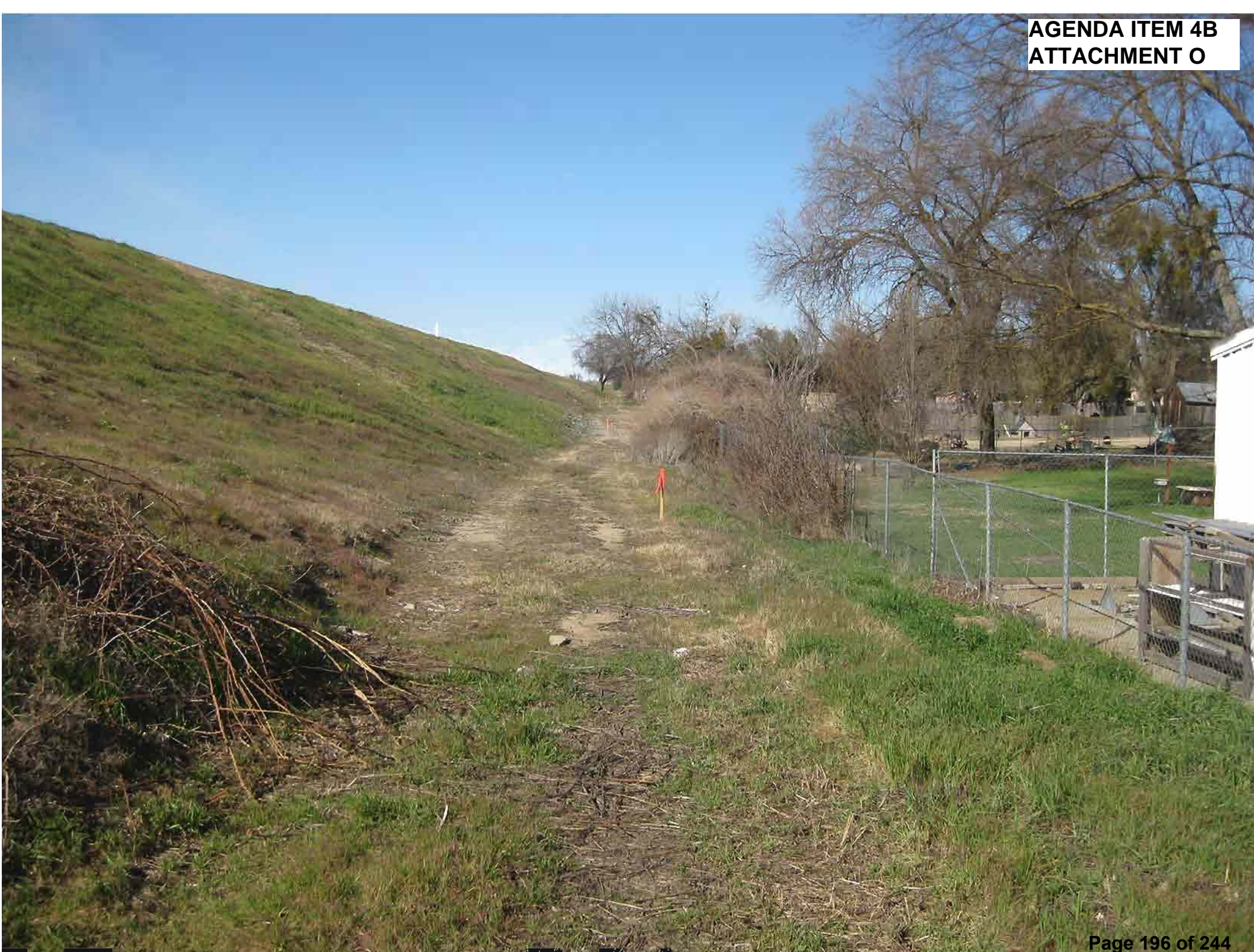
Picture Taken from top of 2nd Levee to show both distances from Water side toe to Land side toe



