

**Meeting of the Central Valley Flood Protection Board  
June 22, 2012**

**Staff Report – Enforcement Hearing**

**Mr. Ron Smith, Yolo Bypass,  
Yolo County**

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**1.0 – ITEM**

Enforcement hearing regarding Cease and Desist order No. 2012-145 which ordered the removal of code violations and unauthorized encroachments constructed in the Yolo bypass consisting of:

- Item I: Damaged agricultural barn missing required structural bracing
- Item II: Elevated earthen equipment pad in path of floodwaters
- Item III: Leaking diesel fuel tank in regulated floodway
- Item IV: Ammonia tank in regulated floodway during the flood season
- Item V: Non-anchored equipment within the floodway during the flood season
- Item VI: Soil berms blocking the free flow of drainage within the floodway
- Item VII: Blockages of ditches and culverts necessary for the free flow of water from neighboring parcels in the floodway

**2.0 – RESPONDENT/PROPERTY OWNER**

Mr. Ron Smith  
2665 Sorney Loop Road,  
Rescue, CA 95672-9483  
Assessor's Parcel Number (APN) 033-190-010, 033-440-060

Note: CVFPB and Board are used interchangeably in this document when referring to the Central Valley Flood Protection Board.

### **3.0 – LOCATION**

The code violations are located on the Yolo Bypass approximately 10.3 miles southeast of the City of Davis and 1.5 miles west from Sacramento Deep Water Ship Channel west levee in Yolo County. Figures 1a and 1b show the vicinity map and an aerial view of the property, respectively.

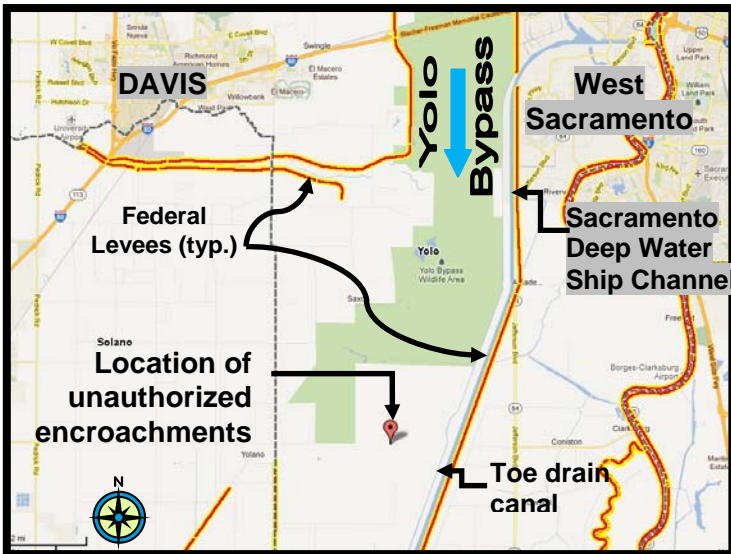


Figure 1a- Vicinity Map of property (Source: Google maps)

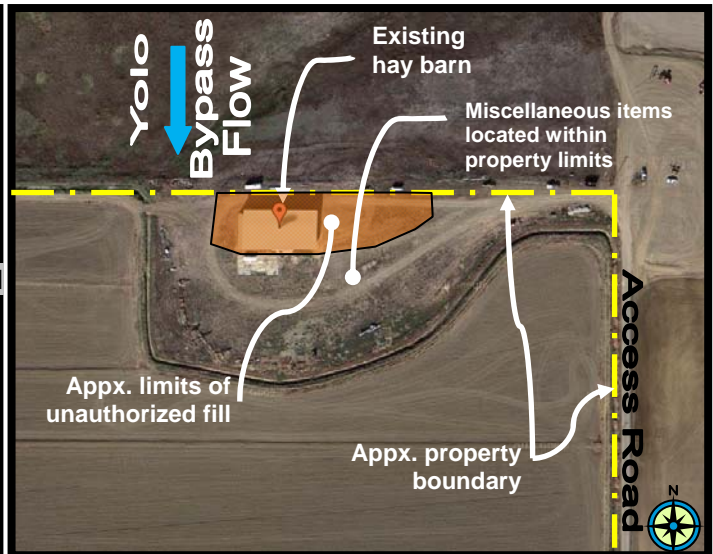


Figure 1b- Aerial view of the property (Source: Google Maps)

### **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 § 8707: The Board may order the removal or alteration of existing structures or obstructions that impede the free flow of water.

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 § 8709.5: The Executive Officer may issue a cease and desist order when the Respondent has failed to respond in a satisfactory manner to previous notifications.

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

Pursuant to § 8709.7: Any person who performs or undertakes an encroachment that is in violation of the Board's regulations is subject to civil penalties.

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 Yolo Bypass.

Pursuant to § 8718: No levee, embankment or other structure within any by-pass or overflow channel adopted by the Board shall be altered without Board authorization.

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

Pursuant to § 6 (a): *“Every proposal or plan of work, including the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment or works of any kind, and including the planting, excavation, or removal of vegetation, and any repair or maintenance that involves cutting into the levee, wholly or in part within any area for which there is an adopted plan of flood control, must be approved by the board prior to commencement of work.”*

Pursuant to § 24 (a): *“The Executive Officer may issue a Cease and Desist Order pursuant to Water Code § 8709.5 if the Executive Officer determines that any of the criteria of § 23 (b) have been met and the respondent fails to respond to the Notice of Violation in a satisfactory manner.”*

Pursuant to § 136: Supplemental standards for work within the Yolo Bypass.

Specific Sections of the CVFPB's regulations are addressed in Section 5.3 of this staff report.

### **5.0 – STAFF ANALYSIS**

#### **5.1 – Background**

The following is a chronology of the events related to this enforcement action:

- December, 2006      Permit application received by CVFPB Staff for a habitat mound
- January 18, 2007      Letter to Respondent notifying of incomplete application and that work in the Yolo Bypass is subject to California Code of Regulations, Title 23 (Attachment B, Exhibit A)
- May 3, 2007      Notice of unauthorized work in the bypass without a Board permit (Attachment B, Exhibit B)

- May 11, 2007 DWR Investigation of The Respondent's Property (Attachment E, Exhibit B)
- July 22, 2008 Second Notice of unpermitted work (Attachment B, Exhibit C)
- October 2008 Unpermitted Barn constructed in the Yolo Bypass (Attachment E, Exhibit A)
- March 25, 2011 CVFPB enforcement compliance meeting with Respondent's son
- April 6, 2011 CVFPB enforcement compliance meeting letter (Attachment B, Exhibit D)
- June 13, 2011 Respondent's enforcement compliance meeting letter to CVFPB staff (undated) received via email from Yolo County (Attachment B, Exhibit E)
- June 28, 2011 Permit application for Giant Garter Snake Habitat
- August 1, 2011 Third Notice of Violation issued to Respondent (Attachment A, Exhibit B)
- August 2, 2011 Letter to Frayji Design Group stating the Garter Snake Habitat application review is pending enforcement action compliance (Attachment B, Exhibit F)
- August 15, 2011 CVFPB staff site visit to Respondent's property (Attachment E, Exhibit C)
- September 2, 2011 Site visit follow-up letter to Respondent (Attachment B, Exhibit G)
- September 29, 2011 Respondent's corrective action plan (Attachment B, Exhibit H)
- December 20, 2011 CVFPB staff response to Respondent's corrective action plan (Attachment B, Exhibit I)
- February 27, 2012 Cease & Desist Order issued to Respondent (Attachment A, Exhibit A)
- March 2, 2012 Respondent's complaint letters regarding drainage (Attachment B, Exhibit J)
- March 18, 2012 Respondent's response letter to C&D Order (Attachment B, Exhibit K)
- April 10, 2012 CVPB staff and staff legal counsel held conference call with Respondent
- April 12, 2012 Conference call follow-up letter to Respondent (Attachment B, Exhibit L)
- April 24, 2012 Respondent submitted request for hearing (Attachment B, Exhibit M)
- May 4, 2012 CVFPB staff acknowledgement of hearing request (Attachment B, Exhibit N)



