**Meeting of the Central Valley Flood Protection Board**

**March 2, 2012**

**Staff Report – Enforcement Hearing**

**Carol Miller, Yuba County**

## 1.0 – ITEM

Enforcement hearing requested by respondent concerning a notice of violation ordering the removal of a private fence 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. 2012-05 (Attachment A) to:

1. Authorize removal of private fences and miscellaneous obstructions on State land subject to Permit No. 18690.
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 notices of violation subject to voluntary compliance with this resolution.

## 2.0 – RESPONDENT/PROPERTY OWNER

Ms. Carol Miller
5676 Riverside Drive
Olivehurst, California 90731
Assessor's Parcel Number (APN) 020-171-001

## 3.0 – LOCATION

Figures 1 & 2 below show the vicinity and an aerial view of the property at 5676 Riverside Dr., respectively.

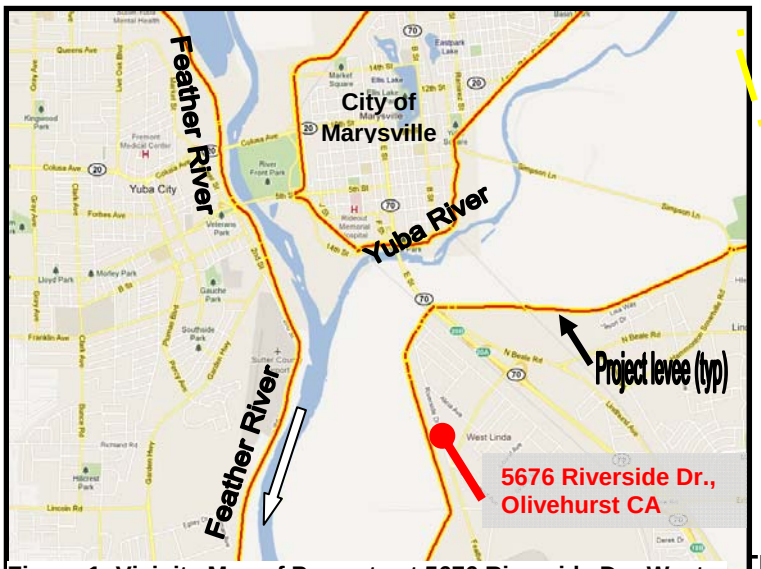



**Figure 1- Vicinity Map of Property at 5676 Riverside Dr., West Linda CA (Source: Google Maps)**

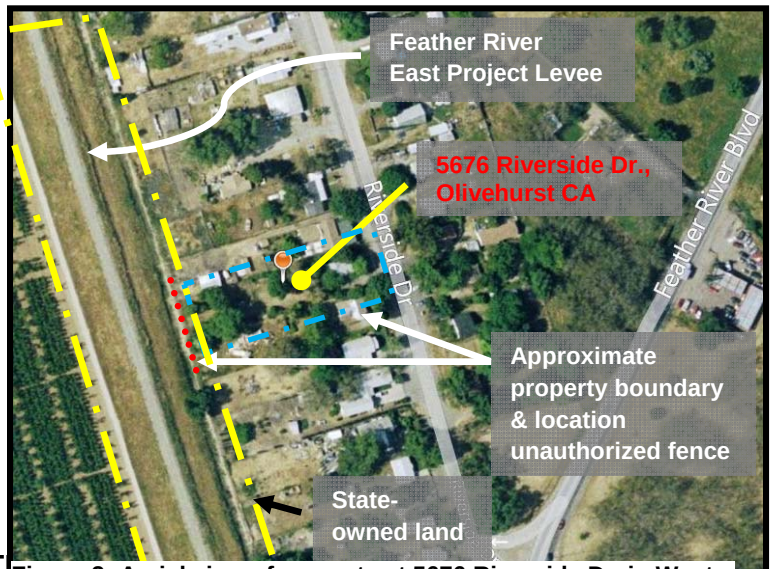



**Figure 2- Aerial view of property at 5676 Riverside Dr. in West Linda CA (Source: Bing Maps)**

## 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 § 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 Carol Miller. 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

The original proposal presented at the December 2, 2011 was to install the new fence at the State right-of-way. This option would provide more than the necessary 20-ft wide O&M corridor but required 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 Carol Miller's property, the existing fence is located approximately 16-18 ft inside State property. The required 20-ft wide corridor can be provided at Carol Miller'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 Carol Miller to use and maintain the remaining State land until needed for a public purpose. 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 and this alternative was supported by the members in attendance.

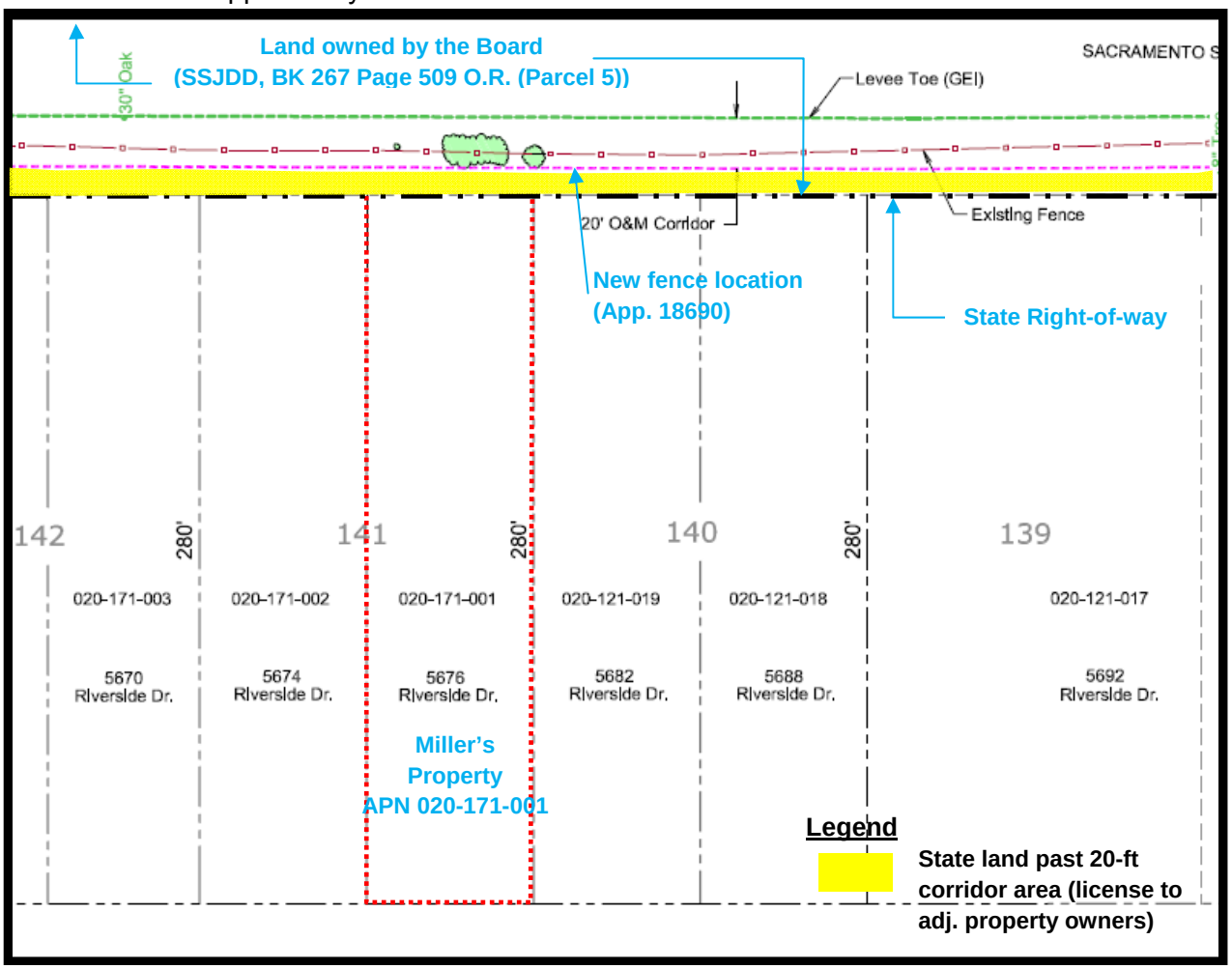



**Figure 3- Source: CTA Levee Exhibit Map dated 11/18/2011, Sheet 1 of 2**

### 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 Carol Miller 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.

## 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 and issue a revocable license to Carol Miller for use and maintenance of State land between the corridor and her property. For these reasons and those stated on this staff report, Board staff recommends the Board adopt Resolution No. 2012-05 (Attachment A).

## 8.0 – LIST OF ATTACHMENTS

A. Resolution No. 2012-05
B. December 2, 2011 Official Transcript for Agenda Items 10 A-D
C. December 2, 2011 Staff Report without attachments for Agenda Item 10C
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 8C)
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 and additional documents submitted by Respondents

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-05

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
CAROL MILLER, 5676 RIVERSIDE DRIVE, 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,** 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), 4(a)(4), 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 (NOV) were issued to property owners adjacent to the Feather River East levee in West Linda, CA. This resolution only addresses the NOV 2011-272 issued to Carol Miller who owns Parcel 020-171-001 (5676 Riverside Drive, Olivehurst, CA); and

**WHEREAS,** on August 25, 2011, Board staff received a hearing request from respondent; 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 Carol Miller for use and maintenance of the portion of the State land not needed to create the 20 foot wide levee toe maintenance corridor; and

**WHEREAS**, existing private fence 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 the residents supported 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 Respondent 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. 2012-05**

5. For the reasons stated on the staff report, staff recommends the Board adopt Resolution No. 2012-05 to:
   a. Authorize removal of private fences and miscellaneous obstructions on State land subject to Permit No. 18690.
   b. Grant a revocable license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
   c. Rescind the notice of violation (2011-272) subject to voluntary compliance with this resolution.
   d. Direct staff to file a Notice of Exemption with the State Clearinghouse.
   e. Direct Executive Officer to execute a revocable license subject to review and concurrence from Board President.

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

| | |
|---|---|
| _____ | _____ |
| Benjamin F. Carter | *To be Determined* |
| President | Secretary |

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





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





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.





(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.

--o0o--

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.

--o0o--

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.

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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.

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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





along the landside of the toe.

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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





land is about 14.8 feet at this location.

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

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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





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.

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

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

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

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

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

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

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

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





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

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

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

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

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





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

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

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

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





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

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

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.

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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





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





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.





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.

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

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

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

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

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

PRESIDENT CARTER: Thank you.

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





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

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

--o0o--

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

--o0o--

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

--o0o--

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





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

--o0o--

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

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

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

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

The encroachment removal is exempt from CEQA; and

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





the State.

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

PRESIDENT CARTER: Are there any quick questions for staff?

Go ahead.

BOARD MEMBER SUAREZ: Thank you.

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

STAFF ENGINEER CALISO: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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





control of its boundary and protect the levee --

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

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

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

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

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

Are there any other questions?

BOARD MEMBER MOFFATT: I did have a question.

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

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





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

BOARD MEMBER MOFFATT: Thank you.

PRESIDENT CARTER: Any other questions?

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

VICE-PRESIDENT RIE: Can I ask a quick question.

How many patrol roads do we already have? Do we have one on the other side of the levee, on the waterside; do we have a patrol road there? And do we have one on the crown of the levee? So this would be a third patrol road. Is that what you're wanting to do?

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

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

PRESIDENT CARTER: What do our standards call

for?

STAFF ENGINEER CALISO: Our standards typically -- or our easements typically are limited to a 10-foot access, an access at the toe -- at the landside toe. This situation is unique, because the property provides not only the 10-foot access that would be required under a standard -- under where -- on other properties where we have an easement, but it provides more than that room that is needed. And I think it's the -- a practice that has been done is where it's not necessarily a 10-foot-wide access that controls the Board's jurisdiction, but it's either -- if we have an easement that is 10 foot or whatever their property rights - and in this case we have -- the Board has property rights over an area that covers more than 10 foot on the landside toe.

VICE-PRESIDENT RIE: Just a follow-up on that last question.

I didn't really understand your response about the urban levee design criteria. I mean the first draft just got released for public review, so those aren't standards. And I think in terms of an enforcement action, we need to rely on Title 23. So I'm not really sure how; that's applicable here.

STAFF ENGINEER CALISO: The 20-foot-wide corridor is required under the interim guidelines. Now, it's not





being a standard at this point. What staff used was the limits of the property that is in ownership by the Board. So we looked at -- if we had a 10-foot easement in this case, then we would be ensuring that the 10-foot easement was provided and was present. In this situation, we have property rights that extend the 10 foot. So we pursued it under the section 19 of our regulations where the Board owns the property.

PRESIDENT CARTER: Mr. Brown.

BOARD MEMBER BROWN: Wouldn't there be a road on that 10-foot easement at the toe of the slope? Wouldn't there be an inspection road?

STAFF ENGINEER CALISO: Yes, the plan under Application 18690 will provide a driveable path. I believe it's 14 feet that will be paved, and then the rest will be graded to allow for vehicles to drive through the 20-foot area -- 20-foot zone.

PRESIDENT CARTER: Question.

DWR ASSISTANT CHIEF COUNSEL TABOR: I wanted to address Ms. Suarez' question, if I might, the jurisdictional basis for this enforcement action.

And, that is, in addition to the Board's property ownership rights is the fact that your permit to Three Rivers Levee Improvement Authority required them as part of their permit to obtain 20 feet landward of the new





levee toe.

All of these fences, the fence on this particular property and the other fences that are the subject of the other -- today are all blocking the ability to comply with the Board's permit. So the handle is the Board's already expressed exertion of its authority over the levee extending out a minimum of 20 feet. And therefore these fences prevent the applicant, the permittee, from complying with the Board's order under its authority.

BOARD MEMBER SUAREZ: Mr. Tabor, is that because we assume that the time that we entered into agreement with TRLIA that we owned that property and that we could go ahead and have those 20 feet?

DWR ASSISTANT CHIEF COUNSEL TABOR: I don't think there was any consideration as to what the Board owned. Because as I understand it - perhaps Mr. Brunner could clarify - what the Board owns in any existing levee situation may vary. Traditionally it is 10 feet. This is a unique area because the Board acquired the railroad right-of-way, which was more than we actually needed for the levee itself. But it was available on the market. We acquired it.

BOARD MEMBER SUAREZ: So, again, we just -- it all goes back to the ownership of that piece of land; and if it's established that we don't own the piece of land,





then we might have a difficulty with enforcement?

DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.

BOARD MEMBER SUAREZ: Thank you. That's all I needed to know.

BOARD MEMBER MOFFATT: I had a question.

If the permit requires 20 feet from the toe - and it looks like the fence and the building go about 14 -- what is it, 14 feet 8 inches beyond what we believe the property boundary to be? But how far into what exists right now -- if you went 20 feet from the toe of the levee, how far in is that line? Does that -- based on your previous statements, I assume that going to what we believe to be the property line is greater than 20 feet, correct?

STAFF ENGINEER CALISO: You're correct. I did identify here -- and that's my apologies for not doing that. But this dash line here on the back of the -- on the screen, this slide up here, that's delineating the approximate location of the levee toe on the landside.

So this is where the levee toe is currently. I wish I had -- that's based on the map that we have. That's what it was identified. So I'll go back.

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

STAFF ENGINEER CALISO: See, this blowup area

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

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

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

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

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

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

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





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

MR. BRUNNER: Angeles, can I speak?

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

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

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

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

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

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

What has prompted us to go to the 20-foot





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

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

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

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

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

BOARD MEMBER MOFFATT: So --





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

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

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

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

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

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

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

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

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

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

we're going to proceed with the testimony. And then we'll ask questions. Once we have everybody's testimony, I think we'll understand the gaps once we do that. Okay?

So go ahead and proceed and clear up exactly what the dimensions are between the levee toe, the existing fence, the proposed fence, and the building.

MR. HEENEY: I don't know --

BOARD MEMBER MOFFATT: Mr. PRESIDENT, maybe can I --

MR. HEENEY: I'm not sure I have enough --

PRESIDENT CARTER: If you can't do that, then we're moving on.

BOARD MEMBER MOFFATT: Can I suggest you go figure out how to answer that and we move on with the respondent --

PRESIDENT CARTER: Okay.

BOARD MEMBER MOFFATT: -- and answer it after? Is that --

PRESIDENT CARTER: Okay. Let's do that.

Ms. Caliso, do you have anything more from the staff?

STAFF ENGINEER CALISO: No, I don't, Mr. PRESIDENT.

PRESIDENT CARTER: Okay. Thank you very much.

I'd like to invite the respondent up to offer





testimony.

MS. LaGRAND: Hi.

First, what's she's giving you is the permit for the building that the attorney here said that I did not have.

The permit was taken out in 1984 by my stepfather, who owned the land at that time. The permit, if you look on page 3, is clearly marked that no encroachment permit is necessary.

I'm just going to give you some background. My family purchased this property 5578 and 5580 in 1946. It was purchased by my maternal grandparents. They came here from Missouri and built their home there. There was no fence when they purchased the property. It had nothing.

The railroad came along, they put a fence up that was basically wooden posts, barbed wire and pretty much chicken wire. They told the residents - they didn't put it in writing - they just told the residents, "This is separating our property from yours." Everyone took that to be what the property was.

A few properties on Riverside actually still have these fences. They're in disrepair but they do still have them. Just a second.

I'm a little nervous. You have to forgive me.

PRESIDENT CARTER: Please take your time.





MS. LaGRAND: In 1951, a flood washed away the railroad tracks. It was completely gone. My mother told me about this numerous times, because it was the year that she graduated from high school. And she said they came out that summer, tore the tracks up, and they were never seen again.

So, that's the timeline I have for when -- they may not have filed abandonment, but that's when we know that the track was gone.

My family have cared for this land all these years. And we do take care of our lot. It is watered, mowed, everything is taken care of.

Now, in the 1980's my mother and my stepfather, Steve Moricz Sr., purchased the property from my grandparents. My stepfather put in a new fence. He put it all in in concrete at the same exact spot where the railroad fence was. You know, he of course figured that's where it belonged because that's where the railroad put the fence.

So in 1984 he built the shop. And there is ten and a half feet between the shop and the fence back behind it. And there is probably about ten feet between the bottom of what they are calling the railroad -- or the toe of the levee. That is not the toe. That is part of the road where the tracks used to run. By their own admission





when they held that picnic in August, TRLIA told us that they truly did not know where the toe was because it has been long buried.

That road is part -- and it's partially buried as well -- that they can drive their cars along is part of where the railroad tracks used to be. That is not the levee toe.

And, let's see, the shop -- of course you've got the permit. This shop in 1984 cost over $28,000. Today that would be a lot more.

My stepfather -- I'm sorry -- he was an immigrant from Hungary, who came to this place trying to build something nice, and that building was his pride and joy. He loved it. That was what he came to this country to do, was to make something of himself.

Now, in 2008 I inherited the property from my mother when she passed away. I am now the third generation owner of this lot.

Now, in 2011, 27 years later, suddenly this shop is in someone's way. I have to admit that I, with somewhat of amusement, had to laugh when they declared it a public nuisance. I don't know if it's screaming at people as they run down the levee or what it's doing, but evidently it's a public nuisance.

I have been given a letter telling me to demolish

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

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

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

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

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





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

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

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





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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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





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

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

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

PRESIDENT CARTER: Thank you.

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

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

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





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

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

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

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

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

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

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

MS. LaGRAND: That's not us.

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





railroad up over the top and then continues.

--o0o--

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

--o0o--

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

BOARD MEMBER BROWN: Is this the waterside still?

MR. FORDICE: This is landside, sir.

--o0o--

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

--o0o--

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

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

--o0o--

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

--o0o--

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





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

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

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

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





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

--o0o--

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

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

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

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





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

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

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

I'd entertain any questions.

PRESIDENT CARTER: Thank you, Mr. Fordice.

MR. FORDICE: Thank you.

PRESIDENT CARTER: Mr. Brunner.

MR. BRUNNER: Thank you.

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

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

railroad embankment that was talked about.
But what we did use for this graphic and what we've used in our study is the levee toe that we used for our certification efforts. We went through and asked GEI. Last year we did certification to establish levee toe based upon where it was within the existing railroad embankment, that we could then go forward with and do our design and make our justification to FEMA.
So that's how we established levee toe.
From the levee toe to the fence line, the property line, that we believe is the property line, is 26.8 feet. The --
PRESIDENT CARTER: You're talking about the existing fence or are you talking about the proposed fence?
MR. BRUNNER: From here the levee toe to the property line here.
BOARD MEMBER BROWN: The property line, not necessarily the fence?
MR. BRUNNER: From the proposed -- from the levee toe to the proposed fence line.
BOARD MEMBER BROWN: Which will be on property line?
MR. BRUNNER: Correct.
BOARD MEMBER BROWN: So that is the property





line. From the toe to the property line is what?
MR. BRUNNER: It's 26.8 feet.
The 20-foot corridor is shown here. The distance from the toe to the existing fence as it's out there is approximately 12 feet. That's the distance from here to here at this location here.
And there was a question, is the -- from the toe to the building corner is 21.3 feet. That's from here to this corner here.
BOARD MEMBER BROWN: Say again, Paul.
BOARD MEMBER BROWN: Is 21.3 feet.
BOARD MEMBER BROWN: What is it?
BOARD MEMBER BROWN: That's the distance from the levee toe to this corner of the building.
BOARD MEMBER BROWN: To the building is what?
MR. BRUNNER: Is 21.3 feet.
And then there was a question from the property line to the fence going in the other direction, which was the confusing point, which is from here back this way to the fence line. Existing fence is approximately 14.8 feet.
So hopefully that clarifies the dimensions on the drawing.
PRESIDENT CARTER: Mr. Brunner, I apologize. I was a little bit slow.





MR. BRUNNER: Okay.
PRESIDENT CARTER: Would you mind just going through all those figures again.
The toe to the property line and proposed fence was 26. --
BOARD MEMBER BROWN: -- 8.
MR. BRUNNER: -- 26.8
PRESIDENT CARTER: -- 8.
The levee toe to the corner of the building was 21.3?
MR. BRUNNER: Correct.
PRESIDENT CARTER: The distance from the levee toe to the existing fence --
MR. BRUNNER: -- is approximately 12 feet.
PRESIDENT CARTER: 12 feet.
And what is that dotted red line that's between the building and the existing fence?
MR. BRUNNER: This one right in through here?
PRESIDENT CARTER: No, the one right above that. The short dots.
That one.
MR. BRUNNER: The Short dot is the 20-foot line -- 20 foot to the levee toe.
PRESIDENT CARTER: Twenty feet from the levee toe. Got it.





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

that it was State property.

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

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

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

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

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





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

And with that, those are my comments.

PRESIDENT CARTER: Thank you.

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

PRESIDENT CARTER: Let's hold the questions.

VICE-PRESIDENT RIE: Okay.

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

VICE-PRESIDENT RIE: All right.

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

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

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





number came from.

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

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

Thank you.

PRESIDENT CARTER: Very good.

Ms. Nagy.

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

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





understand from the Corps' perspective.

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

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

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

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

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

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

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

Thank you.

PRESIDENT CARTER: Thank you.





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

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

MR. STEINHEIMER: Oh, sure.

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

MS. LaGRAND: Yeah.

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

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

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

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

PRESIDENT CARTER: Thank you.

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

And this is the actual railroad track running





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

VICE-PRESIDENT RIE: Excuse me for a second.

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

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

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

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

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

MS. MILLER: This one?

STAFF ENGINEER CALISO: Uh-huh, yeah.

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

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

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





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

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

PRESIDENT CARTER: Go ahead. Please proceed.

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

Now, I need that one there.

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

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

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

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

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

is now?
MS. MILLER: Yes. But in the original official documents it states 40 feet on one side and 40 feet on the other side, from the survey of the west side of the old Sacramento Road, which is this one of the original documents.
Did you want to talk?
MR. MILLER: My name's Phillip Miller. I'm her brother and I'm part owner of the property in that area.
A little bit of history. I'm sorry we don't have as good a presentation as they had.
Let's go back to the 1900's. It was passed over a little bit. 1900's this was -- what you see up here on the monitors was all farmland. That was owned by everybody and anybody. It was -- it was -- yeah, I'll do it. It was, as I said, owned by farmland.
Okay. The railroad right here at this point came through, because they needed to move their produce. Okay. They built the levee. Produce started getting cheap. Land started getting valuable. So the farmers decided to subdivide. That's where we come in to this area. They still have farmland down there. And these railroads -- there was three of them at this time. These railroads were hauling produce back and forth from Sacramento, San Francisco, Chico, all over the place.





Now, they decided it wasn't worth their time because trucking became the thing. So when they had this, the railroads, they had 40 feet from the centerline of that railroad out when they surveyed. When they got the property for their railroads, it was a straight line a thousand-some feet, 40 feet on each side from the centerline.
Now, if you measure this, railroads -- and here's the documents that says that. If you measure those railroads out, you will find that the fence line that is there now is where it should be. The railroad came through -- as Mrs. LaGrand said, the railroad came through. They put up a barbed-wire fence, three strands, on railroad ties. They indicated that that was their property. This was in the forties. They indicated that was the property line for both properties.
And if you go -- like I said before, if you go out and measure it -- if you can find the centerline.
Now, Three Rivers says, "Well, we measure it from the toe." You don't measure from the toe. You measure from the centerline of the railroad, which would put it back about, I'd say, a good eight, nine feet.
So once you measure from that centerline -- if you measure from the toe -- yeah, he's right, he's absolutely right, if you measure from the toe of that





levee. But you don't measure from the toe, ladies and gentlemen. You measure from the centerline.
All the railroads when they were built, the Government gave them in grants and deeds a straight line with so much property on each side, and that was so many feet wide.
So if you go through and look at the history - and that's the important thing, the history of this area - you will find that what they are doing, Three Rivers did, they came in and surveyed it, but it's really not a straight survey this way. If you survey around that levee, the centerline of the railroad around that levee, you will find that those property lines are different than what they get when you survey a property line.
They talk about Riverside Avenue, coming in from Riverside Avenue to the front. Well, Riverside Avenue at one time was the main road from Sacramento into Marysville. It has been laid over, flooded over three times that I'm aware of in my lifetime -- three or four. So that road -- centerline on that road has moved one way or the other. When they came out and repaved it after each flood or when they repaved it, it moved. So now, your property line in the front isn't quite exact.
The same way with the property line in the back. Everything moves.





Now, 784 came in. They put dirt on top of their levee. As they stacked that dirt on top of the levee, it went this way, and it covered up that centerline of railroad. And in the process of covering up that centerline on the railroad, they've covered up the measurement that they need to show where the property lines are.
Now, the question comes down, do they own the back of that property? I say, no, they don't. The property owners own it, because they cannot show where that property line is because it wasn't measured. They came in, they did a survey. They found a point to survey from. You can't find a point to survey from.
He even said, "We found a point to survey from." Is that not correct?
MR. HEENEY: We found several.
MR. MILLER: I'm sorry?
PRESIDENT CARTER: I'm sorry. You can't have a dialogue --
MR. MILLER: I'm sorry. Yes, yes. I'm sorry. I apologize. I know that.
So they can't -- they can't show you where what is, it's been so many years. It's been since the 1800's, the 1900's, 1950's. That property belongs to the homeowners.

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.





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.





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





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

permanent-type structures like the shop, like a house, that would be within the 20 feet? So if we were to set a line at 20 feat from the toe, would that still require getting into a permanent structure like a house or a shop or something like that?

So as you're addressing the President's issue, if there's someone that can answer that question.

STAFF ENGINEER CALISO: I can answer that question. Angeles Caliso, Board staff.

The only two permanent structures within this area is the property owned by Ms. LaGrand and then the property owned by Mr. Miller. Mr. Miller's property encroaches onto State land about 1.5 feet or in that magnitude. So it's much less than Ms. LaGrand's.

Aside from that, the rest of the structures are non-permanent, barbecue pits and --

BOARD MEMBER SUAREZ: That's not the question.

BOARD MEMBER MOFFATT: But I think she answered it in a roundabout way though. Because if we've got 1.3 difference between 20 feet and Ms. LaGrand's structure, that means we've got about -- add 3 -- 4.3 feet between 20 feet and Mr. Miller's house. So I think you've -- if that's accurate, you answered.

PRESIDENT CARTER: Yeah. It appears that we have clearance to establish a 20-foot maintenance





right-of-way -- or maintenance access on the landward side toe.

So what do you guys think about my proposal?

EXECUTIVE OFFICER PUNIA: We have conferred with the counsel. And I think our proposal is we'll go back and come in January. And the main issue is the encroachment on the State property. We will discuss that subject with our legal counsel and then come back next month, you know, with a proposal that -- with the staff recommendation how to deal with it.

Maybe counsel can address that.

DWR STAFF COUNSEL BREWER: Yeah, let me just elaborate on that.

We think -- we agree with you -- I'm sorry. Robin Brewer, staff counsel -- staff legal counsel to the Board staff.

We agree with you, President Carter, that this can be resolved without potentially moving the building. However, we do believe that there was evidence presented here today, very clear evidence, that these buildings do encroach on State property. Therefore, we would like the Board to find that these two buildings are encroaching but direct staff to go back and work out these issues.

Now, there are some very real real estate and legal issues here. One is gift of state property. We





can't just allow these -- we cannot quitclaim this back to these people. That would be a gift of state property. We cannot do that.

The Corps has brought forth whether or not they are going to need to issue an encroachment permit here. So that's another, that Ms. Nagy testified to.

And then at the end of the day, there would be other permits that may or may not be required by this Board.

So that's kind of where we at. We agree that there's a way to resolve this absent moving the buildings, tearing them down, whatnot. But there are some legal and real estate issues that need to be resolved.

And this is clearly State property.

PRESIDENT CARTER: Yeah, I would -- with respect to the Corps, I mean their standard is lower than 20 feet. We own property all over the State that is in and outside of Corps' jurisdiction. And as long as we're meeting their minimum standard, I don't see how they could object. And 20 feet exceeds their minimum standard. So I personally am not too worried about that issue.

DWR STAFF COUNSEL BREWER: Okay.

PRESIDENT CARTER: Unless they make an issue of it, which we can discuss at a future date.

DWR STAFF COUNSEL BREWER: Correct, that's not





our issue.

PRESIDENT CARTER: But the gift of state property, we have to work through. And that would be a subject of negotiations between Board staff and the respondents.

And certainly this solution would eliminate a lot of the issues and the concerns we have with these enforcement hearings that are before us today, and would certainly save everybody a lot of time and heartache, I think.

Mr. Hodgkins.

SECRETARY HODGKINS: Ms. Givens?

PRESIDENT CARTER: Ms. Brewer.

DWR STAFF COUNSEL BREWER: Brewer.

SECRETARY HODGKINS: I'm sorry. Brewer.

DWR STAFF COUNSEL BREWER: That's okay. I was looking.

(Laughter.)

SECRETARY HODGKINS: That's my second Perry moment for the day.

DWR STAFF COUNSEL BREWER: You can call me whatever you want, sir.

SECRETARY HODGKINS: You know, you're asking for a finding that these are on State property. But when you start throwing up those original railroad maps, I'd be

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

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

DWR STAFF COUNSEL BREWER: Okay.

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

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





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

PRESIDENT CARTER: Thank you.

Mr. Shapiro.

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

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

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

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





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

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

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

PRESIDENT CARTER: Thank you.

VICE-PRESIDENT RIE: Can I ask a question?

PRESIDENT CARTER: Just a second.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: I want to get the respondents.

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

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





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

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

You remember me telling you that?

PRESIDENT CARTER: Well, okay.

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

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

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

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

MS. LaGRAND: Okay. Thank you.

SECRETARY HODGKINS: Let me ask Mr. Brunner.

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

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

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

SECRETARY HODGKINS: Okay.

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

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

But I think it would help to have the finding.

PRESIDENT CARTER: Okay. Ms. Rie.

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





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

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

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

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





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

PRESIDENT CARTER: Mr. Moffatt.

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

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

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





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

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

BOARD MEMBER SUAREZ: Sounds like a motion.

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

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

Everybody understand?

Mr. King, do you want to go first?

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.





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





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.





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

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





earlier, it has been reviewed by the County Surveyor's Office as well.
SECRETARY HODGKINS: And they concur?
MR. HEENEY: And they made no comments as to the location of where we put this.
SECRETARY HODGKINS: Thank you.
PRESIDENT CARTER: Any other questions for Mr. Heeney.
VICE-PRESIDENT RIE: Yes, I have a question.
When you looked at the San Joaquin Drainage District's maps, what did they show? Because the State wasn't aware that they own this property. Were the property lines in a different location?
MR. HEENEY: Didn't look at San Joaquin County drainage maps. We looked --
VICE-PRESIDENT RIE: No, no, no. The San Joaquin Drainage District.
MR. HEENEY: We didn't look at their maps. We looked at the maps of record in the County Recorder's Office.
VICE-PRESIDENT RIE: So you did not look at our maps -- our Board's maps?
MR. HEENEY: No. I had the deed.
PRESIDENT CARTER: Are the deeds the governing documents?





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





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

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





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





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





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

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





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





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





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

it does seem like we can take care of public safety and avoid getting crosswise with a bunch of property owners, to think about coming early to the Board, not with an official action but perhaps with the local agency, and asking the Board if they would agree to let you try and go ahead and work it out, so that we don't spend a huge amount of time working on something that gets down to an enforcement action and then the Board compromises.

And I don't know how you figure out which ones you're willing to do that on. But think about it.

EXECUTIVE OFFICER PUNIA: Board Member John Moffatt?

BOARD MEMBER MOFFATT: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board Vice-President Teri Rie?

VICE-PRESIDENT RIE: I'm going to vote no. And it's not because I don't support Mr. Moffatt's motion. I think he made a good motion. It's because staff did not engage with the Real Estate Branch. And I think when we're talking about taking people's homes and their sheds, and we have a Real Estate Branch, I think it's our duty to review the documents, have professional Real Estate staff





check everything. We have our own documents. And it's surprising that those documents -- our own real estate maps were not provided to the surveyor and those documents weren't checked. So, you know, that concerns me.

So I'm voting no.

EXECUTIVE OFFICER PUNIA: Board PRESIDENT Ben Carter?

PRESIDENT CARTER: Aye.

So the motion carries, 5 ayes, 2 nays.

BOARD MEMBER VILLINES: Mr. Carter, can I just -- because I'm losing my voice -- my opinion is the same. I totally support what everyone's doing. I wasn't convinced about the encroachment. I just want to put that on for the record.

PRESIDENT CARTER: Very good.

BOARD MEMBER MOFFATT: And notwithstanding, although I'm offended by both noes.

(Laughter.)

PRESIDENT CARTER: All right. Thank you very much, ladies and gentlemen.





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 Item 10A 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 9th day of December, 2011.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063

**Meeting of the Central Valley Flood Protection Board**

**December 2, 2011**

**Staff Report – Enforcement Hearing**

**Ms. Carol Miller, Yuba County**

## 1.0 – ITEM

Consider approval of Enforcement Order 2011-272 (Attachment A) regarding the Notice of Violation (NOV) issued to Ms. Carol Miller (Respondent) on August 5, 2011, notifying her of an existing unauthorized fence 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.

## 2.0 – RESPONDENT/PROPERTY OWNER

Ms. Carol Miller
5676 Riverside Drive
Olivehurst, California 90731

Assessor's Parcel Number (APN) 020-171-001

## 3.0 – LOCATION

The encroachments are 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 5676 Riverside Drive, respectively.




**Figure 1- Vicinity Map of Property at 5676 Riverside Dr., West Linda CA (Source: Google Maps)**




**Figure 2- Aerial view of property at 5676 Riverside Dr. in 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 G). In addition, CTA submitted a memorandum summarizing the basis for the survey map (see Attachment H).

## 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 required 20-foot wide access corridor is owned by the State. However, existing fences, vegetation and other 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 E 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 F for a summary on the questions and answers from the community meeting.

### 6.2 –Notice of Violation 2011-272

On August 5, 2011, NOV 2011-272 was issued to Ms. Carol Miller (Attachment B). On August 25, 2011, Board staff received a hearing request from Respondent (see Attachment C). On October 4, 2011, a hearing acknowledgement letter was sent to the Respondent (see Attachment D). The NOV issued to the Respondent only identified the existing parallel fence constructed 16-18' into State-owned land (See Figures 3 and 4). Board's regulations prohibit any encroachments to be constructed within land owned by the State unless a lease or agreement has been executed between the Board and the landowner. Board records indicate there are no Board-issued permits or agreements for the encroachments noted on the NOV.

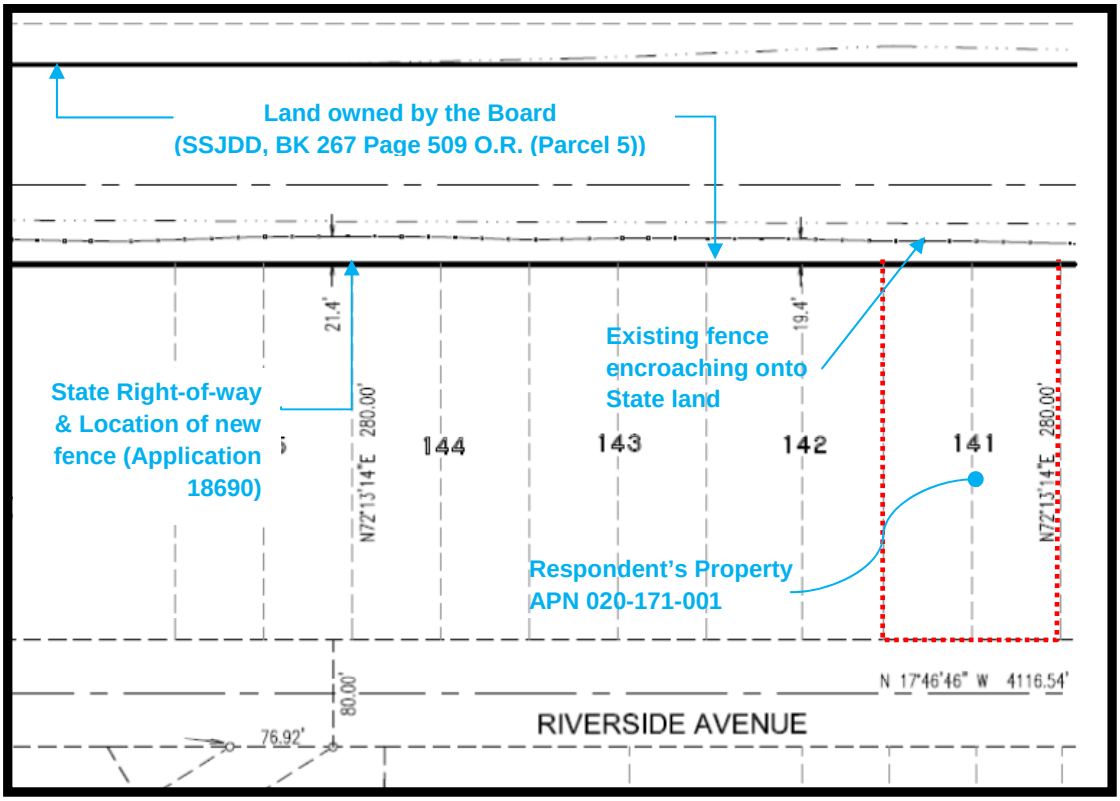



**Figure 3- Source: Survey Map prepared by CTA Engineering & Surveying dated June 2011, Page 1 of 3**




**Figure 4- Photo of Respondent's property. (Source: Downey Brand 7/14/2011)**

The following is a summary and response to the arguments raised by the Respondent's letter dated August 25, 2011 (Attachment C).