EXHIBIT F












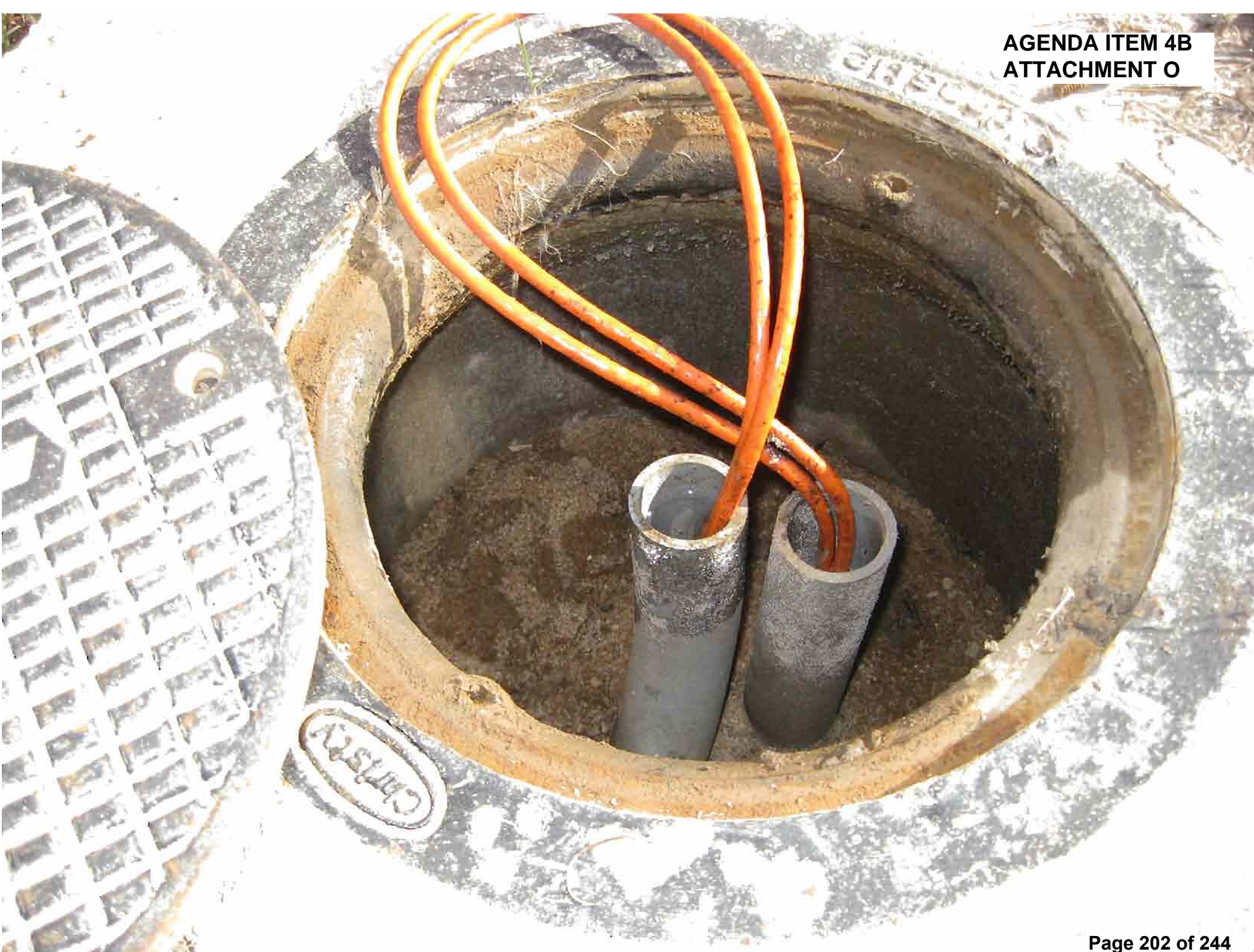
VW Miniluger
PIN 52613310
SN 31558

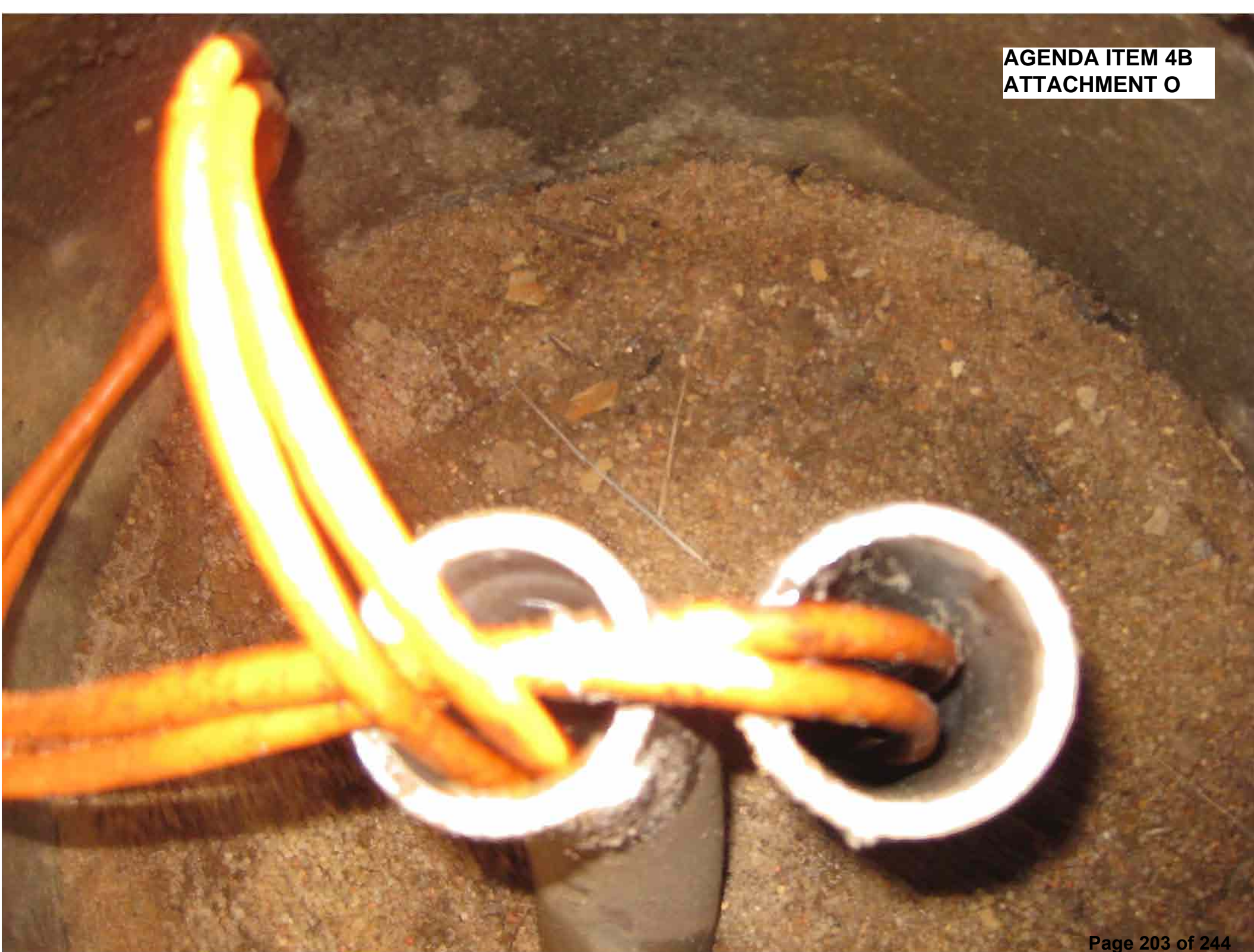
SLOPE INDICATOR
www.slopeindicator.com

WW MiniLogger
SLOPE INDICATOR

A photograph showing a white metal post, likely a survey marker, with the label 'PF-8' painted on it in black. The post is situated in a gravelly area with some sparse green grass. To the right of the post is a concrete curb. The ground is covered in small, light-colored gravel and some dirt. A shadow is cast by the post onto the gravel.

PF-8











P-F7





Caliso, Angeles

From: Caliso, Angeles
Sent: Tuesday, January 31, 2012 11:08 AM
To: 'SUSAN LAGRAND'
Subject: RE: Carol Miller - Fence - Some Federal Decisions On Railroad Responsibility

Ms. LaGrand,

I will include your documents as part of the staff reports, which will be presented to our Board.

If you have any additional questions, feel free to call.

Sincerely,

Angeles Caliso
Central Valley Flood Protection Board
(916) 574-2386 Office | (916) 574-0682 Fax
Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: SUSAN LAGRAND [<mailto:weluvpugs@sbcglobal.net>]
Sent: Sunday, January 29, 2012 4:59 PM
To: Caliso, Angeles
Subject: FW: Carol Miller - Fence - Some Federal Decisions On Railroad Responsibility

Ms. Caliso,

I am sending you the articles that Carol found, so you may forward to the Board for review.

The third page is of the most interest, and I have been searching the internet, but cannot find anywhere that this law has been overridden since 2003.

Thank you very much,

Susan Lagrand

--- On Fri, 1/27/12, Lagrand, Susan <slagrand@frhg.org> wrote:

From: Lagrand, Susan <slagrand@frhg.org>
Subject: FW: Carol Miller - Fence - Some Federal Decisions On Railroad Responsibility
To: weluvpugs@sbcglobal.net
Date: Friday, January 27, 2012, 7:50 AM

Susan Lagrand, CCS

Rideout Memorial Hospital

Health Information Management

726 4th Street

Marysville, Ca. 95901

530-751-4270 ext. 7329

From: SUSAN LAGRAN [\[mailto:weluvpugs@sbcglobal.net\]](mailto:weluvpugs@sbcglobal.net)
Sent: Tue 1/10/2012 9:38 PM
To: Lagrand, Susan
Subject: Fw: Carol Miller - Fence - Some Federal Decisions On Railroad Responsibility

--- On **Wed, 12/28/11**, pjc77@netzero.com <pjc77@netzero.com> wrote:

From: pjc77@netzero.com <pjc77@netzero.com>
Subject: Carol Miller - Fence - Some Federal Decisions On Railroad Responsibility
To: monty_h@eliteuniversalsecurity.com
Cc: weluvpugs@sbcglobal.net
Date: Wednesday, December 28, 2011, 4:41 PM

Sorry I did not do this sooner but I was searching.

Attached are some Federal Decisions that are very interesting.

Another fact that needs to be address - The Railroad nor the Utilities ever maintained the properties on the east side of the fence, before or after the fence was built.

This should help us tremendously.

Talk later,

Carol

We conclude that the land of Category 1 is owned in fee by the landowners, subject to the railway easement. The district court's contrary decision is reversed. On the railway's abandonment of its right-of-way these owners were disencumbered of the railway easement, and upon conversion of this land to a public trail, these owners' property interests were taken for public use, in accordance with the principles set forth in the Preseault cases. On remand the district court shall determine just compensation on the conditions that apply to these landowners.

Recognizing the public interest in establishment of roads, your committee safeguarded such rights by suggesting the amendments above referred to protecting not only roads now established but giving the public authorities one year's time after a decree of forfeiture or abandonment to establish a public highway upon any part of such right of way. (275)

Typically, state-law property rights do not become possessory until the railroad has abandoned its line and some entity interferes with the repossession by the landowner. Justice O'Connor, in her concurrence in *Preseault v. ICC*, stated that ICC continuing jurisdiction over abandonment cannot always be the equivalent to, and preempt issues of, the landowner's constitutional rights under the takings clause. (279) Thus, questions of abandonment and takings liability must be disaggregated. Takings liability may still exist even if a railroad has not abandoned. And takings liability may exist after abandonment if an entity interferes with the landowner's property rights. But there is no question that a railroad that railbanks its corridor has not abandoned it. The government may still be liable for interference with state-law property rights, as the Federal Circuit held on remand in *Preseault v. United States*, (280) and be obligated to pay compensation. But the compensation is due precisely because the abandonment that would trigger state-law property rights was forestalled by application of the railbanking statute.

Nevertheless, for federally granted property rights, as exist in these FGROWs, Congress could provide that no rights vest in adjacent patentees until the FGROW is abandoned by the railroad, and if so Congress could certainly alter the terms and conditions of abandonment at any time without implicating the takings clause so long as the patentees' rights have not vested. (282) This is precisely what Congress believed it was doing when it adopted section 912 and section 1248 (c), which provided that landowner rights would not shift until a judicial or congressional declaration of abandonment. (283) And this is why the timing of the shift in property rights matters. Hence, for FGROW subject to section 912, adjacent landowners' property rights in the servient fee do not transfer out of the government until one year after abandonment when it is determined that no public highway use will be made of the corridor. If the property rights transfer any earlier, then the public highway use, the municipality use, the interim trail use, or any other public use could all raise takings implications.

Any other interpretation of the applicability of section 912 would render the application of section 912 in *Vieux*, *Marlow*, *Barney*, *Marshall*, *Whipps*, and *Idaho I* to have been unconstitutional takings. (284) As we can see, however, the Hash court's summary finding of abandonment, without discussing the criteria of section 912 or making findings of abandonment that would justify its decision as a judicial determination of abandonment, resulted in essentially nullifying section 912, and ruling that the adjacent landowners were entitled to compensation. (285) This ruling means that Congress could not amend section 912 to retain rather than dispose of its rights without running afoul of the takings clause of the Fifth Amendment. By its holding, the Hash court essentially ruled that 16 U.S.C. [section] 1248(c) was a facial taking because it purported to retain and reuse property rights that had already been transferred out of federal ownership. (286) Given the fact that the Supreme Court has yet to find that any law works a facial taking, this court's decision without any discussion, briefing, argument, or findings is particularly stunning. (287) To the extent the Hash court found that section 912 is not applicable to 1875 Act corridors, it eviscerated not only section 912, but 43 U.S.C. [section] 913, 23 U.S.C. [section] 316, and 16 U.S.C. [section] 1248(c) (288) in the majority of FGROW cases, namely those involving 1875 Act FGROW

Even if one were to adopt common law property rules that easements are mere servitudes on an underlying fee, while defeasible fee interests are corporeal hereditaments, any interpretation of the nature of the federally-granted rights-of-way must take into account the purpose of the grants. These right-of-way grants were not made simply to create a railroad, but were to create public transportation and communications arteries. The typical federal railroad grant would be titled: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for Postal, Military, and other purposes." (292) Even if the 1875 Act did not carry the same title, the grants of these federal rights-of-way did carry with them the obligation to allow the placement of telegraph lines, use for parcel post, and required free or reduced rates for military transportation. (293) To imagine that the land granted to the railroads under the 1875 Act are mere railroad easements that terminate upon the cessation of rail use assumes that the federal government has no other interest in these corridors than providing subsidies for the railroads. Clearly, that is not the case. Regardless of what we call this "railroad easement," it must contain within it the entire array of transportation and communications uses.

Whenever public lands of the United States have been or may be granted to any railroad company for use as a right of way for its railroad or as sites for railroad structures of any kind, and use and occupancy of said lands for such purposes has ceased or shall hereafter cease, whether by forfeiture or by abandonment by said railroad company declared or decreed by a court of competent jurisdiction or by Act of Congress, then and thereupon all right, title, interest, and estate of the United States in said lands shall, except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment be transferred to and vested in any person, firm, or corporation, assigns, or successors in title and interest to whom or to which title of the United States may have been or may be granted, conveying or purporting to convey the whole of the legal subdivision or subdivisions traversed or occupied by such railroad or railroad structures of any kind as aforesaid, except lands within a municipality the title to which, upon forfeiture or abandonment, as herein provided, shall vest in such municipality, and this by Virtue of the patent thereto and without the necessity of any other or further conveyance or assurance of any kind or nature whatsoever....

If the strip was described as the westerly 100' of the easterly 150', then, that's what they got. No more

In 1922, Congress enacted 43 U.S.C. §912, which provided that if a railroad ceased using land grant property for railroad purposes, whether by forfeiture or abandonment decreed by a court of competent jurisdiction or by an Act of Congress, the land became owned by the then owner of the land traversed by the right of way, unless the right of way was turned into a public highway within one year of abandonment by the railroad,

In 1922, Congress enacted 43 U.S.C. 912, which provided that if a railroad ceased using land grant property for railroad purposes, whether by forfeiture or abandonment decreed by a court of competent jurisdiction or by an Act of Congress, the land became owned by the then owner of the land traversed by the right of way, unless the right of way was turned into a public highway within one year of abandonment by the railroad.