- May 22, 2012                      Hearing notification sent to Respondent (Attachment B, Exhibit O)
- May 31, 2012                      Hearing staff report sent to Respondent via overnight mail

## 5.2 – Easements

On August 14, 1940, the Board acting through the Sacramento and San Joaquin Drainage District (SSJDD) acquired a flowage easement through Grant Deed 605 recorded on Volume 143, Page 289 (Attachment C, Exhibit A) at the Yolo County Recorder's office, which covers the Respondent's property (Parcel 5), which granted the following rights:

*"...a perpetual right and easement, without recourse to compensation for damage therefrom, past, present or future, for the passage of all flood waters of the Yolo By-pass, which may from time to time inundate, or which has heretofore inundated, the lands of the grantors, over and upon and across all of the following described property..."*

Furthermore, DWR Cadastral Branch verified that Grant Deed 605 pertains to the Respondent's property and any rights granted on said deed have not been vacated. (Attachment C, Exhibit C)

## 5.3 – Code Violation Evidence

The basis for Board staff's encroachment removal identified in the Cease and Desist Enforcement Notice No. 2012-145 dated February 27, 2012 is summarized as follows:

### **Item I:      Damaged agricultural barn missing required structural bracing (see Figures 2a and 2b)**

- The construction of the agricultural barn is in violation of the Board's Regulations § 6 (a) which states that *"Every proposal or plan of work, including the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment or works of any kind, and including the planting, excavation, or removal of vegetation, and any repair or maintenance that involves cutting into the levee, wholly or in part within any area for which there is an adopted plan of flood control, must be approved by the Board prior to commencement of work."*
- Because plans for the barn were not submitted to the Board prior to construction, the barn violates § 136 (a) which states that: *"Final detailed plans for all construction, grading and planting must be submitted to and approved by the board prior to the start of work."*

In addition to the CVFPB's Regulations listed in the Cease and Desist Enforcement Notice No. 2012-145, because the existing barn lacks shear wall bracing and its side wall blew off during a storm it violates CVFPB's Regulation § 107, Permitted Uses in Designated Floodways: *The following uses may be permitted in the designated floodway so long as*

*alone or cumulatively, in the judgment of the board, they will not unduly impede the free flow of water in the floodway or jeopardize public safety:*

§107(g) *“Structures that are designed to have a minimum effect upon the flow of water and are firmly anchored to prevent the structure from floatation, provided that normally no structures for human habitation will be permitted.”*

The respondent's barn is open to the north and closed to the east, west and south. Because the barn is open to the north, during a flood event it would not only impede the free flow of water, but it would also catch flood water and debris, creating additional stress on the barns structural integrity.

**Item II: Elevated earthen pad in path of floodwaters (see figures 2a and 2b)**

- The construction of the elevated earthen pad is in violation of the Board's Regulation § 136 (k), which states that *“No permanent berms or dikes are permitted above natural ground elevation without a detailed hydraulic analysis except where otherwise expressly provided for in reservations contained in the easement deeds to the Sacramento and San Joaquin Drainage District.”* Elevated fill where the barn is located was measured to be 3-4-ft higher than surrounding ground.

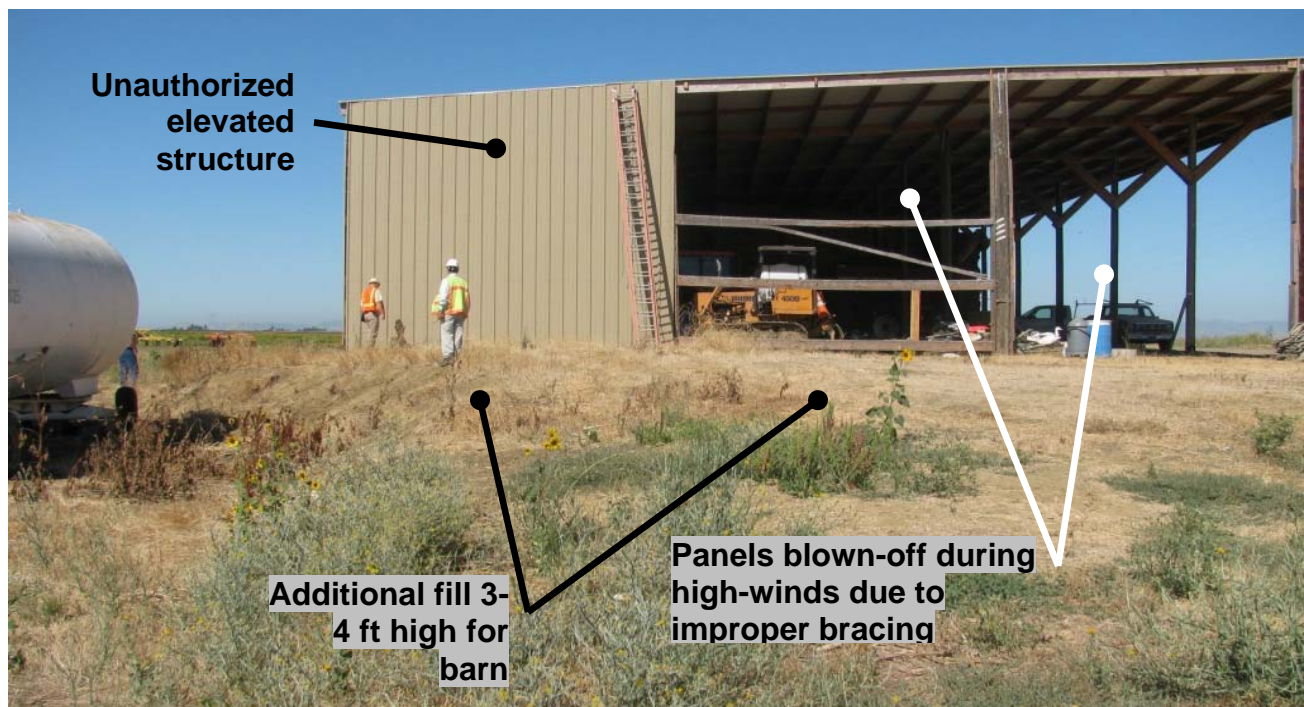


Figure 2a- Existing structure and fill in Yolo Bypass (Source: Board staff site visit 8.15.2011)