***Argument 1*:** According to the Respondent, the existing fence was built by the Railroad in the late 1940's and the Railroad and Homeowner's agree the location of the fence was the property line.

*Board Staff Response*: California Civil Code § 1624 requires that any real estate agreements be in writing. Board staff has not been presented with any documents that confirm the agreement and construction of the existing fence.

***Argument 2:*** According to the Respondent, the railroad alignment was abandoned at least 5 years after the fence was constructed and therefore adverse possession is in effect.

*Board Staff Response*: Record documents show that the portion of the Railway adjacent to the properties was abandoned in 1956. The State purchased the property in 1958. Therefore, the railway (not the land) was abandoned for only 2 years. To date, the Respondent has been unable to furnish documents that indicate when the fence was constructed. In addition, Pursuant to Civil Code § 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 Board 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 against State-owned land. Furthermore, pursuant to Public Utilities Code Sections 211 and 216, a public utility is every railroad performing a service for, or delivering a commodity to, the public or any portion thereof for which any compensation or payment whatsoever. Therefore the Railway Company is a public utility and in accordance with Civil Code Section 1007, no prescriptive rights against a public entity can be obtained.

***Argument 3:*** The methods used for the development of the survey map completed by CTA are inaccurate and therefore the parcel boundaries shown on the map are incorrect.

*Board Staff Response*: Per Section 5.0, the property boundaries shown on the record of survey map prepared by CTA were certified by a licensed surveyor using record documents, existing monumentation, field verification and confirmation from Yuba County Surveyor's office. This map has been submitted to Yolo County for filing. In addition, CTA submitted a memorandum summarizing the basis for the survey map (see Attachment H). Board staff is confident that the survey map was prepared using the best available information, including proper due-diligence and verification of record documents, field verification and done in accordance with applicable professional codes.

***Argument 4***: Between 1951 and 1996, this area was flooded and inspected by State agencies but no requests were made to remove or relocate the fence during this time.

*Board Staff Response*: Any flood-fighting or inspections done in this area would be limited to verifying that the flood control structures are performing as intended and designed. This does not include performing field surveys or boundary verification. As indicated in Section 6.1, the removal of the fences and other structures at this location was discovered as part of TRLIA's levee improvements along the Feather and Yuba Rivers.

***Argument 5:*** The Respondent claims that homeowner's paid property taxes for the portion of the land where the fence was constructed by the Railroad.

*Board Staff Response*: The parcel boundaries shown on the survey map prepared by CTA reflect the recorded subdivision map and these boundaries were confirmed with Yuba County Assessor's office. No documents have been provided to demonstrate that the landowners paid property taxes on the land where the encroachments exist.

## 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

Staff has considered the comments raised by the Respondent against the issued NOV. Staff has concluded that the benefits to improving levee patrol, maintenance access and maintaining this area clear should future levee improvements necessary, are most important. An allowing existing unauthorized encroachment to remain within State-owned land are prohibited by law, regulation and is not consistent with Board's new policy for landside levee setbacks. The information contained in this staff report constitutes significant evidence that the encroachments noted on issued Notice of Violation 2011-272 interfere with the maintenance, performance, or functioning of the Feather River Project Levees, 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. 2011-272 (Attachment A).

## 9.0 – LIST OF ATTACHMENTS

A. Proposed Enforcement Order No. 2011-272
B. Notice of Violation issued on August 5, 2011
C. Respondent's letters dated August 25, 2011 & November 17, 2011
D. Hearing Acknowledgement Letter sent to Respondent on October 4, 2011
E. Sample letter mailed by TRLIA on July 29, 2011
F. TRLIA August 22, 2011 Community Meeting Q&A
G. CTA Engineering & Surveying Record of Survey Map dated June 2011
H. 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 ofthe 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 ½ degrees East, 22 chains; thence East 23.71 chains; thence South 20 chains to the place of beginning, all in Townhhip 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 tha said party of the second part, and to his heirs and assigns forever. - - - - - - - - - - - - - - - - - - - - - - - - - - - -

IN WITNESS WHEREOF, thesaid party of the first part, as execu-tor 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. - - - - - - - - - -

S. O. Gunning Recorder, By Anna E. Gunning Deputy.

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Isaac G. Cohn
et al.
To
Northern 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, inforporated under and by virtue of the laws of the State of California, with the principal place of its business situate 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: - - - - - - - - - - - - - - - - - - -

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 tagent 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 necesary and convenient therefor. - - - - - - - - - - - - - - - - - - - -

TOGETHER with all and singular the tenements, hereditaments



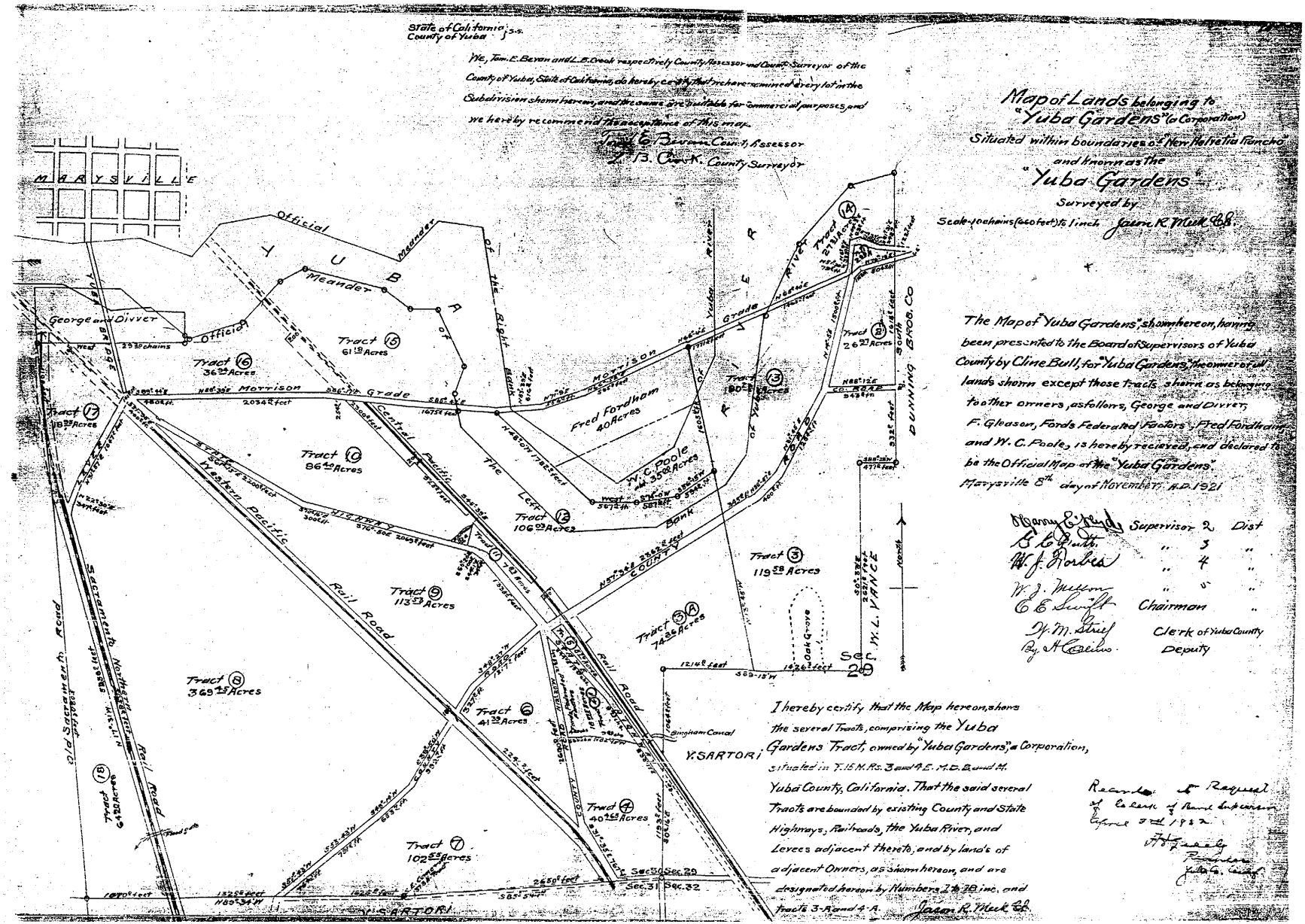


and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof . - - - - - - - - - - - - - - - - - - -

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 LUNSFIRD, 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. - - - - - - - -


State of California } S.S.
County of Yuba
We, Tom. E. Bevan and L. B. Creak 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 hereon, and the same are suitable for commercial purposes, and we hereby recommend the acceptance of this map.
Tom E. Bevan County Assessor
L. B. Creak County Surveyor
Map of Lands belonging to "Yuba Gardens" (a Corporation)
Situated within boundaries of "New Helvetia Rancho"
and known as the
"Yuba Gardens"
Surveyed by
Scale 40 chains (2640 feet) to 1 inch. James R. Mack C.E.
MARYSVILLE
YUBA RIVER
Official Meander of the Right Bank of the Yuba River
Meander
George and Divver
Official
Tract 16 36.25 Acres
Tract 15 61.19 Acres
Tract 17 118.33 Acres
Morrison Grade
Fred Fordham 40 Acres
W. C. Poole 30.00 Acres
Tract 14 86.49 Acres
Tract 12 106.93 Acres
Tract 13 80.21 Acres
Tract 2 26.27 Acres
Tract 1 21.18 Acres
Tract 3 119.58 Acres
Tract 9 113.53 Acres
Tract 5A 74.56 Acres
Tract 8 369.25 Acres
Tract 6 41.33 Acres
Tract 4 40.25 Acres
Tract 7 102.55 Acres
Tract 18 62.25 Acres
Central Pacific Railroad
Sacramento Northern Railroad
Southern Pacific Railroad
Levee
Bank
Road
Bingham Canal
Y. SARTORI
W. L. VANCE
COUNTY
Oak Grove
DUNNING BROS. CO
Sec. 29
Sec. 30
Sec. 31
Sec. 32
The Map of "Yuba Gardens" shown hereon, having been presented to the Board of Supervisors of Yuba County by Cline Bull, for "Yuba Gardens" the owners of all lands shown except those tracts shown as belonging to other owners, as follows, George and Divver, F. Gleason, Ford's Federated Factors, Fred Fordham and W. C. Poole, is hereby received, and declared to be the Official Map of the "Yuba Gardens".
Marysville 8th day of November A.D. 1921
Supervisor 2 Dist
" 3 "
" 4 "
" 5 "
Chairman "
Clerk of Yuba County
By Deputy
I hereby certify that the Map hereon, shows the several Tracts, comprising the Yuba Gardens Tract, owned by "Yuba Gardens", a Corporation, situated in T. 15 N. Rs. 3 and 4 E. M. D. B. and M. 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 land's of adjacent Owners, as shown hereon, and are designated hereon by Numbers 1 to 18 inc. and tracts 3-R and 4-A.
James R. Mack C.E.
Recorded at Request of Clerk of Board of Supervisors Nov 8th 1922
Recorder
Yuba Co. Calif.
2-2

The undersigned, Edith M. Bull Vice President and Donn M. C. Bull Secretary of Yuba Gardens, a corporation, owner of the tract of land shown hereon, being the only persons interested in said tract of land whose consent is necessary to the making and filing of said map or to pass a clear title to the land described and platted hereon do hereby consent to the making and filing of said map.

Edith M. Bull Vice President.

Donald L. Bull Secretary.

STATE of California } ss.
County of Yuba }

On this 3 day of June 1939, before me Elsie Elder Moncur a Notary Public in and for said County and State duly commissioned and sworn personally appeared Edith M. Bull and Donald L. Bull Vice President and Secretary respectively of Yuba Gardens, known to me to be the persons whose signatures are attached to the above written instrument, and they acknowledged to me that they executed the same

Elsie Elder Moncur
Notary Public in and for the County of Yuba, State of California.

My commission expires October 8 1942

I, W. M. Stark County Clerk of the County of Yuba, State of California, do hereby certify that the Board of Supervisor of the County of Yuba, State of California, approved this map on the 6th day of June 1939, and that no parcels of land were offered for dedication for public use.

Dated June 6 1939.

W. M. Stark
County Clerk for the County of Yuba, State of California.

I, the undersigned, County Surveyor of the County of Yuba, State of California, do hereby certify that the subdivision shown herein is substantially the same as it appeared on the tentative map on file and any approved alterations thereof; and all the provisions of Chapter 670, Statutes of 1937, and of any local ordinance applicable at the time of the approval of the tentative map, have been complied with and that I am satisfied that said map is technically correct.

Dated April 28 1939.

Hugh Stone
County Surveyor for the County of Yuba, State of California.

I, Hugh Stone, do hereby certify that I am a licensed surveyor of the State of California and that I prepared this map; that I made the survey for said map in August 1938, and that the survey is true and complete as shown on this map; that all of the monuments shown on this map are of the character and occupy the positions indicated and that said monuments are sufficient to enable the survey to be retraced.

Dated April 28 1939.

Hugh Stone
License Surveyor No 7865.

We, the undersigned, being the owners of the parcels of land listed opposite our respective signatures do hereby consent to the making and filing of this map.

| Signature | Lot |
|---|---|
| C. W. Lindsey Lawrence J. Hunt | 3 & 4 of 10-61 |
| Mrs. Ollie Shelley | 27-69-72 |
| Albert A. Aldrich | 77 |
| Ernest A. Letcher | 54 |
| Ella Sherwood Lois Sherwood | 41 |
| John R. Clarke, Mary Ann Clarke | 5 |
| W. H. Sawyer | 77 |
| Addison A. Harding | 71 |
| Agnes E. Hardisty By Jean Hardisty | |
| The Bank of Yuba Yuba West | 106 |
| Chas. J. Wells | 98 |
| C. D. Lazarus | 114 |
| J. Seidler | 99-100 |
| Harry Harlan Clark | 102-103-104-105 |
| [illegible] | |
| [illegible] | |
| Benjamin Turner Alexander | 112 |
| Donald R. Simpkins Almeda M. Simpkins | 93-94 |
| Elizabeth Gardner | 110-111-117 |
| Victoria Smith | 6 |
| [illegible] | |
| G. T. Stoker Ida Mary Stoker | 95 |

STATE of California } ss.
County of Yuba }

On this 3 day of June 1939, before me Elsie Elder Moncur a Notary Public in and for said County and State duly commissioned and sworn personally appeared the parties whose signatures appear on the above written instrument known to me to be the persons whose signatures are attached thereto and they acknowledged to me that they executed the same.

Elsie Elder Moncur
Notary Public in and for the County of Yuba, State of California.
My commission expires October 8 1942

Approved April 28, 1939.
Yuba County Planning Commission.

Ivan E. Bryant Chairman.

A. K. Gallagher Secretary.

I, Helen Waste County Auditor of the County of Yuba, State of California, do hereby certify that there are no liens for unpaid State, County or other taxes, except taxes not yet payable, against the lands designated on this map or any part thereof.

Dated June 6. 1939.

Helen Waste
County Auditor of the County of Yuba State of California.

This map having been presented to the Board of Supervisors of the County of Yuba, State of California this 6th day of June 1939 it is hereby ordered that the same be approved and that the streets shown thereon be accepted.

C. W. Lazarus
J. Reese
G. A. Tuttle
Lee R. Sagehorst
Chester E. Campbell
Board of Supervisors, County of Yuba, State of California.

Attest W. M. Stark Clerk.
June 6, 1939

Filed in the office of the County Recorder at the County of Yuba, State of California this 14th day of June 1939.

Helen Waste
County Recorder.

Deputy Recorder.

The following Lots are not a part of this Subdivision:

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 83 | 83 F. | 28 | 29 | South 1/2 of Lot 58 | | 48 | 49 | | | | |
| 88 | 89 | 90 | 91 | 92 | 96 | 97 | 101 | 107 | 108 | 115 | 116 |

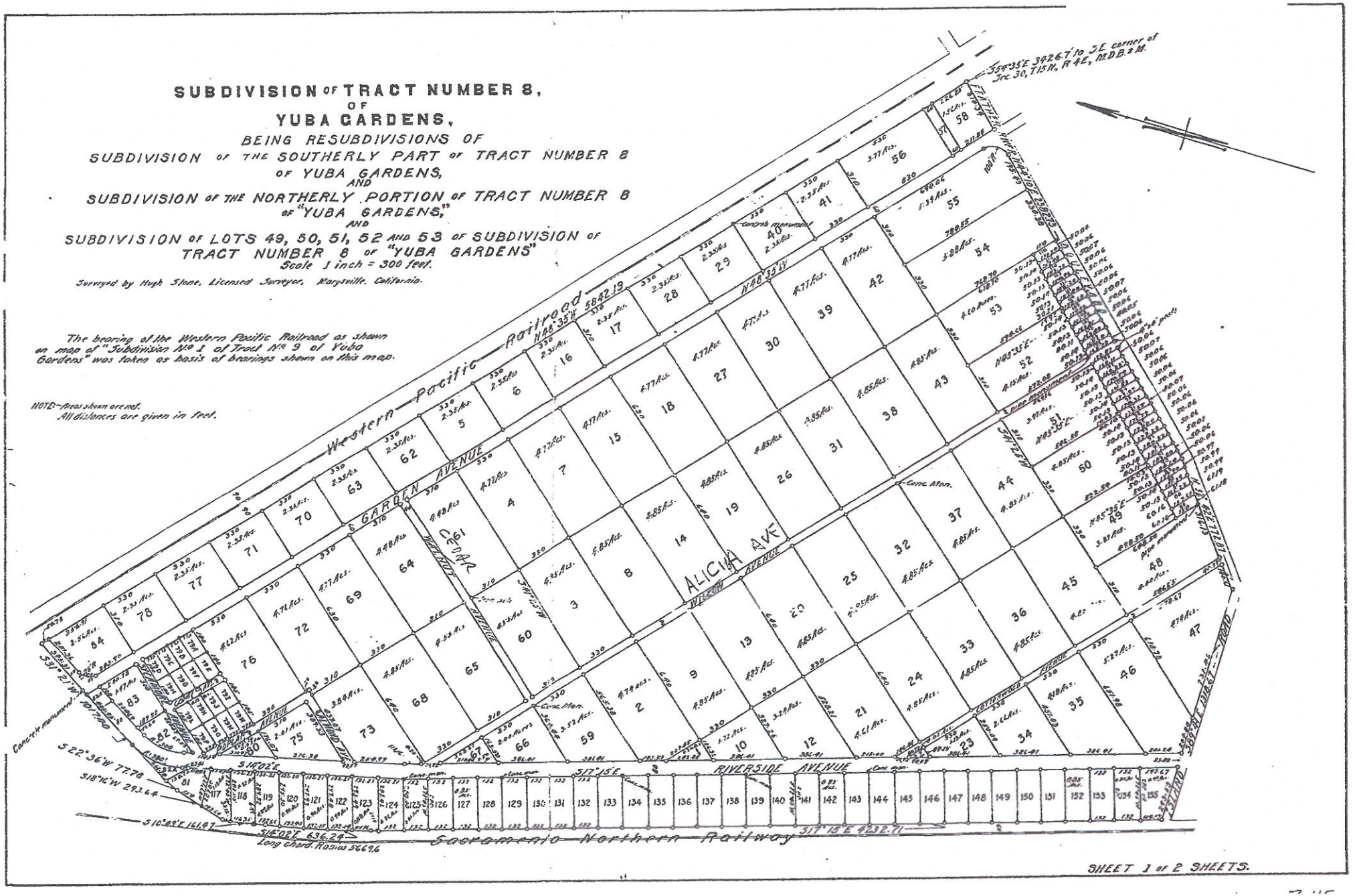
# SUBDIVISION OF TRACT NUMBER 8, OF YUBA GARDENS,

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.

SHEET 2 OF 2 SHEETS.


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 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.
Western Pacific Railroad
N46°35'W 5842.13
S54°35'E 3426.7 to S.E. corner of Sec. 30, T15N, R4E, M.D.B.&M.
GARDEN AVENUE
ALICIA AVE
WILLOW AVENUE
RIVERSIDE AVENUE
Sacramento Northern Railway
S17°15'E 4232.11
S31°21'W
S22°36'W 77.78
S18°16'W 293.64
S16°29'E 161.87
S16°02'E 636.24
Long Chord. Radius 5669.6
SHEET 1 of 2 SHEETS.

2 Cal Ry trackage rights

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. 19254

SACRAMENTO NORTHERN RAILWAY TRACKAGE RIGHTS, ETC.

Decided April 27, 1960

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. L. 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, 1956, applied (1) under sectio. 5(2) o' 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 39.96 to milepost 41.00 (Western Pacific's milepost 178.09), 1.04 miles, and (b) authority to construct a connecting track

extending from applicant's
milepost 178.63, 1.61 mile
representations have been
objection to the applicati
the line involved.

The Railway Labor Exe
application on the ground
adversely affect applicant
association and the applic
imposition of the same con
employees as were prescrib
Abandonment, 257 I.C.C. 17
granted. Our certificate i
the stipulated conditions
who may be adversely affect
opinion a public hearing is
for the reason that the pro
transportation service. Un
mentioned herein are in Cal

Applicant's purpose in
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recent floods. Applicant's
and Marysville roughly paral
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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,

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Construction wil

it was acquired by applicant on November 4, 1955.

The segment in question crossed the remaining portion of the Yuba River, referred to above, on a 1900-foot trestle which was destroyed during floods in December 1955. The trestle, which will cost an estimated $200,000 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 1953 and 1954 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 178.63 and their jointly operated trackage commencing at Western Pacific's milepost 178.09 (Oliver). To accomplish this result, applicant proposes to construct a connecting track between the lines extending from its milepost 38.98 to Western Pacific's milepost 178.63. Construction will begin immediately upon the receipt of our

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joint track.

Applicant will pa
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any change which may b
rate.

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 85-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 0.8 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 $136,000, which will include $26,318 for signals and interlockers and $17,900 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, 1955, 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 such 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 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 $34,000 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 Ra
transaction within the
Commerce Act, as amend
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all as described herein

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COMMISSIONER JOHNSON, be
proceeding.

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.

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. 1956.

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 Railway 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, 1956, and be completed on or before December 1, 1956.

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, respectively;

It is further ordered, That this certificate and order insofar 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;

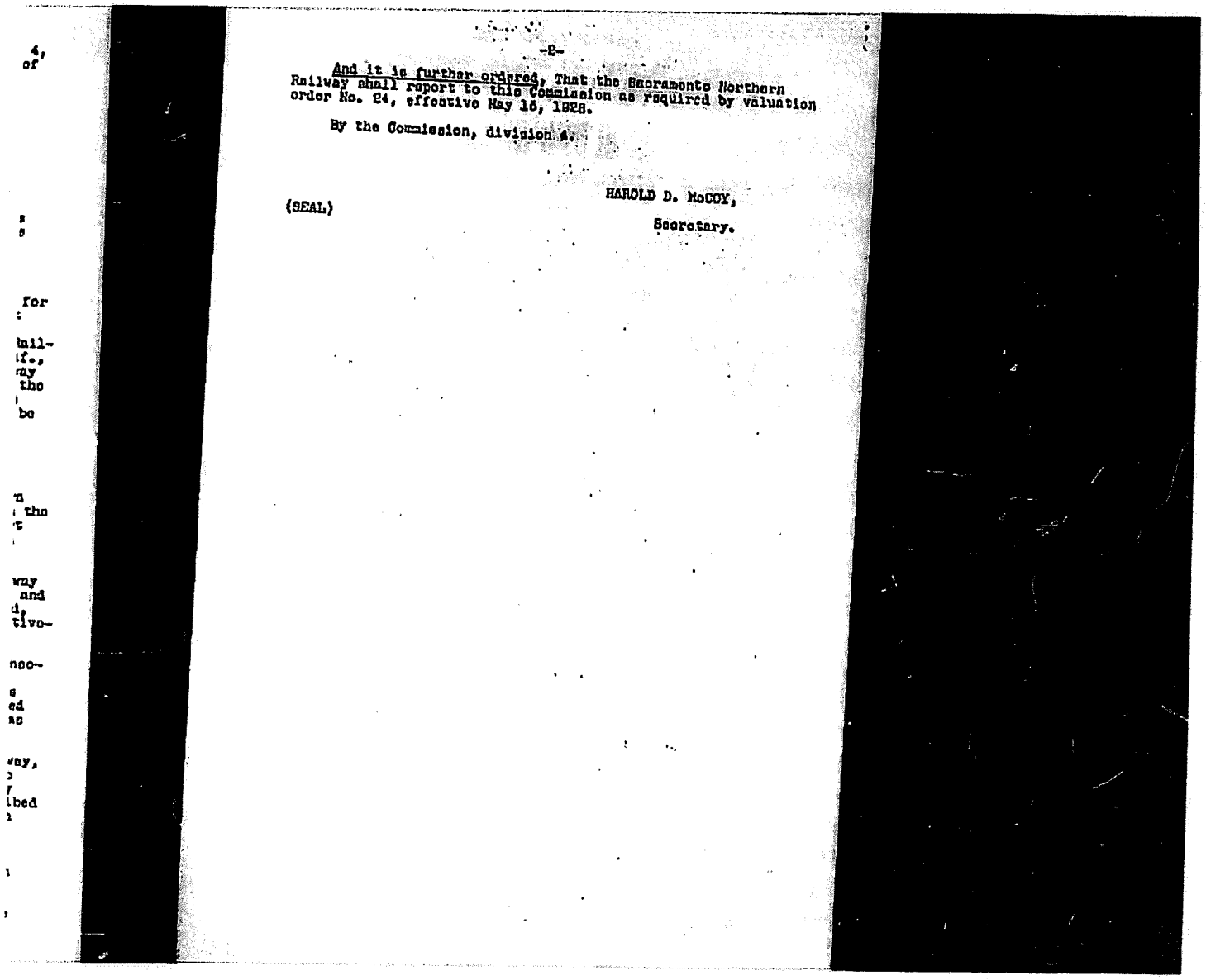
It is further ordered, That the Sacramento Northern Railway, when making such changes in tariffs as may be required, may do so upon notice to this Commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and 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 t
order No. 24, effectiv

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 15, 1928.

By the Commission, division 4.

HAROLD D. McCOY,

(SEAL)

Secretary.

BOOK 267 PAGE 50

R. L. Doc #2475

THIS INDENTURE made this 22nd day of December, 1958, by and between SACRAMENTO NORTHERN RAILWAY, a California corporation 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, 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-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.

DOCUMENTARY 5 5 County Yuba

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. Peyton 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° 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.

State Parcel adjacent to 51 properties issued NOVs

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.

SACRAMENTO NORTHERN RAILWAY

By _____
President and General Manager

Attest: _____
Secretary

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

STATE OF CALIFORNIA, )
) ss.
CITY AND COUNTY OF SAN FRANCISCO )

On this 12th day of December, 1958, before me, EMMA N. McCLURE, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared R. T. KEARNEY, known to me to be the President and General Manager of SACRAMENTO NORTHERN RAILWAY, the corporation described in and that executed the within instrument, and he acknowledged to me that such corporation executed the same pursuant to a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Emma N. McClure
Notary Public
in and for the City and County of
San Francisco, State of California.

My Commission expires April 5, 1959.

BOOK 267 PAGE 514



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° 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° 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.

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

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 12 Th day of December, 1958.

M. T. Richmond
Secretary of
SACRAMENTO NORTHERN RAILWAY

# R E S O L U T I O N

PASSED AND ADOPTED BY THE RECLAMATION BOARD

AT 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.

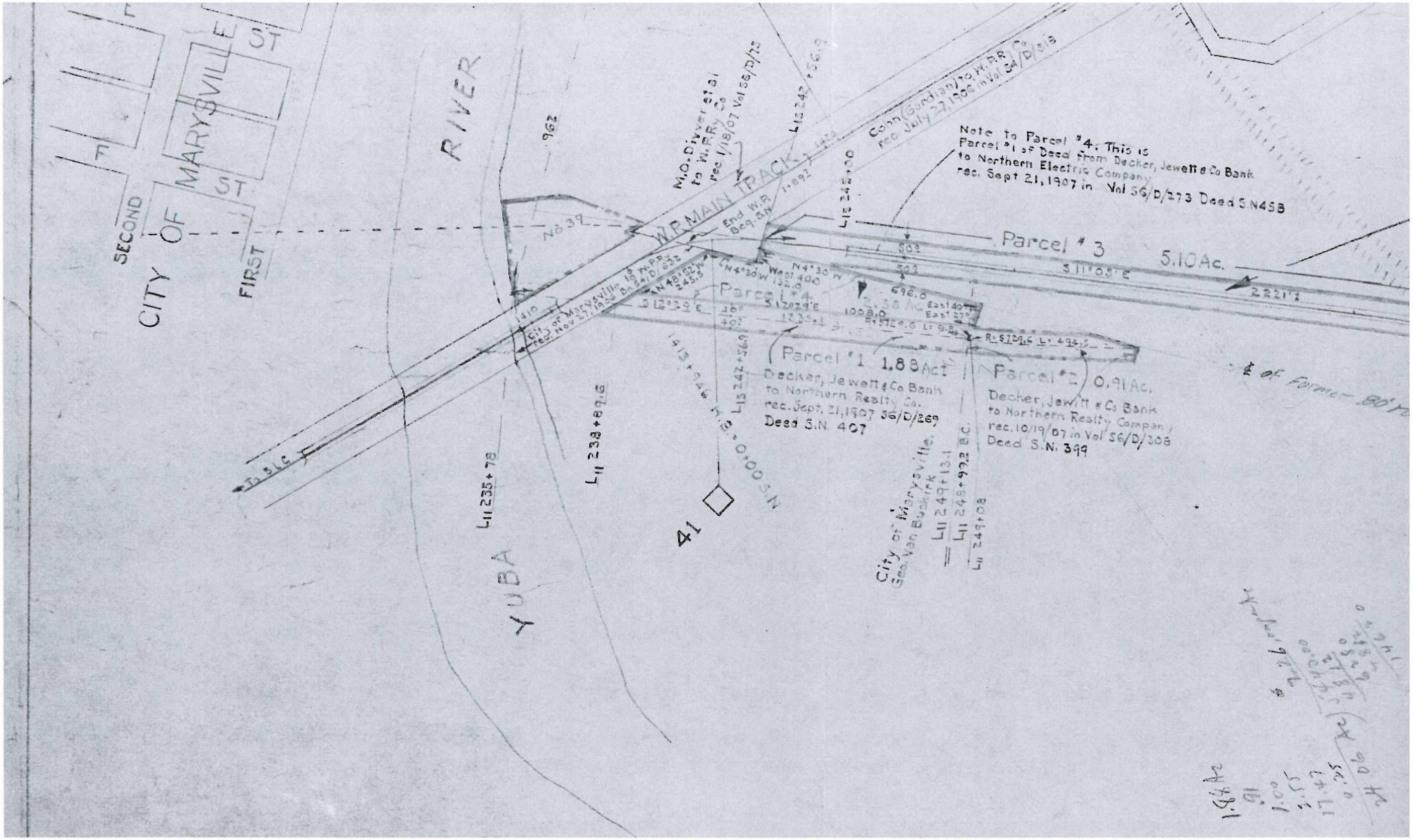
George H Holmes
GEORGE H. HOLMES
Secretary
The Reclamation Board

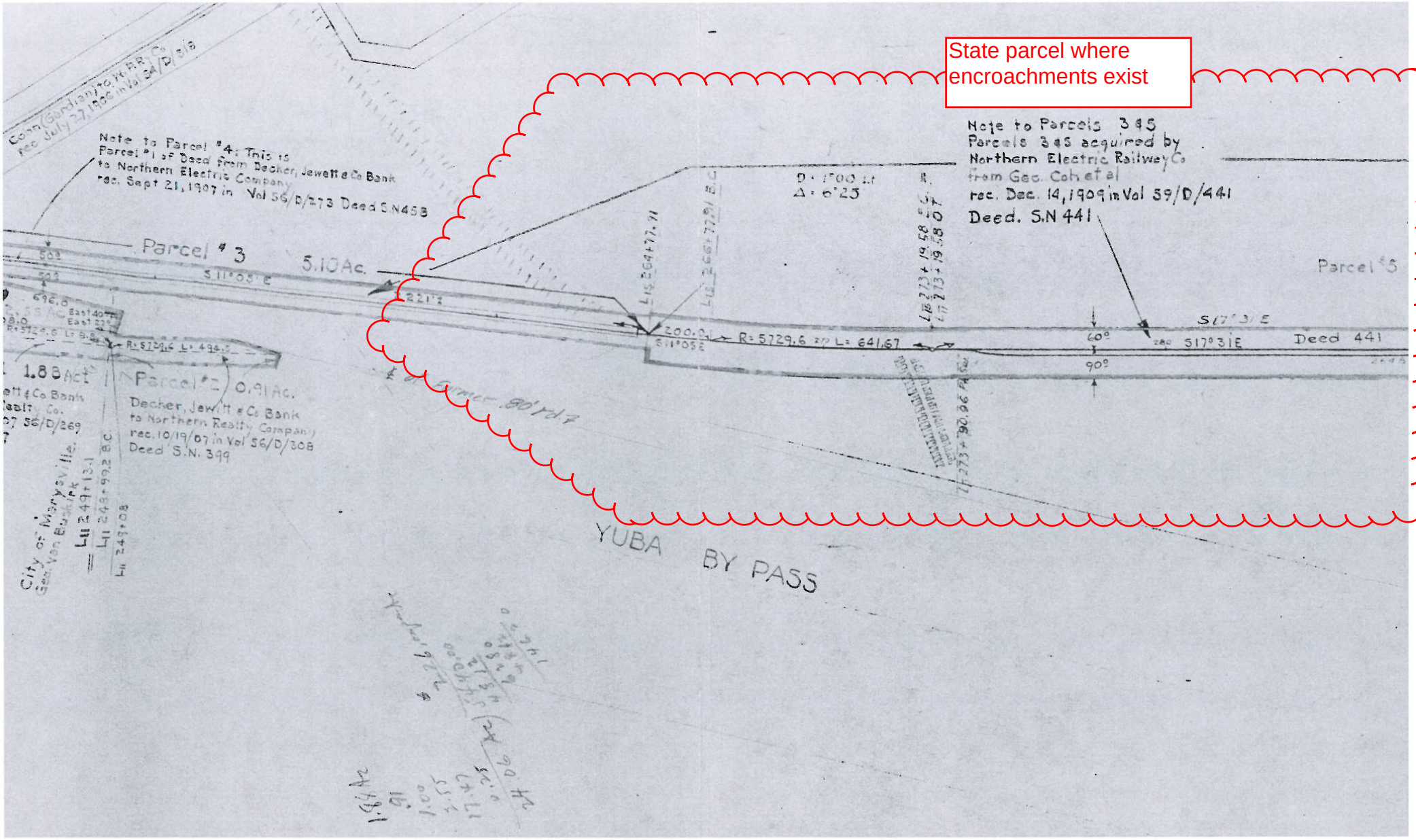
STATE OF CALIFORNIA )
COUNTY OF SACRAMENTO ) SS.