April 2005, 43 C.F.R. was saved as an Appendix of C.F.R. 43 of the New Regulation of 1980. Two Federal Courts have ruled that Government grant right of ways belong to the abutting property owners not the Government or Railroads. This is the case of Hash v. United States 2003, which is still being upheld in Courts today to compensate Property Owners for the taking of Property.

In 2003, in court Two California Property Owner's won their right of the taking of reversionary rights of Railroad right of way

Also, as mentioned in the above paragraph, within one year of abandonment, the right of way had to be used for a public highway, utilities or other public use, after the one year the property will become owned by abutting property owners.

The recording of the deeds in 1959 is clearly past the one year grace period.

Caliso, Angeles

From: Caliso, Angeles
Sent: Tuesday, February 07, 2012 2:05 PM
To: 'Miller Philip'
Cc: 'Brunner, Paul'; Wright, C. Michael
Subject: RE: Carol Miller - Letter request suspension of TRLIA Permit 18690
Attachments: statute1.png; YubaCounty Oak_ordinance.pdf; Placer county_Oak trees.pdf

Ms. Miller,

The Attachment you included on your email does not identify specific County Ordinances related to the protection of oak trees. The "tree retention" notation at the bottom of your attachment is related to the County's "Oak Woodland Conservation Program".

Attached is a copy of existing County protections and it clearly identifies that there is no "specific ordinance" for "Oak Protection during construction".

For comparison purposes, I'm attaching a copy of Place County's ordinance, which does have an oak tree protection ordinance.

If you have any additional questions, do not hesitate contacting me.

Sincerely,

Angeles Caliso

Central Valley Flood Protection Board

(916) 574-2386 Office | (916) 574-0682 Fax

Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Miller Philip [<mailto:olidar45@yahoo.com>]
Sent: Tuesday, February 07, 2012 1:43 PM
To: Caliso, Angeles
Subject: Carol Miller - Letter request suspension of TRLIA Permit 18690

Ms. Caliso,

See Attachment for the Ordinance for County of Yuba concerning Oak Trees. These Ordinances must be followed.

Sorry for the delay in answering your e-mail, please send all e-mail to olidar45@yahoo.com

Mailing address is Carol Miller
2110 VIRGILIA LANE
Olivehurs CA 95961

Thank you
Carol Miller

----- Forwarded Message -----

From: "Caliso, Angeles" <acaliso@water.ca.gov>

To: 'Miller Philip' <olidar45@yahoo.com>

Cc: "monty_h@eliteuniversalsecurity.com" <monty_h@eliteuniversalsecurity.com>; "Brunner, Paul"

**AGENDA ITEM 4B
ATTACHMENT O**

<PBrunner@CO.YUBA.CA.US>; "Taras, Curt" <ctaras@water.ca.gov>; "Wright, C. Michael" <ctaras@water.ca.gov>; "Tang, Alison" <atang@water.ca.gov>; "Brewer, Robin" <rbrewer@water.ca.gov>

Sent: Monday, February 6, 2012 2:46 PM

Subject: RE: Carol Miller - Letter request suspension of TRLIA Permit 18690

Ms. Miller,

I have received your letter date February 6, 2012 (attached for your reference). We will include this and any future communication as part of our Staff reports for the new hearings. Attached is a copy of a letter that has been placed on the mail today for you and the other residents regarding the Board's January 26th decision and the new date for these hearings.

The County recently adopted their new General Plan 2030 and it does not have an oak protection ordinance or general tree protection ordinance. The General Plan does call for adoption and implementation of a tree preservation and mitigation ordinance by 2015. I have contacted the County and they have informed me that they don't expect this ordinance to be adopted in the near future.

Sincerely,

Angeles Caliso

Central Valley Flood Protection Board

(916) 574-2386 Office | (916) 574-0682 Fax

Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Miller Philip [<mailto:olidar45@yahoo.com>]

Sent: Monday, February 06, 2012 1:23 PM

To: Caliso, Angeles

Cc: monty_h@eliteuniversalsecurity.com

Subject: Carol Miller - Letter request suspension of TRLIA Permit 18690

Ms. Caliso, TRLIA Permit 18690

Branches are being cut off the Oak Trees by the Fence. This should not be happening until TRLIA checks with the State and City Ordinance's, TRLIA is not reading the actual Ordinance's. What they are doing is asking the planning commission verbally and someone is giving them the answer they want to hear.

See letter attached. This is everyone's concern. As I stated before once TRLIA constructs the Fence and Receives their grant money, we will not see any State or City Agency until this area is Flooded again. All work needs to stop until we get answers to our concerns and issues!!!!

Respond to,

Carol Miller
2110 Virgilia Lane
Olivehurst CA 95961
e-mail olidar45@yahoo.com

Monty Hecker
e-mail monty_h@eliteuniversalsecurity.com
and all addresses listed below

----- Forwarded Message -----

From: Debra - API Academy <debrah@api-academy.com>

To: monty_h@eliteuniversalsecurity.com; Miller Philip <olidar45@yahoo.com>; SUSAN LAGRANDE <weluvpugs@sbcglobal.net>; Susan LaGrand-Work <slagrand@frhg.org>

	Oak Tree Retention/ Replacement Provisions	Oak Protection During Construction	Heritage Tree Protection	Riparian Vegetation Protections	Canopy Retention Requirements	Canopy Retention Requirements
General Plan Language	The Conservation Element calls for protection of valley oaks through inventory and retention and regeneration guidelines. All Valley oaks >6" dbh must be mapped, and a tree protection plan for replacement, maintenance and monitoring implemented. Retention should be increased by site design including clustering and open space	The Conservation Element prohibits fill, cuts, and equipment storage, to 1.5 times the dripline of Valley oaks. Trees must be fenced during construction and utility lines combined in single trenches. Severed roots must be cut and covered with mulch. Landowners should be educated to not water Valley oak		The Conservation Element calls for no net loss of riparian habitat and setbacks of 50-150' determined based upon site specific conditions	The Conservation Element requires canopy retention based on existing canopy area. 60% of existing canopy must be retained for sites with 80-100% canopy cover. These specific standards shall be included in the Zoning Ordinance.	The Conservation Element requires the County shall encourage the preservation of areas of natural vegetation including oak woodlands through retention and enhancement of large areas or systems which benefit a variety of species or resources
Specific Ordinance	None	None	None	None	None	None
Voluntary Guidelines	None	None	None	None	None	None

Documents reviewed:**Date of Review:** August 2003

☒ Open Space Element
☒ Conservation Element
☒ Land Use Element
☒ Zoning Ordinance
☒ Subdivision Ordinance

☐ Grading and Erosion Ordinance
☐ Roads/Sidewalk Tree Ordinance
☐ Tree Removal Ordinance
☐ Voluntary Guidelines
☐ Other County Codes:

TREE RETENTION: Whenever project objectives can be otherwise achieved, it shall be the policy of the County to avoid oak tree removal (119-OSCP) by entertaining innovative and non-conventional site planning and structural designs (120-OSCP). Project proponents must identify and map the location of all Valley oaks >6" dbh (or groves) on property proposed for a development project. (116-OSCP). Developers must submit a tree protection plan that includes replacement, maintenance and monitoring for all Valley oaks removed.

AGENDA ITEM 4B ATTACHMENT O

YUBA

Protections in place:

	Oak Tree Retention/ Replacement Provisions	Oak Protection During Construction	Heritage Tree Protection	Riparian Vegetation Protections	Oak Canopy Retention Requirements	Oak Woodland Conservation Program
General Plan Language	The Conservation Element calls for protection of valley oaks through inventory and retention and regeneration guidelines. All Valley oaks >6"dbh must be mapped, and a tree protection plan for replacement, maintenance and monitoring implemented. Retention should be increased by site design including clustering and open space	The Conservation Element prohibits fill, cuts, and equipment storage, to 1.5 times the dripline of Valley oaks. Trees must be fenced during construction and utility lines combined in single trenches. Severed roots must be cut and covered with mulch. Landowners should be educated to not water Valley oak		The Conservation Element calls for no net loss of riparian habitat and setbacks of 50-150' determined based upon site specific conditions	The Conservation Element requires canopy retention based on existing canopy area. 60% of existing canopy must be retained for sites with 80-100% canopy cover. These specific standards shall be included in the Zoning Ordinance.	The Conservation Element requires the County shall encourage the preservation of areas of natural vegetation including oak woodlands through retention and enhancement of large areas or systems which benefit a variety of species or resources
Specific Ordinance	None	None	None	None	None	None
Voluntary Guidelines	None	None	None	None	None	None

Documents reviewed:

Date of Review: August 2003

☒ Open Space Element
☒ Conservation Element
☒ Land Use Element
☒ Zoning Ordinance
☒ Subdivision Ordinance

☐ Grading and Erosion Ordinance
☐ Roads/Sidewalk Tree Ordinance
☐ Tree Removal Ordinance
☐ Voluntary Guidelines
☐ Other County Codes:

AGENDA ITEM 4B ATTACHMENT O

Summary of Oak Protection Policies:

Land Use, 1996	<p>The Foothill Agriculture classification is used to preserve foothill areas outside of community boundaries for agricultural uses; to protect grazing land; to conserve open space; to protect timber and forest lands; and to promote and encourage the use of forestlands for multiple purposes such as preservation of wildlife, hunting, hiking, or other compatible uses.</p> <p>Residential development is permitted for single-family dwellings, clustered housing projects, caretakers/employee housing, and farm worker housing. The Wildlife Areas classification recognizes, retains and protects from incompatible development lands in public ownership acquired for the benefit of wildlife.</p>
Open Space and Conservation Elements, 1996	<p>OAK WOODLANDS: Conservation of valley oaks and protection and regeneration of oak woodlands in foothill areas should be accomplished by creation of an inventory of remaining valley oaks and development of guidelines for retention and regeneration (27-OSCO). Foothill oaks should be identified on development project plans and avoided during design and construction (28-OSCO). Prior to final action on any development, the project shall be carefully reviewed for impact on any identified scarce natural resource, including woodlands (3-OSCP). The County shall require appropriate studies to ascertain the impact from proposed development (5-OSCP). Foothill and mountain development projects shall be designed to preserve the existing rural character, including maintenance of natural vegetation (30-OSCP). The County shall explore mechanisms to facilitate preservation and access, including clustering and alternative forms of open space ownership (37-OSCP). The County shall encourage the preservation of areas of natural vegetation including oak woodlands and riparian areas (86-OSCP). Retention and enhancement of large areas or systems which benefit a variety of species or resources, rather than individual species, resources or properties is encouraged by the County (85-OSCP). When habitat for special status species is present, the County shall require biological studies prior to action on development projects (89-OSCP). Mitigation measures proposed shall be incorporated into development project design whenever feasible (90-OSCP).</p> <p>CANOPY RETENTION: All proposed parcel maps, subdivision maps and conditional use permits in areas containing oak woodlands shall show the location of existing oaks by canopy area. The amount of canopy to be retained is based on the amount of existing canopy area on the project site. 60% of existing canopy must be retained for sites with 80-100% canopy cover, up to 90% of existing canopy when cover is <19% (118-OSCP). These standards shall be in the Zoning Ordinance.</p> <p>TREE RETENTION: Whenever project objectives can be otherwise achieved, it shall be the policy of the County to avoid oak tree removal (119-OSCP) by entertaining innovative and non-conventional site planning and structural designs (120-OSCP). Project proponents must identify and map the location of all Valley oaks >6" dbh (or groves) on property proposed for a development project. (116-OSCP). Developers must submit a tree protection plan that includes replacement, maintenance and monitoring for all Valley oaks removed.</p> <p>TREE PROTECTION: During any construction, fill should not be placed within an area which is 1.5 times the distance from the trunk to the dripline of Valley oaks and no closer than 10' from the trunk. The dripline of the tree should be fenced</p>

	<p>during grading and construction. No operating or storing heavy equipment within oak driplines is allowed. Excavations around trees should be minimized. Depth of excavations should be the minimum required. Utility lines should be combined in single trenches whenever possible. If roots need to be removed, they should be cut rather than torn and immediately covered with mulch or soil to prevent desiccation. (117-OSCP). Individuals who purchase lots in subdivisions containing Valley oaks should be provided with literature on Valley oak protection. Watering of Valley oaks should be prevented, and any landscape vegetation planted adjacent to Valley oaks should be drought-tolerant.</p> <p>OAK HARVESTING: Pursuant to the State Board of Forestry's resolution for addressing impacts on oak woodlands, the County adopts this General Plan as its local guidelines to manage the removal of firewood and other wood products from oak woodlands (9-OSCP).</p> <p>RIPARIAN CORRIDORS: No net loss of riparian habitat is an objective. New development projects shall be directed away from riparian areas (71-OSCP). Riparian setbacks of 50 to 150' shall be required based upon site specific conditions (73-OSCP) as a condition of project approval (74-OSCP). The depth of the setback shall be determined based upon site specific conditions and consultations with CDFG.</p>
Zoning Ordinance, Chapter 12	This ordinance establishes Resource Protection Zones for high quality plant areas and wildlife habitat areas.

Contact Information:

Yuba County Planning Division
938 14th Street
Marysville, CA 95901
Phone: (530) 741-6419
Fax: (530) 741-6580

Web site: <http://www.co.yuba.ca.us/comdev/planning.html>

County Contacts:

- ☒ No contacts
- ☐ Policies provided by county staff
- ☐ Policies discussed with county staff
- ☐ Policy inventory reviewed by county staff

AGENDA ITEM 4B ATTACHMENT O

PLACER

Protections in place:

	Oak Tree Retention/ Replacement Requirements	Oak Protection During Construction	Heritage Tree Protection	Riparian Vegetation Protections	Oak Canopy Retention Requirements	Oak Woodland Conservation Program
General Plan Language	Rural Design Guidelines require preservation of native trees and groves through replacement and dedication as open space	None	The Natural Resources Element requires protection of landmark trees and groves and younger regeneration	The Natural Resources Element requires replacement of damaged habitat or payment of a mitigation fee. Creek setback areas should be designated as easements or resource conservation zones	The Rural Design Guidelines encourage retention of trees through dedications as open space and lot design.	The Natural Resources Element calls for conservation of large areas of non-fragmented oak woodlands and a countywide inventory of stands >/ 40 acres. Biotic resources evaluations are required for discretionary development.
Specific Ordinance	The Tree Ordinance requires a permit for (>6") removal and inch for inch replacement on-site, off-site, or payment to a tree fund. Maintenance and irrigation is required for 3 years.	The Tree Ordinance and Rural Design Guidelines require protection of trees with fences, signs, and special root protection measures	The Tree Ordinance defines landmark trees as designated as outstanding specimens or of historical or cultural value	The Tree Ordinance requires discretionary project within 50'-100' of streams to obtain a tree permit and include appropriate mitigations. The Zoning Ordinance requires set backs 50-100' from streams	The Tree Ordinance requires commercial operators to have a permit, a timber operator's license, and attend CDF training. Only thinning may be done.	Placer Legacy calls for large-scale acquisition of oak woodlands in the foothills using conservation easements, fee title acquisition, resident education, conservation activities, and county policy and ordinances. The Oak Woodland Management Plan delineates oak woodland communities, conservation objectives, and conservation and restoration policies.
Voluntary Guidelines	None	None	None	None	None	None

AGENDA ITEM 4B ATTACHMENT O

Documents reviewed:

Date of Review: October 2003

☒ Open Space Element
☒ Conservation Element
☒ Land Use Element
☒ Zoning Ordinance
☒ Subdivision Ordinance
☒ Grading and Erosion Ordinance

☒ Roads/Sidewalk Tree Ordinance
☒ Tree Removal Ordinance
☐ Voluntary Guidelines
☒ Other County Codes: Rural Design Guidelines 1997, Placer County Legacy Open Space and Agricultural Conservation Program Implementation Report 2000, Oak Woodland Management Plan 2003, Draft West County Woodland Mitigation Policy 2003.

Summary of Oak Protection Policies:

Natural Resources Element, 1994	<p>OAK WOODLAND: The County shall ensure conservation of large, continuous expanses of native vegetation by requiring new development preserve natural woodlands to the maximum extent possible. Large areas of non-fragmented blue oak woodlands should be identified through a countywide inventory of the location of oak woodland stands of 40 acres or larger. Approval of discretionary development shall require a biotic resources evaluation (6.C). The County shall require sensitive habitat buffers 50-100' from streams and sensitive habitats including old growth woodlands.</p> <p>LANDMARK TREES: The County shall ensure that landmark trees and major groves of native trees are preserved and protected along with younger vegetation with suitable space for growth and reproduction (6D).</p> <p>RIPARIAN CORRIDORS: Development projects encroaching into a creek corridor must avoid the disturbance of riparian vegetation, replace or restore affected habitat or pay a mitigation fee for restoration elsewhere. Public and private development should preserve creek corridors and creek setback areas through easements or dedications with allowed uses and maintenance responsibilities clearly defined and conditioned. Creek corridors should be maintained in a natural state with no tree removal. The County should consider establishing a resource conservation zone (RCZ) overlay district for application to creek corridors, wetlands, and areas rich in wildlife or of a fragile ecological nature.</p> <p>SCENIC HIGHWAYS: The County shall protect and enhance scenic corridors through design review, grading and tree removal standards, open space easements, and land conservation contracts (1.L.3).</p> <p>OPEN SPACE: The County shall use protected riparian corridors and woodland areas as passive parks as required at the level of 5 acres for every 1,000 residents. (6E). New development must preserve streamside vegetation, significant stands of vegetation, and wildlife corridors.</p>
Tree Preservation Ordinance,	<p>TREE REMOVAL: Tree removal (>/ 6" dbh) requires a permit except when trees are dying, damaged or dangerous, part of a fuel reduction program, interfere with a public utility, part of active agricultural uses, on agricultural land under the Williamson Act, or on single-family residential lots that cannot be further subdivided. Applications must include species,</p>

**AGENDA ITEM 4B
ATTACHMENT O**

<p>July 2000, 12.16</p>	<p>location, dbh, height, dripline radius, condition (excellent to poor) of every tree not removed. Inch for inch replacement may be required using minimum 15- gallon size trees. At least 50% of replacement trees must be of a similar native tree. Replacement trees may be planted on-site or elsewhere, or the current market value paid to a tree preservation fund. Maintenance agreements including irrigation are required as well as a compliance deposit. 5-gallon trees that die within three years must be replaced. 75% of smaller trees must be alive after 3 years. Trees removed without approval will lead to denial of applications for up to 5 years.</p> <p>TREE PROTECTION: Protected or preserved trees may not be damaged during construction. Retained trees within 50' of any development activity must be protected by a 4' tall brightly colored fence with 2' by 2' signs installed in 4 locations (discretionary projects). A \$10,000 deposit (except single family residences) may be required to insure preservation. Retaining walls must be completed within 72 hours and exposed roots must be protected from moisture loss in the meantime. Aeration systems, oak tree walls, drains, special paving and cabling systems may be required with certification letters from the arborist. Trenching must avoid encroachment into roots. A penalty of \$50 per scar is required.</p> <p>HERITAGE OAKS: Landmark trees are designated by the Board of Supervisors to be of historical or cultural value, an outstanding specimen, an unusual species and /or of significant community benefit).</p> <p>RIPARIAN VEGETATION: Discretionary project activities within riparian zones (50'-100' from streams) also require a tree permit and appropriate mitigations.</p> <p>FIREWOOD HARVESTING: Commerical operators must have a tree permit to take > 2 cords a year in the western side of the county, hold a Class A or B timber operator's license, and attend training by CDF on proper forest management techniques. Proposed removal may not result in clear-cutting but thinning or stand improvement.</p>
<p>Subdivision Ordinance, Article 16</p>	<p>The Subdivision Ordinance requires an environment impact report as a condition of approval concerning environmental capacity of the lands including vegetation characteristics and planned grading, planting, revegetation, landscaping. Conditions may include restrictions on improvements that require clearing brush and trees.</p>
<p>Zoning Ordinance, 1998</p>	<p>WILDLIFE HABITAT: Environmentally sensitive areas including woodlands and riparian corridors should be designated as open space in planned developments and linked with adjacent habitat areas whenever possible.</p> <p>RIPARIAN CORRIDORS: All proposed structures must be set back 100' from permanent streams and 50' from intermittent streams. Discretionary land use permit projects may be required to provide greater or lesser setbacks.</p>
<p>Rural Design Guidelines, 1997</p>	<p>OAK WOODLAND: Conservation of the natural vegetation should be an overriding consideration in the design of any project. The retention of trees should be encouraged for aesthetic, economic, and environmental reasons. Planned Developments are allowable only where they protect a grove of oak trees. Any protected areas should be held under common ownership of the homeowners association or deeded to the county or a suitable non-profit trust and not as</p>