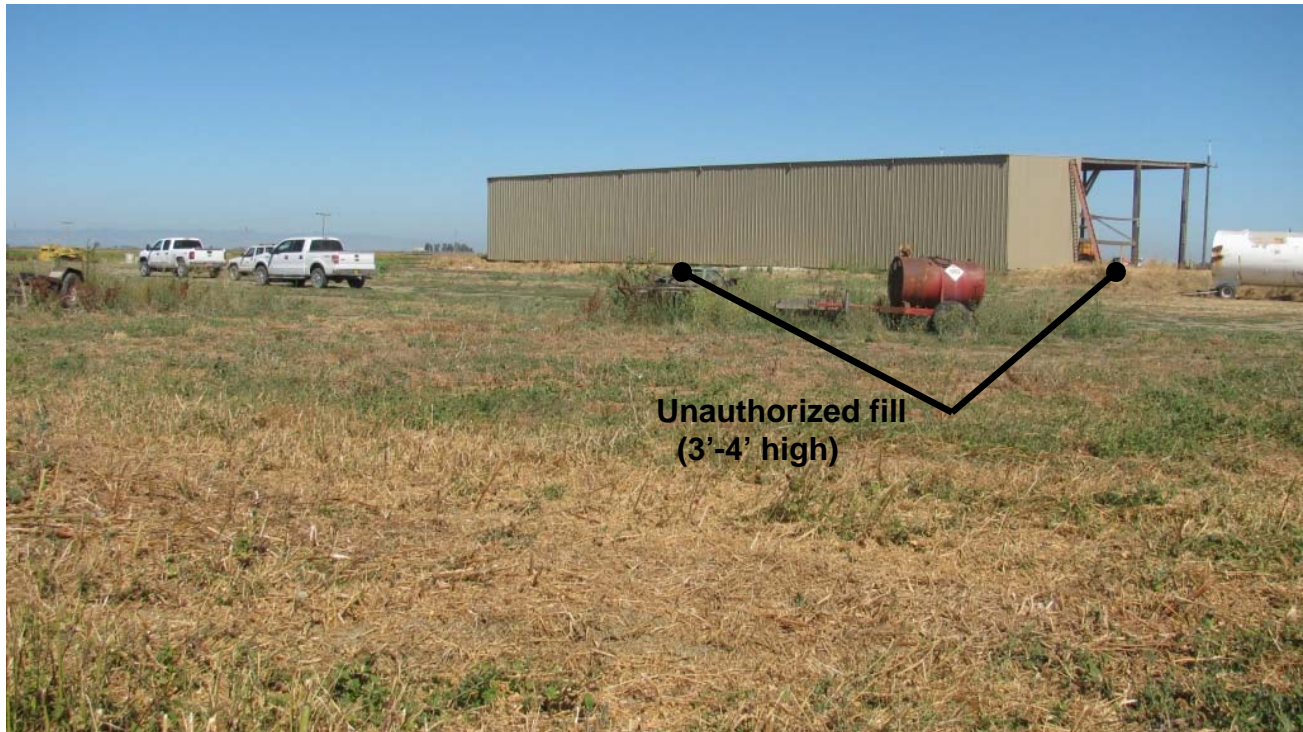
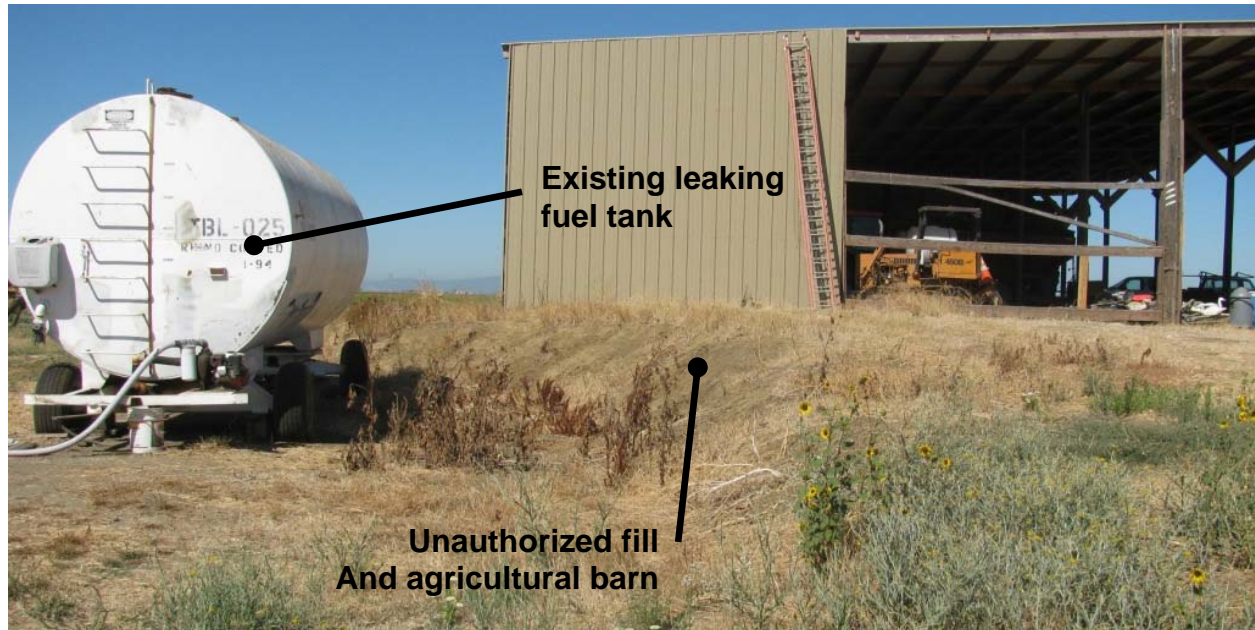


Figure 2b- Existing structure and fill in Yolo Bypass (Source: Board staff site visit 8.15.2011)

**Item III: Leaking diesel fuel tank in regulated floodway (see Figure 3)**

- The Respondent has indicated that the leaking diesel fuel tank has been corrected per their letter dated September 29, 2011 (Attachment B, Exhibit H) and has also been removed from the Yolo Bypass per their letter dated March 18, 2012 (Attachment B, Exhibit K). The existing fuel tank can be allowed to remain within the floodway only seasonally in accordance with Board's Regulations § 137 (i) which states *"The storage of materials or equipment, unless securely anchored, downed trees or brush, and floatable material of any kind are not allowed within a floodway during the flood season as defined in Table 8.1."* CVFPB staff has not confirmed that the tank has been repaired or removed. CVFPB staff recommends this item remain on the enforcement action until documentation showing that the work has been done is submitted by the Respondent or confirmed by CVFPB staff.
- Table 8.1 defines the Yolo Bypass as a Regulated Stream with the flood season from November 1 through April 15.
- Furthermore, the existing fuel tank must comply with Board's Regulations § 137 (a) as follows: *"Tanks used for storage of water or other liquids are not permitted within a levee section or within ten (10) feet of the levee toe. If placed within the floodway, or if placed in the projected levee section and within twenty-five (25) feet of the levee toe, a permit is required."* A CVFPB permit will be required prior to the fuel tank being returned to the Yolo Bypass.