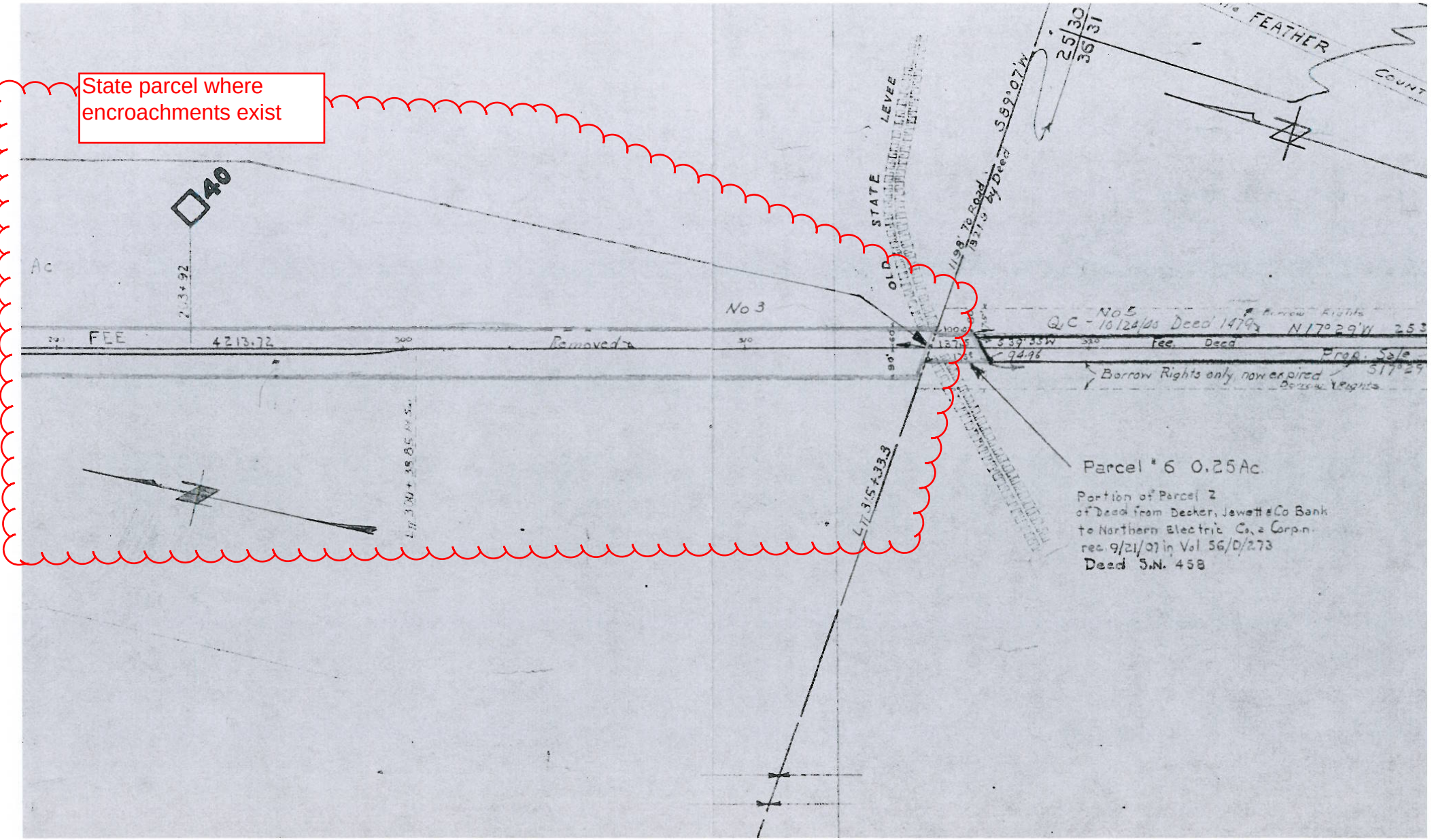
This is to certify that I, the undersigned, duly appointed, qualified and acting Chief Engineer and General Manager of The Reclamation Board, do consent to and accept the attached deed or grant by virtue of the authority vested in me by the resolution of said board, a certified copy of which is above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

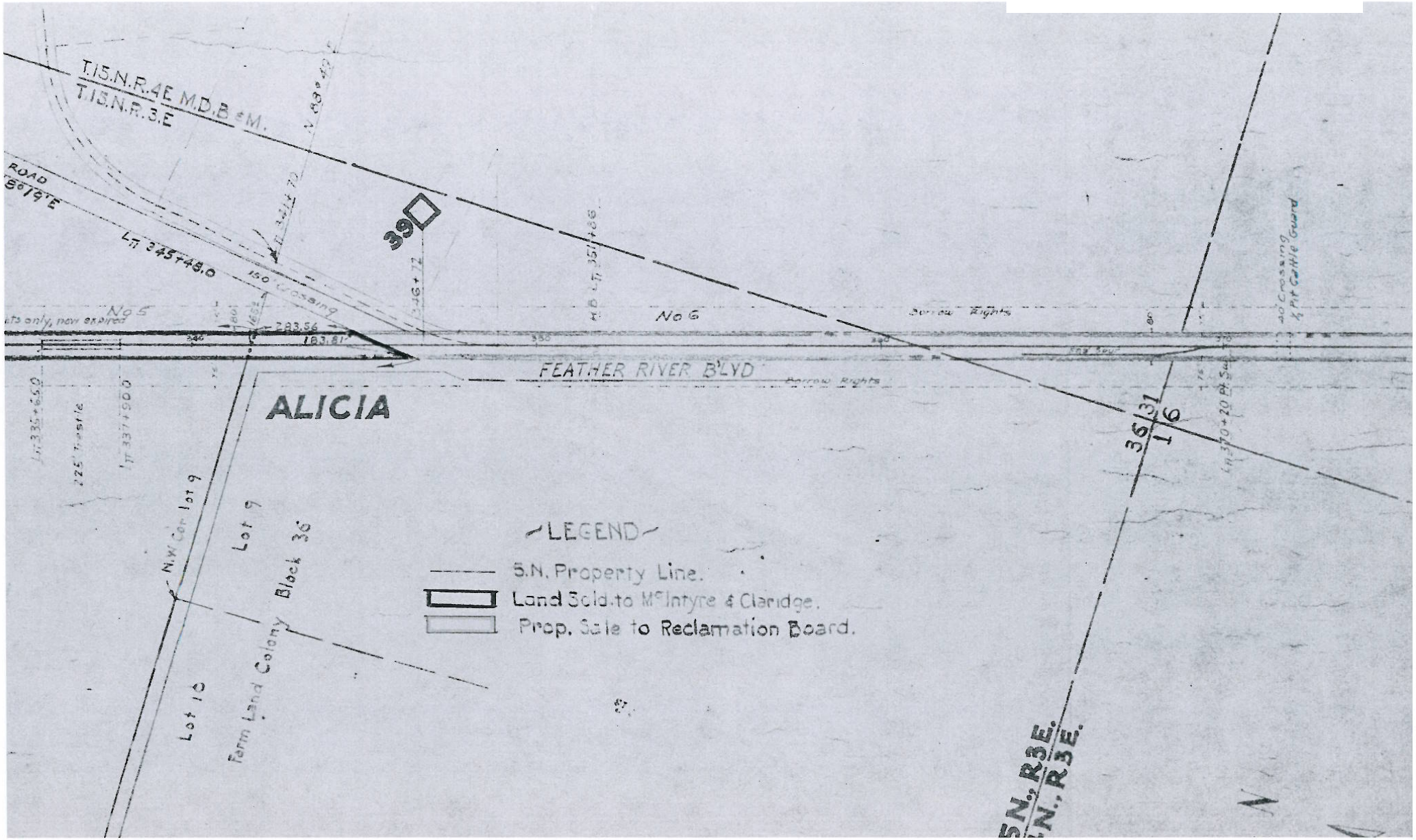
DATED: December 22, 1958.

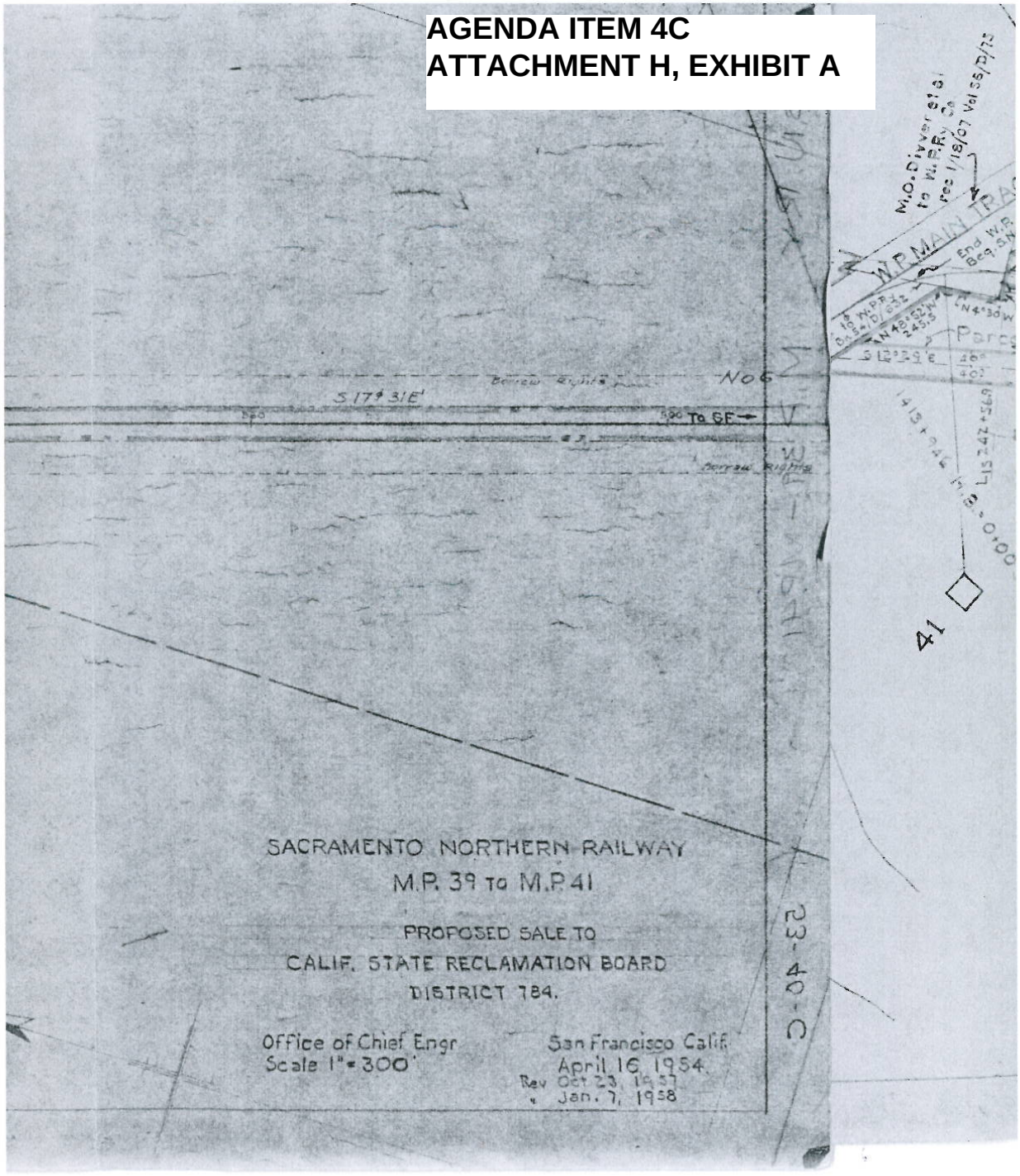
A. M. Barton
CHIEF ENGINEER AND GENERAL MANAGER,
The Reclamation Board


CITY OF MARYSVILLE
SECOND ST
FIRST ST
YUBA RIVER
W.P. MAIN TRACK
End W.P. Beg. S.N.
No 39
962
M.O. Diversion to W.P.R.R. Co rec 1/18/07 Vol 56/D/75
Conn (Guardian) to W.P.R.R. Co rec July 27, 1906 in Vol 54/D/515
Note to Parcel #4: This is Parcel #1 of Deed from Decker, Jewett & Co Bank to Northern Electric Company rec. Sept 21, 1907 in Vol 56/D/273 Deed S.N. 458
Parcel #3
5.10 Ac.
S 11°05' E
2221'±
Parcel #4
Parcel #1 1.88 Ac.±
Decker, Jewett & Co Bank to Northern Realty Co. rec. Sept. 21, 1907 56/D/269 Deed S.N. 407
Parcel #2 0.91 Ac.
Decker, Jewett & Co Bank to Northern Realty Company rec. 10/19/07 in Vol 56/D/308 Deed S.N. 399
City of Marysville rec. 11/8/07 in Bk 94/D/332
Cit Reg of Marysville to W.P.R.R. Co rec Nov 27, 1906 Bk 94/D/332
N 48°52'W 245.5
N4°30W 132.10
N4°30 W West 400
S 12°29'E
S 17°29'E
100.0
East 40
East 27
R=5729.6 L=434.5
R=5729.6 L=98.8
L11 242+56.9
L11 238+69.6
L11 235+78
L11 238+00
L11 242+56.9
L11 249+13.1
L11 248+92.2 B.C.
L11 249+08
1413+94.6 Ahd = 0.00 S.N.
41
To S.L.C.
1410
Cit
Reg
Nov
1906
Bk
94/D/332
S of former 80' R/W


State parcel where encroachments exist
Note to Parcel #4: This is Parcel #1 of Deed from Decker, Jewett & Co Bank to Northern Electric Company rec. Sept 21, 1907 in Vol 56/D/273 Deed S.N 458
Parcel # 3
5.10 Ac.
S 11° 05' E
Note to Parcels 3 & 5
Parcels 3 & 5 acquired by Northern Electric Railway Co from Geo. Coh et al
rec. Dec. 14, 1909 in Vol 59/D/441
Deed. S.N 441
Parcel #5
S 17° 31' E
Deed 441
60°
90°
1.88 Ac.
Parcel #2
0.91 Ac.
Decker, Jewett & Co Bank to Northern Realty Company
rec. 10/19/07 in Vol 56/D/308
Deed S.N. 399
YUBA BY PASS
City of Marysville


State parcel where encroachments exist
FEE
4213.72
Removed
No 3
OLD STATE LEVEE
Parcel # 6 0.25Ac.
Portion of Parcel 2
of Deed from Decker, Jewett & Co Bank
to Northern Electric Co., a Corp.n
rec. 9/21/07 in Vol 56/D/273
Deed S.N. 458
Borrow Rights only, now expired
Prop. Sale


T.15.N.R.4E. M.D.B.&M.
T.15.N.R.3.E
ROAD
Lt 345+48.0
150' Crossing
39
No 5
No 6
Borrow Rights
FEATHER RIVER BLVD
ALICIA
Lot 9
Block 36
Farm Land Colony
Lot 10
N.W. Cor. Lot 9
36
31
1
6
LEGEND
S.N. Property Line.
Land Sold to McIntyre & Claridge.
Prop. Sale to Reclamation Board.
S.N. R3E.
N. R3E.


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
S 17° 31' E
To SF
Borrow Rights
N 06
W.P. MAIN TRACK
41
23-40-C

# RECORD OF SURVEY 2011-11

## THREE RIVERS LEVEE IMPROVEMENT AUTHORITY'S FEATHER RIVER LEVEE - SEGMENT 3

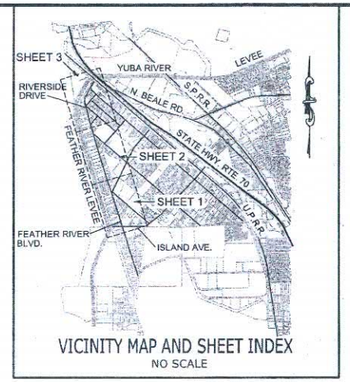
BEING PORTIONS OF TRACTS 8, 17 AND 18, YUBA GARDENS, R.S. 3-2
SITUATED WITHIN THE NEW HELVETIA RANCHO.
COUNTY OF YUBA STATE OF CALIFORNIA
JANUARY, 2012 SCALE: 1"= 100'

cta Engineering & Surveying

SHEET 1 OF 3

### LEGEND

- ○ DIMENSION POINT
- ● FOUND MONUMENT AS NOTED
- ⌀ SET 5/8" REBAR WITH ALUMINUM CAP STAMPED LS 5914
- □ CONCRETE MONUMENT PER [2]
- ⚠ ORIGINAL PROJECT CONTROL MONUMENT
- [ ] RECORD DATA PER REFERENCE NUMBER
- T.R.L.I.A. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
- S.S.J.D.D. SACRAMENTO SAN JOAQUIN DRAINAGE DISTRICT
- O.A. OVERALL




VICINITY MAP AND SHEET INDEX
NO SCALE

### BASIS OF BEARINGS

THE BEARINGS CONTAINED HEREIN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 2, NAD 83, 1986 EPOCH AND ORIGINATED FROM THE CONTROL SURVEY FILE NO. 03-25F BY THE U.S. ARMY CORPS OF ENGINEERS DATED OCTOBER, 2003. DISTANCES CONTAINED HEREIN ARE GROUND DISTANCES. MULTIPLY THE GROUND DISTANCE BY 0.9999166 TO OBTAIN GRID DISTANCES.

### CONTROL MONUMENTS

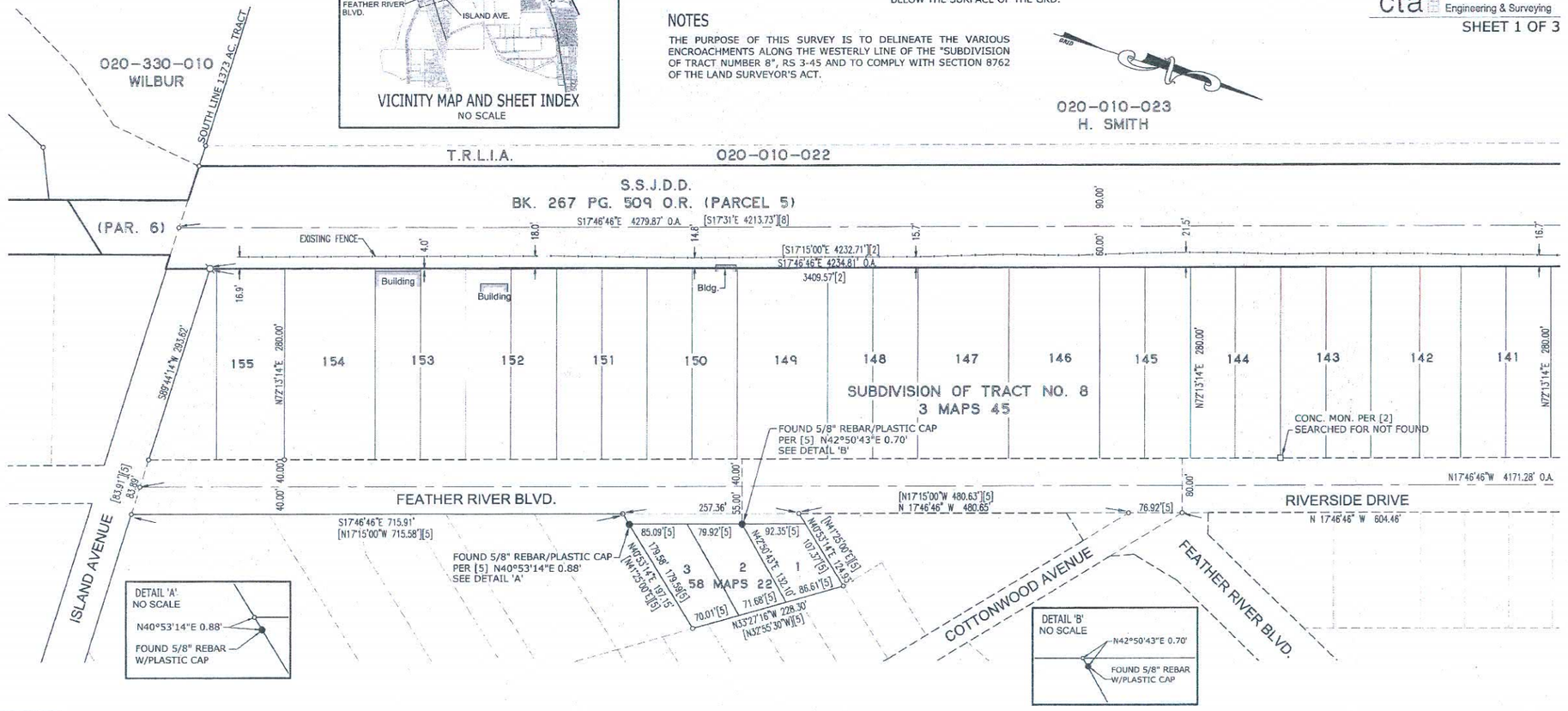
| | | | |
|---|---|---|---|
| CP#5 | N2160255.092 | E6679571.092 | 3/4" IRON PIPE W/ YELLOW CAP |
| CP#6 | N2172562.356 | E6678557.308 | STD. DWR BRASS DISC STAMPED "FRET 8" SET IN CONCRETE 0.3 FT. BELOW THE SURFACE OF THE GRD. |

### NOTES

THE PURPOSE OF THIS SURVEY IS TO DELINEATE THE VARIOUS ENCROACHMENTS ALONG THE WESTERLY LINE OF THE "SUBDIVISION OF TRACT NUMBER 8", RS 3-45 AND TO COMPLY WITH SECTION 8762 OF THE LAND SURVEYOR'S ACT.




020-010-023
H. SMITH




### REFERENCES

| | |
|---|---|
| [1] 3 MAPS 2 | YUBA GARDENS |
| [2] 3 MAPS 45 | SUBDIVISION OF TRACT NO. 8 |
| [3] 8 MAPS 16 | TRACT NO. 137 |
| [4] 50 MAPS 26 | PARCEL MAP 89-03 |
| [5] 58 MAPS 22 | PARCEL MAP 91-38 |
| [6] 61 MAPS 2 | PARCEL MAP 90-142 |
| [7] 88 MAPS 26 | PARCEL MAP 2006-017 |
| [8] 267/509 O.R. | DEED |
| [9] 2007-7304 | DEED |
| [10]1994-13195 | DEED |
| [11]2002-8519 | DEED |
| [12]2010-11251 | DEED |

### SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT AT THE REQUEST OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY IN MAY, 2011

01/05/2012

KEVIN A. HEENEY P.L.S. 5914
LICENSE EXPIRES 12-31-12

LICENSED LAND SURVEYOR KEVIN A. HEENEY NO.5914 Exp.12-31-2012 STATE of CALIFORNIA

### COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS ACT

THIS 9th DAY OF JANUARY, 2012

MICHAEL G. LEE, PLS 7853
YUBA COUNTY SURVEYOR

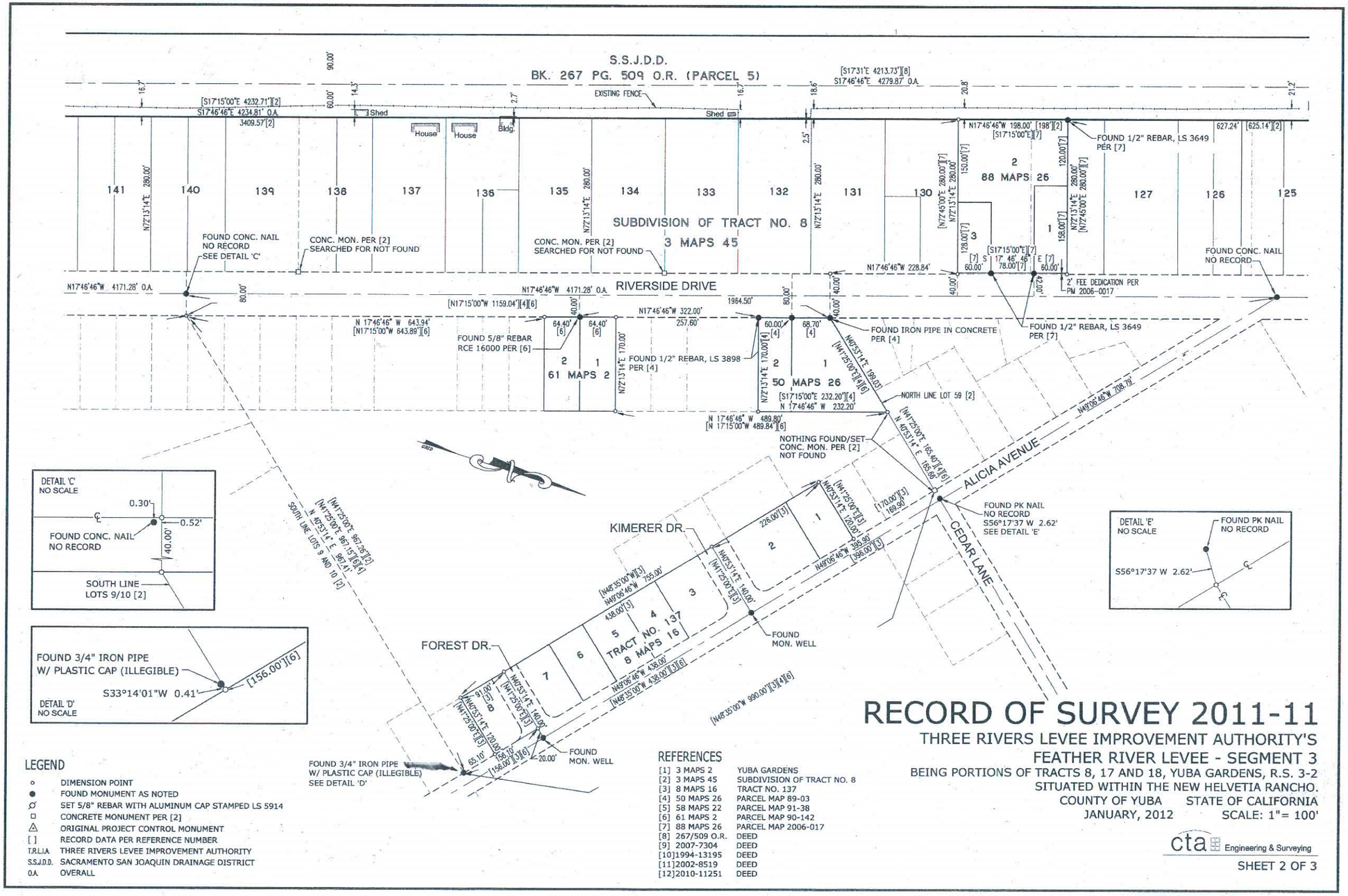
LICENSED LAND SURVEYOR MICHAEL GLENN LEE No. 7853 STATE OF CALIFORNIA

### RECORDER'S STATEMENT

FILED THIS 11th DAY OF January, 2012 AT 8:31 A.M.
IN BOOK 93 OF MAPS AT PAGE 36-38 AT THE REQUEST OF CTA ENGINEERING & SURVEYING.
DOCUMENT NO. 2012R-000375 FEE: $13.00

TERRY A HANSEN, YUBA COUNTY RECORDER
BY: DEPUTY

BK 93 PG 36




## LEGEND

| | |
|---|---|
| ○ | DIMENSION POINT |
| ● | FOUND MONUMENT AS NOTED |
| ⌀ | SET 5/8" REBAR WITH ALUMINUM CAP STAMPED LS 5914 |
| □ | CONCRETE MONUMENT PER [2] |
| △ | ORIGINAL PROJECT CONTROL MONUMENT |
| [ ] | RECORD DATA PER REFERENCE NUMBER |
| T.R.L.I.A. | THREE RIVERS LEVEE IMPROVEMENT AUTHORITY |
| S.S.J.D.D. | SACRAMENTO SAN JOAQUIN DRAINAGE DISTRICT |
| O.A. | OVERALL |

## REFERENCES

| | |
|---|---|
| [1] 3 MAPS 2 | YUBA GARDENS |
| [2] 3 MAPS 45 | SUBDIVISION OF TRACT NO. 8 |
| [3] 8 MAPS 16 | TRACT NO. 137 |
| [4] 50 MAPS 26 | PARCEL MAP 89-03 |
| [5] 58 MAPS 22 | PARCEL MAP 91-38 |
| [6] 61 MAPS 2 | PARCEL MAP 90-142 |
| [7] 88 MAPS 26 | PARCEL MAP 2006-017 |
| [8] 267/509 O.R. | DEED |
| [9] 2007-7304 | DEED |
| [10]1994-13195 | DEED |
| [11]2002-8519 | DEED |
| [12]2010-11251 | DEED |

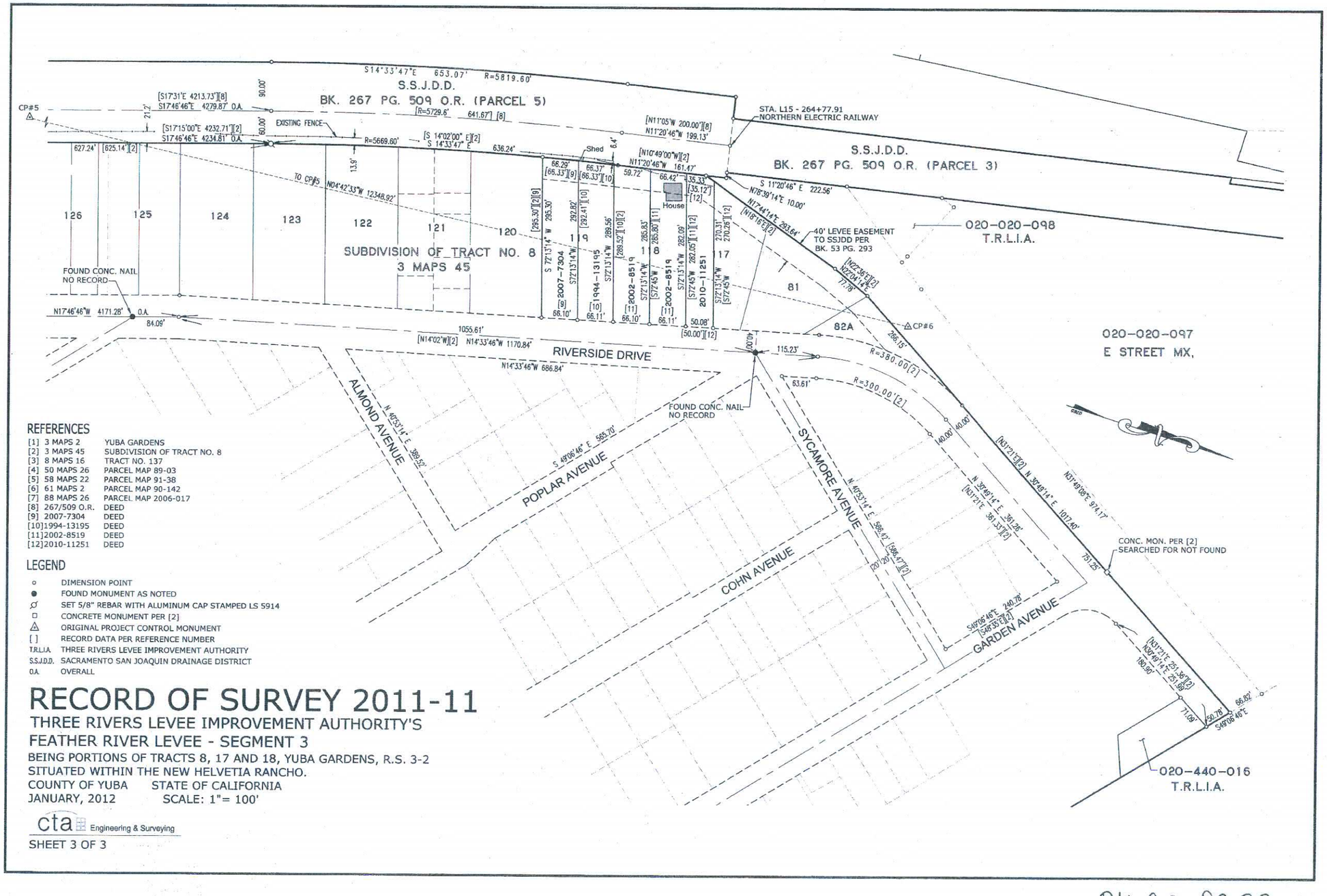
# RECORD OF SURVEY 2011-11

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY'S
FEATHER RIVER LEVEE - SEGMENT 3
BEING PORTIONS OF TRACTS 8, 17 AND 18, YUBA GARDENS, R.S. 3-2
SITUATED WITHIN THE NEW HELVETIA RANCHO.
COUNTY OF YUBA STATE OF CALIFORNIA
JANUARY, 2012 SCALE: 1"= 100'

cta Engineering & Surveying

SHEET 2 OF 3

BK 93 PG 37




## REFERENCES

| | | |
|---|---|---|
| [1] | 3 MAPS 2 | YUBA GARDENS |
| [2] | 3 MAPS 45 | SUBDIVISION OF TRACT NO. 8 |
| [3] | 8 MAPS 16 | TRACT NO. 137 |
| [4] | 50 MAPS 26 | PARCEL MAP 89-03 |
| [5] | 58 MAPS 22 | PARCEL MAP 91-38 |
| [6] | 61 MAPS 2 | PARCEL MAP 90-142 |
| [7] | 88 MAPS 26 | PARCEL MAP 2006-017 |
| [8] | 267/509 O.R. | DEED |
| [9] | 2007-7304 | DEED |
| [10] | 1994-13195 | DEED |
| [11] | 2002-8519 | DEED |
| [12] | 2010-11251 | DEED |

## LEGEND

| | |
|---|---|
| ○ | DIMENSION POINT |
| ● | FOUND MONUMENT AS NOTED |
| ⌀ | SET 5/8" REBAR WITH ALUMINUM CAP STAMPED LS 5914 |
| □ | CONCRETE MONUMENT PER [2] |
| △ | ORIGINAL PROJECT CONTROL MONUMENT |
| [ ] | RECORD DATA PER REFERENCE NUMBER |
| T.R.L.I.A. | THREE RIVERS LEVEE IMPROVEMENT AUTHORITY |
| S.S.J.D.D. | SACRAMENTO SAN JOAQUIN DRAINAGE DISTRICT |
| O.A. | OVERALL |

# RECORD OF SURVEY 2011-11

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY'S
FEATHER RIVER LEVEE - SEGMENT 3
BEING PORTIONS OF TRACTS 8, 17 AND 18, YUBA GARDENS, R.S. 3-2
SITUATED WITHIN THE NEW HELVETIA RANCHO.
COUNTY OF YUBA STATE OF CALIFORNIA
JANUARY, 2012 SCALE: 1"= 100'

cta Engineering & Surveying

SHEET 3 OF 3

BK 93 PG 38

**Meeting of the Central Valley Flood Protection Board**

**January 26, 2012**

**Staff Report – Enforcement Hearing**

**Carol Miller, Yuba County**

## 1.0 – ITEM

Enforcement hearing requested by respondent concerning a notice of violation ordering the removal of a private fence 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. 12-05 (Attachment A) to:

1. Authorize removal of private fences and miscellaneous obstructions on State land.
2. Grant license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Rescind the notices of violation subject to voluntary compliance with this resolution.

## 2.0 – RESPONDENT/PROPERTY OWNER

Ms. Carol Miller
5676 Riverside Drive
Olivehurst, California 90731

Assessor's Parcel Number (APN) 020-171-001

## 3.0 – LOCATION

Figures 1 & 2 below show the vicinity and an aerial view of the property at 5676 Riverside Dr., respectively.

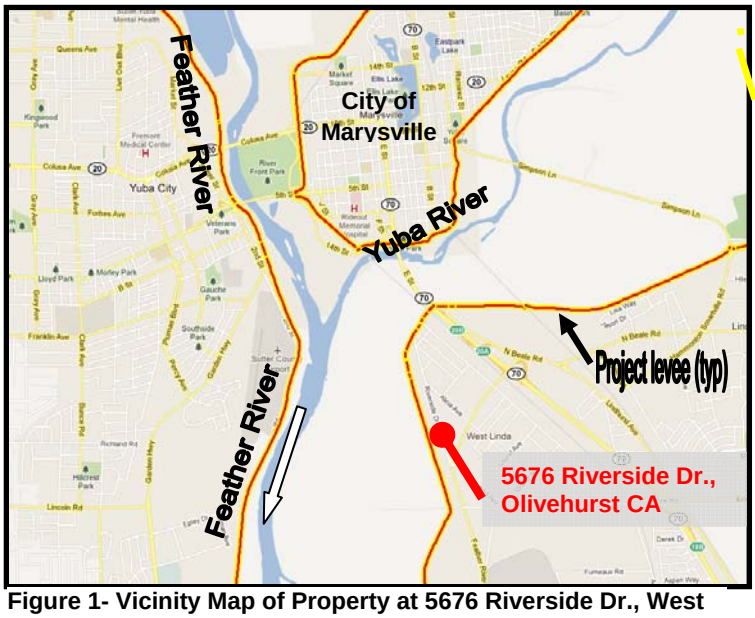



**Figure 1- Vicinity Map of Property at 5676 Riverside Dr., West Linda CA (Source: Google Maps)**

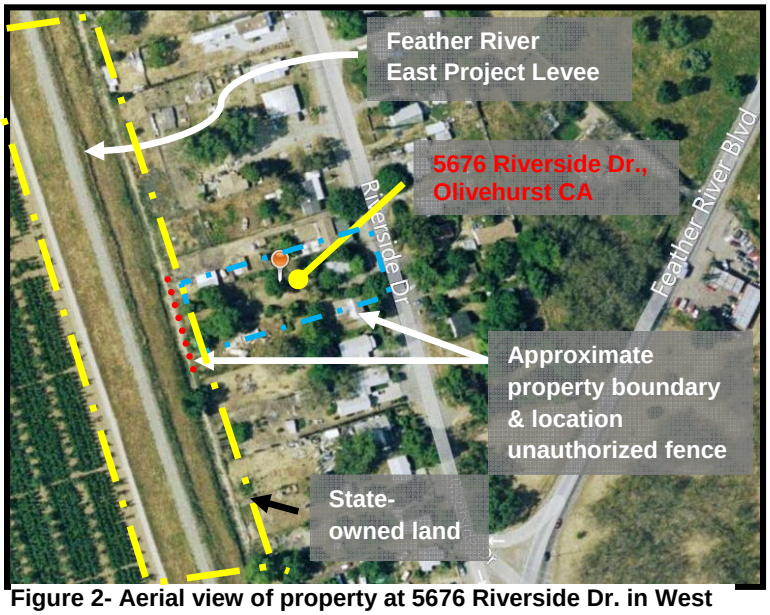



**Figure 2- Aerial view of property at 5676 Riverside Dr. in West Linda CA (Source: Bing Maps)**

## 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 (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

### 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 Carol Miller. 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

The original proposal presented at the December 2, 2011 was to install the new fence at the State right-of-way. This option would provide more than the necessary 20-ft wide O&M corridor but required 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 Carol Miller's property, the existing fence is located approximately 16-18 ft inside State property. The required 20-ft wide corridor can be provided at Carol Miller'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 Carol Miller to use and maintain the remaining State land until needed for a public purpose. 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 and this alternative was supported by the members in attendance.

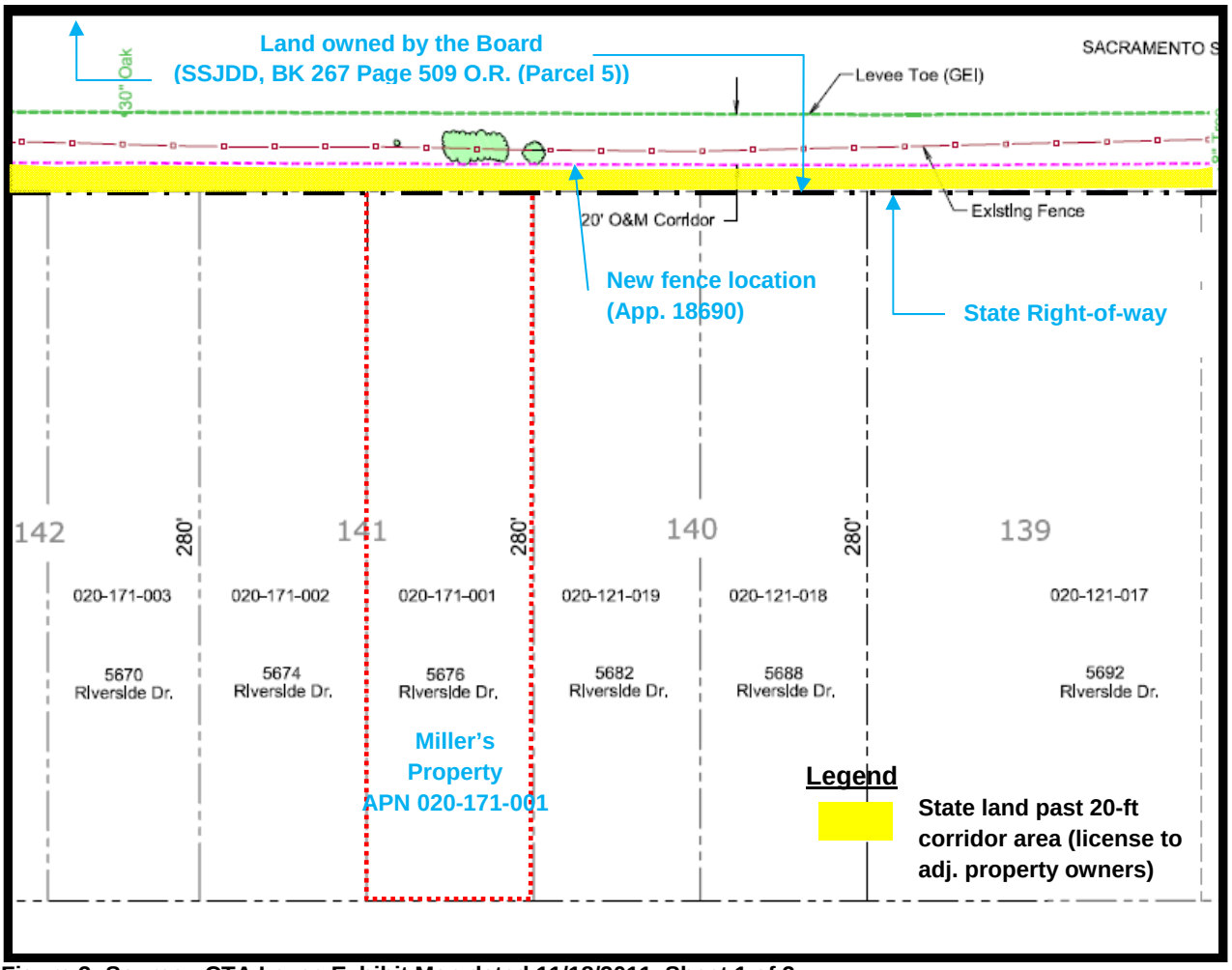



**Figure 3- Source: CTA Levee Exhibit Map dated 11/18/2011, Sheet 1 of 2**

### 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 and issue a revocable license to Carol Miller for use and maintenance of State land between the corridor and her property. For these reasons and those stated on this staff report, Board staff recommends the Board adopt Resolution No. 12-05 (Attachment A).