	easements within individual residential lots. Buildable portions of lots should be designed to incorporate trees into overall project for long term preservation with residences on the edges of wooded areas.
Placer County Legacy Open Space and Agricultural Conservation Program	OAK WOODLAND: Directed, large-scale acquisition of large areas of relatively intact oak woodlands in the northern, less developed parts of the county's foothill region is recommended to maintain east-west habitat connectivity. The county should preserve, through conservation easements, fee title acquisition, and agency land trades, large areas of blue oak and interior live oak woodland in the upper Bear River and/or Coon Creek watersheds, blue oak and interior live oak woodland habitat along the Bear River, and old growth black oak woodland in Foresthill and the West Slope of the Sierra. The nearly ½ of existing oak woodlands in the southern part of the foothill region zoned rural residential should be protected through resident education, local conservation activities, continued application of county policy on discretionary land use entitlements, and county ordinances. This includes large oak woodland patches along Folsom Lake.
Oak Woodland Management Plan*	The Oak Woodland Management Plan delineates the oak woodland communities in the county, their location, their value to residents and wildlife, and conservation objectives for each. Goals include maintaining habitat characteristics by (1) supporting active outreach programs in vineyards, agricultural fields, and housing developments (a), retention of connected oak patches within managed landscapes (b), retention of herbaceous, grass or scrub understory (c), maintenance of oaks around residences and other landscaped areas (d), retention of patches of chaparral, riparian or grassland habitats adjacent to retained oaks (e), and seeking opportunities to work with landowners (f). Sites should be prioritized for oak woodland protection (2) when they have intact oak regeneration and decay processes (a), represent a diversity of oak woodland types (b), according to surrounding land use (c), are adjacent to intact chaparral, grassland, pine or and riparian habitats (d), according to landscape variables (patch size, shape, connectivity) (e), according to management options (f), and based on conservation threats and protection opportunities (g). Oak woodland sites should be prioritized for restoration (4) according to their proximity to existing high quality sites (a), likely success of regeneration and transplanted oak viability (b) and to benefit healthy bird populations (5). Land management policies should protect, enhance or recreate natural oak woodland processes and characteristics (6) by maintaining diverse age structure of oak trees (a), protecting seedling and saplings (b), retaining decaying or dead oak trees, limbs, snags and mistletoe (c), retaining large oak trees whenever possible (d), thinning of oak woodlands instead of complete oak removal in rangelands (e), and managing or influencing management at the landscape level (f). A monitoring program should be established to evaluate the success of the Oak Woodland Management Plan (7) and to monitor edge effects in oak woodland habitats (a), compare areas heavily affected by SODS with those that are not (b), effectiveness of progressive grazing regimes for increasing regeneration (c), and study the effectiveness of prescribed fire in reducing non-native annual grasses and facilitating oak regeneration (d).

**This was adopted by BOS resolution in October 2003*

Contact Information:

Planning Department
11414 B Avenue, Dewitt Center
Auburn, CA
Phone: (530) 886-3000

Web site: <http://www.placer.ca.gov/>

County Contacts:

- ☐ No contacts
- ☐ Policies provided by county staff
- ☐ Policies discussed with county staff
- ☒ Policy inventory reviewed by county staff



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

1114 Yuba Street, Suite 218

Marysville, CA 95901

Office (530) 749-7841 Fax (530) 749-6990

February 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director

SUBJECT: Responses to Mr. Heckers' Questions cited in February 4, 2012 e-mail

Below are answers/responses by paragraph to Mr. Heckers' questions mentioned in his February 4, 2012 e-mail to me:

Paragraph 1: I realize that our questions are a pain for you. But they are valid and important to the property owners. While you are trying to protect these residents from floods, you need to remember that this project impacts us in other ways. Telling us that a corp of engineers monument that probably had something to do with the levee is not relevant is unbelievable. Anything concerning the levee is relevant to us. Mentioning our concerns as part of a "staff report" is a slap in the face. As the Executive Director you are the person who can help us understand. You said in an earlier email that the surveyors do not work for the Corp. That's true, they work for you, but you Mr Brunner work under the guidance of the corp. The surveyor you sent out, told me they could find nothing on the levee side to assist with they're survey, and so they had to use monuments from the front of our properties. Which has raised a bunch of questions.

Response: This memo provides responses to your questions. TRLIA has and will continue to work with you and other residents. As stated in a prior e-mail, I or TRLIA do not work for the Corps of Engineers. The Corps of Engineers, Ca. Department of Water Resources, Ca. Central Valley Flood Protection Board, and FEMA all provide levee requirements and guidance that we incorporate into the TRLIA levee improvement program.

Paragraph 2: The long and short of it is this. We have questions and concerns. We are not getting answers, so we keep digging. Having the questions answered at your level would be the easiest for all of us. And an answer means more than "the monuments are not relevant to you". The question was what is this monument and what was it's purpose! And the second part of that question was why was your hired surveyor unable to find it!

Response: All indications are that the monument you found was used in prior work on the levee to help build the levee. It is not referenced on any survey maps, so that is why our Surveyor did not identify it. The monument does not relate to the property line. The monument was not placed by TRLIA. Provided again are the comments from Kevin Heeney (TRLIA licensed Surveyor) on this monument:

The newly found monument photographed by the Hecker's attached hereto as Exhibit 'G'

- This monument does not appear, in my professional opinion, to be a record monument relating to any property boundary or corner. I believe it to be a reference or control monument, established some time ago by the Corps of Engineers or one of their contractors. The markings "USA" lead me to believe this to be a federal agency monument. The markings 1+00 would indicate to me a stationing reference to some line, either a control line or centerline of levee. The marking 67' may reference an offset distance. The markings 'C' and '2' are likely some designation number. The monument does not have the markings of any licensed land surveyor or civil engineer, which would be the standard practice and requirement of a property corner marker or reference point.
- While we did not locate this specific monument, I have been told it is near the South end of the encroachment area. We did find another similar monument some 4600 feet North marked the same, but with station markings of 47+00. Again, it is my opinion that these are reference monuments to the levee centerline or some control line previously established.

Paragraph 3: I have emailed you several other questions, concerning, drainage, toe markers, trees, etc that you have not responded to at all. Again, a staff report, coordinated with your hired experts is not an answer. I'm needing answers, not lip service or circling the wagons.

Response: I have offered to meet with you directly to go over the questions, but we jointly have not been able to work out a time. The most recent meeting was going to be on 2-6-2012 at 9:00 in my office, but you asked for a time and meeting location change to accommodate your schedule. I could not make your requested time change. I still plan on meeting with you.

Paragraph 4: At the CVFPB meeting a board member asked about oak trees. You couldn't give an answer so you had your consultant Larry Dacus answer. His answer is in conflict with the Yuba County Planning Dept. Have you even looked into that issue. Did the CVFPB get the correct answer, or could there be issues?

Response: I have personally looked into this issue and talked to the Yuba County Planning Department. Mr. Dacus's response was correct at the CVFPB meeting. The tree does not impact the TRLIA proposed project. I previously provided you my response on this item. Here is my response from before: "Yuba County does not currently have an oak protection ordinance or general tree protection ordinance; however, the updated General Plan calls for adoption and implementation of a tree preservation and mitigation ordinance by 2015. Our contact at the County anticipates the ordinance to be adopted before 2015, but not in the immediate future. "

Paragraph 5: Larry Dacus told my wife that the drainage issues before and after the maintenance road are the property owners problem, leaving us to believe that drainage has not even been considered in the construction plans for the maintenance road. Once again, has drainage been addressed and if so how. There is a brand new pump out just across Island Ave. Is it being considered? Is drainage being addressed at all as you change the landscape behind our property's?

Response: As I said at the January 10, 2012 Community meeting, and the January 26, 2012 CVFPB meeting TRLIA has not yet done the design of the levee toe 20-ft corridor. I have opted to not start the design until we have clear direction from the CVFPB Board on where to place the fence. Once we begin the design we will look at the drainage and determine what TRLIA can do within our levee project to improve the drainage. The TRLIA project will not make the drainage problem worse than today, but may be able to improve it. There may be the opportunity to place a pipe through Island Ave, which would allow flow to the southerly ditch.

Paragraph 6: The toe markers showing where you plan to build the road go from the right side of the road behind my property to the left side of the road several properties down. Why? Is there a real need for this, or is it like my wife has said, we just irritated them to much so they are taking more of our backside.

Response: The levee toe moves farther out towards Island Ave because the levee widens in this location. The widening is caused by the additional berms that have been placed on the landside of levee.

Paragraph 7: We asked for the longitude and latitude measurements of the fence line. My wife was told by Mr. Dacus that if she wanted to pay for someone to get it then maybe there would be an issue to address. You were standing beside Mr Dacus at the time, during a break in 26 Jan 12 CVFPB meeting when he answered her questions about the longitude/latitude and drainage. Did you find those answers acceptable? Would you have if you had been in her place?

Response: During the break at the January 26, 2012 meeting I was engaged in many conversations with several people. I was not involved in the conversation you reference with Mr. Dacus and your wife and do not know what was said or the context of any statements made. As to the latitude and longitude question, I have asked Kevin Heeney (TRLIA licensed Surveyor) to provide his comments, which are provided below:

"A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit 'E' shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.

- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46'46"E. Above that bearing we show [S17°15'00"E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.

- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.

- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15'00"E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence."

Paragraph 8: Frankly, the lack of response to specific questions is hard to understand since you and your board have repeatedly offered to assist the landowners as much as possible as you permanently change the landscape affecting our property.

Response: We are providing you accurate and timely responses to your questions.

Paragraph 8: I am once again asking for answers to clarify these questions from you and the TRLIA board. There is a TRLIA board meeting already scheduled for 7 February @ 15:30. There is nothing on the agenda showing that concerns are still being raised or that any of our letters and emails have been received or addressed.....

Response: This memo provides you answers to your questions. You are welcome to provide comments at the February 7, 2012 TRLIA Board meeting during the public comment portion of the meeting.