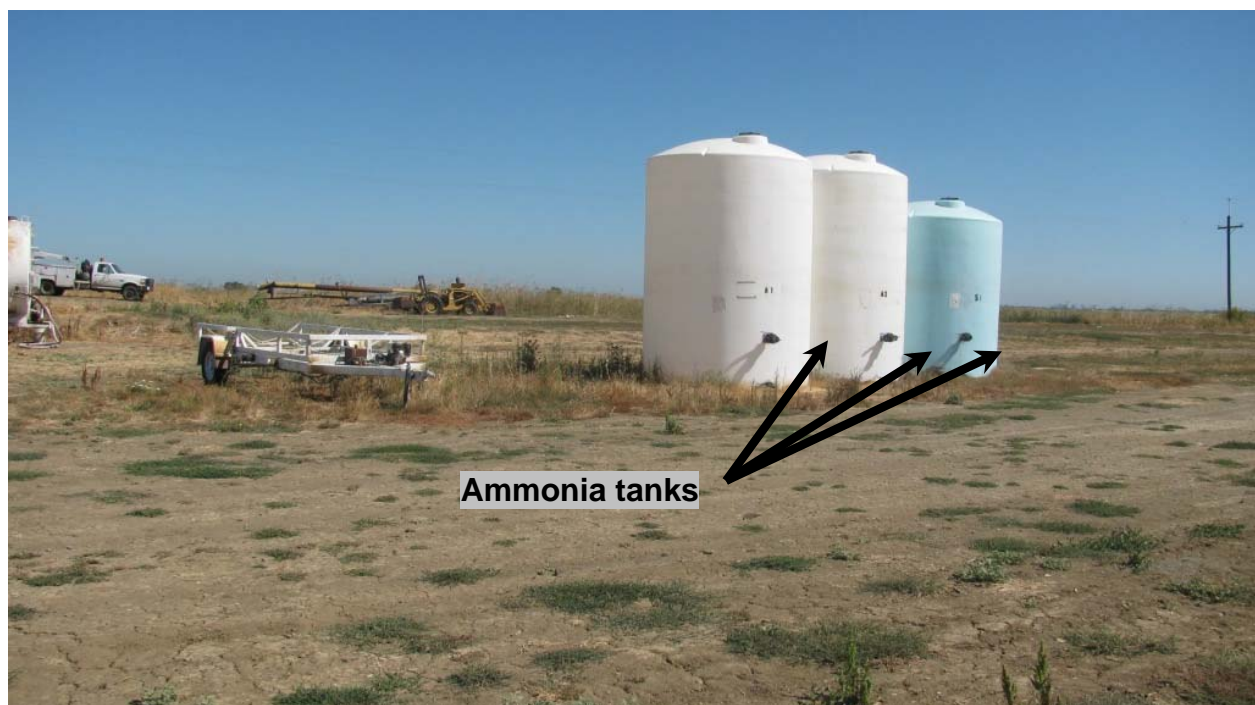




**Figure 3 – Leaking fuel tank next to existing structure and fill in Yolo Bypass (Source: Board staff site visit 8.15.2011)**

**Item IV: Ammonia tank in regulated floodway during the flood season (see Figure 4)**

- In a letter dated March 18, 2012 (Attachment B Exhibit K), the Respondent has indicated that the ammonia tanks have been removed from the floodway and therefore are in compliance with CVFPB Regulations § 137 (a) and (i). This information has not been confirmed by CVFPB staff. CVFPB staff recommends this item remain on the enforcement action until documentation showing that the work has been done is submitted by the Respondent or confirmed by CVFPB staff.



**Figure 4 - Ammonia tanks in regulated floodway (Source: Board staff site visit 8.15.2011)**

**Item V: Non-anchored equipment within the floodway during the flood season**

- The Respondent has indicated his willingness to comply and remove smaller items from the Bypass during the flood season in accordance with Board's Regulations § 137 (i).
- Table 8.1 defines the Yolo Bypass as a Regulated Stream with the flood season between November 1 through April 15.

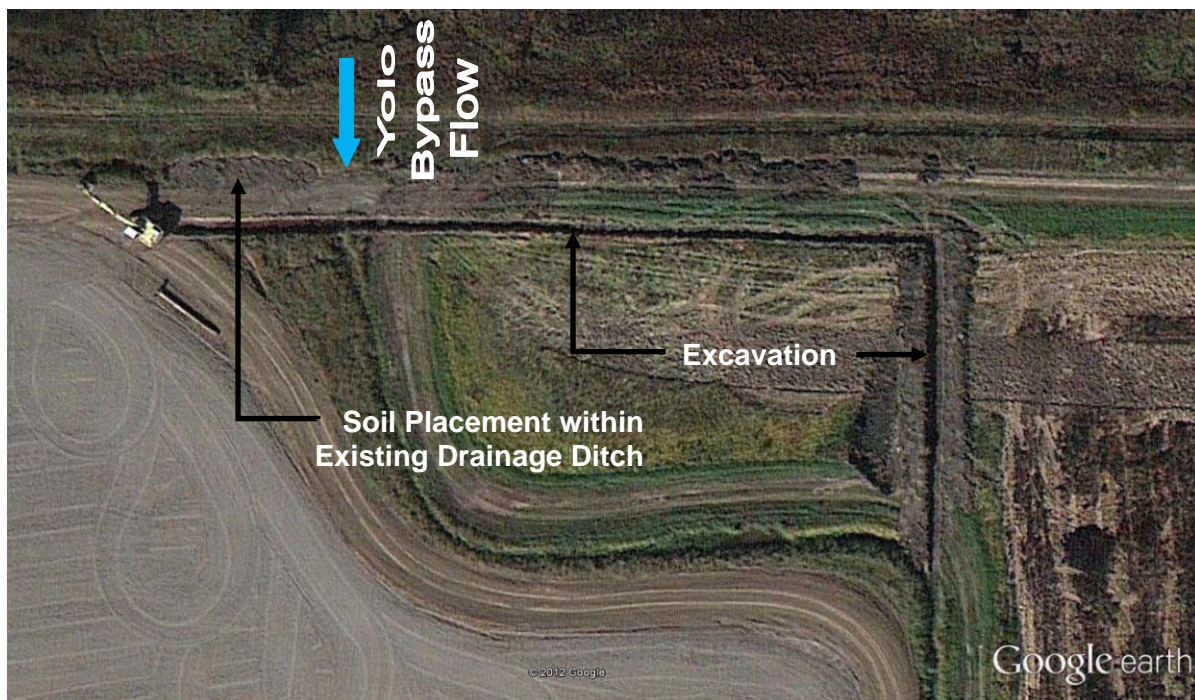
**Item VI: Soil berms blocking the free flow of drainage within the floodway (see Item VII below and Figure 5)****Item VII: Blockages of ditches and culverts necessary for the free flow of water from neighboring parcels in the floodway (see Figure 6 and 7)**

- CVFPB Regulation § 112 (a) states *"The Board requires applications to be filed for all proposed encroachments within the floodways under its jurisdiction (identified in Table 8.1) and on levees adjacent thereto, on any stream which may affect those floodways."*
- Soil berm blocking the free flow of drainage within the floodway is in violation of CVFPB Regulation § 112 (b) which states *"Banks, levee, and channels of floodways along any stream, its tributaries, or distributaries may not be excavated, cut filled, obstructed, or left to remain excavated during the flood season."*
- Furthermore, Water Code § 8707 states that where there are existing encroachments, *"The Board may in the case of existing works compel the removal or alteration of the structures or obstructions that impeded the free flow of water."*



**Figure 5 – Soil Berms Blocking Free Flow of Drainage (Source: Board staff site visit 2.2.2012)**





**Figure 6 – Excavation and Soil Placement Redirecting Drainage and Blocking Drainage from the North**  
 (Source: Google Earth 10.30.2012)



**Figure 7 – Drainage Structure Blocking Free Flow of Water** (Source: Board staff site visit 1.20.2012)

## 5.4 – Filed Complaints

In addition to evidence collected by CVFPB staff, neighboring parcel owners have filed complaints about the code violations.