## 8.0 – LIST OF ATTACHMENTS

A. Resolution No. 12-05
B. December 2, 2011 Official Transcript for Agenda Items 10 A-D
C. December 2, 2011 Staff Report without attachments for Agenda Item 10C
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)

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





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





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





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.

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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--

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.

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





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





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.

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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





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.

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

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

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

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

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

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

And then in 1958, the State eventually purchased





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

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

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





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

--o0o--

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

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

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

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





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

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

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

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

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

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

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





part of the Notice of Violations that were issued

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

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

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

--o0o--

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





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

And this concludes my presentation.

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

Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President.

Ms. Caliso, number one, very well done. Excellent staff report.

STAFF ENGINEER CALISO: Thank you.

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

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

Can you --

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





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

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

VICE-PRESIDENT RIE: President Carter, question.

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

LEGAL COUNSEL SMITH: I'm prepared to --

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

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

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

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

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

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

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

LEGAL COUNSEL SMITH: No.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Ms. Rie.

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

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





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

STAFF ENGINEER CALISO: Correct.

VICE-PRESIDENT RIE: Just license agreements.

STAFF ENGINEER CALISO: Exactly, yeah. So the resolution would allow that the fences that are currently within the area of the 20-foot corridor that's necessary, those would be removed, and the area would be cleared out to provide the 20-foot corridor. There's no other permanent structures in that area, so the license would essentially be allow them to use -- remain use of that State land, but they -- there's no need for an actual permit for them, because there are no structures there.

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

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

SUPERVISING ENGINEER TARAS: There's a correction.

PRESIDENT CARTER: Let's limit our discussion to the 48 parcels that we're talking about here, in which, I





assume, we're not talking about permits. We're talking about licenses.

STAFF ENGINEER CALISO: Right. So the plan is the licenses, because this has been presented to the landowners at the January 10th meeting. And they'd -- after some discussions back and forth, they seemed to approve the presented alternative.

So the plan is that every -- the landowners are aware of what is being presented this morning, and they have agreed to what was presented. So therefore, we don't see an issue getting those licenses executed and recorded, so that TRLIA can begin the work.

VICE-PRESIDENT RIE: So the question is, do you anticipate the licenses being executed prior to the fence being relocated?

STAFF ENGINEER CALISO: It may be a concurrent thing, but the main thing that we're -- what may happen is that the licenses may take time to proceed and get them recorded. But in the meantime, if the Board gives the authorization to proceed with the permit, that TRLIA will initiate -- as the licenses are getting recorded, that TRLIA can begin the clearing and removal of the area, so that the project is not delayed any further. So it may be concurrent, but we are proposing that the permit is not subject to obtaining the licenses and getting them





recorded.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any other questions for Ms. Caliso?

BOARD MEMBER VILLINES: Yes.

PRESIDENT CARTER: Mr. Villines.

BOARD MEMBER VILLINES: So the community met and agreed to this, and they were good with that?

I see waving in the back, so maybe somebody will testify later.

Who will be paying for the removal of the fence and the putting back up?

STAFF ENGINEER CALISO: TRLIA would be covering the cost for the removal and the replacement of the fence. And I'll let TRLIA maybe speak a little bit more on that on how the funding is being set up. But as far as -- we know it's TRLIA is putting up the cost to do this work.

BOARD MEMBER VILLINES: Thank you.

PRESIDENT CARTER: If there are no other questions, thank you very much. I'm going to invite TRLIA or RD 784 to come up and present their evidence on this particular item, these 48 parcels and the fence.

MR. BRUNNER: Good morning. I'm Paul Brunner, the Executive Director for Three Rivers.

And I don't have a presentation today, but I do

have some comments. And I'll keep them brief, and then I'm sure there will be questions.

We do support the plan that was proposed today. During the December 2nd meeting, I think the Board did make your desires known as to what you wanted to do and move forward on.

So we've been -- from the Three Rivers point of view, RD 784, have been working with the State to try to come up with an equitable plan. I think what was shown here is an equitable plan to move forward, to try to meet the community and to do what's best for them.

I know my Board has been really pushing for that also to move forward. The characterization of the January 10th meeting, where the community was asked to approve the action -- I led the meeting -- we didn't ask them to approve the action. What we asked them to do was to review what we presented and provide their feedback and comments. You all approved the action as to what's going on in that regard.

So we did get some acceptance from the community. I mean, there are always some members in the community, I'm sure you'll hear them today, that had some reservations about where we are and where we're going. I did encourage them to support the action today to come forward, and that's up to them whether or not they do that





or not.

One of the key points I'd like to get across to the Board here is that my Board is really very committed to making this happen. And one of the things that is happening, when we talked about costs just a second ago on that, and I'll go over that -- go into that in a little bit more detail about the construction in a second.

But the -- this additional step to really document that yellow area that Angeles was showing you on her slides, and to allow the people to use that with the licenses and that, and then recording the documents, comes at some cost, as we work through that.

And there is some -- well, from DWR, they have chosen so far not to support that cost-share on that. I went twice to my Board and to have that discussion. One, is for local share. And then later on support the action to move forward, so we can have a resolution to this.

My Board voted unanimously to move forward. And then if we needed to, do all at a local cost, move this project forward, to get it done, and for the resident's sake to fund it.

Our cost for that work was around $150,000 to do this work. The documentation -- not the fence work, but just the documentation, the surveying, and how we're going to proceed with that. I did bring my surveyor here, and





legal team to address how we'd do that, how we'd record, if that was necessary for the Board, if not during this hearing, maybe in a subsequent hearing today, that we go through that.

So I think that's significant that we're committed to moving forward, take that step and go forward. So we put resolution to this, and I think a step forward for us to work with the community.

Now, let me address the construction activities that we have on the project. The timing -- our goal is still to try to get out there this spring or summer to make this happen, and put the fence in. There will be some construction activities that will take place. We're not going to be tearing into the levee.

But along the levee toe we have to do some regrading and placing and removing some shrubs, moving the fences back and then installing the new fence. This opportunity to let the people use this portion of the property really doesn't end up saving us some cost, because we will not be clearing that small swath of land from trees and other things that might be in that area, as we move forward.

So what I would expect to happen from this is that if we do get your concurrence on all the various actions today, and there's five of them that you have, we





would then take steps to go and start doing two things really kind of simultaneously.

I committed at the January 10th meeting that we would go back and do the design. I put our design team on hold. The designer is GEI, the ones who did the levee design on all the improvements we did. But to go and start to layout the grading -- and it's not complex, but the grading and what we're going to remove, prepare those drawings, so we can go to construction.

And I think there are some tweaks and different things as we go through this, where is the levee toe. We had GEI come in to plot that green line that you saw there. Some of it is theoretical, because it isn't right at the levee toe where you walk out there and look down, because there's a lot of overburden that's been built over the years. There's a railroad berm and other things that all kind of overlay into the system of which the -- and some portions of it, the levee toe actually, we believe, is embedded inside the structure, not right at the far end that is almost at, in some cases, at the edge of the State property now where it is. So we'll work through that.

I committed at the January 10th meeting to have interactive meetings with the community as we do that design, so we can get their feedback on it. There is a drainage issue out there. My project doesn't address

drainage, per se, but if we can try to work through that and help someway, we'll try to do that in what we do on our project.

So we'll start the design aimed at trying to get out there this spring or summer to do this work. Simultaneously, the license agreements we will go through, and work with the folks to get those license agreements with them. We ask later on that when you get to that point that you think about the construction time on that and not make it where they tie together on it, because there is a need - we're working on State property - to put a fence in on it, as to what we do out there.

So we'll work with the folks simultaneously to get those license agreements, explain the project to them, and then implement the project as we go forward. I did bring my legal counsel here too to speak to the license and other issues that, Ms. Suarez, you had some comments about that. They could come forward and speak to the legal issues too, if you'd like for them to do that.

PRESIDENT CARTER: I think we're -- we'll reserve that option for a little later.

MR. BRUNNER: Okay.

PRESIDENT CARTER: Any questions for Mr. Brunner? Mr. Hodgkins.

SECRETARY HODGKINS: Mr. Brunner, I'm not sure





this is for you or for staff, but as part of the license, what conditions are we placing on the applicant's use of this property with respect to alteration, planting, those kind of things? Have we thought that through?

MR. BRUNNER: Maybe we should -- and I will ask Scott McElhern from Downey Brand to come up and to speak to that, and -- because we had to give some thought to it, and -- so, Scott, if you could come up.

MR. McELHERN: Thank you. My name is Scott McElhern. I'm with Downey Brand. I'm outside counsel for TRLIA. And the question was what type of limitations would be in the license?

There would be no structures would be able to be built in that area. The area could have vegetation, a garden or something of that nature, but no permanent structures is what we're intending to do by way of the license.

PRESIDENT CARTER: Ms. Caliso, did you want to add anything to that?

STAFF ENGINEER CALISO: Yes. I just wanted to clarify for the -- as far as modifications or alterations to the existing structures, those would be addressed at a later hearing, and they would be addressed as part of the permit that would be issued to the landowner for that structure that would remain on State land.





PRESIDENT CARTER: For the two structures that are under separate hearings, but as far as the 48 parcels that have no permanent structures?

STAFF ENGINEER CALISO: It would just be like Scott just mentioned, just restrictions to no permanent structures, excavations. Just -- mainly just use of the land.

PRESIDENT CARTER: Pools?

STAFF ENGINEER CALISO: Excavations would be one, yeah.

PRESIDENT CARTER: Thank you. Okay. Any other questions for Mr. Brunner?

SECRETARY HODGKINS: I have one last one. Paul, you said there's a drainage issue. Is there a drainage issue now or is there going to be one when we're done?

MR. BRUNNER: There's a drainage issue currently. Some of the lots are lower than others, and so it ponds. And there is drainage issues now that the residents have. So it's a -- it's been there for a long, long time.

SECRETARY HODGKINS: Okay. I do think it should be clear whether or not there is a drainage issue in the license, and that it's fixed or it's not fixed, and just long term.

VICE-PRESIDENT RIE: Mr. Brunner, how will -- are you planning to put in an access road at the toe of the





levee on the land side?

MR. BRUNNER: Yes. The purpose of the landside toe access corridor is to have a -- really a roadway of which you'd have vehicles that could pass on to do flood fighting and RD 784 to do maintenance in the area on it. And the -- so we will be putting in a roadway. It's not an asphalt roadway, but it's -- it might have some rock base or something depending upon --

VICE-PRESIDENT RIE: And how will that -- the road, how will the levee slope and the road drain? Is it going to drain onto the private property that is low? Are you going to put in a drainage system?

MR. BRUNNER: Yeah. Well, currently the levee structure drains into the adjacent properties. The levee is higher, so water runs off the levee into the adjacent properties. What happens is that the -- as the water flows from the adjacent properties on the low spots, in some of these lots, the property that the owners have is lower in their backyard than the street. And the levee is in their backyard, or right along the backyard, so it naturally just drains from their property to the levee, and then drains off the levee into the area and it ponds.

VICE-PRESIDENT RIE: So is there any plan to address the drainage problem?

MR. BRUNNER: Not within the Three Rivers levee

project. I mean currently we have improved the area for the levee structure, and we're doing our levee toe access corridor, but our project would not improve the drainage in the area. That would be a county drainage issue that they would work or -- to resolve the drainage problem.

VICE-PRESIDENT RIE: Will the construction of the access road make it worse?

MR. BRUNNER: I don't think so. The -- and that's one of the reasons why we want to work cooperatively with the residents, that if we can blend what we're doing to somehow make it better for them, we'll try to do that.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Thank you, Mr. Brunner.

MR. BRUNNER: Thank you.

PRESIDENT CARTER: At this time, I'd like to invite any of the 48 respondents to come up and address the Board?

Yes, sir.

MR. HECKER: I have pictures too, if you'd like to see them.

My name is Monty Hecker. My place is 5548. I would request, if they didn't mind, if they'd put the slide up here, slide number 12, so I can identify what we're talking about.





And I'd like to thank you guys for coming up here to have the meeting. This is great. And all of the 48 want to help. Let me clarify something, we did not vote as -- and he did great, Mr. Brunner. They showed us. There was an option one and an option two. We agreed with the option one overall, because we've got to do something. And nobody down there wants us to flood, and anything we can do to help, but this has been a 50-year thing.

My office is right here. Okay. Can somebody tell me what the green line is?

STAFF ENGINEER CALISO: The levee toe.

MR. HECKER: That's the levee toe. The fence line then is the red one?

STAFF ENGINEER CALISO: The existing fence.

PRESIDENT CARTER: Mr. Hecker, if you wouldn't mind, I think the mouse works on the computer. And if you could point using the mouse, that will show up on the large screen and it will also enable us to get an accurate recording of the --

MR. HECKER: There you go.

And then there's the green, and then the existing fence is there. Okay.

The reason I brought pictures, and I brought it to their attention -- is it appropriate to hand these -- to just hand them down or I don't have a way to...





This is in '86, okay. And this place floods all the time. Again, we've had this property, everybody, the 48, for over 50 years. No one has ever came in until June and told us we were encroaching. We got active with it. I would love to work with TRLIA to make sure we do the drainage. Right there at Island, on the opposite side, they built a great big drainage area, but nobody ever put a pipe in, which it wouldn't go that way anyway, because all of our property runs this way.

You'll be looking at this property today. That's Susan's. Mine is down front where she's actually at -- let me get back here. Well, my house left. Oh, there it is.

That's my office, these two spaces and my building, and my other building that you see right here. Where I'm going to run into some problems is water. And if you come down here, this is where Carol's is, and that's the water. And we have to have it pumped out. We've got to take the pumps, put them over the side of the levee, and then pump them out, or you have to bring in, as I do, I have a water truck, so I can pump my own water out.

We don't utilize the area in the wintertime because of the flood. How they're going to take trucks and run down that is beyond me. The minute that they take





and dig the dirt out, that water is going to all group up there and my little building that you see right here will be filled with water, and you can't drive on it.

We have a current road that's -- again, where's my mouse. Does this mouse work?

PRESIDENT CARTER: It's down in the legend, the left corner -- lower left corner, your mouse or it was.

There you go.

MR. HECKER: Okay. I know it's not your job to go and look at the levee. I've done that. I had the surveyor out there. Well, he couldn't answer the question. We used to have two railroad tracks there. And I agree with the way they're doing this. But our toe on these properties that you're looking at right here, and the fence line, if you stand back and look at it, it should run straight.

There's a road existing that's above ground, almost four foot, so that they can drive it. When they move this, they're going to drop down four foot to go to my property, to where all this water backs up. There's no way, in this last storm, they could even drive through there, because they'll get stuck.

And that's what I wanted to bring up. I do -- I think when you have your other meetings, option one is what we agreed to, because we didn't feel we wanted to

move any properties and stuff with the pictures. I really think that needs to be addressed, on the drainage. And I appreciate TRLIA bringing that up today, because that was my question when the rain came.

That's my main concern. I'm more than willing to work with them. I'd like this to be the forum too, that if you guys ever come back up for that to please come up. And I'd like to work with TRLIA along with the other people.

Arnold owns the place right next to me, that's the 5528, big place. He would have been here. He's a senior citizen, and he's in pretty bad shape, and he didn't have the time to come and air his concern because of the same thing, the flooding problem and that all the water -- who's going to take care of it. And if it's not addressed now before we go into this, I think we're going to have problems later down the road, if it's not addressed.

PRESIDENT CARTER: Mr. Hecker, just one question. The drainage that you're speaking of, this is surface runoff after rain storms --

MR. HECKER: After rain storms yes, sir.

PRESIDENT CARTER: -- that comes from the levee, our property, and your property and accumulates there at the toe of the levee?





MR. HECKER: Yes, everything down there, all of the properties as you go down, they -- it all backs up on their back edge. You'll have a lot of people that's piled cement and that back there and that, so that you can step high enough out of the water. But, yeah, we definitely have a major drainage problem that I think needs addressed before we go cutting roads and stuff.

PRESIDENT CARTER: And that problem has been in existence for decades?

MR. HECKER: Fifty years, at least. And there's a road there, but again because of their toe line that they're showing here, it's on the other side of that green line of what they say is the toe. So they don't even put on there that there's a road there, that they can drive all the way down. As they get to Carol's place, for some reason, and we can't understand and the surveyor couldn't explain to me, why it jumps from the right side of the road that's above it, it jumps to the left side. That means that all -- they wouldn't even have to go to my property.

If you look down that line, it should be straight. I took pictures, but it's such a distance. At the top of the levee, it's a straight shot. The people are here that can address it. The surveyor is here, Larry, right, that I took out and showed him. We asked





him. He felt we were being argumentative. Nobody is being argumentative.

The other person that's going to speak, he was there with us. And we were asking why does it make this jog?

My concern is, is at the top of the levee you have a distance down to the bottom of the toe, but because we have a road there in this, our end is wider. The more you go up, the wider it goes. You walk straight down that road, and you get past Carol's, all of the toes jump over to the opposite side. That's why these people all have yellow that you're looking up there at.

We don't. Why?

Because they jump to the other side of the road. When you drive down the road at my place or Carol's, the line is on the right side. You go past Carol's, it jumps to the middle of the road. And just past it, it jumps to the left side. Now you drive down the road, all these lines are on the left side of the road.

And I hope I'm explaining it well enough, because it's so frustrating. I was so upset, because at the meeting, that was our concern. Please guys, go out, mark your lines, so us as property owners know what we're talking about. It's not pie in the sky. And I appreciate them going out and marking it. But once I had Larry show





up, we didn't get nowhere, because nobody could say why these residents -- there's approximately six of them there -- we're -- our line is on the right side, not in the straight line as everybody else. We're talking about six out of forty something.

So that was my main concern I wanted to bring to you guys. If you ever had a chance to look at it, I think you'd automatically say the same thing, why is orange on the right side, not all of them in a straight line that runs down the same road you'll drive down.

VICE-PRESIDENT RIE: Mr. Hecker, I have to ask this question. So we're moving the fence back so that we can have more room for flood fighting and patrolling. Is that even possible with all this surface water out there ponding?

MR. HECKER: Honestly, no. It's not. That's what's not making any sense. And these guys are -- even the surveyor, ask him the depth we're talking. We're talking four foot.

VICE-PRESIDENT RIE: Four feet of water?

MR. HECKER: When they came out just from this last rain storm, I took pictures. The Appeal-Democrat came out. I've got a creek flowing through. Now, if it rains for two, three days, you ain't getting back there. We don't even utilize the area. I park -- as in the

paper, you've seen the cars. We put cars that we don't use, because you can't get back there to work. And it's all easily seen. I mean, I could have brought more pictures of this area that floods, and that was just from the two days.

PRESIDENT CARTER: Mr. Hecker, do we have your permission to keep these or can we make photocopies of them so that we enter them into the record?

MS. MILLER: Do what?

PRESIDENT CARTER: Make copies.

MS. MILLER: Yeah.

PRESIDENT CARTER: All right.

MR. HECKER: It's Carol's pictures though. My pictures that I had, I ended up leaving them.

PRESIDENT CARTER: Ms. Woertink, would you be sure that we get copies of these before we leave today?

MR. HECKER: And I think it's something we really need to look at before we go tearing down a fence, put in another fence that's going to do something. It's -- a fence ain't going to hold in water.

And they have to take the ground down. I've got an oak tree back there, that's over 50 -- probably a hundred years old. It's huge, and it's right at the toe of the levee, because we've always worked back there. My cement on my property goes to the red line.





VICE-PRESIDENT RIE: Mr. Hecker, does the oak tree need to be removed to relocate the fence?

MR. HECKER: If you're going to drive a vehicle down it, if they can -- they're going to have to go wider to go around that oak tree. I would think they'd have to.

VICE-PRESIDENT RIE: Do you happen to know if it's a protected oak tree?

MR. HECKER: Oh, I -- no, ma'am, I --

VICE-PRESIDENT RIE: You don't know.

MR. HECKER: -- didn't --

VICE-PRESIDENT RIE: We'll ask our staff.

PRESIDENT CARTER: Thank you very much.

MR. HECKER: Okay. Again, thank you for coming up here. I know a lot of people wanted to make it here. I know Arnold wanted to be here, and he said thanks for coming up and taking a listen to us.

PRESIDENT CARTER: Thank you. Mrs. Hofman, would you like to address the Board.

MS. HOFMAN: Good morning. Thank you very much for the opportunity to speak. I do not loan -- own any land that you're speaking of, but I do know about levees.

When you look at the 1930 quad sheets, it shows that a lot of the levee construction went through open land. One of the problems with this area is the levee has cutoff the natural drainage. The higher you build the





levee, the more you compact it, the more water you put on your neighbor.

The road is out there, if you want a road, because I have almost a mile and a half of levee, we have red dirt, and there's swales. The last rain on basically flat land, no gravel, just flat land, there was 10 to 14 inches of water where 784 has dispensed on my property. Absolutely impossible, unless you have a cat, or a four-wheel drive tractor.

My question to the Board is, don't ignore the drainage. It has to be solved, not only for the landowners, it has to be solved in a real flood fight. If you want to use that road, do a flood fight. Let's not just go out there and grade it and put six inches of gravel over the top, which won't do, excuse the expression, a damn bit of good.

You can have all the engineers you want. I welcome you to come out and try to drive on the dirt on my ranch. It's a problem that needs to be addressed. This is a problem that should have been addressed when the original levee design was done on the levee.

And if you research the old, old deeds, you will see that part of the right of way that the State of California had was granted originally by the City of Marysville, and it was to be fenced, because there was a





railroad track going in with crossings.

All I'm saying is we need to address the drainage, not for the landowners only, but for the -- if you want to call that a road -- an area to use for a flood fight, you've got to do something. If you want it handy for 784 to run around in the summertime, then so call it that, and limit it to that. Don't give your people that are fighting floods an area to work on that they're expected to use, unless it's a cat road in the wintertime.

Thank you very much for the opportunity.

PRESIDENT CARTER: Thank you.

MS. HOFMAN: Is there any questions?

I'm sorry.

PRESIDENT CARTER: Thank you.

Is there anyone else that wishes to address the Board?

Yes, sir.

MR. MILLER: Yeah. My name is Phillip Miller, and I own one of the properties on Riverside. I got the map up.

We keep talking about the toe of the levee. Well, the toe of the levee has moved, changed, and all that, as I said at the last meeting, if you'll remember.

Oh, where's the arrow on that map.

I'm sorry.

Anyway, where it says -- the green line is the toe of the levee. Okay, when -- in 1905, Sacramento Northern bought that property. They measured it. They surveyed it. They surveyed it from the center line of the railroad, not the toe of the levee. Now, if you go by their survey, they had a strip 120 feet, 60 feet on each side of that railroad. There was one levee there, that was the railroad levee.

Some time in history, somebody built a levee next to it. They still -- the railroad still owned 60 feet on one side of the levee, the housing side of the levee. That didn't change.

Now, if you go out and measure approximately where the center line of that railroad was, where the -- about two feet over the fence line, what TRLIA -- which TRLIA wants, and I have no problem with, they will come up with a fence line, where the fence line should be.

Where the problem is, this Board wants to take more than that, and I'm saying take. They don't own it. They never have owned it. If you measure that -- and we have a surveyor here. And I asked at the last -- at the last meeting if anybody had surveyed the middle of that -- of where the tracks were. And I didn't get an answer at that time, and I still haven't got an answer. We keep talking about the toe. The toe is not a measurement, but





the center track of that railroad is a measurement, and that's what was used to establish that railroad was the center line.

And I would -- for one, I would like an answer. Maybe that would clear up my problem with this situation, is to get an answer to that question.

And, like I say, this goes back into history. This goes back to 1909 this is -- was stated earlier. And you have to remember that there was one levee. That's why they got what -- that's why the railroad received what they did, bought what they did.

Thank you for your patience. I know I'm not a good speaker.

PRESIDENT CARTER: Thank you, Mr. Phillip -- Mr. Miller, I'm sorry.

Thank you.

Is there anyone else that wishes to address the Board on these 48?

Yes, sir.

Yes, ma'am.

MS. MILLER: My name is Carol Miller and that was my brother that just spoke. And I am supposed to be at one o'clock, so I don't know, do I get time at one o'clock or --

PRESIDENT CARTER: Yes, you do.





MS. MILLER: Okay. Then I'll hold my --

PRESIDENT CARTER: And we'd prefer to keep these separate.

MS. MILLER: Okay. Thank you.

PRESIDENT CARTER: Thank you.

Sir.

MR. CURRIER: My name is Scott Currier. I own two properties that are affected by this project.

Overall, I'm not opposed to the project and improvement of a road. There is a road that exists, in part. You could get some kind of a vehicle on it. And it's not at the bottom of the levee.

I'm confused saying that -- I'm confused by some of the public comments about you can't get vehicles behind there. You can get vehicles behind there. It's just not a very usable access. It needs to be improved.

If I can make a note. I'm an old dirt mover, a CB. If I can get this cursor to work here. Am I doing this -- okay.

I'm over here at 51 -- did I move that over. I'm at -- no. Could somebody help me with this? I do a mouse better than a -- go this way. So I'm at 51 right there, and I have another property further north.

The levee -- let me just back up and say the levee material used was apparently material used from





Feather River Boulevard and they downcut toward where the levee is, so if the drainage from Feather River Boulevard going downward to the levee is the cause of some of the drainage.

Most of it's open soil, except for the gentleman that spoke about his building there. That used to be a nursery. There's a lot of concrete in there, so that water drainage from that facility is rather abrupt at times. You can get water come down to the lowest part of that drainage area, and then proceed toward the property that I own. So there is a drainage issue.

I don't know how that can be mitigated, solved. But in the event of a rain storm, two or three inches within a couple days, we see water flowing down there. It doesn't collect for long, but it can collect. That would be somewhat of a concern.

I believe that the option that TRLIA has proposed accommodates the people with the buildings. And I think it was a good effort on their part to move the project along.

And I believe that the project should go forward. Drainage can be an issue. I don't think the process of putting in the road makes the drainage any worse. There's a drainage problem already there. I don't believe it makes it worse. I believe it will help if we have access

to the levees, so they can expect, possibly repair.

So I'm in support of the project. I also was interested in when the road was to be put there, that they would put grade stakes and locations of the final elevation of the road. That would be very helpful, so that any retaining walls necessary, especially toward this back building, would be necessary, so that there's -- it's maintainable, and it's not an abrupt drop-off. It definitely can't be two to one or three to one slope, but it looks like at these locations some of them -- so that was my concern.

So is there any questions?

PRESIDENT CARTER: Thank you, Mr. Currier.

Ms. Suarez.

BOARD MEMBER SUAREZ: Just a quick one. Were you at the January 7th meeting?

MR. CURRIER: Locally I was in the -- on Riverside, I was at that meeting.

BOARD MEMBER SUAREZ: Is that -- I'm sorry, do I have the right date, the January 7th meeting, the TRLIA community meeting, were you at that meeting?

MR. CURRIER: Yes.

BOARD MEMBER SUAREZ: Okay. Thank you.

PRESIDENT CARTER: I think it was January 10.

BOARD MEMBER SUAREZ: Oh, I'm sorry, January 10.





Thank you.

PRESIDENT CARTER: Thank you very much.

Are there any other members of the public that wish to address this item before the Board?

Very good.

Then what we'll do, ladies and gentlemen, we're going to close the public testimony portion of the hearing, and we're going to take a brief recess, let's -- 10 minutes. And then we'll reconvene for Board discussion, deliberation, and moving forward.

(Thereupon a recess was taken.)

PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats, we'll continue with the hearing.

As you recall, prior to our break, we were on Item 8A. We had entertained staff and proponent and respondent testimony. We're now moving on to the discussion/deliberation phase of the hearing. So with that, I'm going to open it up to the Board. Are there any questions -- additional questions the Board has with respect to what the testimony that they had heard earlier this morning of staff, of the respondents?

Ms. Rie.

VICE-PRESIDENT RIE: This question is for TRLIA and for our staff. We saw photographs of flooding in the





area where we're going to relocate the fence. So my question is, how will we be able to flood fight and patrol the levee during the winter with four feet of ponded water? Now, I would imagine it's not everywhere, but you probably have to cross the ponded water at some point.

So I'm just wondering how are we going to patrol and flood fight with ponding water in this area?

MR. BRUNNER: Paul Brunner from Three Rivers, Executive Director.

The -- maybe if we could pull up the graphic, I could speak to it better again. And I'll try the mouse on it. The area that we're talking about for flood fighting, where the biggest issues are, is really in the south end of the project close to Island Avenue, so it affects several parcels, but not most of them, I believe.

SUPERVISING ENGINEER TARAS: Is this the slide you wanted?

MR. BRUNNER: That works, Curt. Thank you.

As you look through here -- there we go. I'll use this one here -- is that Island Avenue is the end of the project, and it ramps up to the top of the levee. And then along through here there's an access road that comes down from the top of the levee that kind of runs parallel through here, and then it just kind of keeps going through here. But it is elevated in through here along the side





bank of the levee on it, so it isn't down at ground surfaces.

And I would imagine, as when we do our design for the project, is this area down by Island Avenue through Parcels 153, 54, 153, maybe 152 and in that area, the road in that 20-foot area will be elevated somewhat into the bank, like on top of a stability berm or what -- that's currently really kind of their now, but that we would elevate. And they're not going to be driving through this water situation.

Now there are two, three parcels -- and I could be off on the numbering -- 151, could be one of them and that -- that naturally the lot is lower in the back. It is lower than 153 and say 150. So when the subdivision was built, I think the railroad tracks and that were there at least most likely when the subdivision was. The lots were not drained to the street, so they drained to the back and they pond.

So there are some lots that naturally will pond, because of adjacent parcels being higher and definitely the levees higher in the back on it. So for those situations -- some of the parcels very close to the end 154, 155, they do have some drainage issues there.

Potentially, one could go through -- and what I was trying to let the Board know is part of our design as

we work through this and work with the folks, recognizing we're not a drainage project, but a levee project, is how do we address that?

Well, potentially, if we don't disrupt the contours of the drainage today, one could put a culvert through on Island Avenue to let it drain for those areas. So some of those lots would make -- alleviate the drainage issue. Under certain high flow conditions, you might have some -- just volume of water that you're going to have problems anyway, but to let it drain.

That doesn't solve some of the lower parcels that are farther north, like say 151 that's lower than the adjacent parcels. I think the only way that those ever get really solved is for the property owner to really raise the back of his yard up, so it drains to the street, and drains out. And that takes a volume of soil to do that, so that it drains around.

And just normally when you have a subdivision and that when they've built homes, you've got a lot that they -- that your backyard drains to the street. And the homes are there and you cut your drainage around, so that you don't flood your home as that's happening, but you drain to the street. And some of these parcels don't do that, they just pond.

So I think the long-term solution for those homes





would be to do that. That does cost money. Unfortunately, that's not part of the flood control project that I currently have to try to do that. If we can work with them to try to make that better someway and do that, we'll try to do that moving forward.

So did that answer your question?

VICE-PRESIDENT RIE: Partially. Who's responsible for the drainage at the landside of the levee? Is the reclamation district responsible for pumping that water out and ensuring proper drainage, because I can't imagine that it would be good to have water sitting at the toe of the levee?

MR. BRUNNER: Well, in this particular case, who's -- let me answer the question that you asked first, who's responsible?

Directly who's responsible here, it's either Reclamation District 784 had some drainage issues in their areas or Yuba County. In this particular area, I'm not sure. Steve Fordice is here. Steve could come forward and speak to who has the drainage in the street and working with that for his area.

As far as the levee toe goes, I think part of our improvements that we have on our project that we go with the corridor program is that we would improve that, so that we don't have drainage issues at the toe of the





levee. We're going to elevate that road through there, so that we don't have an issue for our project.

BOARD MEMBER BROWN: Yeah. That was my question, is it reasonable to bring in fill along the road at the toe of the slope to where access is feasible, and it solves the drainage problem as far as ponding is concerned too, with interference with the road?

MR. BRUNNER: I'm not quite sure I'm following the question. Is it reasonable to bring fill in?

BOARD MEMBER BROWN: Yes, to grade a road at the toe of the slope and to bring in enough fill to where it covers the low areas, and would not pond and create a problem for driving on it during periods of storm.

MR. BRUNNER: For the levee toe, the access corridor that we have, yeah, I think it's reasonable that we could bring in fill in those areas. You're not talking about a huge area, and do it contouring within the corridor to make it happen.

If the question goes to trying to solve the drainage issue in that local community --

BOARD MEMBER BROWN: No. No, not -- I think our concern, of course, is with access and...

MR. BRUNNER: I think it's very viable. And like what I was talking about earlier, is that we will have our design team go and meet with the folks to work with them





to show them what we're doing and how we're going to do the drainage. We haven't gone out and done the topo work to do the design on it. Once we get -- if we get the okay, we'll go forward and start doing that. And I don't mind coming back and sharing with you all what we're doing on it to go forward with it.

But the -- it's -- can we do that? Yeah, I think so. And it will be a lot better for RD 748 to do this, so that they would be able to work the project in that and be able to maintain that levee. You know, it's interesting that -- why this came about that we're involved in these projects, is that one of the goals for Three Rivers has been is to implement this levee toe access corridor program across all our levee systems, be it under Phase 2, from prior -- well, many years ago and go forward, but to really leave RD 784 with a levee corridor program where we have all access issues resolved. They have their corridors, and it really is what I think you want, is a system where you're -- the folks, RD 748, can maintain their system.

And before we ever stop what we're doing, we end up going through and doing everything that's in our permits and the various interim criteria, but to make it happen.

And that's one of my goals that I've asked the

team to do, and my Board said that's great to go do that. But we can -- as an engineer, I think we do it. We haven't done it yet, but I think we can do it, John.

BOARD MEMBER BROWN: Good.

PRESIDENT CARTER: Thank you.

MR. BRUNNER: Thank you.

VICE-PRESIDENT RIE: I have one more question, President Carter.

PRESIDENT CARTER: Okay. And we do need to move along here.

Ms. Rie.

VICE-PRESIDENT RIE: Mr. Brunner, one more question for you. Mr. Hecker mentioned that an oak tree on his property may need to be removed so the fence can be relocated. And I just wanted to see if that was the case. And if so, are you going to have to mitigate 10 to 1 for the removal of that tree?

MR. BRUNNER: Well, you know, I heard the question. And I know we have done our initial CEQA review for this permit and go through with that, and we didn't find any findings as far as an oak tree being a problem.

I made a mental note and a note to go back and check as to where are we at on that oak tree. Based upon our environmental documentation for the project so far, I would say it's not one that we have to mitigate for, but I





would go back and check. And if it is, then we'd have to work through and adapt. I don't know the specific lay, unless one of my team -- Larry, would you know?

MR. DACUS: Larry Dacus, Three Rivers Design Manager. Oak trees are not protected in Yuba County, so there's no mitigation required for removal of an oak tree.

VICE-PRESIDENT RIE: Okay. Thank you.

MR. BRUNNER: And I see Steve Fordice from RD 784 would like to make a comment, if that's okay.

PRESIDENT CARTER: Please.

MR. FORDICE: President Carter, members of the Board, my name is Steve Fordice, General Manager of Reclamation District 784.

To answer the question concerning internal drainage in the neighborhood is actually the responsibility of Yuba County. Once the water gets to us into our major laterals, then we get it out of the District.

And directly to the south of Island Road ramp, we have a detention basin and a pump station. And it's more than capable of dealing with any water that's delivered to us should it come from that particular area.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any other questions?

I have one. I believe it was Mr. Miller





mentioned or raised a question with regard to the survey, and he claims that the center line of the railroad was used to define the railroad ownership. I'd like the surveyor to come and respond to that, if they came across that survey when they did their research, why they used the positioning hubs or the locations to conduct their survey?

MR. HEENEY: Thank you. Kevin Heeney, CTA Engineering and Surveying. TRLIA surveyor.

Earlier you saw a slide that kind of gave you chronologically where we are today -- how we got here. The original grant deed was, I believe, in 1909 to the railroad. 1921 followed up with a subdivision of the Yuba Gardens area that created several large tracts of land. That subdivision map specifically excludes all railroads, highways, and levees shown on that map.

The subsequent subdivision that we're discussing today is a subdivision of Tract number 8. Tract number 8 lies between two railroads. As part of our due diligence research, not only do we survey the other surveys that were in this block area, in these -- adjacent to these lots, we further went out on Highway 70 and beyond to check surveys over there to confirm the location of the easterly railroad, measured the distance across to the westerly railroad, and found those to be in conformance





with what we had found other surveyors had set along Riverside and Feather River Boulevard.

With that information, in my professional opinion, the best evidence was the prior work done by other surveyors in those blocks, the subdivision map for these lots, designates their depth to be 280 feet deep.

All of the deeds for these people are granted the lots as shown on the map. Therefore, that property line was established from those blocks that we found within the streets agreeing with prior surveys. And the evidence also showed that that survey was bounded on both sides by the railroad, the railroad that was later then granted to the State.

Does that answer your question?

PRESIDENT CARTER: Well, did you come across a survey by the railroad that defined their ownership as the 60 feet on either side of the center line?

MR. HEENEY: They have right of way plats that show their land was 60 feet on one side, 90 feet on the other side of a center line. It should also be noted that the center line shown on right-of-way maps on old railroad plans are not necessarily always the center line of the railroad. Many times, there's two rails. Many times the rails have spirals and other types of curves that are in it, that the right of way does not.

So to try and make the correlation that the center of an old railroad that's no longer there should be the basis for defining this right of way is not always correct. That evidence is gone, so we went to the next best evidence that we could find, being the maps and the work that other surveyors had done.

PRESIDENT CARTER: Okay. Thank you.

Any other questions?

Ladies and gentlemen, what is your pleasure?

BOARD MEMBER BROWN: Mr. Chairman, I like staff's recommendation. And to get it moving, I'll move that we adopt the reclamation that staff has presented.