AGENDA ITEM 4B ATTACHMENT O

Caliso, Angeles

From: Brunner, Paul [PBrunner@CO.YUBA.CA.US]
Sent: Monday, February 06, 2012 12:44 PM
To: Monty Hecker
Cc: Nicoletti, John; Mary Jane-Duke's Diner; Board Comments; Caliso, Angeles; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Attachments: Responses to Mr Hecker 2-4-2012 email.pdf

Hi Monty – attached are responses to the questions you asked in e-mail below.

As stated in my earlier e-mails last week I did check to see when we can meet this week to go over you questions. I am available Wednesday afternoon (Feb 8) or Thursday (Feb 9) to meet with you to go over your questions. We can meet at my office or at your office. I will ask Angeles Caliso from the CVFPB and my Surveyor (Kevin Heeney) to participate in the meeting. Let me know if either of these days works for you.

Paul

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Saturday, February 04, 2012 12:19 PM
To: Brunner, Paul
Cc: Nicoletti, John; Mary Jane-Duke's Diner; Board Comments; acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Importance: High

Mr Brunner,

I realize that our questions are a pain for you. But they are valid and important to the property owners. While you are trying to protect these residents from floods, you need to remember that this project impacts us in other ways. Telling us that a corp of engineers monument that probably had something to do with the levee is not relevant is unbelievable. Anything concerning the levee is relevant to us. Mentioning our concerns as part of a "staff report" is a slap in the face. As the Executive Director you are the person who can help us understand. You said in an earlier email that the surveyors do not work for the Corp. That's true, they work for you, but you Mr Brunner work under the guidance of the corp. The surveyor you sent out, told me they could find nothing on the levee side to assist with they're survey, and so they had to use monuments from the front of our properties. Which has raised a bunch of questions.

The long and short of it is this. We have questions and concerns. We are not getting answers, so we keep digging. Having the questions answered at your level would be the easiest for all of us. And an answer means more than "the monuments are not relevant to you". The question was what is this monument and what was it's purpose! And the second part of that question was why was your hired surveyor unable to find it!

I have emailed you several other questions, concerning, drainage, toe markers, trees, etc that you have not responded to at all. Again, a staff report, coordinated with your hired experts is not an answer. I'm needing answers, not lip service or circling the wagons.

At the CVFPB meeting a board member asked about oak trees. You couldn't give an answer so you had your consultant Larry Dacus answer. His answer is in conflict with the Yuba County Planning Dept. Have you even looked into that issue. Did the CVFPB get the correct answer, or could there be issues?

Larry Dacus told my wife that the drainage issues before and after the maintenance road are the property owners problem, leaving us to believe that drainage has not even been considered in the construction plans for the maintenance road.

AGENDA ITEM 4B ATTACHMENT O

Once again, has drainage been addressed and if so how. There is a brand new pump out just across Island Ave. Is it being considered? Is drainage being addressed at all as you change the landscape behind our property's?

The toe markers showing where you plan to build the road go from the right side of the road behind my property to the left side of the road several properties down. Why? Is there a real need for this, or is it like my wife has said, we just irritated them to much so they are taking more of our backside.

We asked for the longitude and latitude measurements of the fence line. My wife was told by Mr. Dacus that if she wanted to pay for someone to get it then maybe there would be an issue to address. You were standing beside Mr Dacus at the time, during a break in 26 Jan 12 CVFPB meeting when he answered her questions about the longitude/latitude and drainage. Did you find those answers acceptable? Would you have if you had been in her place?

Frankly, the lack of response to specific questions is hard to understand since you and your board have repeatedly offered to assist the landowners as much as possible as you permanently change the landscape affecting our property.

I am once again asking for answers to clarify these questions from you and the TRLIA board. There is a TRLIA board meeting already scheduled for 7 February @ 15:30. There is nothing on the agenda showing that concerns are still being raised or that any of our letters and emails have been received or addressed.....Monty

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 3:30:51 PM
To: [Monty Hecker](#)
Cc: [Nicoletti, John](#); [Mary Jane-Duke's Diner](#); [Board Comments](#); acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

I will mention your concerns as part of the TRLIA staff reports.

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, February 03, 2012 3:27 PM
To: Brunner, Paul
Cc: Nicoletti, John; Mary Jane-Duke's Diner; Board Comments; acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

TRLIA has a meeting scheduled for Tuesday, 7 February @ 15:30. Our concerns are no where on the agenda. Did we not request the board be made aware of our concerns/questions and that they be addressed? Just checking, can you let me know.....Monty

AGENDA ITEM 4B ATTACHMENT O

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 2:39:04 PM
To: [Monty Hecker](#)
Cc: [Nicoletti, John](#); [Mary Jane-Duke's Diner](#); [Board Comments](#); acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

Monty – we are giving you honest answers to your questions. When we meet I will explain the levee toe and other questions you have asked. As to the oak tree:

Yuba County does not currently have an oak protection ordinance or general tree protection ordinance; however, the updated General Plan calls for adoption and implementation of a tree preservation and mitigation ordinance by 2015. Our contact at the County anticipates the ordinance to be adopted before 2015, but not in the immediate future.

Thanks, Paul

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, February 03, 2012 2:03 PM
To: Brunner, Paul
Cc: Nicoletti, John; Mary Jane-Duke's Diner; Board Comments; acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Importance: High

Copy that, it has to stand for something and I would like to know what, as a lot of what is being to to us has be false " i.e. The oak tree's" still have not got a answer why the levee toe run on the right side till it get's to Carol place and then changes to the left side of the road, that make the levee smaller and that make no since, no one can figure that one out.....Monty

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 1:51:52 PM
To: [Monty Hecker](#)
Cc: [Nicoletti, John](#); [Mary Jane-Duke's Diner](#); [Board Comments](#); acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

Monty – the monument is not relative to your issues. It most likely was used in construction. You ask for honest responses and I am giving them to you. The surveyors do not work for the Corps.

AGENDA ITEM 4B ATTACHMENT O

I am still checking on what day will work for our meeting.

Thanks, Paul

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, February 03, 2012 1:34 PM
To: Brunner, Paul
Cc: Nicoletti, John; Mary Jane-Duke's Diner; Board Comments; acaliso@water.ca.gov; kim@floydcommunications.com
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Importance: High

Holy ##%##, the possibility of a "corp" monument relating to the Levee! And how would this not be relative to our concerns, especially considering the fact that the surveyor disclaimed being able to "find any monument" near the levee. Do these guys not work hand in hand with the corp and in fact under their guidelines? Why were you, Mr Common Citizen, able to find this monument when the professionals were not? How many more are at there? This type of stuff just makes me wonder what else is being withheld from us. Maybe if we go in circles long enough, we will be to dizzy to keep going, right?

Identify the purpose and date of the things, then we can go back in the records to see what "the standard of practice" was at that time. Standards do change! And the FEDERAL government does not always fall under state guidelines. Who's professional opinion was this? Is the Corp of Engineers not considered professional? That response just created a whole new slew of questions....and by the way it would be really nice to get answers before the "official board meeting" when all the experts stand up, give an opinion and sweep our concerns under the carpet!

Did you get answers, excuse me, responses for your other questions?.....Monty

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 12:49:29 PM
To: [Monty Hecker](#)
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

I will check to see what day will work. Since many of your questions pertain to surveying issues, it is probably best for me to have Kevin Heeny (our surveyor) at the meeting if possible. After the last CVFPB meeting I asked Kevin to comment on the marker you identified. Below are Kevin's comments.

AGENDA ITEM 4B ATTACHMENT O

The newly found monument photographed by the Hecker's attached hereto as Exhibit 'G'

- This monument does not appear, in my professional opinion, to be a record monument relating to any property boundary or corner. I believe it to be a reference or control monument, established some time ago by the Corps of Engineers or one of their contractors. The markings "USA" lead me to believe this to be a federal agency monument. The markings 1+00 would indicate to me a stationing reference to some line, either a control line or centerline of levee. The marking 67' may reference an offset distance. The markings 'C' and '2' are likely some designation number. The monument does not have the markings of any licensed land surveyor or civil engineer, which would be the standard practice and requirement of a property corner marker or reference point.
- While we did not locate this specific monument, I have been told it is near the South end of the encroachment area. We did find another similar monument some 4600 feet North marked the same, but with station markings of 47+00. Again, it is my opinion that these are reference monuments to the levee centerline or some control line previously established.

Paul

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Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, February 03, 2012 11:52 AM
To: Brunner, Paul
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

What other day, I need to let Carol and Susan know, and see if they can make it, Monday after noon would work also, as I believe Susan is off that day. We really want to show you that monument and it's location so we can find out what it is. We're not getting answers to our questions and you always said you would have someone come help us in the past. We are asking for you help and assistance in answering our concerns.....Monty

Read Below....

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 11:09:37 AM
To: [Monty Hecker](#)
Cc: [Susan LaGrand-Work](#); [Susan LaGrand](#); [Carol Miller Philip-Owner-Marysville](#); [API AcademyDebra](#); [Debra - Att New](#); [Nicoletti, John](#); [Board Comments](#); acaliso@water.ca.gov
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

Hi Monty – 10:30 does not work. I do not have a GPS machine. I have all the pictures you have taken that show the areas you have interest in, so what else is there to see in the field?

AGENDA ITEM 4B ATTACHMENT O

In your prior e-mails you indicated that coming to my office to discuss your questions would work for you, so what has changed?**In my first email I said ok BUT would like to have it at my office, and so did Carol and Susan.....**

The 9:00 time is still good for me at my office. If this doesn't work for you then we'll need to reschedule to another day.

Thanks, Paul

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, February 03, 2012 10:00 AM
To: Brunner, Paul
Cc: Susan LaGrand-Work; Susan LaGrand; Carol Miller Philip-Owner-Marysville; API AcademyDebra; Debra - Att New; Nicoletti, John; Board Comments; acaliso@water.ca.gov
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Importance: High

Paul:

We want to change the time to **10:30 am on Monday**, and would really like to all meet at my office, we do have lots of room, and really have questions that need to be answer at the site as your guy Larry Dacus would not answer and ALWAYS referred them back to you, made no sense to send him ! Also do you have a GPS machine, as we have been checking all the old survey and would like to go over that. You may have walk the levee but you did not do it with us, so again I ask that we meet at may office. Please let me know as soon a possible so I can get Carol and Susan the time and place.