Complaint filed November 8, 2011 by Mr. Timothy French (See Attachment D, Exhibit A) accusing the Respondent of:

“Illegally blocking our drainage of our property affecting our NAWCA (North American Wetlands Conservation Act ) Grant funds and creating drainage issues for us and the clubs to the north of us that drain through our property.”

“Illegally moving fill to prevent us from access on our property along the Toe Drain.”

“Illegally moving earth and constructing buildings out in the Yolo Bypass which is a flood plain and requires the issuance of permits prior to any changes to land in the bypass.

Complaint filed September 6, 2011 by Mr. Dan Kominek (See Attachment D, Exhibit B):

“RD 2068 has historically drained irrigation tail water and winter storm runoff along the northern and eastern edge of our property and then through a canal crossing Mr. Smith's property to the Toe Drain. This arrangement has been in place for nearly fifty years. Two years ago, Mr. Smith constructed a headwall structure across the drainage and now refuses to allow drainage to the toe drain for all of RD 2068 tail water and drain water from the Pope Ranch Mitigation Bank and lands owned by the Berta Trust to our south. The blockage is manageable in the summer months as we are able to use the backed up water for irrigation purposes. The winter season runoff, however, causes severe ponding on both my property and that of the Berta Trust resulting in crop loss and undue pressure on all water delivery infrastructure. During bypass flood events, this backup certainly causes a build up of debris and exacerbates local flooding. This entire situation could be resolved by Ron Smith simply opening the water control structures after October 15 and allowing the winter drainage to flow to the Toe Drain. I have had discussions with Dustin Smith regarding draining along the historic path but have been told that we would have to negotiate a financial settlement to reinstate the drainage. In my mind this is tantamount to extortion.”

(For Drainage Structure Referenced in Quote Above, see Figure 7)

## **6.0 –CEQA ANALYSIS**

CVFPB staff has prepared the following CEQA determinations:

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

## **7.0 – STAFF RECOMMENDATION**

The information contained in this Staff report constitutes significant evidence that these encroachments interfere with the maintenance, performance, or functioning of the Sacramento River Flood Control Project and the adopted plan of flood control pursuant to Water Code § 8708 and § 8709. Pursuant to Water Code § 8708, the State has given assurances to the United States Army Corps of Engineers that the State will maintain and operate federal flood control works. Therefore, the State is obligated to enforce the removal or modification of encroachments that impact the flood control system operations and maintenance. Furthermore, pursuant to Water Code § 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 CVFPB may commence or authorize actions to abate such nuisance.

In addition to violating specific sections of the Water Code and California Code of Regulations, the barn and berm create an obstruction to the passage of floodwaters, create a debris catching obstacle, and if the barn does fail during a flood event, the debris from the barn can pose a threat to downstream facilities.

For the reasons stated on this staff report, CVFPB staff recommends the CVFPB determine the encroachment removal to be exempt from CEQA and approve Enforcement Action 2012-145 to order removal of the unauthorized encroachments and order restoration of the site per the Enforcement Conditions and Encroachment Removal Enforcement Order attached to the Cease and Desist Order (Attachment A, Exhibit A).

## **8.0 – LIST OF ATTACHMENTS**

### A. Notices

Exhibit A - CVFPB Cease and Desist Order, Enforcement Action No. 2012-145 dated February 27, 2012

Exhibit B - CVFPB Notice of Violation issued on August 1, 2011

### B. Correspondence

Exhibit A- CVFPB letter to Respondent dated January 18, 2007

Exhibit B- CVFPB letter to Respondent dated May 3, 2007

Exhibit C- CVFPB letter to Respondent dated July 22, 2008

Exhibit D- CVFPB letter to Respondent dated April 6, 2011

Exhibit E- Letter from Respondent received June 13, 2011

Exhibit F- CVFPB letter to Frayji Design Group dated August 2, 2011

Exhibit G- CVFPB site visit follow-up letter to Respondent dated September 2, 2011

Exhibit H - Respondent's corrective action plan letter dated September 29, 2011

Exhibit I - CVFPB staff response to corrective action plan dated December 20, 2011

Exhibit J - Respondent's complaint letters regarding drainage dated March 2, 2012

Exhibit K - Respondents response letter to Cease & Desist Order dated March 18, 2012 (also contains submitted easement information)



Exhibit L - CVFPB conference call follow-up letter dated April 12, 2012

Exhibit M - Respondent's request for a hearing per letter dated April 24, 2012

Exhibit N - CVFPB Acknowledgement of hearing request dated May 4, 2012

Exhibit O - Enforcement hearing notification sent to Respondent on May 22, 2012

C. Easement Information

Exhibit A - Deed 605 Recorded on Volume 143, Page 289

Exhibit B - Deed recorded September 15, 1920

Exhibit C – Real Estate review of Deeds

D. Public Complaints

Exhibit A – Complaint filed November 8, 2011 by Mr. Timothy French

Exhibit B – Complaint filed September 6, 2011 by Mr. Dan Kominek

E. Additional Information

Exhibit A – Photos of Barn Construction

Exhibit B – DWR Field Investigation Report

Exhibit C – CVFPB Staff Field Investigation Pictures

Report Prepared by: Michael Wright, Angeles Caliso

Document Review: Len Marino, Robin Brewer

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



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

**CEASE AND DESIST ENFORCEMENT NOTICE**

**Property Owner:** Mr. Ron Smith  
**Mailing Address:** 2665 Sorney Loop  
Rescue, CA 95672

**Date:** February 27, 2012  
**Enforcement Action:** 2012-145

**Encroachment Location:** Yolo Bypass, Yolo County  
**Local Maintaining Agency:** NA – Designated Floodway  
**Assessor Parcel Number:** 033-190-010 & 033-440-060

**Description:** The State of California - Central Valley Flood Protection Board (CVFPB) staff has documentation that encroachment violations of the State Plan of Flood Control exist within its jurisdiction at this encroachment location consisting of the following:

1. Damaged agricultural barn missing required structural bracing (Unpermitted)
2. Elevated earthen equipment pad in path of floodwaters (Unpermitted)
3. Leaking diesel fuel tank in regulated floodway
4. Ammonia tank in regulated floodway during flood season
5. Non-anchored farm equipment within a floodway during the flood season
6. Soil berms blocking the free flow of drainage within the floodway
7. Blockages of ditches and culverts necessary for the free flow of water from neighboring parcels in the floodway

**Regulations:** These encroachments are in violation of provisions in the California Water Code and the California Code of Regulations (CCR) Title 23 Waters, Division 1. The provisions are as follows:

1. CCR Title 23 Waters, Division 1, Article 3, Section 6 (a) – Need for a Permit
2. CCR Title 23 Waters, Division 1, Article 8, Section 136 (a) and (k) – Standards for Yolo Bypass
3. CCR Title 23 Waters, Division 1, Article 8, Section 137 (a) and (i) – Miscellaneous Encroachments
4. California Water Code Section 8707 Flood Control – Removal and Alteration of Existing Structures.
5. California Water Code Section 8718 – By-pass and overflow channels; board approval for alterations.