PRESIDENT CARTER: Okay. So we have a motion to adopt the staff recommendation, which, Ms. Caliso, could you please review that for us again, please.

STAFF ENGINEER CALISO: I apologize. I'm trying to find the last --

BOARD MEMBER SUAREZ: While she does that, may I ask Mr. Brown if he would consider that the motion include deleting the whereas on page two that makes reference to -- let me put my glasses on -- DWR's Office of Chief Counsel is reviewing the granting of licenses and so our own Board attorney has already provided us with her opinion.

So, Mr. Brown, would you consider removing that





part of the -- as part of your motion, removing that whereas on page two of the resolution?

BOARD MEMBER BROWN: I'm sorry. I was showing the advantages of having it in print, as opposed to on the computer. And if you don't mind repeating that with my apologies.

BOARD MEMBER SUAREZ: Absolutely. There is a whereas on the resolution that addresses the DWR's Office of Chief Counsel reviewing the issue of the license. Since our own Board attorney has already provided us with her opinion, that it is unlikely to result in a gift of public property. I would like to remove that, since it's unnecessary, and actually contrary to what our own Board staff is telling us.

BOARD MEMBER BROWN: I will add that to my motion.

BOARD MEMBER SUAREZ: Okay. Thank you.

PRESIDENT CARTER: Any -- so the staff recommendation is to approve Resolution number 12-03, authorize the removal of the private fences and miscellaneous obstructions on State land, grant licenses to 48 adjacent private property owners identified in Attachment B of the staff report for use and maintenance of a portion of the State lands adjoining the Feather River East Levee, rescind the Notices of Violation subject





to voluntary compliance with this resolution, and direct staff to file a Notice of Exemption with the State Clearinghouse.

Everybody understand that?

I have one question. I was unable to find the draft license language, but these licenses will include language that ask the signatories to relinquish any claim to the property, and also indemnify the State, in terms of the use of State property as advised by our counsel.

STAFF ENGINEER CALISO: We will make sure those are reflected on that.

PRESIDENT CARTER: Okay. All right. Any other questions or comments?

Is there a second on the motion?

BOARD MEMBER SUAREZ: I second it.

PRESIDENT CARTER: Okay. We have a second from Ms. Suarez.

BOARD MEMBER DOLAN: Mr. Chairman.

PRESIDENT CARTER: Ms. Dolan.

BOARD MEMBER DOLAN: I'll state the obvious. This is my first meeting, so I was not present as a Board meeting on December 2nd. But I would like to state that I read all the transcripts, so I have a flavor of how you have your discussions that I'm going to be joining in, and was provided quite a bit of background from the staff





about prior meetings that had been held, both here and in the community. So I did my homework. I don't feel that I am as fully informed as all of you who have been involved personally, but I feel confident to participate in this vote.

PRESIDENT CARTER: Thank you.

Mr. Hodgkins.

SECRETARY HODGKINS: I'd like to ask the motioner to consider an amendment that would include in the approval a Condition E, that, in effect, directs Three Rivers to correct the drainage problems on the property here, to the extent that they can be corrected without going onto private property. I don't want you guys to have to go do grading on anybody's lot. But to the -- and you'll have to figure out what you can do when you get the details. Would that work okay for you, Paul?

SUPERVISING ENGINEER TARAS: This is Curt Taras, Chief of Permitting and Enforcement. My suggestion is to condition the permit with that requirement rather than the resolution. The permit will come before you as Item E later this afternoon, and you can add those specifics about the permit for the fence and the work that TRLIA will do. This is mostly to address real estate matters, which I believe might confuse the matter by adding another resolution item.

SECRETARY HODGKINS: I accept that as constructive.
SUPERVISING ENGINEER TARAS: I'll let Mr. Brunner address anything about the ability of TRLIA to correct drainage.
MR. BRUNNER: For the -- you want me to address that one point now or later? I'll be here later.
SECRETARY HODGKINS: I'll leave that to the Chair.
PRESIDENT CARTER: Let's do that as part of the permit discussion, if you wouldn't mind.
MR. BRUNNER: All right.
PRESIDENT CARTER: Thank you.
LEGAL COUNSEL SMITH: Mr. President, I have a couple of comments on the resolution.
PRESIDENT CARTER: Ms. Smith.
LEGAL COUNSEL SMITH: I think a couple of things could and should be clarified in the resolution. And on 3a it says, so that everyone understands what exactly the Board is voting for today, it says, "Authorize removal of private fences and miscellaneous obstructions on State land". It's not clear who is going to do the removal, when that's going to be done. And also it's a little unclear what the miscellaneous obstructions refers to.
And then also, I would recommend that in 3b, that





the licenses be to the satisfaction of the Board. And that would address any of those concerns that you had raised.
PRESIDENT CARTER: Okay. Is the motioner and seconder, are you --
BOARD MEMBER SUAREZ: Yes.
PRESIDENT CARTER: -- comfortable with that? You accept those recommendations?
BOARD MEMBER BROWN: Yes.
PRESIDENT CARTER: And yes?
BOARD MEMBER SUAREZ: Yes.
PRESIDENT CARTER: Okay.
VICE-PRESIDENT RIE: Question on that. Ms. Smith, when you say, "to the satisfaction of the Board", are you suggesting that the licenses come back to the Board for approval?
LEGAL COUNSEL SMITH: No. No. I believe -- I thought that the resolution gave -- delegated to the Executive Officer the authority to execute those. But if not, that should be added as well.
VICE-PRESIDENT RIE: I don't see that in here.
LEGAL COUNSEL SMITH: That should be added, I would recommend, so that it doesn't have to come back to the Board.
VICE-PRESIDENT RIE: And I would suggest that





when we delegate, because I don't see that in here, to the Executive Officer that Board President Carter review those and concur with the language in the license before it gets executed.
PRESIDENT CARTER: Okay. So you want to delegate to the Executive Officer the authority to approve the grant licenses subject to the Board President's review and concurrence.
VICE-PRESIDENT RIE: Yes.
PRESIDENT CARTER: Okay. Understand.
VICE-PRESIDENT RIE: And we should probably just delete 3A. Ms. Smith, what do you think about just deleting A, because I thought the removal of the fences was going to be discussed under a separate permit.
LEGAL COUNSEL SMITH: Well, actually because these -- the way -- procedurally, these are coming before you are as an enforcement action, so the Board needs to make some order -- you can't force a private party to enter into an agreement. And if the parties don't enter into these agreements, my understanding is that 3a -- the purpose for 3a was to address the situation where those agreements are not entered. But it's not clear who's doing the removal.
You know, typically in an Enforcement Order, the Board would give the property owner an opportunity to do





that, a certain amount of time. And if not, the Board could order TRLIA or someone else to do that removal.
BOARD MEMBER SUAREZ: But, Mr. President, if I may?
I believe our regulations address that, so why can't it be as per our regulations?
LEGAL COUNSEL SMITH: Well, that's what the regulations say, is that in the order the Board shall describe.
BOARD MEMBER SUAREZ: Right. So it seems to me that we don't need to make any additional references within what our regulations prescribe, that's what we follow.
LEGAL COUNSEL SMITH: The regulations don't state the -- they leave it open to the Board to determine who, when, how the removal shall be done. So the Board still would need to make that decision.
BOARD MEMBER SUAREZ: Under the new regulations?
VICE-PRESIDENT RIE: But wouldn't it make sense to deal with that, if we need to deal with it, at a separate hearing?
LEGAL COUNSEL SMITH: That's up to the Board. If you want to reserve that till later, that -- you can do that, but it might require an additional step, and it may prevent TRLIA from moving forward.

PRESIDENT CARTER: I think we ought to endeavor to not revisit this issue in the future. And so to the extent that we can be as clear as possible, and in our intentions and actions going forward today, we ought to do that. And if it requires us authorizing Three Rivers or 784 to remove the fences by a certain date, that's what -- I'd welcome that language, if that's what it requires.

I don't want to -- if there are fences out there that the property owners want to keep or replace at the 20-foot line, and the property owners wish to deal with that, I would hope that TRLIA would work with the property owners and allow them that opportunity, so that we don't just have a dozer out there destroying somebody's fence, that they hold a lot of value in.

STAFF ENGINEER CALISO: If I may, Mr. President. I think a clarification could be added to Item A could be that to authorize the removal of private fences and miscellaneous obstructions on State land in accordance with the Permit 18690, which would be this afternoon. And that would identify who is doing the work, the replacing of the new fence, and the specific conditions of how that work is to be done. Would that --

PRESIDENT CARTER: Would that satisfy, everyone, Ms. Smith?





BOARD MEMBER BROWN: Just add "as permitted". Can you do that?

STAFF ENGINEER CALISO: Sure.

PRESIDENT CARTER: Ms. Smith.

LEGAL COUNSEL SMITH: My only concern is we haven't heard the permit item yet, so it's conditioning something on an action that hasn't been taken. But if the Board's comfortable with that, you can proceed in that way.

BOARD MEMBER SUAREZ: I'm comfortable.

PRESIDENT CARTER: Ladies and gentlemen?

BOARD MEMBER BROWN: I'm all right, Mr. Chairman, and ready to call for the question.

PRESIDENT CARTER: Okay. Very good. Any other discussion?

I want to give this opportunity to the staff to comment on the Board's proposed action. Do you have any comments?

STAFF ENGINEER CALISO: No, we don't. We agree that the action that the Board is taking before this is a good resolution to this matter.

PRESIDENT CARTER: Okay. And Three Rivers or 784, do you have any comments with respect to the Board's proposed decision?

MR. BRUNNER: Three Rivers is fine.





PRESIDENT CARTER: Three Rivers is fine.

MR. FORDICE: As is 784.

PRESIDENT CARTER: And 784 is fine.

The respondents, the property owners, anyone out there wish to express any concerns or any thoughts on the Board's proposed decision for these 48?

MR. MILLER: The fence -- I'm sorry.

PRESIDENT CARTER: If you could please approach.

MR. MILLER: Yes. Phillip Miller, property owner on Riverside. I would like this Board to make the decision on who replaces the fence, who does the cleanup, and that type of thing, because I think this -- well, let's leave it at that.

Thank you.

PRESIDENT CARTER: Okay. Thank you.

Please.

MS. HECKER: There's two issues. One, is --

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

MS. HECKER: I'm sorry. Debra Hecker.

PRESIDENT CARTER: Debra Hecker, thank you.

MS. HECKER: My husband spoke earlier.

One issue is if you build up your levee road to make it accessible, and it affects the drainage on the homeowner's side, who's responsible, because you've





changed landscape on your side?

The second issue is you're talking about the fence lines and the cleanup, we were told by TRLIA they were doing it. So why aren't they standing up and saying we've taken responsibility for that? We were told it was at no cost to us.

Thank you.

PRESIDENT CARTER: Thank you. I think -- before we get into the permitting question, I think that's the intention. I think that TRLIA does intend to do this at no cost to the landowners. The -- and the State is cost sharing in the removal and reconstruction of the new fence. We want to certainly give property owners the opportunity if they have -- if they want to go out and do it at their expense, they are welcome to do it. But if they don't, TRLIA and the State will take care of it.

So any other questions, comments?

Okay. Everyone understands we're approving Resolution number 12-03 with the deletion of the whereas referring to the DWR legal review on page two, and addition of a delegation to the Executive Officer to sign the licenses, subject to concurrence by the President, and authorize removal of the private fences and miscellaneous obstructions on State land in 3a subject to the Permit number 18690.

Any questions?
VICE-PRESIDENT RIE: Didn't Mr. Hodgkins have a modification?
PRESIDENT CARTER: No. He -- my understanding is you asked the question and it was going to be addressed as we -- when we consider Permit number 16980 later on.
VICE-PRESIDENT RIE: Okay.
PRESIDENT CARTER: All right. Mr. Punia, would you call the roll.
EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?
BOARD MEMBER VILLINES: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez.
BOARD MEMBER SUAREZ: Before I vote, I just want to take an opportunity to thank the staff, the TRLIA -- Mr. Brunner, please express to your Board our sincere thanks for working so hard and willing to put money and effort to fix this complicated problem. I want to thank the homeowners and the property owners for trying to work with us. It's a difficult situation for you, as it is for us. And I want to take the opportunity to thank Board President, Mr. Carter, and Ms. Rie. I know they've been working very hard on behalf of the staff and -- of the Board to get this resolved.





So with all those things, yea.
EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?
SECRETARY HODGKINS: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?
BOARD MEMBER DOLAN: Aye.
EXECUTIVE OFFICER PUNIA: Board Member John Brown?
BOARD MEMBER BROWN: Aye.
EXECUTIVE OFFICER PUNIA: Board Vice-President Teri Rie?
VICE-PRESIDENT RIE: I'm going to vote aye with the understanding that it's no cost to the private residents out there, and it's at TRLIA's cost.
Thank you.
EXECUTIVE OFFICER PUNIA: Board President Ben Carter?
PRESIDENT CARTER: Aye.
So the motion caries unanimously.
Ladies and gentlemen, thank you very much. I want to do a quick process check. We're running about an hour behind schedule.
And is Mr. King in the audience? He's our next hearing under Item 8B.





Okay. The Board scheduled this hearing. It was not at the request of Mr. King, but his property does have a structure, and so we wanted to handle that separately from the others.
What we'll do is let's go ahead and -- the other question is Mrs. Miller or Mrs. LaGrand, do you have any severe time constraints for the afternoon, if we're running behind?
MS. MILLER: No.
PRESIDENT CARTER: Okay. Hearing none, then what we'll do, let's go ahead and break for lunch. We take an hour. The Board is going to be meeting in closed session over lunch, and then we will reconvene here at one o'clock. Thank you very much.
(Thereupon the meeting recessed into closed session at 12:04.)





AFTERNOON SESSION
(Thereupon the meeting reconvened open session at 1:08 p.m.)
PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats, we'll go ahead and continue with our meeting. I want to inform the public that the Board did meet in closed session over the lunch hour as agendized. The Board listened to staff counsel and directed staff accordingly on those issues.
So we are on Item 8B on our agenda today. And I'd like to call the hearing to order. This is an Enforcement Hearing as requested by the Board concerning a Notice of Violation ordering the removal of a private fence and a portion of a permanent structure located on State land adjacent to the Feather River East Levee in West Linda, California.
This Resolution 12-06 is to authorize the removal of a private fence on State land, grant license to Michael King for the use and maintenance of a portion of State land adjoining the Feather River East Levee, authorize a structure on parcel 020-121-021 owned by Michael King to remain on State land subject to permitting, and then rescind the Notice of Violation subject to voluntary compliance with the Resolution 12-06.
With that, we will follow the same process we did

with our first hearing before the lunch hour, and I will turn it over to Ms. Caliso to present the staff findings.

(Thereupon an overhead presentation was presented as follows.)

STAFF ENGINEER CALISO: Thank you, President Carter. In the essence of time, I know we're running a little behind, would you like me to run through the entire presentation with the background that is essentially similar to the previous or would you like me to skip to the specifics on this case?

PRESIDENT CARTER: What I would do is ask you to include the relevant information that is duplicate from the last hearing in your testimony, and be sure that it's included as evidence as part of this hearing, and then we can go on with the additional evidence that you'd like to supply.

STAFF ENGINEER CALISO: Okay. Perfect. Will do.

Angeles Caliso, Board staff, once again presenting a brief overview on what happened at the December 2nd meeting, which the Board heard these items before.

At the December 2nd meeting, the Board voted to note that encroachments existed on State land. The staff -- and directed staff to come back and work with TRLIA and the landowners to come back with a plan that





would provide the corridor and a real estate plan that would allow the residents to use any remaining land under State control.

The Resolution 12-06 that's presented to you is, as President Carter indicated, authorizing the removal of the fences on State land. And this would be subject to Permit number 18690. So I've modified my slides slightly to reflect the change from the earlier presentation.

Granting a license to Mr. Michael King for the use and maintenance of the State land that is adjoining the Feather River East Levee; authorizing a structure that is located on Parcel 020-121-021 that is owned by Michael King to remain on State land, subject to permitting by the Board; rescinding the Notice of Violation subject to compliance with this resolution; and authorizing the Executive Officer to execute the revocable licenses subject to concurrence from the Board President.

--o0o--

STAFF ENGINEER CALISO: Once again, this property is located just south of Marysville. This map on the screen shows Marysville at the center of the screen. West Linda, the City of West Linda, at the bottom of this screen. The location -- approximate location of the property is identified in the star.

This is an aerial view of the property. The





approximate property boundaries are identified there in red. The property is bounded by Riverside Drive to the east and the levee, which includes the State-owned property, to the west. The location of the unauthorized encroachments is noted here, so I'll give you -- this is a -- there's a photo that shows -- oh, this is a mistake.

I apologize. That's incorrect. I thought I had a photo, but I obviously didn't have the right photo on that one.

Moving on. The TRLIA is completing the $400 million levee project -- improvement project to increase the flood protection in the Cities of Linda, Arboga, Olivehurst, and Plumas Lake. Part of that levee improvement require a 20-foot corridor that is in accordance with DWR's urban levee design criteria that was developed in accordance with Senate Bill 5. And this 20-foot corridor is intended to provide adequate room for maintenance, inspection, and flood fighting during high water events.

In addition, TRLIA intends to pursue 200-year levels of cert -- 200-year level of certification. And the -- moving forward with this project, it would allow the unauthorized access to the levee, which currently has -- there's been issues with vehicles accessing the levee through unauthorized access points and causing





damage to the levee.

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STAFF ENGINEER CALISO: The applicable laws and regulations pertinent here would be 80 -- Water Code Section 8534, which grants the Board the authority to enforce quote, "The erection, maintenance, and protection of such levees, embankments, and channel rectifications as will, in its judgment, best serve the interests of the State", end quote.

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

Water Code Section 8709, in which the Board retains the rights to commend a suit -- commence a suit, if the respondent fails to remove an encroachment. The Water Code Section 8710, which the State -- the Board -- it states that the Board must approve any encroachments that are located within an adopted plan of flood control. This would include the Sacramento River Flood Control Project. And this project includes the Feather and the Yuba Rivers.

--o0o--

STAFF ENGINEER CALISO: Title 23, Code of Regulations also is pertinent to this action. That would

be Section 6(a), which states that the Board approval is required for any work that is within or near an area where there is an adopted plan of flood control.

An adopted plan of flood control is defined in our regulations under Section 4(a)(4), which defines it as a means of a flood control or reclamation strategy for a specific area that has been adopted by the Board, that includes a 10-foot from the levee toe, except where an O&M manual has been furnished or real property rights acquired by the Board specifically provide otherwise.

Water -- Section 19 of the California Code of Regulations, which states that no encroachments may be constructed or maintained on lands that are owned by the Sacramento-San Joaquin Drainage District, unless they're expressly approved by or permitted by the Board via a revocable license, a lease or an agreement between the Board and the adjacent landowner.

Section 20(a), which allows the Executive Officer to commence an enforcement action against the landowner that maintains encroachments that are not consistent with the Board's regulations.

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STAFF ENGINEER CALISO: Just a quick summary on the background that is also related to this case, similar to the one earlier this morning.





On July 29, letters from TRLIA were mailed, including this property owner, notifying them of the encroachments. August 5th, the Notice of Violation was issued on behalf of the State, noting the unauthorized encroachments. August 22nd, TRLIA conducted a community meeting. December 2nd, the Board conducted hearings. And, at that hearing, the Board noted that the encroachments exist on State land, directing staff to work with TRLIA and the landowners and come back with a plan, that provided the 20-foot corridor and minimize the impact to the adjacent landowners.

Then December 16, all the landowners were notified of the Board's decision. And January 10th, the alternative -- the proposed alternative, that's being presented here to you today, was presented to the landowners at a community meeting.

After some discussion, the landowners by majority did vote -- didn't vote, but did agree that this was the -- supported the preferred -- this as the preferred alternative.

On January 19th, the staff reports were all posted and distributed to the applicable parties.

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STAFF ENGINEER CALISO: A timeline on the property that is owned by the State, that is adjacent to





the parcels, the private parcel here.

Starting back in 1909, the purchase -- the property was purchased by Northern Electric Company from a private individual. And this was recorded at the county's office in Book 59, page 441.

On November 8th, 1921, a survey map was prepared and it was recorded at the county's office on Book 3, page two.

PRESIDENT CARTER: Ms. Caliso?

STAFF ENGINEER CALISO: Yes.

PRESIDENT CARTER: Since -- is this all the same as the --

STAFF ENGINEER CALISO: Essentially, yes.

PRESIDENT CARTER: Could we stipulate for the record that all of these facts are the same as in our prior hearing under Item 8A, heard earlier this morning, and move along.

BOARD MEMBER BROWN: Yes, sir.

PRESIDENT CARTER: Is everyone okay with that?

Let's do that. That will save you some -- save some of your voice.

STAFF ENGINEER CALISO: Okay. So the proposed alternative for this property, it would be to place -- the new fence would be placed at the edge of the 20-foot corridor.





SECRETARY DOHERTY: It would -- existing fences that are located in the corridor would be -- the existing fence located there would be to -- would need to be removed.

The solution -- the real estate solution allowing for the remaining State land would be to issue Mr. Michael Grand a revocable license for the use of that land; and allowing the existing structure that is located on the parcel to remain, and this would be subject to a Board permit that would come before you at a future meeting; restricting the development -- the license would restrict the future development on the parcel. That would include permanent structures, excavations and that type of work.

And the license could be revocable if the need for a public purpose arises. And once again, it would also be recorded against the title of each company -- title of the property.

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STAFF ENGINEER CALISO: This is an exhibit showing the particular parcel. The assigned line shows the approximate limits of Mr. King's -- the southern portion is not reflected. The property goes further south. But at the right-hand side of the screen, you'll see that the residence that is on State land is identified there in light -- in the blue -- with the blue label.

This State-owned parcel is identified in the shaded brown area. Those are the limits of the State-owned parcel. The existing fence is identified in the red line. That is within State land.

The corridor that is being proposed would be -- is the one shade on the screen that is showing in green. And as you can see that the corridor -- the edge of the corridor was to be far enough from the existing structure, so it wouldn't require removal of that said structure.

The shaded blue -- the shaded yellow area, once again, would be that area that would be allowed to be used by the landowner under the license. And that area varies from approximately 12.3 feet on the left-hand side of the screen, so that would be on the south side, to about 13 feet on the right-hand side.

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STAFF ENGINEER CALISO: Once again, the comments of the Three Rivers Levee Improvement Authority and RD 784 support the presented alternative.

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STAFF ENGINEER CALISO: And the CEQA findings for this are noted in staff report Section 6.0. It would essentially mimic the previous findings on the earlier presentation.

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STAFF ENGINEER CALISO: Therefore, staff's recommendation is that the Board adopt Resolution number 1206 and this resolution is -- or this recommendation is reflecting the changes from the earlier -- from the morning.

It would include the deletion of the six -- sentence of the sixth whereas on the resolution on page two reflecting; authorizing the removal of the fence on State land subject to Permit 18690; granting the revocable license to Mr. King for the use and maintenance of the portion of State land that is adjoining the Feather River East Levee; authorizing the structure that is located on parcel with an APN number 020-121-021, owned by Mr. King to remain on State land, subject to a Board permit; and rescinding the Notice of Violation, which was number 2011-268 subject to voluntary compliance with this resolution; directing staff to file a Notice of Exemption with the State Clearinghouse; and authorizing the Executive Officer to execute the revocable licenses, subject to concurrence from Board President.

And that concludes my presentation.

PRESIDENT CARTER: Okay. Any questions for Ms. Caliso?

Ms. Suarez.

BOARD MEMBER SUAREZ: I would like to take this





opportunity to ask again, Ms. Smith, to, for the record, answer the question of whether or not granting a license, in her legal opinion, constitutes a gift of public funds or public property?

LEGAL COUNSEL SMITH: I do not believe so, so long as the landowners relinquish any legal right they may have to challenge the property line.

BOARD MEMBER SUAREZ: Thank you.

VICE-PRESIDENT RIE: Question.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: Ms. Caliso, going back to an earlier question on the previous permit. In this particular hearing, you reference, "subject to permitting". Can you explain what that means, what's the process, and does that permit need to come back to the Board and what's the timing on that?

STAFF ENGINEER CALISO: Yes. So, correct, the subject of permitting on the resolution is referring to the structure. So the plan is that we would process a encroachment permit application for the structure that is on State land. This would be in addition to the revocable license. This permit would come before the Board for approval at a future meeting, potentially at the next Board meeting.

And so this -- the permit would place





restrictions, typical restrictions, that we have used in the past for development, future expansion of the structures and other sorts.

VICE-PRESIDENT RIE: Now, are you going to prepare that permit on behalf of Mr. King or --

STAFF ENGINEER CALISO: We would be coordinating with Mr. King, yes. We would ask that he -- I mean, there would be certain endorsements that would need to get done. So we would be coordinating, following our application process to proceed with this one as well.

VICE-PRESIDENT RIE: Are you going to ask him to apply for this permit or are you going to assist with the preparation of the permit and any necessary attachments or analysis? Are you going to help him with that?

STAFF ENGINEER CALISO: We would ask that he submit an application, and we would try to assist him with the completion of the application. As far as preparation of exhibits, I think those exhibits are available. I'm not sure what additional support you're referring to.

VICE-PRESIDENT RIE: Well, description of the property, any survey data, legals and plats, is all of that going to be provided or are you going to put that burden on Mr. King?

STAFF ENGINEER CALISO: Well, I think this -- a lot of this information has already been prepared by Three

Rivers Levee Improvement Authority. A lot of the exhibits, the survey map has been prepared. This parcel is one of the 51 along that area, so it covers this particular parcel. So I would think that he can use some of the exhibits that are already available and that have been recorded to present and submit for his application.

VICE-PRESIDENT RIE: I think it would be appropriate for the staff to put this together and assist him with this effort.

STAFF ENGINEER CALISO: Okay. We can do that.

PRESIDENT CARTER: Any other questions?

Very good. Thank you, Ms. Caliso.

Does Three Rivers or 784 wish to address the Board at this time?

MR. BRUNNER: Paul Brunner, the Executive Director for Three Rivers. Very similar to last time -- last hearing, but to be on record, the -- we do support the plan that's laid out before you. The only difference, I believe, is the Encroachment Permit for the structure, between this one and the last hearing that we just went through.

On this particular case, Three Rivers is willing to prepare the documents for the real estate license and surveying, and just as last time, and bear that cost. The construction schedule is very similar, where we go through





the design, work with the person, Mr. King, and make sure that we address whatever issues that he has on his plot. And I want to defer any discussion about drainage and that to really the permit discussion that we have, which is Item 8E on the agenda.

I believe that's it that I'd like to address here.

Is there any questions for me?

PRESIDENT CARTER: Will you be able to work with staff, assist staff, and the applicant to complete the Encroachment Permit necessary to allow -- to submit a permit application for the structure?

MR. BRUNNER: Yes. Yeah, we have already provided all the -- many of the exhibits and the drawings and the survey information. So whatever the State staff needs or Mr. King needs, we'll be glad to provide.

During our discussions that we led up to this, one of the things I think from my recollection of discussions is that the State would help Mr. King do this and put it together.

PRESIDENT CARTER: Yes. Okay. Very good. Yeah, we don't want him to have to recreate a lot of things that are already -- have already been created, either by you or by our staff and help him through this process.

MR. BRUNNER: Oh, absolutely. We've already





prepared a lot of the documentation. So if we have it, he should definitely be able to use it, or staff.

PRESIDENT CARTER: Thank you.

VICE-PRESIDENT RIE: And, Mr. Brunner, this would -- all of this assistance would be at no cost to Mr. King, I'm assuming?

MR. BRUNNER: Yes. So far, all the various work that we've done has really not been a burden on any of the residents that are there. We have paid for our costs on surveying and real estate work so far through our local levee funds that we've got to do the project. When we go later on to do the construction of a fence and work on the grading in the area, that is State cost shared under our EIP agreement, 70/30 ratio. But direct charges to the residences would be -- we don't plan to do that or don't see the need to do that.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any questions for Mr. Brunner?

MR. BRUNNER: Thank you.

PRESIDENT CARTER: Thank you very much.

Is Mr. King here?

Are there any members of the public that wish to address the Board on this particular item?

MS. HOFMAN: I think I turned a card in.

PRESIDENT CARTER: I'm sorry, Mrs. Hofman, I





didn't get it. Please go ahead approach.

Oh, I'm sorry. You did turn in a card, and I overlooked the fact that it says 8A, B, C, and D.

MS. HOFMAN: I was trying to save our trees by only using one card.

PRESIDENT CARTER: And I appreciate that.

Please proceed.

MS. HOFMAN: I thank you for the opportunity. And, Board Member Mr. Hodgkins, I agree with you on the drainage issue. At the lunch break, I went home and I looked at the quad sheets, and I looked at some notes that was prepared a long time ago by another engineer. The original railroad tracks in this area was put on the center line. That center line, according to the deed that Dan Fua provided for me, varied in width from 40 feet center line with 40 on each side, some with 60 feet.

There's one that is 60 and 90. In the discussion today, I only hear of the one, and the State was required to fence that. And as my understanding from the older engineer, who has now passed, that the levee was built alongside of the railroad track. When the railroad track was built, they did it with horses. So consequently, the borrow was rather close. So most of the original railroad tracks in Yuba County, according to his statement, was that there was a borrow area or a depression, a ditch.

And when it came to a swale or a drainage, there was a trestle put in, so that allowed the water to flow in its natural pattern. It also kept the water away from the railroad track.

And in the discussion, I heard the engineer say that the levee -- I thought I heard him say -- the levee was put on one side of the railroad track not over the top, alongside it. So -- and I heard the engineer say that he basically surveyed from another railroad track, and done a lot of figuring and got the location.

And I would like to be able to verify with your staff, at their convenience, that the document that Dan Fua gave me is the one that we're discussing today.

And my concern is drainage. There is going to be, number one, the State built something different than the original property owner, was a railroad track. I know from the experience on my ranch, there is more drainage coming off of the levee than bare ground. I know that you're supposed to have 90 percent compaction on your levee. You're supposed to have a hard surface at the top, which means that there's no water coming off.

So there is additional drainage coming to the landowner's side with the construction of the levee. Now, we're going to construct another road alongside of it. TRLIA's responsibility when they were granted the permit





to reconstruct the levee system to provide with an easement right of way for a maintenance -- operation and maintenance.

The levee has been built, and suddenly we don't have enough room. This is something that the -- I'm speaking to the Board that buildings don't appear instantaneously, that this is something that should have been considered in the construction process. This is something that should be considered not at the end of the project, before it starts.

And I believe -- I don't own any land there. I do own land next to a levee. I believe that it is important that there be proper drainage, both for the levee system and the landowner.

If you're building a system, I heard TRLIA say, "We're not having anything to do with the landowner. He's got to drain the other way". The problem being is you shouldn't block your neighbor. And if the quad sheets show a swale drainage towards the river, Three Rivers should be required to provide a drainage system to get that water that they're blocking to get to the river.

I'm just a landowner. And as farmers, we're not allowed to block our neighbor. If we leveled a piece of land that's going to affect him, we have to provide him with drainage in Yuba County.





And I feel that the cost to draining this small amount of land cannot be astronomical. And since it was large budgets for TRLIA, this is something that should have been budgeted in in the beginning.

And if you have any questions, I'd be glad to answer them. And I thank you very much for the time.

PRESIDENT CARTER: Thank you.

Anyone else wish to address the Board on this item?

Okay. I am going to close the public testimony portion of the hearing.

Ladies and gentlemen, discussion.

LEGAL COUNSEL SMITH: Mr. President, since Mr. King is not here, I think it would be wise for staff to affirm that he was given proper notice of this hearing.

STAFF ENGINEER CALISO: Angeles Caliso, Board staff. You are correct, the -- Mr. King was present at the January 10th -- or I take that back. His sister was present at the community meeting on behalf of Mr. King who is currently ill. And she was present during the briefing and presented the alternatives, and she supported the alternative.

On January 19th, an overnight package was sent out to Mr. King at the address that we have on record. And that provided him with a copy of the staff report and





notification of the meeting.

PRESIDENT CARTER: All right. Any questions, discussion, thoughts, motions?

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: I know when we discussed the last permit, we discussed the drainage. And I know Mr. Hodgkins had a proposal on how to deal with the drainage. Can you refresh my memory, what did we decide to do?

SECRETARY HODGKINS: I think Mr. Carter suggested, and I agreed that the condition for dealing with the drainage is appropriately apart of TRLIA's permit to construct the fence. And I think that makes sense.

VICE-PRESIDENT RIE: And what was your proposal again?

SECRETARY HODGKINS: My proposal fundamentally would be that TRLIA fix -- eliminate trapped water to the maximum extent feasible without having to do any work on private property. So to the extent they can get it out of here within the State's right of way and the highways on either side, they would be asked to do it.

In those instances where there may be ground that's just too low, and the only alternative would be to fill not only our easement, but the property itself, I am not asking TRLIA to do that.

VICE-PRESIDENT RIE: Okay. But the plan is to address this with the actual permit to TRLIA's permit that they're requesting?

SECRETARY HODGKINS: Yeah, I would propose to do that.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Which we will do later on this afternoon as part of 8E.

Any other questions, discussion?

Ms. Suarez.

BOARD MEMBER SUAREZ: I have just a quick comment. And again, this to me is to help clarify. We have heard a couple times already mentioned that the property owners affected participated in the January meeting, and they supported an option. And I just want the property owners to understand that I understand from a perspective of some of them, that supporting an option is probably too strong of a word. That I can understand that some of them feel like they don't have a lot of options.

And we -- I think everybody here understands that. So I just wanted to kind of caution, for the record, that I think, at least this Board member and I believe others, understand that support is not the best of words. That maybe more in terms of realization that there are few options for all of us. And the ones -- the one





before us might be the one that keeps everybody out of a courtroom.

PRESIDENT CARTER: Okay. Any other comments, questions, motions, ladies and gentlemen?

SECRETARY HODGKINS: I'll move approval of staff's recommendation.

PRESIDENT CARTER: Okay. We have a motion to approve staff's recommendation.

Is there a second?

BOARD MEMBER SUAREZ: Second.

PRESIDENT CARTER: And we have a second.

Any further discussion?

VICE-PRESIDENT RIE: Well, the staff recommendation that was put up on the PowerPoint is different than what's in the resolution.

BOARD MEMBER SUAREZ: Correct.

PRESIDENT CARTER: Ms. Caliso, could you bring that up for everyone to see, please.

So the staff recommendation has been modified since our hearing, prior to lunch, to reflect the Board's desires deleting the sixth whereas, which refers to DWR legal reviewing the validity of the -- of granting licenses; authorize the removal, subject to -- of the private fence, subject to Permit number 18690; grant a revocable license to Mr. King for the use of the State





property; authorize a structure owned by Mr. King to remain on State property, subject to permitting; rescind the Notice of Violation; direct staff to file a Notice of Exemption; and authorize the Executive Officer to execute the licenses subject to the concurrence from the Board President.

VICE-PRESIDENT RIE: And I think we should add one more thing. I think the Board should direct staff to assist in the preparation of the permit application.

PRESIDENT CARTER: Okay. Does the motioner and the seconder, are they -- they agree with that?

SECRETARY HODGKINS: The change is to direct staff to assist in the preparation of the application for the permit?

VICE-PRESIDENT RIE: Yes.

SECRETARY HODGKINS: Is that what it was?

VICE-PRESIDENT RIE: Yes.

SECRETARY HODGKINS: I'm okay with that.

PRESIDENT CARTER: Seconder?

BOARD MEMBER SUAREZ: I'm okay with that too.

PRESIDENT CARTER: Okay. The motioner and seconder accept that amendment --

VICE-PRESIDENT RIE: Thank you.

PRESIDENT CARTER: -- addition.

Any other comments, suggestions?





Staff, do you have any comments or suggestions on the Board's proposed action?

STAFF ENGINEER CALISO: No, we don't.

SUPERVISING ENGINEER BUTLER: I do.

PRESIDENT CARTER: Mr. Butler.

SUPERVISING ENGINEER BUTLER: Thank you. I think it would benefit staff if you could clarify, since we are about to have Tier 1B come into play, do you -- are you requesting of them that they must bring any subsequent permits back to you publicly, or if it meets the delegation requirements of Tier 1B, and we come back at the point at which they're in place, do they -- can they go ahead and authorize those under delegated authority that you subsequently may provide? I think that clarity might be beneficial.

BOARD MEMBER SUAREZ: I can take a stab.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: I think it's premature for us to make that determination. Put together a permit, go through the criteria, and if the staff determines that based on the criteria it's one the Executive Officer can proceed with.

PRESIDENT CARTER: Although, we haven't delegated that authority to the Executive Officer yet, I don't believe. We haven't -- the Board hasn't taken formal

action to -- in terms of his delegation to do that.
EXECUTIVE OFFICER PUNIA: That's correct.
SUPERVISING ENGINEER BUTLER: I'm not asking that.
PRESIDENT CARTER: So it would have to come back before the Board until that delegation is granted.
SUPERVISING ENGINEER BUTLER: Correct.
PRESIDENT CARTER: It can come back as a consent item.
SUPERVISING ENGINEER BUTLER: I understand.
PRESIDENT CARTER: We don't have to hear it again, unless there are some other extenuating circumstances.
SUPERVISING ENGINEER BUTLER: Okay.
SECRETARY HODGKINS: But on the other hand, if we delegate the authority, and after you prepare the permit it's one that would fall under that authority, the Board has no objection to your pursuing it as a delegated permit.
PRESIDENT CARTER: Correct.
BOARD MEMBER SUAREZ: I'm sorry. I think that's what the regulations do is delegate under certain circumstances.
SUPERVISING ENGINEER BUTLER: That's correct.
BOARD MEMBER SUAREZ: So once they -- yes, once





the regulations become effective, you can -- and this permit, if it's after that point, you can go through the analysis. And if it doesn't fit the delegated authority, then it comes to us. But the regulations, that's what they do, they delegate.
PRESIDENT CARTER: Okay,
SUPERVISING ENGINEER BUTLER: Yes.
VICE-PRESIDENT RIE: But can we delegate the authority now to issue the permit?
SUPERVISING ENGINEER BUTLER: I'm sorry. I didn't mean to sidebar this that far.
BOARD MEMBER SUAREZ: I think it's premature.
SUPERVISING ENGINEER BUTLER: I simply was looking for clarity -- since the permits will be related to some fairly complex hearings, I was merely looking for clarification as to whether or not you wanted to, in advance, say, by the way, bring back any permits related to this publicly. That was my question.
BOARD MEMBER SUAREZ: It's probably premature. That's a great idea. It's a good thing to start remembering, since soon you'll have that authority, but we haven't even heard -- it's not even finalized yet.
SUPERVISING ENGINEER BUTLER: Correct. We expect it to be.
PRESIDENT CARTER: Any doubt, bring it back to





the Board.
SUPERVISING ENGINEER BUTLER: Okay. Thank you.
PRESIDENT CARTER: Okay. So does everybody understand the motion at this point?
The motion is to approve the staff's recommendation as you see on the screen, with the addition that the staff assist the property owner in the preparation and processing of the Encroachment Permit for the structure.
Any questions?
Does anybody from the public or the TRLIA or RD 784 have any comments on the Board's proposed action?
MR. BRUNNER: No.
PRESIDENT CARTER: TRLIA does not.
784 does not?
MR. FORDICE: Correct.
PRESIDENT CARTER: Okay. Members of the public?
Hearing none.
Mr. Punia, would you call the roll.
EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?
BOARD MEMBER DOLAN: Aye.
EXECUTIVE OFFICER PUNIA: Board Member John Brown?
BOARD MEMBER BROWN: Aye.





EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
VICE-PRESIDENT RIE: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?
BOARD MEMBER VILLINES: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?
BOARD MEMBER SUAREZ: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?
SECRETARY HODGKINS: Aye.
EXECUTIVE OFFICER PUNIA: Board President Ben Carter?
PRESIDENT CARTER: Aye.
The motion carries unanimously.
Then this hearing is adjourned, and we will right away transition into Item 8C.
So I call the enforcement hearing for Carol Miller to order. This is an enforcement hearing as requested by the 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.
We are here to consider approval of Resolution number 12-05 to authorize the removal of a private fence

on State land, grant a license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East Levee, rescind the Notice of Violation.

And, Ms. Caliso, I think to the extent that we don't need to re-present what we have heard in the last two hearings, to the extent that those are -- those facts are identical, just so state for the record, and then proceed with the additional evidence.

(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER CALISO: Thank you, President Carter. So once again, this presentation -- or this item is for Resolution 12-05 as read by President Carter. And this would be for the removal of the fence, subject to Permit number -- once again, this proposed change reflects the two previous hearings, so it would be the first item.

Remove -- authorize the removal of the private fence subject to Permit number 18690; granting the license to Carol Miller for the use of State land -- the use and maintenance of State land that is adjoining the Feather River East Levee; rescinding the Notice of Violation, subject to compliance; and authorizing the Executive Officer to execute the revocable license subject to concurrence and review from the Board President.

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STAFF ENGINEER CALISO: Once again, this one parcel is located in the same vicinity. This is an aerial map of that property. The property boundary is shown in red. And the property is bounded by Riverside to the east and the project levee to the west. The unauthorized encroachments are identified there. And they essentially consist of minor vegetation and a parallel fence.

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STAFF ENGINEER CALISO: The purpose of this action is the same as that it was for the previous hearing for Agenda Item 8A and B, so I will skip through that, but I want to make sure that goes on the record.

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STAFF ENGINEER CALISO: The applicable codes and regulations that are pertinent to this action as well will also reflect the previous two hearings. And that would include the Water -- California Water Code Section 8534, allowing the Board to take enforcement actions, authorize the Board to enforce the maintenance and protection of the levees in a way that it best serves the benefits of the State.

Water Code Section 8708, where the Board has granted assurances to the Army Corps of Engineers.

8709, authorizing -- allow the Board to commence a suit if the respondent fails to comply with the unauth





-- comply with the Board's direction.

And 8710, stating that any encroachment must come before and for approval from the Board before it takes place. And this would be any encroachment on the adopted plan of flood control, including the Sacramento River, which includes the Feather and Yuba Rivers in this case.

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STAFF ENGINEER CALISO: Once again, the California Code of Regulations that are also applicable to this case would be the Section 6A, requiring approval from the Board for any encroachments on -- where there is an adopted plan of flood control.

Section 4(a)(4), which specifically defines what a flood control -- adopted plan of flood control is, and that being -- I'll read it for the record. It's defined as, "A means for a flood control or a reclamation strategy for a specific area that has been adopted by the Board, including the 10-feet of the levee toe, except where an O&M manual has been furnished or real property rights have been acquired by the Board".

Section 19, essentially not allowing any permanent -- any encroachments to be maintained on State-owned land, unless they're specifically approved by the Board via license, revocable lease, or another agreement between the Board and the private owner.





And Section 20, allowing the Executive Officer to initiate enforcement action.

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STAFF ENGINEER CALISO: The background is, for this case, essentially the same as the previous two hearings. So I will skip through that and just make mention that it will refer to Agenda Item 8A and B.

The only difference in this -- with this background would include the date of August 25, 2011, in which the respondent requested a hearing in response to the Notice of Violation that was mailed on August 5th. The remaining dates are -- match the previous hearings, so I'll skip through those.

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STAFF ENGINEER CALISO: The Section 5.2 of the staff report, which was also noted and read for the record at the earlier presentations are also the same. It remains the same for this hearing, so I will skip through that.

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STAFF ENGINEER CALISO: That brings us to the presented alternative -- the proposed alternative for this particular parcel. And that would be to locate the fence at the 20-foot -- at the edge of the 20-foot corridor. It would require the removal of an existing private fence on

State land. And the real estate solution for that would be to grant the revocable license to Ms. Carol Miller for the use and maintenance of the State land; restricting development on that State land, and that would include structures and other features; and the license could be revocable if the public purpose arises in the future; and it would be recorded against the title of the property.

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STAFF ENGINEER CALISO: This is a screen shot of what that property looks -- the property is. So Ms. Miller's property is identified in the sion color on the screen. The shaded -- light shaded brown corresponds to the State-owned parcel and the limits. The corridor is defined in the shaded green. And the existing fence -- it's hard to tell, but it's behind the green -- is identified there in the light green, so it's clearly within that 20-foot corridor.

The area that would be allowed to be used for Ms. Miller's property would be that one shaded in yellow. And the approximate limits at her property would be approximately 10.8 feet from the edge of the corridor to the State right of way.

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STAFF ENGINEER CALISO: Both TRLIA and the Reclamation District 784 support this alternative.





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STAFF ENGINEER CALISO: The CEQA findings remain the same as those noted in the previous two hearings. Those were also noted on staff report Section 6.0

--o0o--

STAFF ENGINEER CALISO: Therefore, staff's recommendation would be -- is to -- for the Board to adopt Resolution number 12-05; to authorize the removal of a private fence on State land, subject to Permit number 18690; granting a revocable license to Carol Miller for the use and maintenance of a portion of State land that is adjoining the Feather River East Levee; rescinding the Notice of Violation, that would be number 2011-272, that is subject to voluntary compliance with this resolution; directing staff to file a Notice of Exemption with the State Clearinghouse; and authorizing the Executive Officer to execute a revocable license that is subject to the review and concurrence from Board President.

And that concludes my presentation.

PRESIDENT CARTER: Thank you. Any questions for Ms. Caliso?

Thank you.

I'd like to invite TRLIA or 784 to come up and address the Board. Do you have any traditional evidence you'd like to present?





MR. BRUNNER: Paul Brunner, the Executive Director for Three Rivers. Evidence is the same, just for the record, as that. We do support the plan. There is no cost to the residents for this action. And we will pay for the real estate documents, and go forward, as I stated before, and we'll continue to work with them. And if there's any questions I'll be glad to respond.

PRESIDENT CARTER: Any questions for Mr. Brunner?

Thank you very much.

MR. FORDICE: President Carter, members of the Board, Steve Fordice, General Manager, RD 784. We also concur and support this plan.

PRESIDENT CARTER: Thank you very much.

Any questions for Mr. Fordice?

Thank you very much.

Okay. I'd like to invite Ms. Miller, if she would like to come up and present evidence.

MS. MILLER: Good afternoon, Board, and thank you for coming to Marysville. I have an indenture here between Decker-Jewett and Bank Company to the Northern Electric, which goes from the north -- the southeast corner of Lot 6 to the Bear River. It shows the exact boundary lines. It shows that it was surveyed from the east bank of the Feather River.

The only time they use the west side to survey





was to use the county road and that was it, which is what they're using Island Road as now. And this indenture is very explicit and it does specify fences going north and south and east and west. So if you'd like to have this, I'll be glad to give it to you. I have a copy on my computer.

And then also at the last meeting, we were supposed to have defined the toe of the levee. Now, the toe of the levee has never been defined at all, so what I did I pulled up the Sacramento River glossary, and the definition of the toe of the levee is the outer edge of the levee base where it meets the levee grade. So that's another thing to take into consideration when you're -- when this process is -- when we're going through this process.

And then also on the easement, it states, "A Notice of Intent to preserve an interest in real property shall be in writing and signed and verified by or on behalf of the claimant. This notice to be filed in the county recorder's office of the county the easement is located".

Now, that has to happen at the time or within 20 years of the abandonment.

I'm getting a little bit nervous, excuse me.

PRESIDENT CARTER: Please, take your time.

MS. MILLER: Okay. Now, if it doesn't happen within 20 years, and if it's not filed in the county that the easement is located, then easement is deemed terminated. The property reverts to the property owners. The easement has been located within the fence since 1947 that I know of. And we're also a mile and a half from the city limit sign, so we're not in a municipality, so it doesn't go back to a municipality either. It goes back to the landowners.

So that's what I have. And the part of the Oliver Tract that was abandoned does include our part of the tract, and that was finalized April 17th, 1956.

So 1976, if the county recorder didn't receive it, they would have removed the easement, because it didn't have any intent to preserve it. And that's what I have.

I have more, but I don't want to bring it up right now.

PRESIDENT CARTER: All right.

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Yes.

VICE-PRESIDENT RIE: Can we look at the document? Would it be okay for us to --

PRESIDENT CARTER: Yes.

VICE-PRESIDENT RIE: -- pass it around.





PRESIDENT CARTER: I think Ms. Miller has agreed to supply it.

MS. MILLER: Yeah -- oh, my voice.

PRESIDENT CARTER: No, your document you called it the indenture. Your document that has the survey coming to the east bank of the Feather River.

MS. MILLER: Yes. This was in 1907 with the bank.

PRESIDENT CARTER: Okay.

MS. MILLER: With Northern Electric and the bank.

PRESIDENT CARTER: And you can supply us -- or can you give that to us?

MS. MILLER: Yes.

PRESIDENT CARTER: Okay.

BOARD MEMBER BROWN: Mr. Chairman, has TRLIA had a chance to see those documents where they're surveying them.

PRESIDENT CARTER: We'll have to ask.

So questions?

BOARD MEMBER SUAREZ: Thank you. Ms. Miller, were you at the January 10th meeting that TRLIA organized?

MS. MILLER: No.

BOARD MEMBER SUAREZ: Did you know about the January -- do I have the date right, January 10th?

PRESIDENT CARTER: Yes.





MS. MILLER: Well, I only had five days to get back up here, and I couldn't get a flight, and I was really sick at that time.

BOARD MEMBER SUAREZ: So neither you or a representative --

MS. MILLER: No, neither one of us were there.

BOARD MEMBER SUAREZ: Were you aware of the options that were presented by TRLIA?

MS. MILLER: No, I was not. They talked about option one, option two and I don't know which --

BOARD MEMBER SUAREZ: You haven't been briefed on that?

MS. MILLER: No.

PRESIDENT CARTER: Mr. Brunner, does that sound consistent with your recollection?

PRESIDENT CARTER: I think let --

MR. BRUNNER: Yes. I don't remember Ms. Miller being at that meeting.

PRESIDENT CARTER: Let's -- okay.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Other questions for Ms. Miller?

BOARD MEMBER DOLAN: Yes. I cannot remember what the date of that document that you call an indenture is?

MS. MILLER: 1907.





BOARD MEMBER DOLAN: 1907.

MS. MILLER: That's when the indenture was made between the bank and Northern Electric.

BOARD MEMBER DOLAN: We have one from 1958 as Attachment H, but --

(Laughter.)

MS. MILLER: I don't mind my age.

BOARD MEMBER DOLAN: I don't know if it supersedes it or not.

PRESIDENT CARTER: Are there questions for Ms. Miller?

Mr. Hodgkins.

SECRETARY HODGKINS: Ms. Miller, I'm trying to be sure --

PRESIDENT CARTER: Your mic.

SECRETARY HODGKINS: I'm trying to be sure I understand what you're trying to tell us. I think, first of all, you're trying to tell us that you don't agree that we have properly located the boundary of the State's land?

MS. MILLER: Correct.

SECRETARY HODGKINS: And then in addition to that, are you trying to tell us that even if we did, it's not the State's land, because when the railroad right of way was abandoned, it should have reverted to --

MS. MILLER: After 20 years, if the intent is not

filed with the county -- intent to -- intent to preserve an interest in the easement.

SECRETARY HODGKINS: Okay, but you understand that this was not an easement to begin with.

MS. MILLER: It's right of way.

SECRETARY HODGKINS: No, the railroad purchased the land in fee in 1907.

MS. MILLER: Right.

SECRETARY HODGKINS: So they owned it.

MS. MILLER: Correct.

SECRETARY HODGKINS: That's different than an easement or a right of way, and I want to be sure you understand that.

MS. MILLER: Okay. No, I do understand, but they were using both the easement and the purchase. Now, the purchase of the property is there, and it shows the exact survey between the bank and northern electric.

SECRETARY HODGKINS: Okay. Well, let me ask a question --

MS. MILLER: And then most of the land was on the river side not on the land side.

SECRETARY HODGKINS: Let me ask a question of the surveyor.

PRESIDENT CARTER: We're going to get to the surveyor issue, I think, and the difference between what





he has come up with and this in a moment. But let's try and wrap up -- or let's continue with Ms. Miller.

Mr. Villines.

BOARD MEMBER VILLINES: Ms. Miller, just a question. Have -- because maybe I misunderstood what you just said, do you -- has anybody briefed you since today being in here where you're just listening to what the options are, on, you know, sort of option one and two?

MS. MILLER: No, nobody has briefed me. I didn't know there was option one or two. I just saw what was on my packet.

BOARD MEMBER VILLINES: Okay. So I get -- just my own process, it would be tough to take a vote unless we had an idea of what you were thinking on those two options, and what others have agreed to, because it seems like we've hit a pretty amicable solution many times. And I'm wondering if that might not be to you as well. I understand that you have an issue about the property line.

But I wonder -- I don't really know how we get around that, but I sure wish we had a chance for you to have a better understanding of what the proposals are, because it may be that there's a chance for a win-win here, because -- I think, right?

Right now, what you're saying is it's a dispute over the property line, but maybe there's a way to work it





out.

MS. MILLER: No, but I haven't had an option to see what the options were. I mean, nobody's told me what the options were on -- and I saw revocable in there. If it said irrevocable, I wouldn't mind.

PRESIDENT CARTER: Okay. Any other questions for Ms. Miller?

Thank you very much.

MS. MILLER: Okay. Thank you for your time.

PRESIDENT CARTER: Thank you. All right. So now we can move on. There were several questions.

Mr. Brunner, you're queued. We're going to need to get your surveyor queued as well, because there are questions there.

Go ahead.

MR. BRUNNER: Sure. I would like to, as Kevin comes forward to talk surveying items, the designs about options, we did notice everyone to come to the community meeting. Not everyone made it to the community meeting. It's difficult for 51 areas to get here.

The two options to know is -- I mean, the best option was the one that we presented here to come forward with the people get the use of the property. The other option that was presented was to put the fence on the State property line, where no one got benefit of any of





the property from the State, and we just kinked around the structures.

Those were the two options. So the best option I think was presented for the residents. So I think it would have been -- if this option didn't work out, I don't think the other one would have been a win-win.

PRESIDENT CARTER: So this question of notice, we just need to resolve. Staff, everyone was properly noticed on this particular hearing? Everyone got the staff reports timely? There were staff recommendations timely?

MR. BRUNNER: Yeah. Well, this particular hearing was your staff's responsibility. I'm talking about the January 10th meeting, the community meeting which was a TRLIA meeting that we held to try to get people to come and explain what we were doing in moving forward.

So your staff did attend that meeting, along with a DWR representative, but it was our outreach effort on January 10th, and we did notice everyone.

PRESIDENT CARTER: Okay. Thank you.

Ms. Caliso, could you go on the record.

STAFF ENGINEER CALISO: Absolutely. Angeles Caliso, Board staff. The December 16th meeting -- letter that went out to the residents that notified them of the

Board decision from the December 2nd meeting, it also notified them the Board was to continue and have the -- was going to conduct the meeting -- the conduct -- the continuation of the meeting would be held here in Marysville and that an agenda would be published at that point in time.

So there's a copy of this letter that was mailed out to all the residents -- a copy of the letter was mailed out to all the residents notifying them of the Board's decision, and that was December 16th. Once the agenda was finalized, a copy of the agenda was mailed out and distributed as well to the residents.

PRESIDENT CARTER: So this letter stated that the --

STAFF ENGINEER CALISO: Let me bring it up on the screen.

PRESIDENT CARTER: Okay.

STAFF ENGINEER CALISO: So this letter on the screen here, it's dated December 16 from our office. And it's essentially a generic letter that went out to everyone of the 51 landowners, which at the bottom of the first paragraph, it identifies -- towards the bottom it says, "The meeting..." -- sorry. "The Board has directed staff to present this plan at the January 26th, 2011 Central Valley Flood Protection Board meeting. The





meeting will be held in Marysville at the following address:", and then it provides the Yuba County Government Center with the address. "Additional details of this meeting will be provided when the agenda is finalized".

BOARD MEMBER SUAREZ: Specific question. The staff report specifically outlines the proposal. When did Ms. Miller get the staff report?

STAFF ENGINEER CALISO: The staff report was mailed out on December 19th via an overnight package.

BOARD MEMBER SUAREZ: So that this staff report that I'm looking at she received on December 19th.

STAFF ENGINEER CALISO: That's correct, yes.

BOARD MEMBER SUAREZ: And again to --

PRESIDENT CARTER: Overnight package, so it probably was received January 20th.

BOARD MEMBER SUAREZ: I'm sorry. So say that again. It wasn't December.

STAFF ENGINEER CALISO: It was January 19th when a copy of the January staff report that is presented to you today was mailed out via overnight to Ms. Miller.

BOARD MEMBER SUAREZ: So that was a week go roughly?

STAFF ENGINEER CALISO: Um-hmm.

BOARD MEMBER SUAREZ: And it included Item 5.3, proposed alternative.





STAFF ENGINEER CALISO: That's correct. The staff report that she received is the staff report that was posted on our website, which also is the staff report that was part of your packages.

BOARD MEMBER SUAREZ: Okay. Thank you.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: Just to follow up on that, that's only six days. Not to be technical or anything, but I believe the requirement is seven.

STAFF ENGINEER CALISO: You're correct. We were running on a crunched timeline. The January 10th meeting was -- all the landowners were notified at the community meeting. And so the plan was that at the community meeting with the landowners present, we would have -- if we had a concurrence on the two alternatives presented, we could move forward. But you are correct, we weren't able to meet the seven-day requirement because of the holiday.

SUPERVISING ENGINEER TARAS: No, there's seven days between the 19 and the 26th.

BOARD MEMBER VILLINES: I think when it's received.

VICE-PRESIDENT RIE: Yes.

PRESIDENT CARTER: Okay. Thank you. All right. So we -- I think we've established notice, at this point, and timing. Now, the question of the surveys and





ownership. So what I'd like to do -- Ms. Miller, we'll give you an opportunity in a moment.

MS. MILLER: Okay. Because I was going to clarify the timeline. I live in San Pedro.

PRESIDENT CARTER: We'll give you an opportunity in a moment.

Okay. So Mr. Brunner, I guess the question is -- and Ms. Miller presented evidence of this 1907 indenture between the bank and Northern Electric showing the survey from the east bank of the Feather River. Can you give us an explanation as to if and how that was incorporated in the -- your survey, and how you established the property lines?

MR. BRUNNER: Sure. We'll work to address that. We looked at many documents. Could we actually see the document and -- as Kevin looks at it and responds to the question as to what -- which one we're talking about specifically?

PRESIDENT CARTER: Who has the copy?

MR. BRUNNER: Well, Kevin, why don't you look at it first.

MR. HEENEY: I do believe this is one that we've looked at in the past. The names ring a bell. Some of the older -- calls to some old survey maps are in the same area. Specifically, how it affects this, I'd have to

review it a little deeper. I've reviewed probably a stack an inch or two deep of similar documents. I don't know though that it's really relevant.

The subdivision, as I tried to explain earlier, that was done in 1921 excluded all the levees, highways, and railroads that are shown thereon. These lots that we're talking about today were further subdivided from a chunk of that subdivision.

If their contention is that we have not located this property line properly, then the measurements of those prior surveyors and engineers and the other ones that I've cited would also all have to be wrong.

As a surveyor, I have to look for the best evidence available. The center line of the railroad is no longer there, so the best evidence is what others before me have done. That's what my survey reflects. That's why I'm not real sure how pertinent this might be.

My recollection, this particular grantor was for most properties either north or south of here. But again, I'd have to review the details. There's several descriptions in here, but I'm not sure it's still relevant.

PRESIDENT CARTER: Questions?

Thank you very much.

BOARD MEMBER BROWN: I have no questions, Mr.





Chairman, but it would seem to me like it is possibly relevant. And to that degree, we need to determine if it is or isn't.

PRESIDENT CARTER: Okay. Any other questions?

Thank you, Mr. Brunner.

I'd like to -- Ms. Miller, if you would want to come up and rebut or add to.

MS. MILLER: I wanted to come up and say the timeline now. I never received anything for the resolutions, but I did receive the packet for the -- for this meeting. And I received that this Tuesday, because I have been going back and forth from San Pedro to here. And then I had -- I was sick for two weeks, and I didn't receive anything, so I had my mail forwarded to here. And then when I get back home, I'll take care of that part of it. But so far, I've been receiving everything, except this one packet on time.

PRESIDENT CARTER: And the one packet that you did not receive on time was --

MS. MILLER: Was this last one of this meeting, but I didn't receive anything from the meeting of January 10th.

PRESIDENT CARTER: You did not receive?

MS. MILLER: I did not.

PRESIDENT CARTER: So you did not receive





anything for the meeting on January 10th and you did not --

MS. MILLER: From the meeting.

PRESIDENT CARTER: Oh, from the meeting.

MS. MILLER: Yeah, right. I received the letter that we were going to have the meeting January 10th, but that was the time frame where I was sick, and I couldn't make it up here, so -- but I did receive this packet, but I received it on Tuesday, because it was forwarded to me.

PRESIDENT CARTER: All right. Very good.

MS. MILLER: That's what I wanted to say.

PRESIDENT CARTER: Thank you for clarifying that.

Any other questions?

Ms. Smith pointed out to me, reading from Title 23, Section 21, regarding hearings, 21(d), "Written notice of the hearing shall be mailed to the respondent and each other party at least 10 days prior to the date of the hearing. Respondents and other parties shall be mailed a copy of any staff report or recommendations on enforcement proceedings at least 10 days prior to the hearing". That's what our regulations state. That's Title 23, Section 21, Items (d) and (e). I just want that to go on the record and for everybody to be aware of that.

So ladies and gentlemen, any further discussion?

VICE-PRESIDENT RIE: I move to continue this





hearing.

PRESIDENT CARTER: Okay. We have a motion to continue the hearing.

BOARD MEMBER DOLAN: I'll second that.

PRESIDENT CARTER: And there's a second.

Any discussion?

BOARD MEMBER SUAREZ: Sure. What's the rationale?

PRESIDENT CARTER: Ms. Rie, do you want to tell us why you want to continue the hearing?

VICE-PRESIDENT RIE: Because Mrs. Miller has not had a time -- has not had an opportunity to review her options, and she did not receive the staff reports before 10 days.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: My question then becomes is this a defect of all the actions that we have before us? Did all the staff reports go out late?

PRESIDENT CARTER: That's a question for staff.

STAFF ENGINEER CALISO: All staff reports were mailed out on -- and distributed on January 19th.

BOARD MEMBER SUAREZ: Ms. Caliso, did they go out within the 10 days or not?

STAFF ENGINEER CALISO: They met the seven days.

SUPERVISING ENGINEER TARAS: President Carter,

this is Curt Taras, Chief of Enforcement, which Section are you referring to in Title 23, is it 21(d)?

PRESIDENT CARTER: Section 21 (d) and (e).

SUPERVISING ENGINEER TARAS: Okay. Because the evidence shows that written notice of the hearing was mailed in December, as well as the previous staff report that was also mailed in December that contained a lot --

BOARD MEMBER SUAREZ: The staff report that this Board is considering today, when was that mailed?

SUPERVISING ENGINEER TARAS: January 19th.

PRESIDENT CARTER: January 19th.

BOARD MEMBER SUAREZ: And that's the case for all the actions before us?

SUPERVISING ENGINEER TARAS: The Board's Executive Committee approved the agenda, I believe, on the 18th, and the reports were mailed on the 19th.

PRESIDENT CARTER: Okay. So the answer to the question is January 19th. And if the question is did it meet the 10-day notice period for the regulations? The answer would be no, is that correct?

STAFF ENGINEER CALISO: If I may just add one thing to that. I did have Email communication with Ms. Miller. I don't have printed PDFs of the emails that I did send to her, but I know that they were before the -- before the January 19th deadline, in which I sent --





distributed to her and Ms. LaGrand and Mr. Monty Hecker were all included in that email notifying them of the Board -- the meeting and the Board's decision and the distribution of the staff reports.

So I wanted to make sure that, yes, you are correct. We didn't meet the 10-day deadline for the staff reports, but we did meet the seven days for distribution for all 51. So all 51 staff reports were mailed out on the 19th.

PRESIDENT CARTER: I don't know where you're getting the seven days. Where does that come up in the regulations under Hearings?

VICE-PRESIDENT RIE: That's probably my fault, because I quoted seven days 20 minutes ago incorrectly.

PRESIDENT CARTER: 21(e) says, "Respondents and other partners shall be mailed a copy of any staff report or recommendation on enforcement proceedings at least 10 days prior to the hearing". I don't see a reference to seven days.

LEGAL COUNSEL SMITH: The seven day requirement is in Section 13, which relates to permits.

PRESIDENT CARTER: Permits. Okay.

SUPERVISING ENGINEER TARAS: President Carter, staff would like to propose, because the respondent has gone to the expense to fly up from southern California,





that perhaps they'd like to have the hearing conclude today with the full evidence and vote on it. It's their option, but they may have an input into that to avoid having to return for a future hearing.

PRESIDENT CARTER: Well, let's hear from the respondent in that regard.

Ms. Miller.

MS. MILLER: Yes.

PRESIDENT CARTER: There's a motion before the Board right now to continue the hearing because the notice requirements in our regulations were not met properly. That means that we did not supply you sufficient notice for you to be able -- a 10-day notice for you to be able to review the documents, the staff recommendations and whatnot that we are considering in this hearing.

And the Board is considering continuing the hearing, which means that it would -- we would continue the hearing and then come back in a month's time and rehear the same evidence we've heard, along with any additional evidence that comes to light between now and then. And so that is one option.

The other option is, if you would prefer that we conclude the hearing today, at your -- you can tell us that and we will continue.

MS. MILLER: I would prefer to continue.





PRESIDENT CARTER: You'd prefer to continue the hearing today or wait and revisit it in a month?

MS. MILLER: Wait in another month, yes.

PRESIDENT CARTER: Okay.

MS. MILLER: I would rather do -- I'd rather wait for another month, so I can see what my options are.

PRESIDENT CARTER: Okay. That's fine. That will give the surveyor a chance to review the documents that Ms. Miller provided. And we would appreciate any evidence that you supply today or any additional evidence you'd like to supply, please supply that to the staff, so that all parties are aware of it, ahead of the hearing.

MS. MILLER: Okay. I can do -- can I do that over the Internet, like --

PRESIDENT CARTER: Absolutely. Absolutely.

MS. MILLER: Okay. That will be fine.

PRESIDENT CARTER: Okay. So ladies and gentlemen, we have a motion and a second before us. The motion is to continue this hearing.

Any discussion?

BOARD MEMBER SUAREZ: I'd like a quick discussion.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: It seems to me that, as a matter of fairness, the way we treat Ms. Miller needs to

be the way we treat everybody else. So I'd like to have some discussion then what do we do with the action we did earlier today, and the action -- the remainder of the actions before us?

PRESIDENT CARTER: So our options are to vacate the decision that we made earlier, with respect to Items 8A and 8B, and then rehear those at the same time we rehear the Items 8C and 8D at a future date, should the Board choose to continue, or we can let those stand. Are there any other options that you're aware of?

BOARD MEMBER VILLINES: Mr. President, is it an option to -- the ones that were done today to simply move to a consent agenda item for next month? Could that be done? Not in the case of Mrs. Miller who wants to have a hearing. But for the other actions that we took, we would move it and just put it onto the Consent Agenda, so that we're not actually having the hearings, because we've heard them. I mean -- and then, of course, during that month if the decisions we've made, if somebody opposes them, they can be pulled.

So at least we're not setting up a series of hearings, that I think that maybe nobody wants to have, because I do believe we actually got to a win-win on this through the process, but --

PRESIDENT CARTER: That's a legal question. It





depends on -- well, Ms. Smith, could you weigh in on that, please.

LEGAL COUNSEL SMITH: I question the idea of putting an enforcement hearing on consent. I don't think that would be wise. However, at least the first decision the Board made, the notice issue was not raised and therefore it was waived. So that decision can stand, unless the Board wants to reopen it. I have a concern about the second item, because Mr. King was not present.

BOARD MEMBER VILLINES: Correct, but even on the first one, did they waive it?

BOARD MEMBER SUAREZ: She didn't --

BOARD MEMBER VILLINES: I mean, we don't know that they waived it.

BOARD MEMBER SUAREZ: I raised the issue here.

BOARD MEMBER VILLINES: Yeah.

BOARD MEMBER SUAREZ: Not Ms. Miller.

BOARD MEMBER VILLINES: So they could bring it back up and say well, we weren't informed either. That's -- it wasn't waived. Nobody waived it, and nobody received the packet in the timeline that you stipulated.

PRESIDENT CARTER: Our counsel is just saying that potentially we could let the first one stand. That's at the discretion of the Board.

Any other comments, questions?





VICE-PRESIDENT RIE: President Carter, I would recommend that we let the two items 8A and 8B stand, but leave open the possibility that someone could come back and ask for reconsideration. And if, at that time, someone did ask for reconsideration, we could rehear either one of those items next month.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: But I don't think that knowing that we don't have proper notice, I don't see how we can proceed with the remainder of the items.

PRESIDENT CARTER: Okay. Other comments?

BOARD MEMBER VILLINES: Just to clarify, because I like the solution you came up with, I just want to make sure I understand it, so I can vote appropriately. What you're saying is, is that we would notice the folks that we've already voted on saying -- I mean, somehow we have to inform, so if they do want to have it pulled, they could, not that they will. I think they'll agree, but that way at least we've noticed them. And then we're not -- because what I don't want to do personally is vote to just say yes to what we've done today and then not this one. I do want to make sure that we, like you, articulate it are going to say well those will stand. The ones that we can say stand, but we need to notify them that somehow that the packet didn't come in time and is that a problem





for them.

BOARD MEMBER DOLAN: Mr. Chairman.

PRESIDENT CARTER: Ms. Dolan.

BOARD MEMBER DOLAN: I think there's another distinction with this one, if I might. I'm kind of reluctant at my first meeting to be accused of having done something unfair in the last half hour.

Mrs. Miller has brought forward a document that appears to be new to us and to the surveyor. It also appears to be remarkably similar to documents that are attached to ours, except that it doesn't have exactly the same names. It has the same year, same descriptions, I think. And the surveyor said "looks like it", "likely", "might be". Those are a little more vague than what he said before of some more -- some more certainty, so she brought them forward.

The other distinction is for a variety of reasons, Mrs. Miller has not been involved. And everyone else said I was at this meeting and I did this, I went there, I got talked to. Maybe, it's her own personal circumstance. I think -- from my perspective, I think all of the things that I've seen, read, the transcriptions, the efforts, the staff reports, the analysis show we probably are going to make the similar decision. And I'll tell you that, unless you come up with something that's

like a Ah-ha.
But just in the abundance of fairness, because she has not been involved as the others are, let's just have a chance for the surveyor to read this one new indenture that probably got resubdivided and changed with future ones, but just give him that chance. And I think that's a distinction of the previous two hearings.
PRESIDENT CARTER: So --
BOARD MEMBER DOLAN: So I agree with Ms. Rie, let those stand and continue this one.
PRESIDENT CARTER: Let those stand and continue this one.
VICE-PRESIDENT RIE: Okay. Let me withdraw that motion and make a new motion. I move that we continue Mrs. Miller's hearing, and in consideration of hearing 8A and 8B, we let those stand, but as Mr. Villines recommended, we should provide notice to those 48 respondents and Mr. King that we have made a decision. However, if they would like us to reconsider those decisions, we could certainly do that. And I think that was it.
BOARD MEMBER DOLAN: Rehear.
VICE-PRESIDENT RIE: Pardon me?
BOARD MEMBER DOLAN: I would second that, if you'd say rehear rather than reconsider.





VICE-PRESIDENT RIE: Rehear.
PRESIDENT CARTER: The enforcement process calls for a -- actually, it's a reconsideration process, as it's stated in the regs, and so I --
VICE-PRESIDENT RIE: Reconsider.
PRESIDENT CARTER: -- think reconsideration is the -- or reconsider is the appropriate word.
BOARD MEMBER DOLAN: All right.
VICE-PRESIDENT RIE: Reconsider.
BOARD MEMBER DOLAN: Okay. Thank you.
PRESIDENT CARTER: All right. So Ms. Rie has withdrawn her original motion and put forward another motion. Is there a second for that one?
BOARD MEMBER DOLAN: Yes.
PRESIDENT CARTER: Ms. Dolan seconds. Okay. Discussion.
BOARD MEMBER SUAREZ: Yeah, and then what do we do with LaGrand, same defect, same problem? Are we continuing that one, is that part of your motion also, Ms. Rie.
PRESIDENT CARTER: That would be a postponement, not a continuation, I guess.
BOARD MEMBER SUAREZ: So we'll deal with it that way.
VICE-PRESIDENT RIE: And if I could add that we





postpone --
PRESIDENT CARTER: Actually, it's continued from December 2nd, so it would be continued again, you're right. I'm sorry.
VICE-PRESIDENT RIE: That we further continue Item 8C, Carol Miller, as well.
BOARD MEMBER SUAREZ: And LaGrand.
PRESIDENT CARTER: Carol Miller and Susan LaGrand.
VICE-PRESIDENT RIE: I'm sorry. Continue the enforcement hearing for Susan LaGrand as well.
PRESIDENT CARTER: Okay. So that's the motion. Is there -- and do you agree with that modification, Ms. Dolan?
BOARD MEMBER DOLAN: Yes.
PRESIDENT CARTER: Okay. Just as a point of reference, Ms. LaGrand, do you -- does postponing the hearing or continuing your hearing present a hardship for you, postponing it for another month?
MS. LaGRAND: It shouldn't no.
PRESIDENT CARTER: Just for the record, Ms. LaGrand said it shouldn't -- "it shouldn't, no".
MS. LaGRAND: It should not.
PRESIDENT CARTER: Okay. Very good. Any other question, discussion?





Mr. Hodgkins.
SECRETARY HODGKINS: Item 8A, while it's not listed as an enforcement item, it is in Resolution 41 Notices of Violation, is it okay?
LEGAL COUNSEL SMITH: I believe it's defensible, because the issue was not raised during the hearing, and that's a requirement. You need to exhaust your arguments before the Board, and that was not done.
SECRETARY HODGKINS: Okay.
PRESIDENT CARTER: Okay. Any other questions, discussion from the Board?
Sir, would you like to address the Board?
MR. HECKER: Sure.
PRESIDENT CARTER: Please approach.
MR. HECKER: And I have another person here who couldn't make it this morning because of his age and that and his health, Mr. Arnold Craft.
PRESIDENT CARTER: Can you identify?
MR. HECKER: My name is Monty Hecker, and I was here this morning. And, no, it didn't come up. You know why it didn't come up? Because we didn't know it was an issue. I think it all should be set for another month, only because it's the right thing to do. And if this paperwork turns out, we can address it at the same time. That's all I have.

PRESIDENT CARTER: Thank you. Is there anyone else from the public that wishes to address the Board?

Okay. Ladies and gentlemen, we have a motion before us. The motion is to continue the enforcement hearing for Carol Miller and Susan LaGrand, and for clarification let the Board's decision on Item 8A, 48 Notices of Violation, and 8B, the resolution enforcement for Mr. Michael King to stand with staff notifying them that they have an opportunity to -- for reconsideration of the Board's decision.

Did I miss anything?

VICE-PRESIDENT RIE: No. But, Ms. Smith, since we now know that we have a request for a reconsideration, would you recommend that we change our motion?

PRESIDENT CARTER: Well -- okay.

LEGAL COUNSEL SMITH: You know, actually there is something that I'm having a bit of a second thought on this, in that I don't know if a court would find that a waiver is proper when notice wasn't properly given in the first place.

BOARD MEMBER VILLINES: Right.

PRESIDENT CARTER: So, Ms. Rie, would you like to amend your motion?

VICE-PRESIDENT RIE: Yes. I'm going to withdraw the last motion, and I move to vacate Enforcement Hearing





8A, the 48 Notices of Violation, 8B, the Enforcement Order for Michael King, postpone and continue the enforcement hearing for Carol Miller, postpone and continue the enforcement hearing for Susan LaGrand.

PRESIDENT CARTER: Okay. Is there a second for that motion?

BOARD MEMBER VILLINES: Second.

PRESIDENT CARTER: We have a second from Mr. Villines.

All right, any other discussion?

BOARD MEMBER SUAREZ: Mr. President, if we could clarify that all the respondents understand that our next meeting will be in Sacramento, so we will not -- it would be likely that we'd be here in Marysville for those hearings, and the issue of hardship that -- you understand the next time we meet we'll be in Sacramento, not here.

PRESIDENT CARTER: That's not fixed in stone, but that's a distinct and very real possibility.

Any other questions, comments from the Board?

Staff, do you have any comments?

Staff does not.

Mr. Punia.

EXECUTIVE OFFICER PUNIA: I just want to apologize that I think we -- due to this not properly noticing, we wasted a lot of public and the Board's time,





so we'll make sure it doesn't happen again.

PRESIDENT CARTER: Okay. Any comments from the public on the Board's proposed decision?

MS. LaGRAND: It's not on your decision. It's on something else.

PRESIDENT CARTER: Is it -- does it relate to this?

MS. LaGRAND: It relates to this.

PRESIDENT CARTER: Thank you.

MS. LaGRAND: Hi. I'm Susan LaGrand. I'd like to thank you for coming here, first off. What my comment was about when you first approved the 48, the proposal, this gentleman right here held a paper up, turned around to the man in the herringbone jacket, fist pumped, mouthed Woohoo, then a few seconds put the paper up again and mouthed Woohoo again.

Now, I might have done that if the 49ers had won Sunday, but I found that behavior immature, unprofessional, and just rude. And I think he demands -- or I think we should all get an apology from him.

Thank you.

SUPERVISING ENGINEER TARAS: Ms. LaGrand, I -- if there was any -- I -- if there was any other witnesses to a fist pump, I apologize for any misconstruing that I looked back at the Section Chief and -- I did not, but I





did look back at this other Section Chief.