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/3/2012 9:46:37 AM
To: [Monty Hecker](#)
Cc: [Susan LaGrand-Work](#); [Susan LaGrand](#); [Carol Miller Philip-Owner-Marysville](#); [API AcademyDebra](#); [Debra - Att New](#); [Nicoletti, John](#); [Board Comments](#); [Caliso, Angeles](#)
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

Hi Monty – Thanks for the response. It works much better for my schedule to meet at my office on Monday. I have walked the levee toe along the area you have questions about. Let me know if this still works for you.

Thanks, Paul

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)

AGENDA ITEM 4B ATTACHMENT O

916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Thursday, February 02, 2012 2:49 PM
To: Brunner, Paul
Cc: Susan LaGrand-Work; Susan LaGrand; Carol Miller Philip-Owner-Marysville; API AcademyDebra; Debra - Att New; Nicoletti, John; Board Comments
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting
Importance: High

Paul:

Monday at 0900 is good. Could we meet at my office so we can show you first hand what our questions are. It's hard to explain something, and much easier to show. I would also like to see if Carol Miller could come down for that meeting. I believe Susan LaGrand, is working so she would not be able to make it.....Please let me know if that would work, other wise I will come to your office.....Monty

-----Original Message-----

From: [Brunner, Paul](#)
Date: 2/2/2012 2:13:54 PM
To: [Monty Hecker](#); [Nicoletti, John](#); [Board Comments](#)
Cc: [Caliso, Angeles](#)
Subject: RE: Questions I asked at the meeting of the Central Valley Board Meeting

Hi Monty - thanks for the e-mail. Are you available Monday (Feb 6) morning to go over your questions? If so, let's meet at my office in Marysville at 9:00. I will ask Angeles Caliso from the CVFPB to the meeting also.

Thanks, Paul

Paul G. Brunner

Executive Director

Three Rivers Levee Improvement Authority

530-749-5679 (office)

916-765-4981 (cell)

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Wednesday, February 01, 2012 11:42 AM
To: Nicoletti, John; Board Comments; Brunner, Paul
Subject: Fw: Questions I asked at the meeting of the Central Valley Board Meeting

Paul, I resent this email

AGENDA ITEM 4B ATTACHMENT O

I would like to know who can answer the questions I ask at the meeting that were not answered !!!!!

1. 1st of all, please check the pictures at and answer why the stakes go right to left as you head north.
2. What does this pipe mean?
3. Drainage issues are not being answered. And there is no pipe going under Island Ave to let the water flow through.
4. Attached is a view of 2 survey maps from June 2011 and January 2012. For the same area from the same surveyor and they differ in many respects. Why was another survey filed in January 2011 with different info on it? Neither of these surveys were the one sent to resident last fall! How many survey's and changes have occurred over the last year? The two compared in these email are both filed with the county.

I would like to have someone from TRLIA came to my office and answer these questions, if necessary I will go to theirs.

I would also like to bring up about the OAK tree's and that there is a rule for them, if they check with Kelly at the planning Dept she can fill Larry in about the RULE he said we did not have.....

Since Mr. Paul Brunner is ill please postpone the meeting of February 2012 until he is able to have another community meeting in Marysville, as we did not cause that meeting to be a waste of time for all.

I would request we have the Central Valley Board Meeting held in Marysville again and in April or May. This would be very much appreciated, and please let them also see what I have been sending you.....Monty

Regards,
Monty Hecker and Debra Hecker

-----Original Message-----

From: [Monty Hecker](#)
Date: 1/31/2012 2:25:01 PM
To: acaliso@water.ca.gov
Subject: Fw: Questions I asked at the meeting of the Central Valley Board Meeting

-----Original Message-----

From: [Monty Hecker](#)
Date: 1/30/2012 1:32:26 PM
To: acaliso@water.ca.gov
Cc: [Taras Curt](#); [Len Marino](#); [Paul Brunner- TRLIA](#); [Allison Tang](#); [Board of Supervisors-Yuba County](#); [Brewer Robin](#); [John Nicolett-Work](#); kim@floydcommunications.com; [Wright C. Michael](#)
Subject: Questions I asked at the meeting of the Central Valley Board Meeting

Ms. Caliso
I would like to know who can answer the questions I ask at the meeting that were not answered !!!!!

1. 1st of all, please check the pictures at and answer why the stakes go right to left as you head north.
2. What does this pipe mean?
3. Drainage issues are not being answered. And there is no pipe going under Island Ave to let the water flow through.
4. Attached is a view of 2 survey maps from June 2011 and January 2012. For the same area from the same surveyor and they differ in many respects. Why was another survey filed in January 2011 with

AGENDA ITEM 4B ATTACHMENT O

different info on it? Neither of these surveys were the one sent to resident last fall! How many survey's and changes have occurred over the last year? The two compared in these email are both filed with the county.

I would like to have someone from TRLIA came to my office and answer these questions, if necessary I will go to theirs.

Since Mr. Paul Brunner is ill please postpone the meeting of February 2012 until he is able to have another community meeting in Marysville, as we did not cause that meeting to be a waste of time for all.

I would request we have the Central Valley Board Meeting held in Marysville again and in April or May. This would be very much appreciated, and please let them also see what I have been sending you.....Monty

Regards,

-----Original Message-----

From: [Caliso, Angeles](#)

Date: 1/30/2012 8:51:46 AM

To: 'Monty Hecker'

Cc: [Taras, Curt](#); [Marino, Len](#); [Paul Brunner- TRLIA](#); [Tang, Alison](#); [Board of Supervisors-Yuba County](#); [Brewer, Robin](#); [John Nicolett-Work](#); [kim@floydcommunications.com](#); [Wright, C. Michael](#)

Subject: RE: RE:

Monty,

The Board has two different processes. One addresses Enforcement matters and the other Applications. The fence relocation included both of these issues as there was work (fences and other structures) previously constructed without Board authorization and the construction of a new fence. The Notices of violation that were issued on August 5, 2011 fall under the Board's Enforcement process. The new installation of the fence (Application 18690) is under the permit process. Both of these processes are outlined on our Regulations (Title 23), which can be found on our website (see link on my signature below).

The letter you submitted dated October 7, 2011 was in response to Application 18690 notification that was mailed to you and all other 50 property owners. Therefore, your letter was properly acknowledged by our office and included as part of Agenda Item 8E (Permit Application 18690).

You were not given a separate hearing like Ms. LaGrand and Ms. Miller because you did not respond to the Notice of Violation in the given timeline (see clip from the "conditions" noted on the August 5, 2011 NOV).

Conditions: Removal of the identified encroachments will be completed by Three Rivers Levee Improvement Authority (TRLIA) after forty-five (45) days of the receipt of this notice. If you believe this notice in error, please mail this office a copy of any license, lease, easement, or agreement that authorizes this encroachment, along with a written request for a hearing, within thirty (30) days of receipt of this notice.

We will be mailing you a letter in the upcoming days regarding the Board's decision from Thursday's meeting, with direction on how to request reconsideration for Agenda Item 8A.

Best Regards,

Angeles Caliso
Central Valley Flood Protection Board
(916) 574-2386 Office | (916) 574-0682 Fax
Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]

AGENDA ITEM 4B ATTACHMENT O

Sent: Friday, January 27, 2012 12:23 PM

To: Caliso, Angeles

Cc: Taras, Curt; Marino, Len; Paul Brunner- TRLIA; Deborah Smith; Tang, Alison; Board of Supervisors-Yuba County; Brewer, Robin; John Nicolett-Work; kim@floydcommunications.com

Subject: RE: RE:

Importance: High

Angeles,

Ok I really need more "claification"! Are you telling me that:

1. There was more than one opportunity to protest and since I only received the one letter in early October,(which I responded promptly to) I missed my opportunity; or
2. I protested the "wrong issue" and therefore was lumped into a general category; or
3. My Protest Letter was not received/and or properly addressed by your organization.

I apologize for not understanding this, but I do not have the legal advisors and expert consultants at hand to help me understand these processes. I am trying to do the best I can with what knowledge I have. Please understand that if this was in the military jargon or my current occupation of security, I would understand the intricacies and necessary processes. I really need your people to work with us on the questions that I have. We are consistently bombarded with "expertise" and non answers that do nothing to answer the questions. I also need to know if I need to send another letter requesting that the next meeting be in Marysville, as this last one was not our mistake that caused it to be rescheduled. And I would like to readdress 8A at that time. And be advised I brought up issues about the toe markers and the drainage thinking both would be addressed, but only one was - drainage. And that issue was not very clear. I felt like it was more important to rush into the permit approval process. Also please be advised that Kelly at the Yuba County planning department has issues with the MLK, Inc. Contractors response to the oak tree issue. She says oak trees are a mitigated issue that TRLIA needs to address. This is another area where you are receiving bad information. Given the paperwork that Carol Miller gave to you and these current issues of drainage, toe marks, oak trees, etc I really do not feel that this project is ready to have the application for a permit decided. I would like my feelings and concerns made available to your board members before the next meeting is set.

I have another question? Did the 8E also get postponed to the next meeting, and as you so stated in your prior email I would need to be present at that one also? Can you please clarify what is different from 8A and what is being addressed in 8E????.....Monty

-----Original Message-----

From: [Caliso, Angeles](#)

Date: 1/27/2012 9:42:55 AM

To: ['Monty Hecker'](#)

Cc: [Taras, Curt](#); [Marino, Len](#); ['Brunner, Paul'](#); ['Deborah Smith'](#)

Subject: RE: RE:

Monty,

Let me try and clarify what I believe was the same confusion from Ms. Miller. The hearings were broken up to address two issues: the Notices of Violation (Enforcements) and the permit application (18690).

Your letter was received in response to the Adjacent landowner notification for Application 18690. Therefore, your protest letter was to be considered as part of Agenda Item 8E.

Ms. LaGrand and Miller submitted a letter in response to the Notice of Violation within the required 30-days noted on the NOV. As a result, they were granted a hearing and noted as Respondents in the agenda and related documents.

Our office did not receive a letter from you within the 30-days required by the NOV. As a result, you were considered as one of the 48 property owners on the enforcement hearings, who did not request a hearing on a timeline manner.

At each hearing, the Board gives the opportunity for anyone to speak in favor or against an item. You can address the Board at each hearing if you chose.

Hope this makes a bit more sense.