**Conditions:** You are ordered to cease and desist obstructing the floodwaters of the Yolo bypass by removing the listed encroachment violations from the floodway within thirty (30) days of receipt of this notice. To comply with this notice please schedule a compliance inspection within 10 days of the start of removal work. The rights of the Respondent and the CVFPB are detailed in the attached enforcement order. You have the right to request a public hearing disputing this cease and desist order by submitting a written request for a hearing within 30 days of the date of this notice.

**Past Notices:** You have received past notices informing you that the Central Valley Flood Protection Board has jurisdiction over the Yolo Bypass and projects undertaken within the bypass require a CVFPB permit. These notices are attached to this package as Exhibit A.

Encroachment Removal Enforcement Notice No. 2012-145

**Staff Contact:** The staff member assigned to this enforcement action is: Michael Wright, Senior Engineer, Enforcement Section; E-mail: mcwright@water.ca.gov; Desk: (916) 574-0698.

Signed,



Jay S. Punia  
Executive Officer

**Attachments:**

1. Encroachment Removal Enforcement Order
2. Enforcement Conditions
3. Photos of Encroachments

**Exhibits:**

- A. Past Notices

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
 SACRAMENTO, CA 95821  
 (916) 574-0609 FAX: (916) 574-0682  
 PERMITS: (916) 574-2380 FAX: (916) 574-0682

**ENFORCEMENT CONDITIONS**

**Property Owner:** Mr. Ron Smith  
**Mailing Address:** 2665 Sorney Loop  
 Rescue, CA 95672

**Date:** February 27, 2012  
**Enforcement Action:** 2012-145

**Encroachment Location:** Yolo Bypass, Yolo County  
**Local Maintaining Agency:** NA – Designated Floodway  
**Assessor Parcel Number:** 033-190-010 & 033-440-060

**GENERAL CONDITIONS:**

1. These enforcement conditions are issued under the provisions of Sections 8700-8709 of the California Water Code and the provisions of the California Code of Regulations, Title 23 Waters, Division 1, Article 3 - Application Procedures and Article 8 - Standards.
2. The property owner is responsible for all personal liability and property damage which may arise out of failure on the property owner's part to perform the obligations under this enforcement order. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the property owner shall hold each of them harmless from each claim.
3. Should any of the work not conform to the conditions of this enforcement notice, the property owner, upon order of the Central Valley Flood Protection Board (CVFPB), shall in the manner prescribed by the CVFPB be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein described.

**REMOVAL CONDITIONS:**

1. The Property Owner shall contact the Enforcement Section by telephone at (916) 574-0698, to schedule an inspection conference at least 10 working days prior to start of work.
2. All unauthorized encroachment items within the floodway mentioned in the attached Enforcement Notice need to be removed.
3. Remove unauthorized agricultural barn and all debris created from removal of barn from the Yolo Bypass.
4. Remove fill used to create elevated pad.
5. Remove storage tanks from Yolo Bypass. Once the tanks are certified to not be leaking and a permit is issued, the tanks may be allowed in the floodway only seasonally.
6. Remove all non-anchored equipment from the Yolo Bypass during the flood season.
7. Remove any structures or obstructions that impede the free flow of water during flood season, which is November 1 through April 15:
  - a. Structure located at south-west corner of parcel APN 033-190-010-000
  - b. Remove fill that has been placed to block drainage from the parcel north of parcel APN 033-440-006-000.



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151

SACRAMENTO, CA 95821

(916) 574-0609 FAX: (916) 574-0682

PERMITS: (916) 574-2380 FAX: (916) 574-0682

**ENCROACHMENT REMOVAL ENFORCEMENT ORDER**

The State of California - Central Valley Flood Protection Board (CVFPB) has determined that encroachments in violation of the California Water Code or of the more specific California Code of Regulations (CCR) Title 23 Waters, Division 1 are constructed works or activities that threaten the successful execution, functioning, operations, or maintenance of an adopted plan of flood control. California Water Code Section 8709 also states that an encroachment that interferes with or obstructs such operation and maintenance constitutes a public nuisance. You are therefore requested to cease the encroaching activity and remove the encroachments described in the enforcement notice. You may obtain a compliance inspection of the encroachment removal by contacting the inspection section identified in the notice ten (10) days prior to the start of removal work. Removal of the encroachments shall be completed in accordance with the attached enforcement conditions.

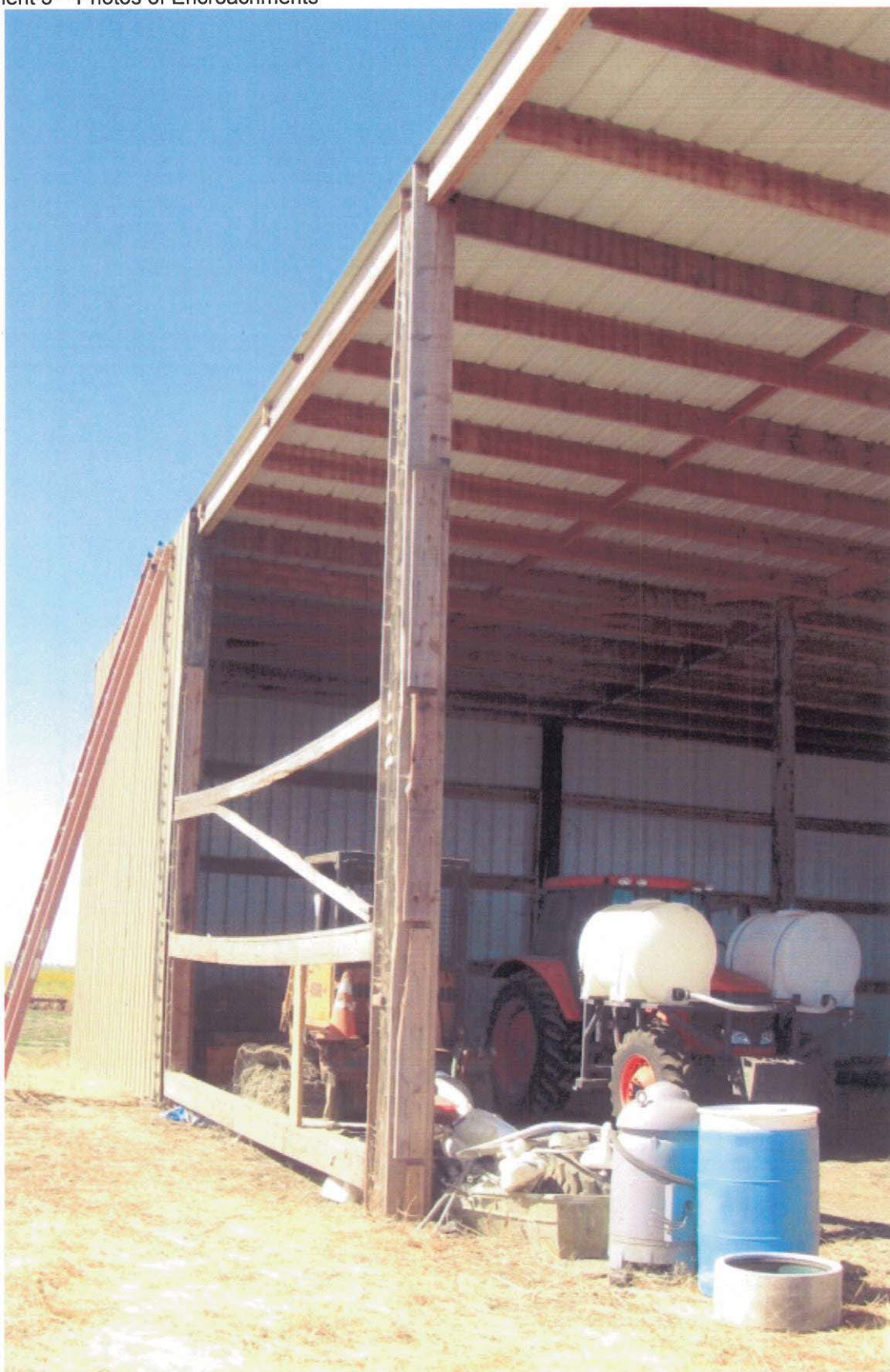
**Respondents Rights:** The landowner or person owning, undertaking, or maintaining the work that is the subject of the attached notice is the respondent. The respondent has the opportunity to an enforcement hearing which must be requested in writing within 30 days of receipt of this notice. All hearings are open to the public and are held by one or more members of the CVFPB or a designated hearing officer. Failure to file a hearing request response within thirty (30) days constitutes a waiver of the respondent's right to a hearing. The respondent and other parties may request the CVFPB provide a copy of any document not exempt from disclosure under the Public Records Act that is relevant to the enforcement proceedings. The CVFPB may charge a reasonable fee for each copy.