MS. LaGRAND: Yes, you did, sir.

SUPERVISING ENGINEER TARAS: Okay. I apologize for anything that might have been done or said.

Thank you.

PRESIDENT CARTER: Okay. We have a motion and a second before us.

Mr. Punia, would you call the roll.

EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?

BOARD MEMBER VILLINES: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?

SECRETARY HODGKINS: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?

BOARD MEMBER DOLAN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

Board Member Teri Rie?

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





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





us here.
(Thereupon the hearings on Items 8A, B, C, D, and E concluded.)





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

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY EDMUND G. BRC

**CENTRAL VALLEY FLOOD PROTECTION BOARD**
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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

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., GOVERNOR

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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

Jay S. Punia
Executive Officer

*"Celebrating 101 Years of Flood Managem*

# 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**
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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

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., GOVERNOR

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**Sent via Overnight Mail**

February 17, 2012

Ms. Carol Miller
2110 Virginia Lane
Olivehurst, California 95961

Subject: March 2, 2012 Agenda Item 4C Staff Report
Property Owner: Ms. Carol Miller
Property Address: 5676 Riverside Drive, Olivehurst, California 95961

Dear Ms. Miller:

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 10:20 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,

Jay S. Punia

Jay S. Punia
Executive Officer

Attachments: As referenced above

cta Engineering & Surveying
Civil Engineering ■ Land Surveying ■ Land Planning

3233 Monier Circle
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# 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

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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.

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- 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

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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.

<u>The exhibit prepared by Hecker showing my June 2011 survey vs. my Recorded Survey of January, 2012, attached hereto as Exhibit 'F'</u>

- 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.

<u>The newly found monument photographed by the Hecker's attached hereto as Exhibit 'G'</u>

- 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.

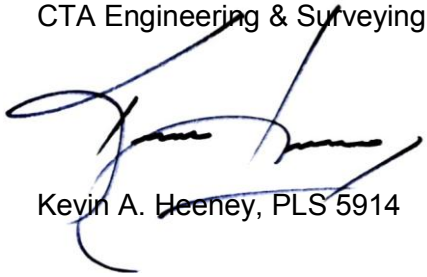
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FAX 638-2479
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In closing, I would like to reiterate the point I tried to make at the January 26, 2012 hearing. My survey is consistent with the 1921 Yuba Gardens Subdivision, the 1939 Subdivision 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.

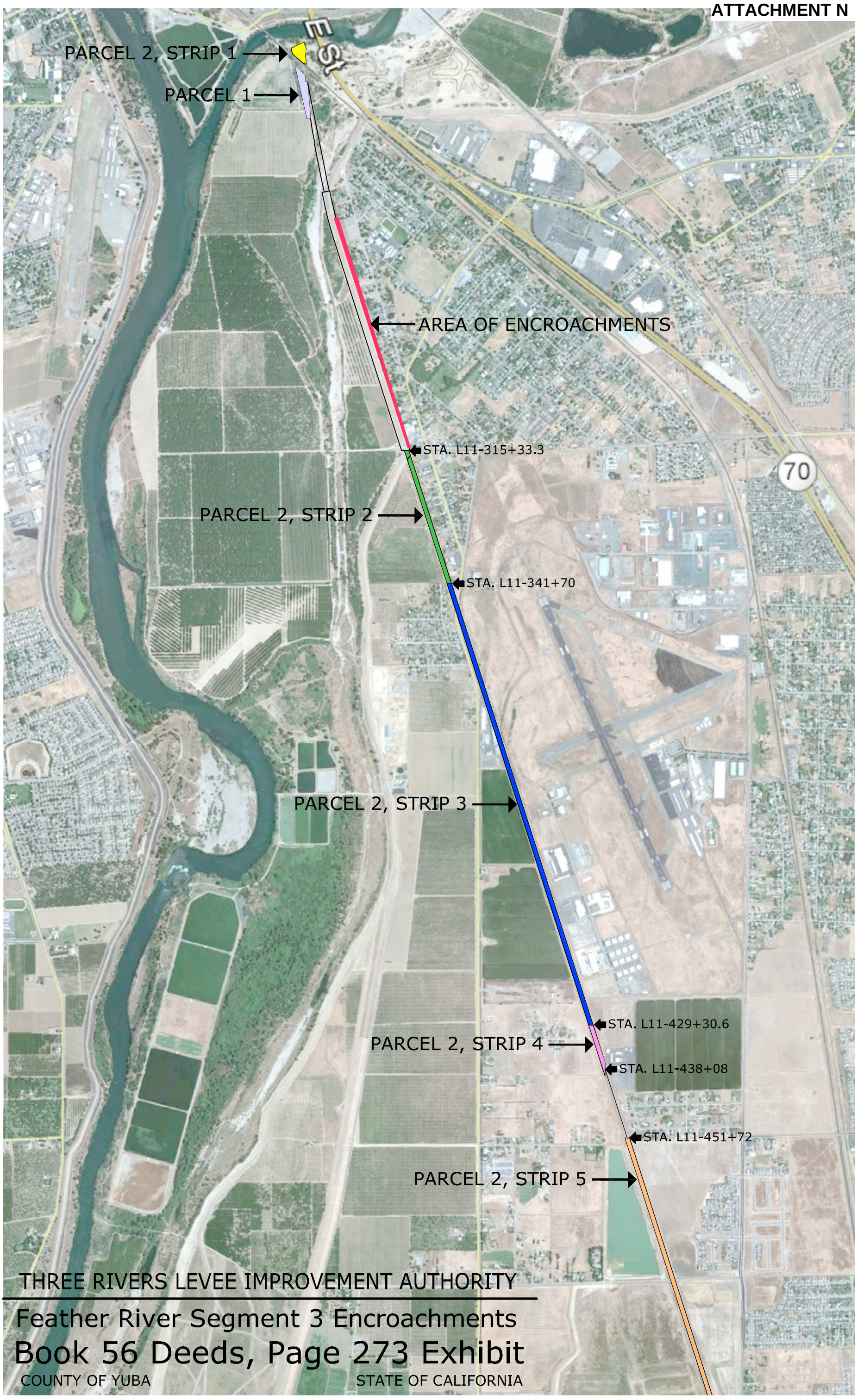
Respectfully submitted,

CTA Engineering & Surveying



Kevin A. Heeney, PLS 5914








M:\06-008-005\EXHIBITS\ENCROACHMENTS\56-273 Exhibit.dwg, 1/31/2012 10:31:28 AM

Corp Seal

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 Casher 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.----------

L. A. Lanning 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 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 ensealing 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 I. 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-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 baing 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 owne-d 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 paral-lel 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 know 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

less, to the line of fence dividing the land herein described and conveyed from the land lately owned by Burkhart Hunwiler and afterwards by the Estate of Edwards Woodruff, deceased thence North forty (40) chains, more or less, to the line of fencedividing 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 Packerd 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 Packerd 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. Packerd, 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 South 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. Packerd and the property now or formerl 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. Packerd 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 Westerly 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.Packerd, 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 McGowan 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 JamesClark 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 Clerk 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 followinf described strips or parcels of land; Two Strips of land each thirty (30) feet in width, one on each side of and adjacent and paralla 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 les 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 COMPANYS 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 Companys 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 landeach 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 (600) feet in width, one on eah 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, Tifft 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 six 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. Tifft 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

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 lan 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 beong 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 L11-672+26 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 L11-691+37.41 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 L11-691+36.41 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 L11-699+71 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 particular-ly 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 South-east 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 boun-dary 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 fofty (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 and parallel 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.----------

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 ClineBull, said corner being fifty-two and six tenths (52.6) feet measured Easterly along the boundary line between the Robert Johnston property andthe property now or formerl owned by Cline Bull from Engineer Station Lll-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 )° 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 Lll-842+70 of said survey; thence East eighty (80) feet; thence North 0° 13' East, forty (40) feet from and parallel to said survey, onethousand three hundred twenty-four (1324) feet to a point South 89° 47' East of Engineer Station Lll-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 Lll-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) feetiin width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station Lll-752+46 to Engineer Station Lll-778+88. Said strip or tract of land containing eight and forty-nine hundredths (8.49) acres, more orlless. 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-

ecuted 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.----------

Corp Seal

Decker Jewett & Co Bank By A.C.Bingham, Cash.----------

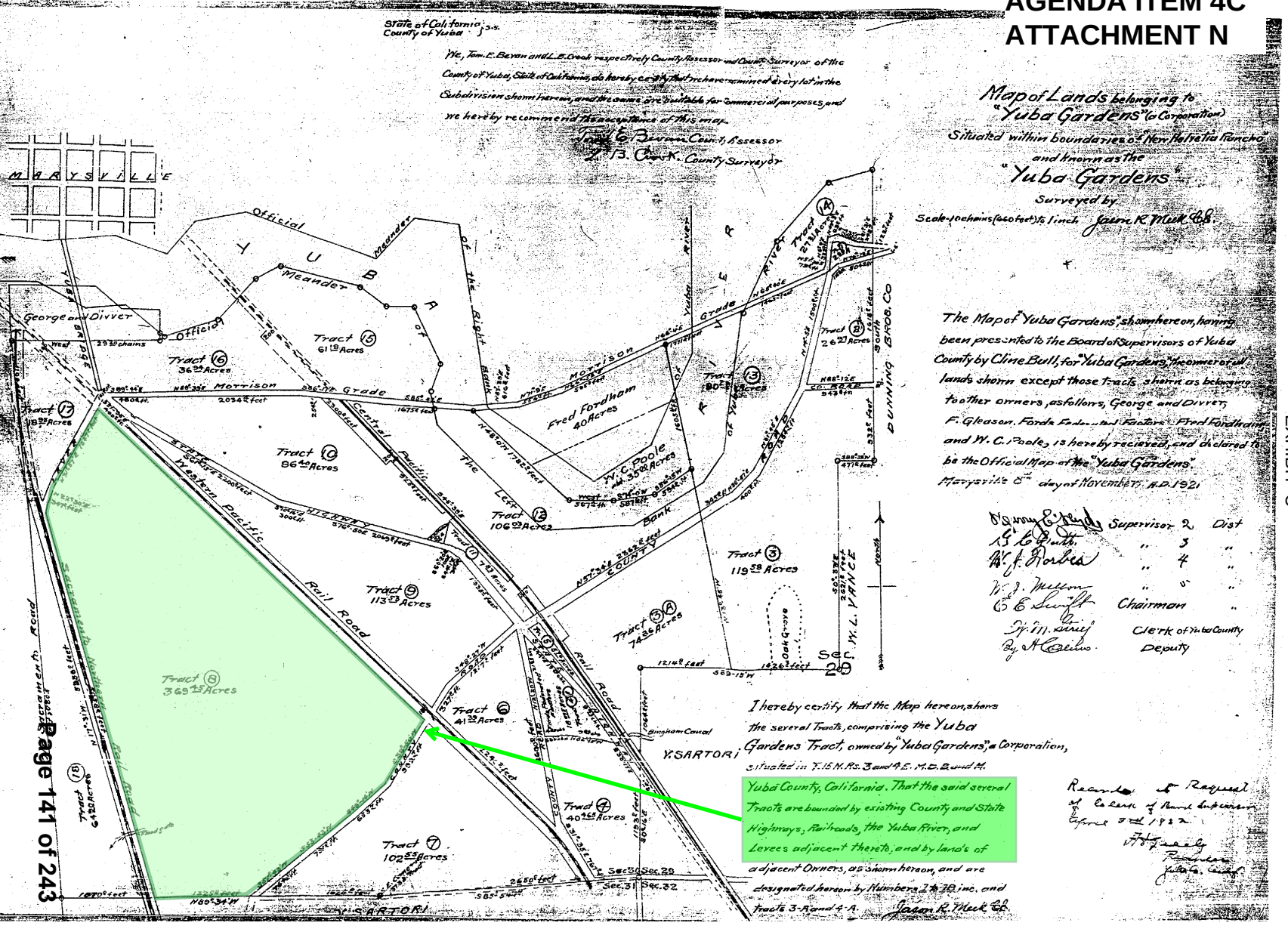
STATE OF CALIFORNIA, )
)SS
County of Yuba, )

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 HEREOF, 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, 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, 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, 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 ensealing 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 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



State of California } S.S.
County of Yuba

We, Tom. E. Bevan and L. B. Creak 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 hereon, and the same are suitable for commercial purposes and we hereby recommend the acceptance of this map.

Tom E. Bevan County Assessor
L. B. Creak County Surveyor

Map of Lands belonging to "Yuba Gardens" (a Corporation)
Situated within boundaries of "New Helvetia Rancho"
and known as the
"Yuba Gardens"
Surveyed by
Scale 4 chains (264 feet) to 1 inch Joseph R. Mack C.E.

The Map of "Yuba Gardens" shown hereon, having been presented to the Board of Supervisors of Yuba County by Cline Bull, for "Yuba Gardens," the owner of all lands shown except those tracts shown as belonging to other owners, as follows, George and Divver, F. Gleason, Forde Fenton and Foster, Fred Fordham, and W. C. Poole, is hereby received, and declared to be the Official Map of the "Yuba Gardens"
Marysville 6th day of November A.D. 1921

Supervisor 2nd Dist
" 3 "
" 4 "
" 5 "
Chairman "
Clerk of Yuba County
Deputy

I hereby certify that the Map hereon, shows the several Tracts, comprising the Yuba Gardens Tract, owned by "Yuba Gardens," a Corporation, situated in T. 15 N. Rs. 3 and 4 E. M. D. Base and M.

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 land's of adjacent Owners, as shown hereon, and are designated hereon by Numbers 1 to 20 inc. and Tracts 3-A and 4-A.

Joseph R. Mack C.E.

Recorded at Request of Clerk of Board of Supervisors 7th 1922
Recorder
Yuba Co. Calif.

Y. SARTORI

EXHIBIT 'C'

AGENDA ITEM 4C
ATTACHMENT N

EXHIBIT 'D'

BOOK 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 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

# 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 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.

Western Pacific Railroad N48°35'W 5842.19

S35°35'E 3426.7' to S.E. corner Sec. 30, T.15N., R.4E., M.D.B.&M.

ALICIA AVE
WILLOW AVENUE

RIVERSIDE AVENUE

Sacramento Northern Railway

S17°15'E 4232.71

S10°49'E 161.97

S22°36'W 77.78

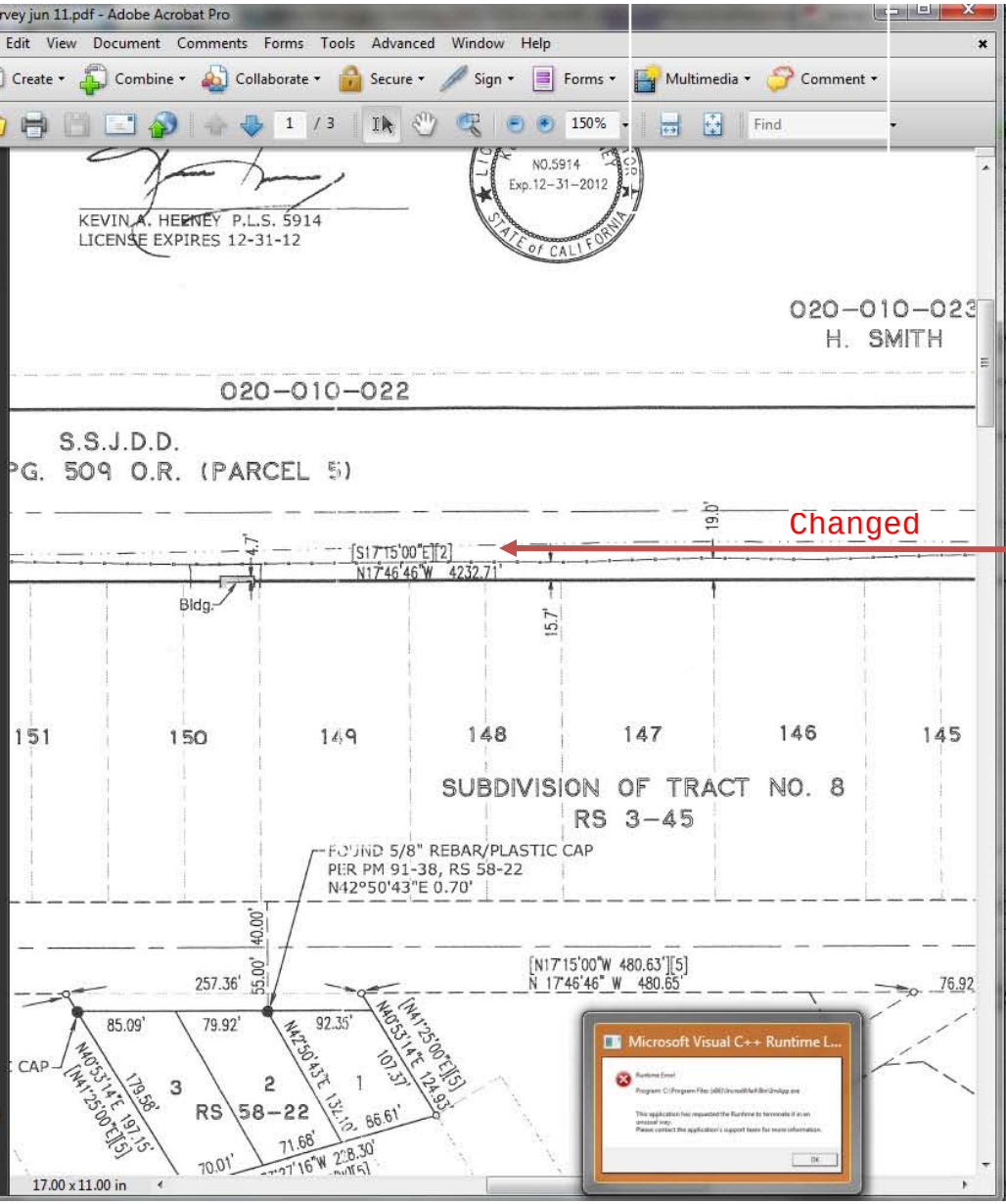
S18°16'W 293.64

S12°02'E 636.24
Long Chord. Radius 5669.6

SHEET 1 of 2 SHEETS.

Survey filed June 2011

Survey filed Jan 2012



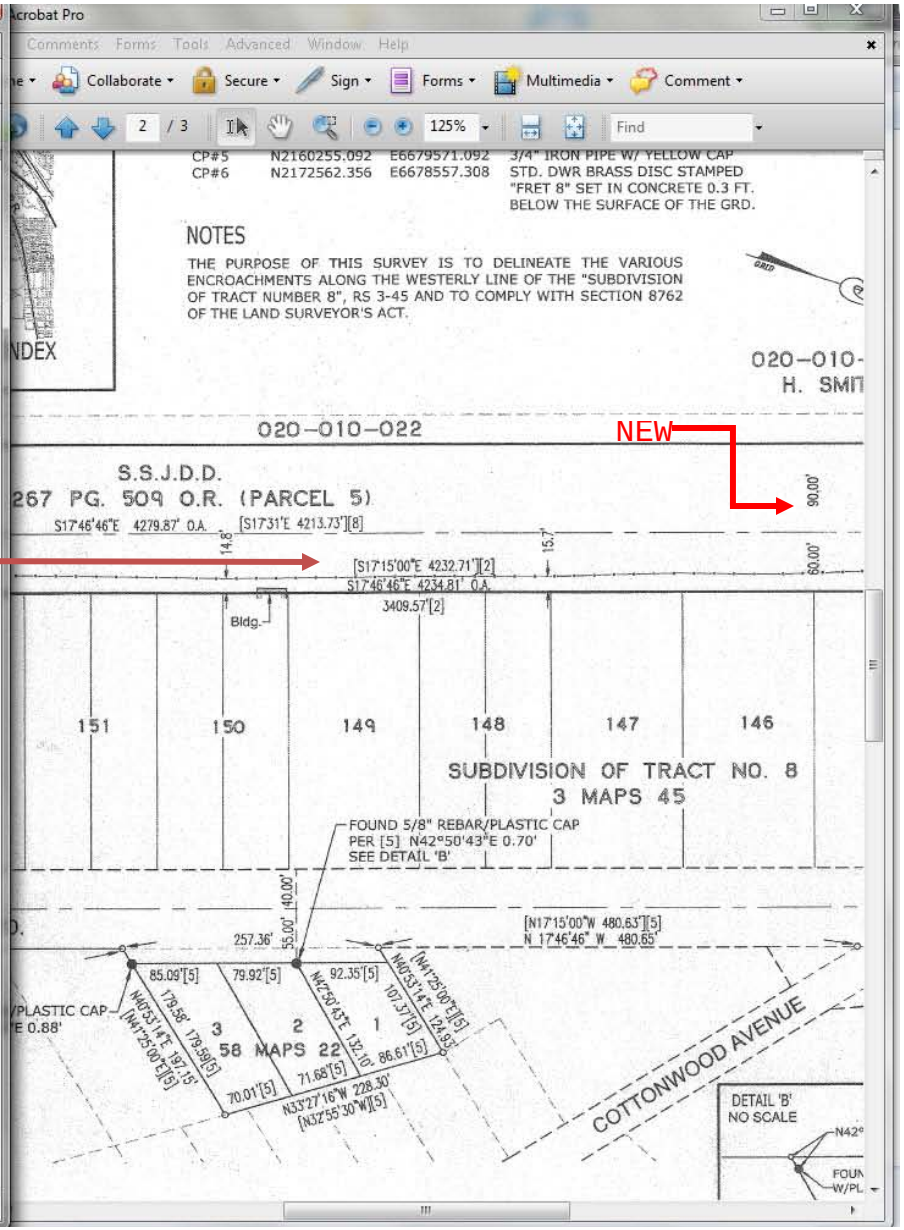



EXHIBIT 'G'


Marker found at north corner of Feather River Levee
North of Island Avenue - was completely covered whe
found 1-17-2012

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY **EDMUND G. BROWN JR.,** GOVERNOR

**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, 3012 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.

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.

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.

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.

Questions:

Were There 2 Survey Maps and if so Why?

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?

Why was the toe of the Levee left off the Recorded Survey of January 2012?

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?

Since Northern Electric Railway built the Fence at the side of the strip of land, wouldn't the the fence be on the boundary or property line?

Because of the easement in the front, by the County of Yuba, how is it justified to move our properties into the easement?

Why are the properties being moved from North to South, slightly?

By Law can you change our 0.424242 Acres or 280ft that is stated in our Deed?

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.

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?

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?

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.

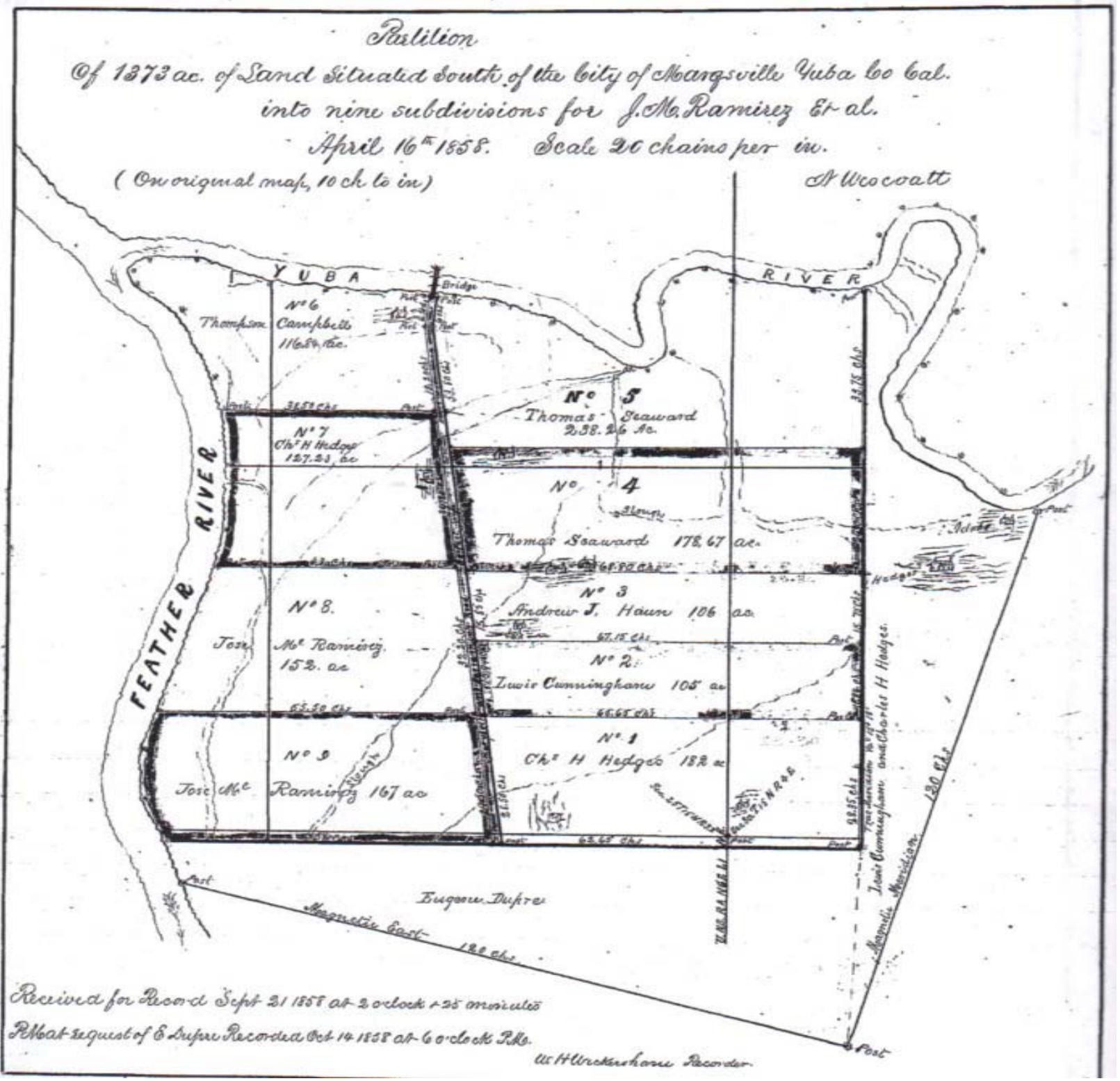


EXHIBIT B





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.----------

L. A. Fleming 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 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 ensealing 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 I - 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 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 LI5-236+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 LI5-235+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 abandonsd 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 Duffiey, 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 (1200 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 L11-313+33.3 or 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 L11-313+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 know 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

less, to the line of fence dividing the land herein described and conveyed from the land lately owned by Burkhart Buehler 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 South 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 Westerly 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.Packerd, 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 19° 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 McGowan 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 JamesClark 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 lese. Also the right to use for borrow purposes the followinf 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 landeach 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 (600) feet in width, one on eah 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, Tifft 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 six 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. Tifft 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

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 lan 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 beong 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 L11-672+26 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 L11-691+37.41 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 L11-691+36.41 E.S./B.C. of said survey; thence to the right in 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 L11-699+71 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 particular-ly 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 and parallel 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.----------

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 ClineBull, said corner being fifty-two and six tenths (52.6) feet measured Easterly along the boundary line between the Robert Johnston property andthe property now or formerl owned by Cline Bull from Engineer Station Lll-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 )° 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 Lll-842+70 of said survey; thence East eighty (80) feet, thence North 0° 13' East, forty (40) feet from and parallel to said survey, onethousand three hundred twenty-four (1324) feet to a point South 89° 47' East of Engineer Station Lll-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 Lll-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 seventeen 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) feetiin width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station Lll-752+46 to Engineer Station Lll-778+88. Said strip or tract of land containing eight and forty-nine hundredths (8.49) acres, more orless. 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-

ecuted 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.----------

Corp Sec

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 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. S. 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, 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, 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 ensealing 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 strip or tract of land situate in the County of Yuba, State of California, namely: A strip or tract of land as hereinafter described, bei on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railro

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 ½ 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. - - -

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=L14-273 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 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 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., Ema 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 annexed 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 JOly 20, 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, Hand 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 instrum 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. - - - - - - - - -

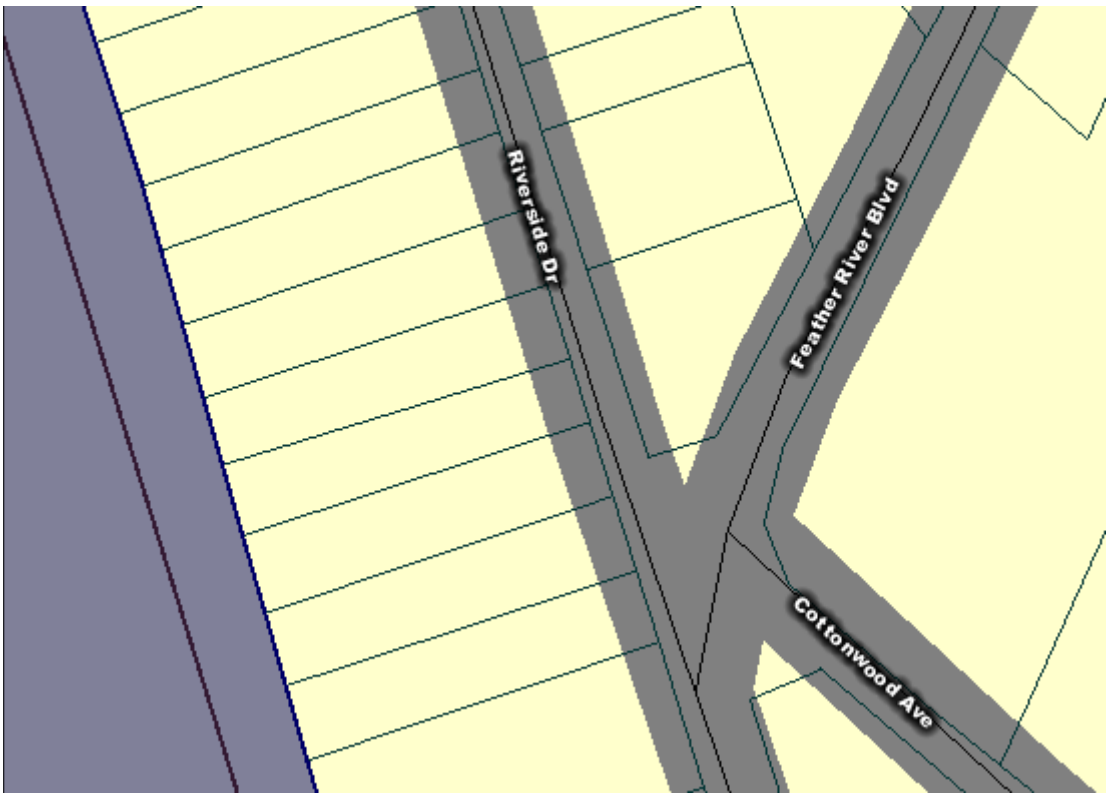
State of California )
County of Yuba ) ss.

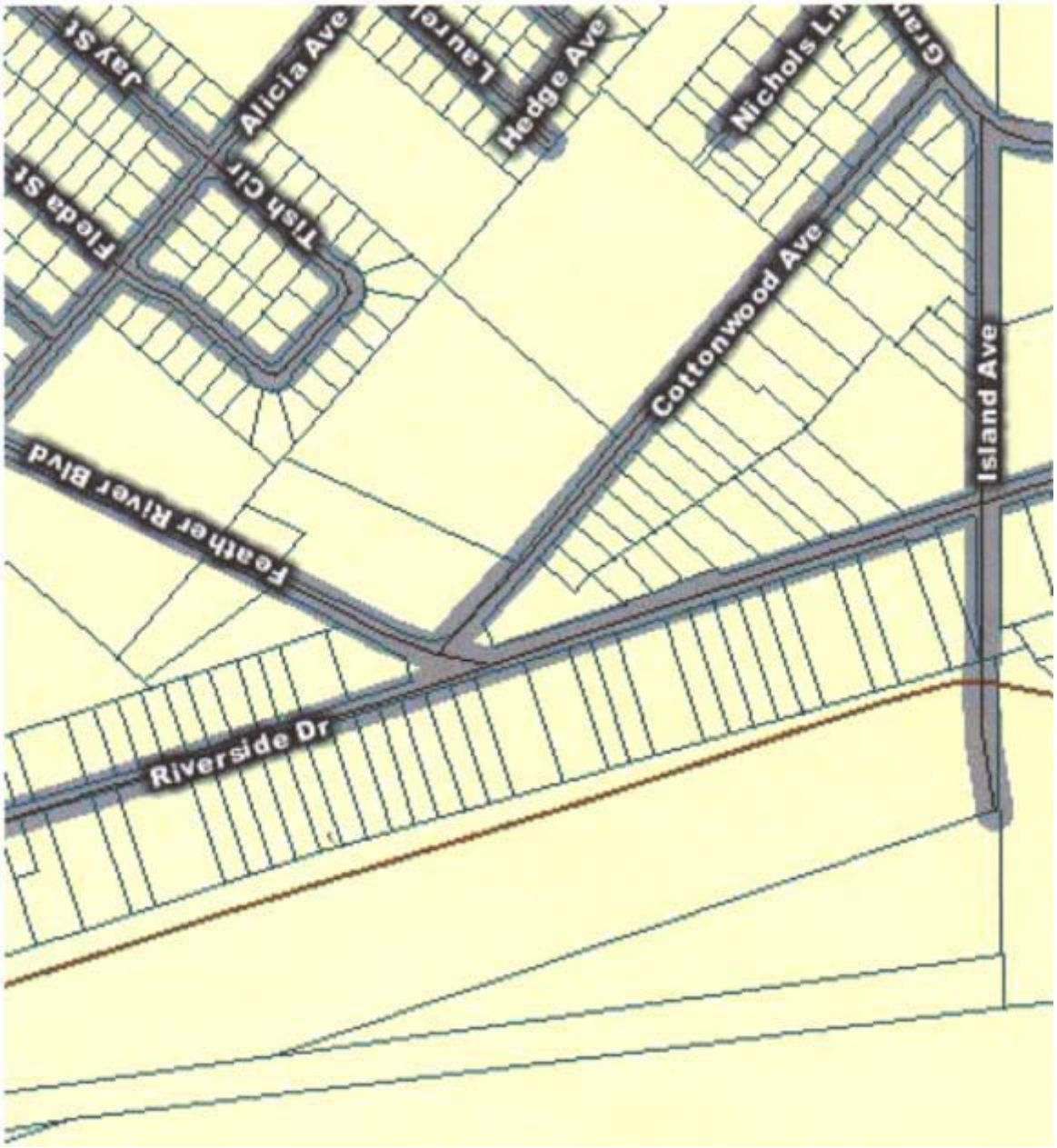
On this 7th day of December, in the year of our Lord one thousand nine hundred and nine before me, MAUDE LUNSFIRD, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ISAAC G. COHN, known to me to be the person whose name is subscribed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

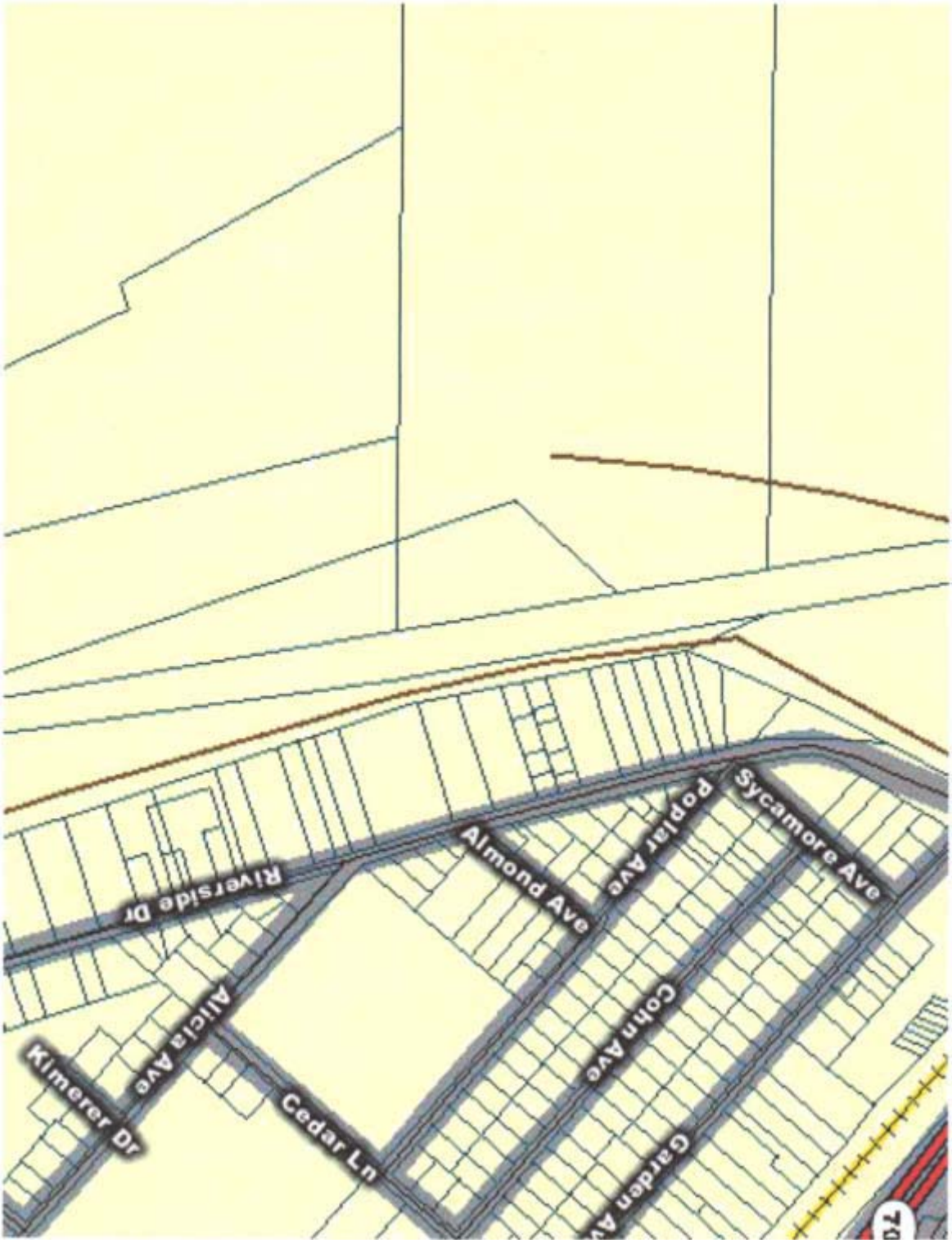
**EXHIBIT G 1-4**

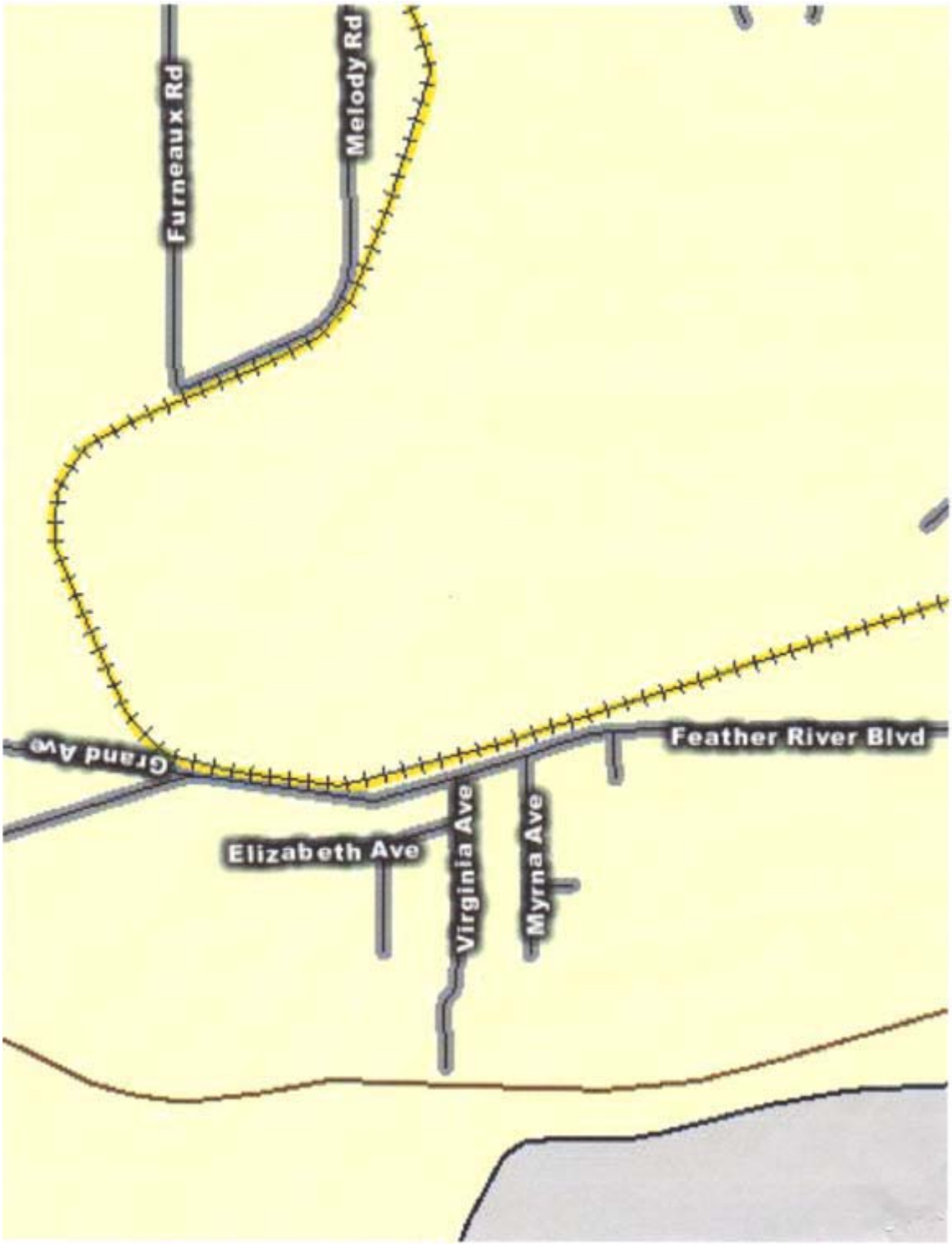
## YUBA COUNTY EASEMENT MAP AS OF 2011




Jay St
Alicia Ave
Hedge Ave
Nichols Ln
Flada St
Tish Cir
Cottonwood Ave
Island Ave
Feather River Blvd
Riverside Dr


Riverside Dr
Almond Ave
Poplar Ave
Sycamore Ave
Alicia Ave
Kimerer Dr
Cedar Ln
Cohn Ave
Garden Av


Furmeaux Rd
Melody Rd
Grand Ave
Feather River Blvd
Elizabeth Ave
Virginia Ave
Myrna Ave

D 9/17/58



BOOK 267 PAGE 51

R.L. Doc #2475

605

THIS INDENTURE made this 22nd day of December, 1958, by and between SACRAMENTO NORTHERN RAILWAY, a California corporation 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, 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-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.