Sincerely,

Angeles Caliso
Central Valley Flood Protection Board
(916) 574-2386 Office | (916) 574-0682 Fax
Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, January 27, 2012 9:10 AM
To: Caliso, Angeles
Subject: RE:

Why wasn't I acknowledged as being one of the protesters? Why I have I been told since then that I am a part of the 48 non-protesters? Ms Miller and Ms LaGrand were given separate meeting times. What am I missing here. Why can I only address the board at meetings as a member of the 48 non-protesters?.....Monty

-----Original Message-----

From: [Caliso, Angeles](#)
Date: 1/27/2012 8:38:45 AM
To: 'Monty Hecker'
Cc: kim@floydcommunications.com; [Marino, Len](#); [Taras, Curt](#); 'Brunner, Paul'; [Brewer, Robin](#); 'Deborah Smith'; [Tang, Alison](#)
Subject: RE:

Monty,

The letter you submitted and attached to this email was accounted for as a protest letter and included as part Agenda Item 8E. Our office sent you a letter on October 21, 2011 acknowledging receipt of your protest letter. Copies of these two letters were part of the Staff Report for Agenda Item 8E, under Attachment D, Exhibit A. I'm not attaching the staff report due to its size but you can find it on our website at the following link: <http://www.cvfpb.ca.gov/meetings/2012/01-27-2012.cfm>

If you have trouble viewing the documents or have any additional questions, feel free to call.

Sincerely,

Angeles Caliso
Central Valley Flood Protection Board
(916) 574-2386 Office | (916) 574-0682 Fax
Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Monty Hecker [mailto:monty_h@eliteuniversalsecurity.com]
Sent: Friday, January 27, 2012 7:33 AM
To: Caliso, Angeles
Cc: kim@floydcommunications.com
Subject: Fw:
Importance: High

AGENDA ITEM 4B ATTACHMENT O

To whom it my concern:

Can you tell me why this letter I sent in was never addressed, I never heard back from anyone, and we did do a Protest letter as you can see from the attached.....Monty

-----Original Message-----

From: [Monty Hecker](#)

Date: 10/13/2011 7:30:32 AM

To: [Monty Hecker](#)

6 February 2012

From: Monty and Debra Hecker
2984 Ostrom Road
Marysville, CA 95901

To: Central Valley Flood Protection Board
Attn: Board of Directors
3310 El Camino Avenue, Room 151
Sacramento, CA 95821

Re: Request to Suspend Action on Permit No. 18690 Three Rivers Improvement Agency

We respectfully request any and all action for Permit 18690 be suspended until the concerns and questions directed to TRLIA and CVFPB Boards have been answered. Our questions and concerns are not being addressed.

Our concerns raised include:

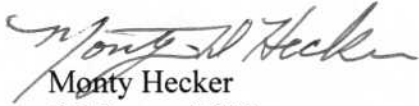
1. Report of Survey June 2011: The basis for the Encroachment Notices issued to 51 property owners on Feather River Blvd and Riverside drive is under question. We have received encroachment notices for two of our properties on Feather River Blvd, and tried to dispute them. These encroachment notices were done in coordination with the TRLIA and CVFP Staff. The staff report to your Board on 2 December 2011 and 26 January 2012, stated that the staffs began working on them in May 2011, based on a June 2011 Survey Report by CTA engineer Kevin Heeney. The CVFP Board Members were told that the Yuba County Surveyor had approved the survey and the survey was in the process of being filed with Yuba County Recorder's office. The survey that was used and given to landowners, was not stamped by the Yuba County Surveyor's Office or the Yuba County Recorder's office and has not been since. A Record of Survey 2011-11 was filed by CTA in the Yuba County Recorder's office 11 January 2012, stamped by the Yuba County Surveyor's office 9 January 2012, and Kevin Heeney 5 January 2012. This survey, however, is substantially different from the unfiled Record of Survey used for the encroachment notices. Most notably longitude and latitude lines have changed from the unofficial June 2011 report of survey. The Yuba County Surveyors office disclaims reviewing it for accuracy, stating they are only required to file it. Questions concerning the accuracy of the "draft" survey have raised and not been answered. Questions concerning monuments found on the levee have been deemed irrelevant, even though it has been generally acknowledged by two departments and the surveyor Kevin Heeney that the monument is probably from Corp of Engineers concerning the levee.

2. Drainage Issues: On 26 January 2012 drainage issues for the maintenance road to be constructed were addressed to the Board by several property owners. The board was assured that drainage would be addressed, however, it was not revealed to the board that drainage had never

been brought up or considered until the questions were raised before your board. TRLIA has not addressed drainage and has not answered any questions concerning this issue. Apparently it is an issue that no one is willing to take on. A written plan of action needs to be accomplished.

3. Several other issues have been raised concerning the layout of the maintenance road, environmental issues, etc and also not answered.

We feel that the members of your board and the property owners should have all pertinent facts and accurate data prior to the permit being issued. Thank you for your consideration.



Monty Hecker

6 February 2012



Debra Hecker

Debra Hecker
6 February 2012

cc: TRLIA Board of Directors
Yuba County Board of Supervisors
Assemblyman Dan Logue
Congressman Wally Herger

AGENDA ITEM 4B ATTACHMENT O

Caliso, Angeles

From: Caliso, Angeles
Sent: Monday, February 06, 2012 2:46 PM
To: 'Miller Philip'
Cc: monty_h@eliteuniversalsecurity.com; 'Brunner, Paul'; Taras, Curt; Wright, C. Michael; Tang, Alison; Brewer, Robin
Subject: RE: Carol Miller - Letter request suspension of TRLIA Permit 18690
Attachments: Letter_Hecker 02.06.12.pdf; TRLIA Jan. 26 hearings Decision ltr_02.06.2012.pdf

Ms. Miller,

I have received your letter date February 6, 2012 (attached for your reference). We will include this and any future communication as part of our Staff reports for the new hearings. Attached is a copy of a letter that has been placed on the mail today for you and the other residents regarding the Board's January 26th decision and the new date for these hearings.

The County recently adopted their new General Plan 2030 and it does not have an oak protection ordinance or general tree protection ordinance. The General Plan does calls for adoption and implementation of a tree preservation and mitigation ordinance by 2015. I have contacted the County and they have informed me that they don't expect this ordinance to be adopted in the near future.

Sincerely,

Angeles Caliso
Central Valley Flood Protection Board
(916) 574-2386 Office | (916) 574-0682 Fax
Email: acaliso@water.ca.gov | www.cvfpb.ca.gov

From: Miller Philip [<mailto:olidar45@yahoo.com>]
Sent: Monday, February 06, 2012 1:23 PM
To: Caliso, Angeles
Cc: monty_h@eliteuniversalsecurity.com
Subject: Carol Miller - Letter request suspension of TRLIA Permit 18690

Ms. Caliso, TRLIA Permit 18690

Branches are being cut off the Oak Trees by the Fence. This should not be happening until TRLIA checks with the State and City Ordinance's, TRLIA is not reading the actual Ordinance's. What they are doing is asking the planning commission verbally and someone is giving them the answer they want to hear.

See letter attached. This is everyone's concern. As I stated before once TRLIA constructs the Fence and Receives their grant money, we will not see any State or City Agency until this area is Flooded again. All work needs to stop until we get answers to our concerns and issues!!!!

Respond to,

Carol Miller 2110 Virgilia Lane Olivehurst CA 95961 e-mail olidar45@yahoo.com	Monty Hecker e-mail monty_h@eliteuniversalsecurity.com and all addresses listed below
--	---

----- Forwarded Message -----

From: Debra - API Academy <debrah@api-academy.com>
To: monty_h@eliteuniversalsecurity.com; Miller Philip <olidar45@yahoo.com>; SUSAN LAGRANDE <weluvpugs@sbcglobal.net>; Susan LaGrand-Work <slagrand@frhq.org>
Sent: Monday, February 6, 2012 11:01 AM
Subject: Letter request suspension of TRLIA Permit 18690

Caliso, Angeles

From: Michael King [mgking47@gmail.com]
Sent: Tuesday, February 07, 2012 12:27 PM
To: Caliso, Angeles
Subject: Re: 5722 Riverside Dr.A (Enforcement ID 2011-268) - Proposed Alternative

Thank you, this agreement sounds good to me. Either myself or my sister will attend. MK

On Mon, Feb 6, 2012 at 10:46 AM, Caliso, Angeles <acaliso@water.ca.gov> wrote:

Mr. King,

Per my voicemail from this morning at approximately 10:23 am, the Central Valley Flood Protection Board ("Board") held a hearing on January 26, 2012 regarding the property you own in Olivehurst California (APN: 020-121-021) where private encroachments exist on State land. At the January 26, 2012 Board meeting, the Board voted 7-0 in favor of approving Staff's recommendation. However, this decision was later vacated because the property owners did not receive the Staff reports within the required 10-days before the meeting. Therefore, the Board will be conducting new hearings on March 2, 2012 in Olivehurst. Additional details will be provided once the agenda is finalized.

At the March 2, 2012 meeting, Staff will be presenting the same alternative presented in January 26, 2012. This alternative proposes the following:

1. Authorize the removal of the existing private fence located on State land
2. Grant a revocable license to you (Michael King) for the use of State land not necessary for the 20-ft corridor.
3. Authorize the existing residence to remain on State land – requiring you to obtain a Board permit.
4. Rescinding Notice of Violation (2011-268) subject to voluntary compliance with items 1-3.

You should have received a copy of the staff report from the January 26th Board meeting which provides additional details on the alternative described above. For your reference, you can find a copy of the staff report on our website at the following link:

http://www.cvfpb.ca.gov/meetings/2012/012612_Item8B_King_StaffreportandRes.pdf

We will be preparing a revised staff report for the March 2, 2012 Board meeting. We will provide you with a copy of this report at least 10-days before the meeting.

If you have any objections to the proposed alternative, please contact our office at your earliest convenience. If you are unable to attend the meeting on March 2, 2012 but would like to submit written comments, please submit them to our office in advance of the Board meeting.

If you have any questions or need clarification, please do not hesitate contacting me.

Sincerely,

Angeles Caliso | Water Resources Engineer

Central Valley Flood Protection Board

Encroachment Control & Land Use Section

3310 El Camino Avenue, Room 151 | Sacramento, CA 95821