**CVFPB's Rights:** If the respondent fails to comply with this notice within the specified timelines, the CVFPB may seek judicial enforcement and commence and maintain a suit in the name of the People of the State of California for the prevention and abatement of the nuisance. A failure to comply with this notice renders the owner or operator of any of the encroaching structures liable to any person for the damages caused by the structure's failure. The CVFPB may also physically remove the violating encroachments using a contractor or the local maintaining agency and recover its costs from the respondent. Further, the CVFPB may abate violations or threats to the adopted plan of flood control by requiring you to take an action, at your cost, that may include, but is not limited to: (1) removal of the work; (2) alteration of the work; (3) performance of additional work; (4) implementation of specified mitigation for effects on the environment; (5) compliance with additional reasonable conditions; (6) filing an application for a permit pursuant to this division; or (7) revocation of a permit.

Jay S. Punia  
Executive Officer



Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments



Damaged Agricultural Barn



Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments



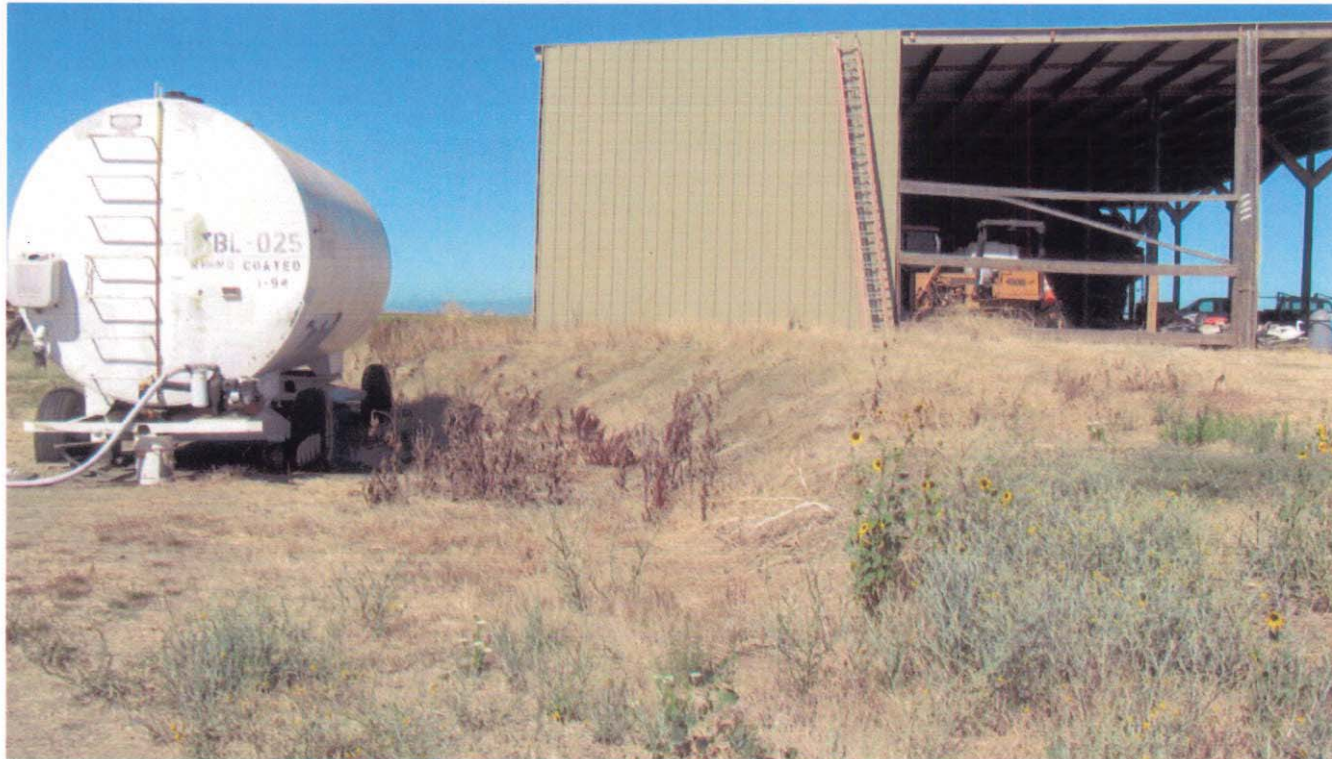
Damaged Agricultural Barn on elevated pad and Unanchored Fuel Tank





Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments

Fuel Tank



Unanchored Leaking Diesel Fuel Tank



Unanchored Ammonia Tanks



Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments



Unanchored Farm Equipment



Soil Berm Blocking Drainage



Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments



Soil placed that blocks drainage from the parcel to the North.



Soil placed that blocks drainage from the parcel to the North.



Encroachment Removal Enforcement Notice No. 2012-145  
Attachment 3 – Photos of Encroachments



Drainage structure blocking free flow of water.

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-0685 FAX: (916) 574-0682

**Sent via certified mail**

August 1, 2011

Mr. Ron and Mrs. Clover Smith  
2665 Sorney Loop Road  
Rescue, California 95672-9483

Subject: Notice of Violation for unauthorized earthen pad and hay barn in Yolo Bypass (APN: 033-190-010)

Dear Mr. and Mrs. Smith:

The State of California, Central Valley Flood Protection Board (Board), has been notified about the unauthorized construction of an earthen pad approximately 8 feet high, 100 ft wide, 800 feet long and a hay barn within the Yolo Bypass, located approximately 2.9 miles east of the intersection County Road 152 and County Road 104 in Yolo County (APN: 033-190-010). Attached to this letter are the site location and photographs, Figures 1 and 2 respectively.

Our records show that you submitted an encroachment permit application to the Board on December 5, 2006 requesting authorization for the construction of a 100-ft by 800-ft, 8 ft high berm. Per Board letter dated January 18, 2007, you were notified that additional information was required in order to process your application. You were also informed that the proposed work required a variance from the Board's regulations, which could only be granted by our Board and would have to be requested by you. Our files do not show any records of a response to our letter mentioned above and your application will not be processed. Furthermore, the unauthorized work continued after being notified to stop the work as document on our letters dated May 3, 2007 and July 22, 2008, which are attached as Figures 4 and 5, respectively.