DOCUMENTARY Yuba 5.50

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. Peyton 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° 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.

SACRAMENTO NORTHERN RAILWAY

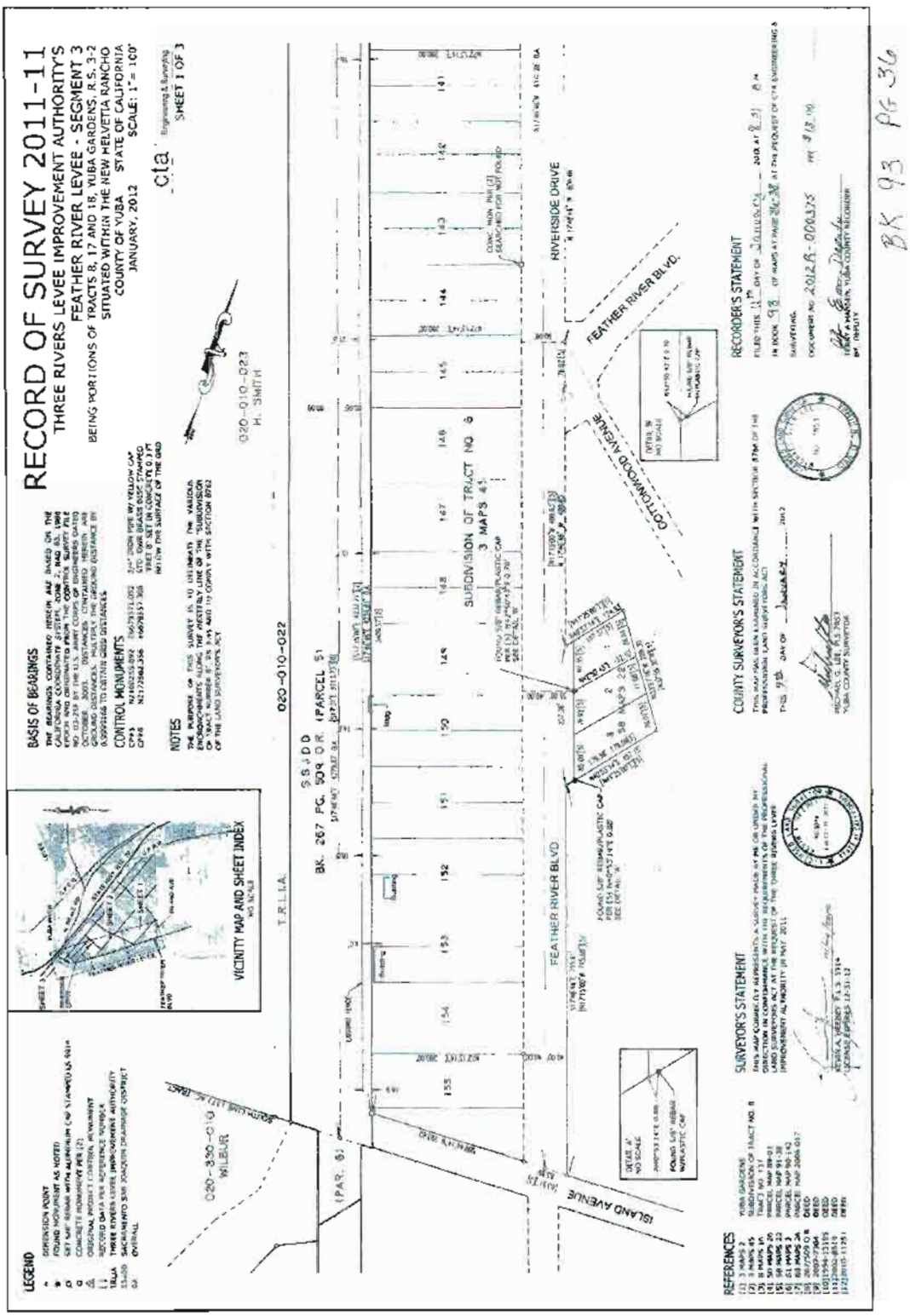
By _____
President and General Manager

Attest: _____
Secretary

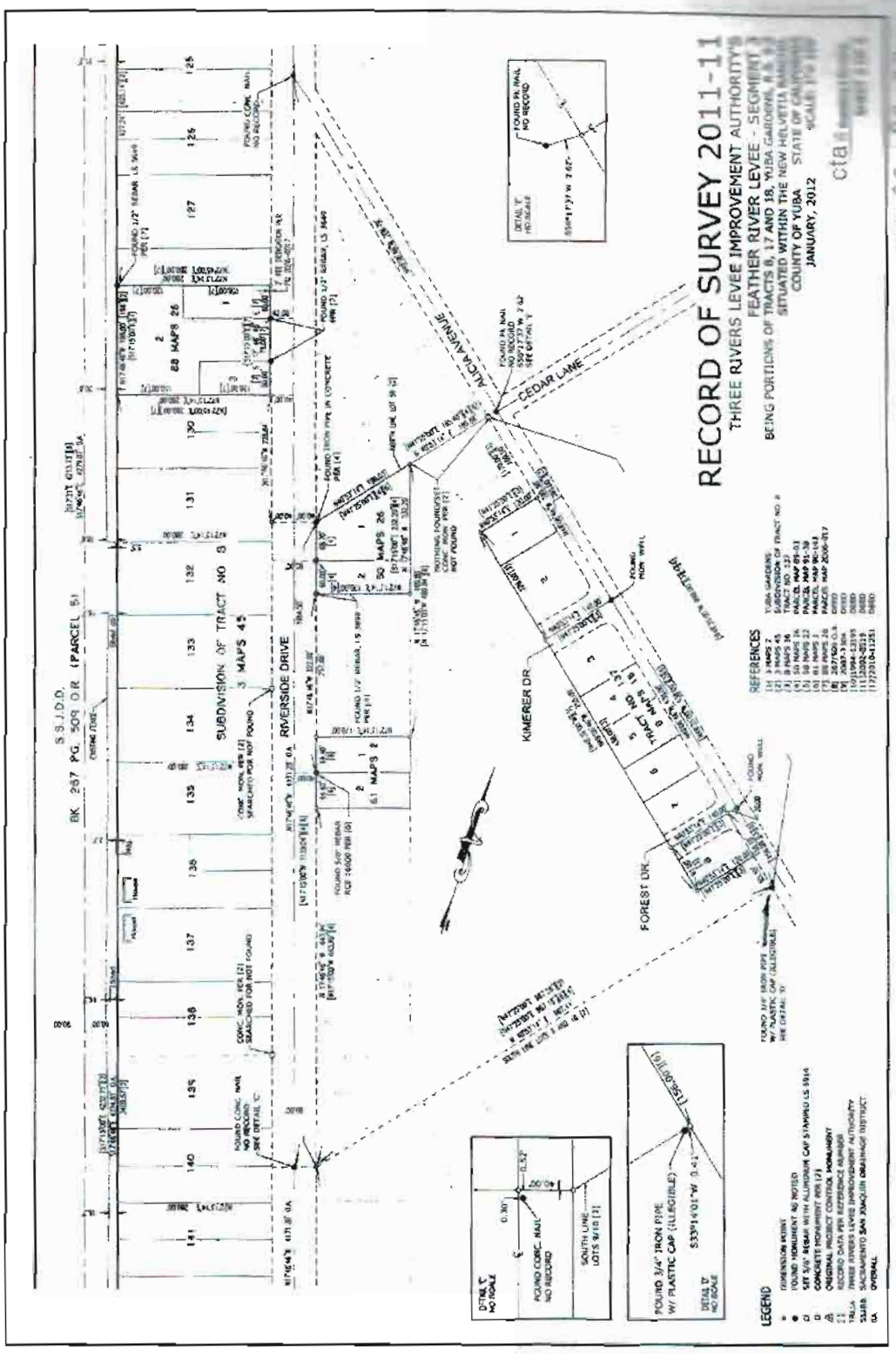
BUDGET | POLICY | DESCRIPT.
DEPARTMENT OF FINANCE
APPROVED
SEP 29 1958
T. H. MUGFORD
Director of Finance

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"
Scale 1 inch = 300 feet
Surveyed by Hoyt Sherman, Consulting Engineer, Sacramento, 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.
SHEET 1 of 2 SHEETS.

**ATTACHMENT I**



**ATTACHMENT I**



ATTACHMENT I

**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

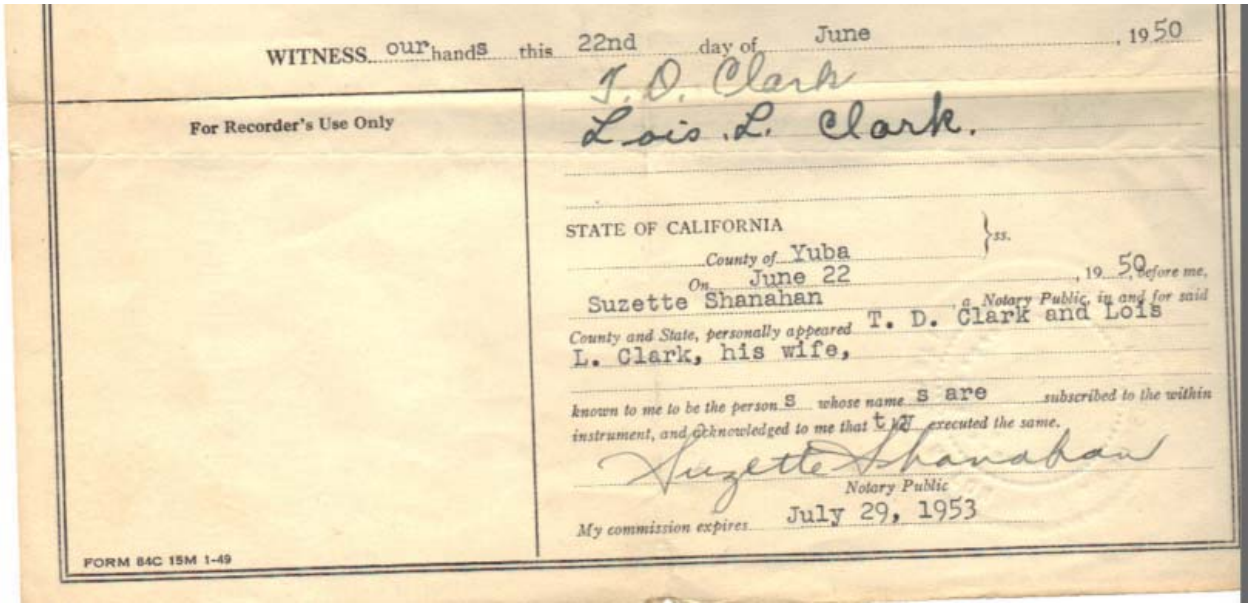
all that real property situate in the

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 } ss.

County of Yuba

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 t y 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.

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.

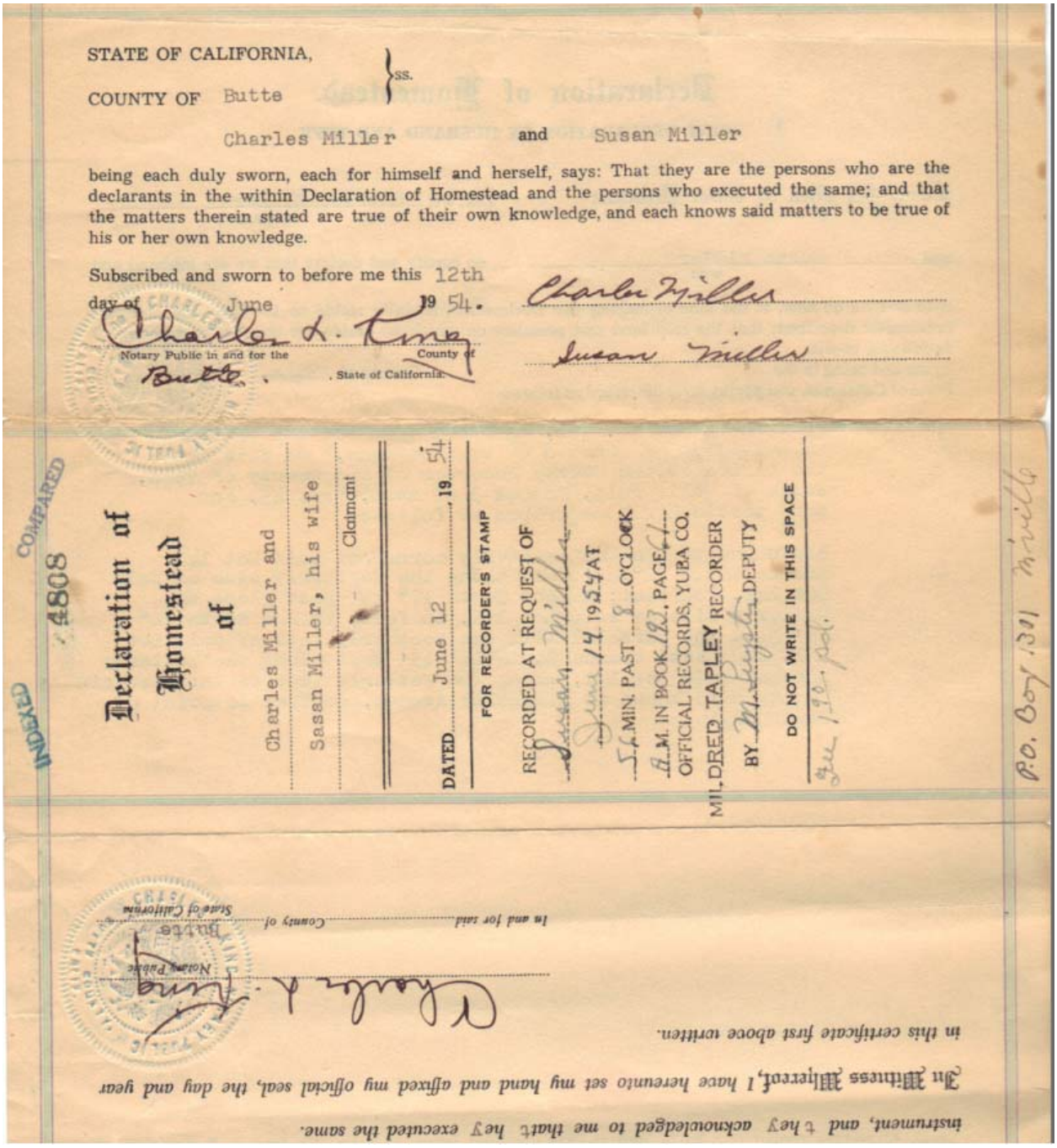
It Is Our Intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon and its appurtenances, as Homestead, and we do hereby select and claim the same as a Homestead.

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, }ss.
COUNTY OF Butte

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

Charles Miller
Susan Miller

INDEXED
COMPARED
4808

**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 MIN. PAST 8 O'CLOCK A.M. IN BOOK 182, PAGE 64
OFFICIAL RECORDS, YUBA CO.
MILDRED TAPLEY RECORDER
BY M. Lingle DEPUTY

DO NOT WRITE IN THIS SPACE

Fee 1.00 Paid

P.O. Box 391 Marysville

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. Tuma
Notary Public
In and for said County of Butte State of California

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

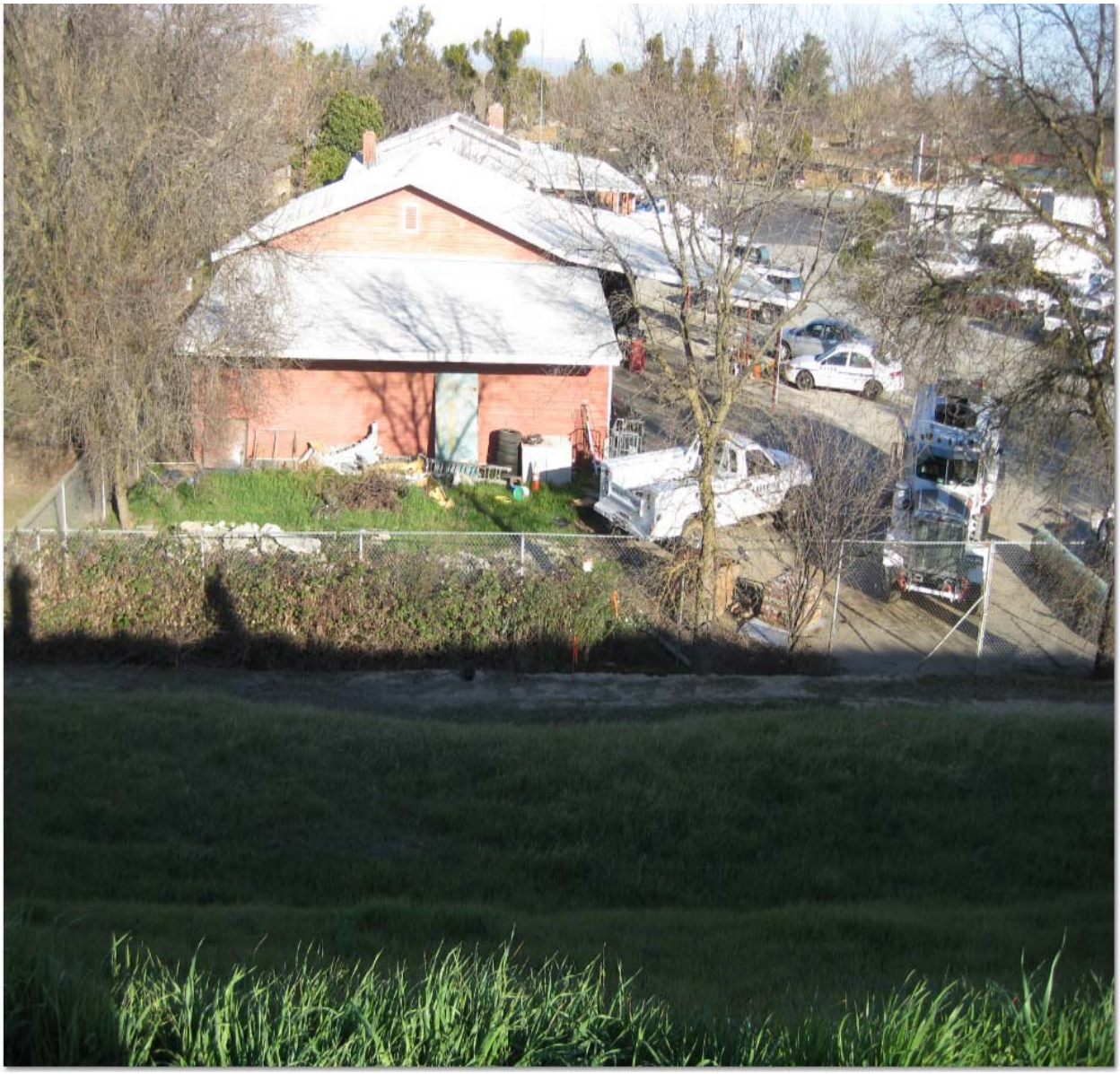


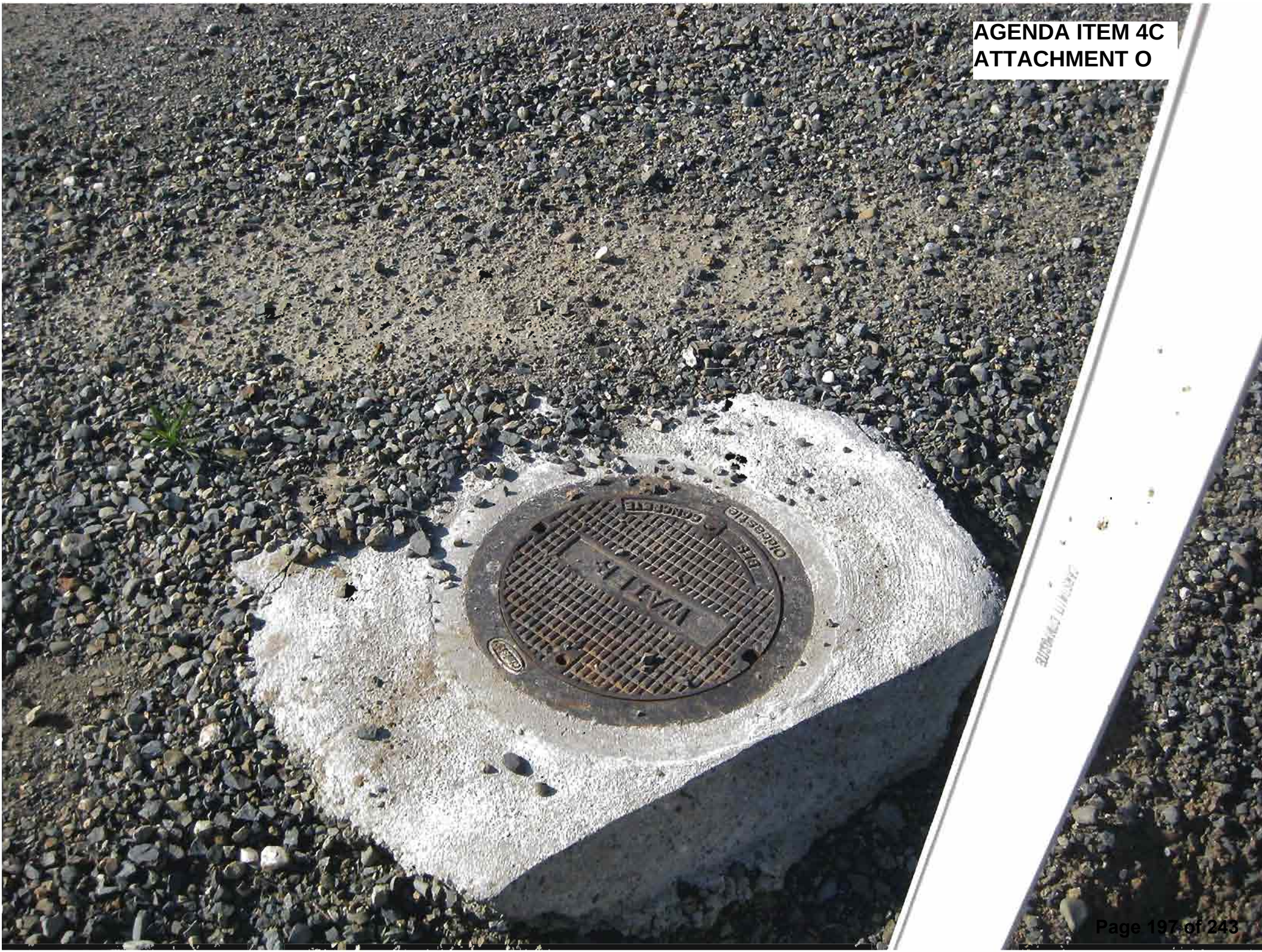
**EXHIBIT F**







**AGENDA ITEM 4C**
**ATTACHMENT O**

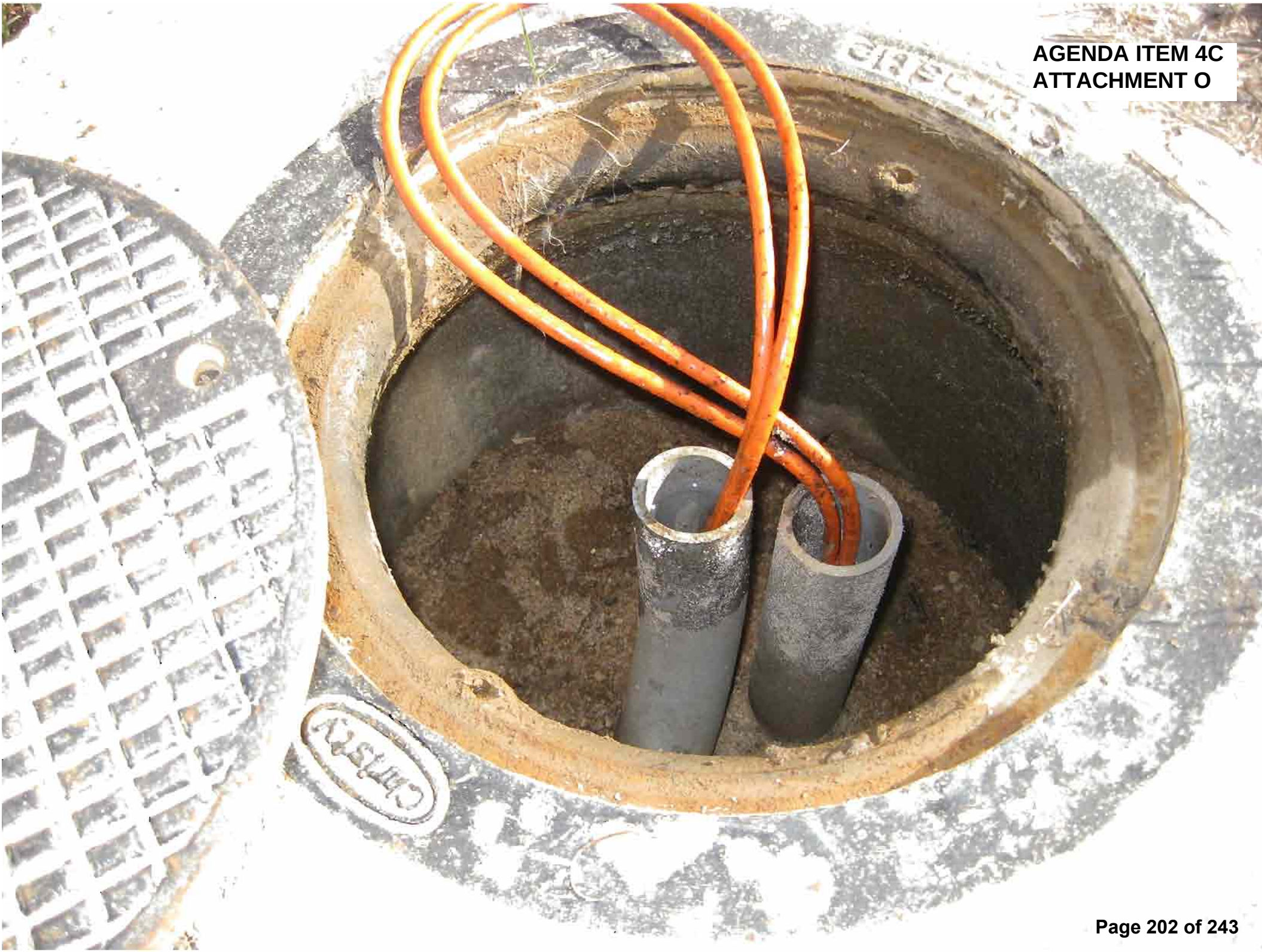

AGENDA ITEM 4C
ATTACHMENT O

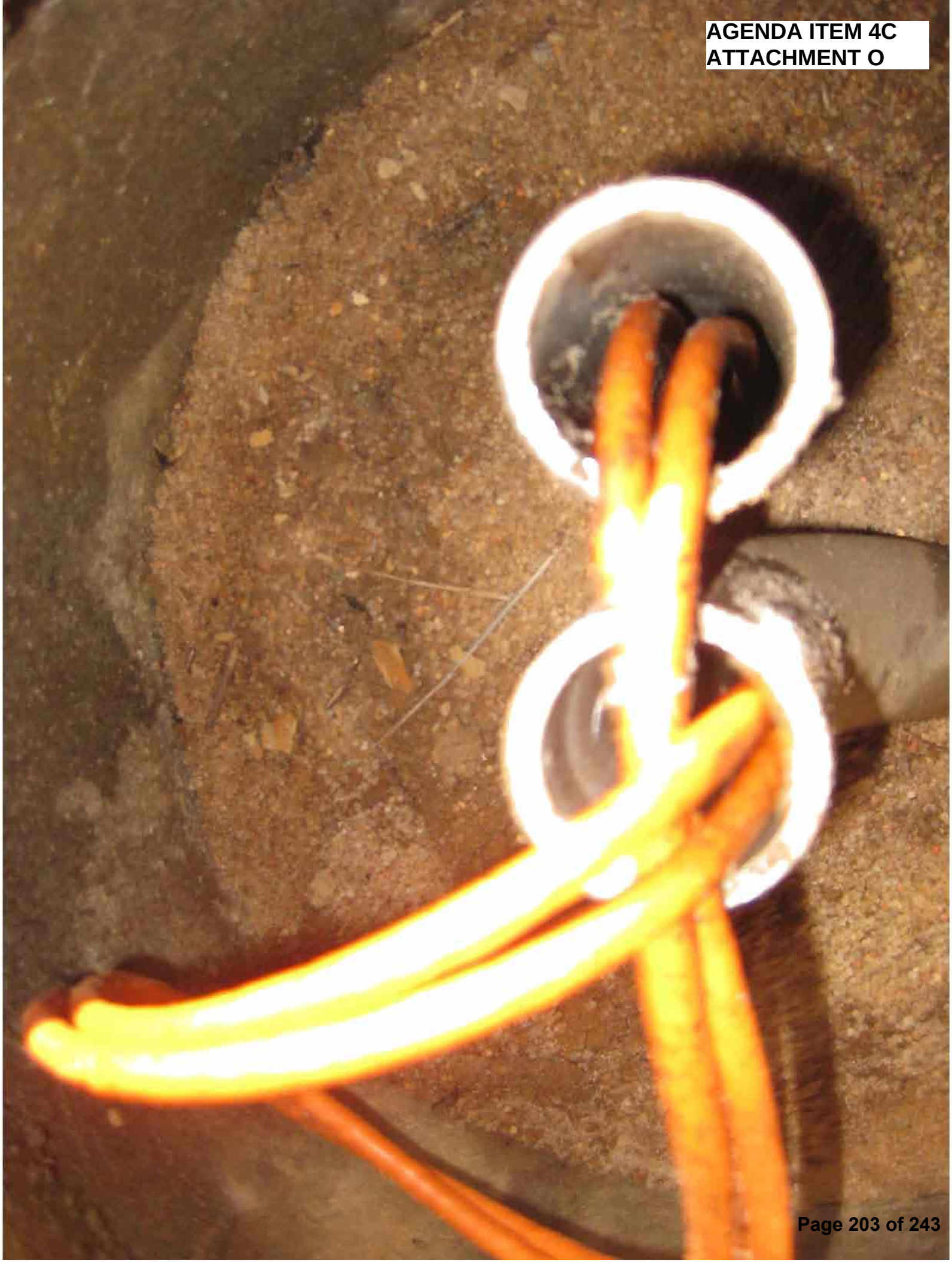

AGENDA ITEM 4C
ATTACHMENT O


VW Minilogger
P/N 82613310
S/N 31558
SLOPE INDICATOR
www.slopeindicator.com


MiniLogger
SLOPE INDICATOR


PF-8


CITY










P-F7
WATER



## 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 Railraod Responsibili ty

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 Railraod Responsibili ty

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 Railraod Responsibili ty
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 LAGRAND [mailto:weluvpugs@sbcglobal.net]
**Sent:** Tue 1/10/2012 9:38 PM
**To:** Lagrand, Susan
**Subject:** Fw: Carol Miller - Fence - Some Federal Decisions On Railraod Responsibili ty

--- 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 Railraod Responsibili ty
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 appl 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 fights 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 rf a railroad ceasec 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 oi wav was turned into a public hiqhwav within one vear of abandonment bv 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 of 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.FR.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 up held 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

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**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'"

<PBrunner@CO.YUBA.CA.US>; "Taras, Curt" <ctaras@water.ca.gov>; "Wright, C. Michael" <r
"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 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

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**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 Ordnance's, TRLIA is not reading the actual Ordnance'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 LAGRAND <weluvpugs@sbcglobal.net>; Susan LaGrand-Work <slagrand@frhg.org>

**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:**

__X__ Open Space Element
__X__ Conservation Element
__X__ Land Use Element
__X__ Zoning Ordinance
__X__ Subdivision Ordinance

**Date of Review:** August 2003

____ 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 avo 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 propo for a development project. (116-OSCP). Developers must submit a tree protection plan that includes replacement, maintenance and monitoring for all Valley oaks removed.

**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:**

__X__ Open Space Element
__X__ Conservation Element
__X__ Land Use Element
__X__ Zoning Ordinance
__X__ Subdivision Ordinance

**Date of Review:** August 2003

____ Grading and Erosion Ordinance
____ Roads/Sidewalk Tree Ordinance
____ Tree Removal Ordinance
____ Voluntary Guidelines
____ Other County Codes:

**Summary of Oak Protection Policies:**

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|---|---|
| Land Use, 1996 | 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. 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. |
| Open Space and Conservation Elements, 1996 | 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).<br>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.<br>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.<br>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 |

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| | 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.<br>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).<br>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. |
| 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:**
___X_ No contacts
_____ Policies provided by county staff
_____ Policies discussed with county staff
_____ Policy inventory reviewed by county staff

**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 commerical 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 |

**Documents reviewed:**

__X__ Open Space Element
__X__ Conservation Element
__X__ Land Use Element
__X__ Zoning Ordinance
__X__ Subdivision Ordinance
__X__ Grading and Erosion Ordinance

**Date of Review:** October 2003

__X__ Roads/Sidewalk Tree Ordinance
__X__ Tree Removal Ordinance
_____ Voluntary Guidelines
__X__ 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:**

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|---|---|
| **Natural Resources Element**, 1994 | 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.<br>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).<br>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.<br>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).<br>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. |
| **Tree Preservation Ordinance,** | 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, |

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| July 2000, 12.16 | 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.<br>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.<br>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).<br>RIPARIAN VEGETATION: Discretionary project activities within riparian zones (50'-100' from streams) also require a tree permit and appropriate mitigations.<br>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. |
| **Subdivision Ordinance,** Article 16 | 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. |
| **Zoning Ordinance,** 1998 | 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.<br>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. |
| **Rural Design Guidelines,** 1997 | 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 |

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| | 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
___X_ 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 unbelieveable. 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 C

- 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 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 understa 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.

**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)

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**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 unbelieveable. 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.

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)

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**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

*-------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)

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**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.

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)

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**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.

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

Paul G. Brunner
Executive Director
Three Rivers Levee Improvement Authority
530-749-5679 (office)
916-765-4981 (cell)

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**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?

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)

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**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)

916-765-4981 (cell)

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**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)

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**From:** Monty Hecker [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

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

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, you 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]

**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

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
6 February 2012

cc: TRLIA Board of Directors
Yuba County Board of Supervisors
Assemblyman Dan Logue
Congressman Wally Herger

**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 Ordnance's, TRLIA is not reading the actual Ordnance'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 LAGRAND <weluvpugs@sbcglobal.net>; Susan LaGrand-Work <slagrand@frhg.org>
**Sent:** Monday, February 6, 2012 11:01 AM
**Subject:** Letter request suspension of TRLIA Permit 18690