The California Code of Regulations (CCR), Title 23 Waters, Division 1, Section 6 (*Need for a Permit*), states that the placement or construction of any structure, obstruction or encroachment within any area for which there is an adopted plan of flood control must be approved by the Board prior to commencement of the work. In addition, CCR 23, Section 136 (k) states that permanent berms above natural ground elevation are not permitted within the Yolo Bypass without a detailed hydraulic analysis. The construction of the earthen pad is located within the Yolo Bypass, which is part of the Sacramento River Flood Control Project and is subject to a flowage easement recorded for the benefit of the Sacramento San Joaquin Drainage District (SSJDD). Therefore, the work taken place at your property is a clear violation of the Board's regulations which are intended to avoid risks to public safety from alterations to the Flood Control System.

Please respond to this office within thirty (30) days from the date of receipt of this notice with a plan and schedule outlining the encroachment removal and restoration of the floodway to its pre-existing condition. If a response is not received by the mentioned deadline, you will be subject to an enforcement action, as outlined in Article 4 of CCR 23.



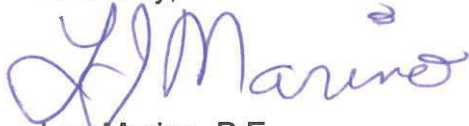
Mr. & Mrs. Smith

August 1, 2011

Page 2 of 2

Should you have any questions, please contact Board Staff engineer Ms. Angeles Caliso at (916) 574-2386, or e-mail her at [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov).

Sincerely,



Len Marino, P.E.  
Chief Engineer

Attachments:

- Figures 1 & 2: Site Location and Photographs
- Figure 3: Letter dated January 18, 2007- Application 18160
- Figure 4: Letter dated May 3, 2007
- Figure 5: Letter dated July 22, 2008
- Figure 6: Letter from CVFPB dated April 6, 2011
- Figure 7: Letter from Dustin Smith, America's Habitat (no date)

cc: Mr. Dustin Smith  
America's Habitat  
424 Moon Circle  
Folsom, California 95630

Mr. John Bencomo, Director  
Mr. Lonell Butler, Chief Building Official  
Planning and Public Works  
Yolo County  
292 West Beamer Street  
Woodland, California 95695

Ms. Meegan Nagy, Chief  
Flood Protection & Navigation Section  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Mr. Don Rasmussen, Chief  
Mr. David Pesavento, Section Chief  
Mr. Herman Phillips, Inspector  
Flood Project Integrity and Inspection Branch  
Department of Water Resources

Mitra Emami, CVFPB  
Curt Taras, CVFPB  
Ward Tabor, DWR Legal Counsel

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**THE RECLAMATION BOARD**

3310 El Camino Avenue, LL40  
 SACRAMENTO, CA 95821  
 (916) 574-0609 FAX: (916) 579-0682  
 Permits: (916) 574-0653 FAX: (916) 574-0681



January 18, 2007

Mr. Ronald D. Smith  
 2665 Sorney Loop  
 Rescue, California 95672

Application No. 18160

Dear Mr. Smith:

We have received your application for a Reclamation Board encroachment permit to construct a habitat mound within the Yolo Bypass. As Board staff has explained to you, your application, as submitted, is incomplete. If you would like the Board to continue processing this application, you will need to submit a completed application to the Reclamation Board at the above address, which will include all of the following, if not already provided:

- (1) A copy of any draft and final environmental review document prepared for the project, such as an initial study, environmental assessment, negative declaration, notice of exemption, or environmental impact report. For any reasonably foreseeable significant environmental impacts, mitigation for such impacts shall be proposed.
- (2) Complete plans and specifications showing the proposed work, and adequate cross sections through the area of the proposed work. The plans must be drawn to scale and refer to National Geodetic Vertical Datum (NGVD), or other known datum. The plans must also indicate any project features such as levees and/or channels, roads, or other structures, and must show river mile or levee mile references. The dimensions of any proposed or existing fills, excavations, and construction must be given.

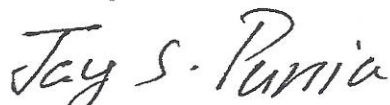
Additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys and other analyses may also be required at any time prior to board action on the application. Once your application is complete, Reclamation Board staff will review it and determine whether to issue a permit for the project. Specifically, because the application relates to a project in the Yolo Bypass, it will be subject to the Supplemental Standards for the Yolo Bypass contained in Board regulations (23 CCR sec. 136). For elevated features, Board regulations require submittal of a detailed hydraulic analysis of the project.

However, as has also been explained to you, based upon our understanding of your proposal, staff will not be able to issue a permit or support this project because your project would require a variance from Board standards. Only the full Board can grant such a variance. Please note that once an application has been denied by the staff, applicant will have the right to have the application heard by the Board.

Ronald D. Smith  
January 18, 2007  
Page Two

For further information regarding this matter, please contact Mike Mirmazaheri, DWR Chief of Floodway Protection, at (916) 574-0609. Please include the application number provided above with any communications to this office.

Sincerely,



Jay Punia  
General Manager

cc: Jim Sandner, Chief  
Operations Technical Division  
Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

Stein Buer, Executive Director  
Sacramento Area Flood Control Agency  
1007 – 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814-3407

John Bencomo  
Yolo County Department of Public Works  
292 West Beamer Street  
Woodland, California 95695

bcc: Keith Swanson, Chief  
Flood Maintenance Office



STATE OF CALIFORNIA – THE RESOURCES AGENCY  
GOVERNOR

ARNOLD SCHWARZENEGGER,

**THE RECLAMATION BOARD**

3310 El Camino Ave., Rm. LL40  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-0653 FAX: (916) 574-0682



May 3, 2007

Mr. Ronald D. Smith  
2665 Sorney Loop  
Rescue, CA 95672

Dear Mr. Smith:

The Reclamation Board has received information that unauthorized work may be underway on or adjoining your property in the Yolo Bypass. We contacted you on May 1, 2007 to try to set up a mutually agreeable time for you and an Inspector from the Department of Water Resources to meet at the property so that he might document any potential construction activities that may be occurring there. Since we could not come to terms, the Department of Water Resources is sending an inspector, accompanied by a Yolo County Sheriff's Deputy, to visit your property on Thursday, May 10, 2007 at 10:30 a.m.

The Yolo Bypass is part of the Sacramento River Flood Control Project and is subject to a comprehensive flowage easement recorded for the benefit of the Sacramento and San Joaquin Drainage District. A wide range of projects undertaken in the Yolo Bypass, or anywhere within an adopted plan of flood control, requires a permit from the Reclamation Board pursuant to 23 CCR s. 6, and are subject to inspection by the Department pursuant to Water Code § 8360, which gives the Department supervisory powers over the maintenance and operation of the flood control works of the Sacramento River Flood Control Project on behalf of the State.

If you have any questions, please call me (916) 574-0609, or Sam Brandon, Acting Chief of Floodway Protection for the Department of Water Resources, at (916) 574-0651.

Sincerely,

*Jay S. Punia*  
Jay S. Punia  
General Manager

cc: (See Attached List).



cc: Jim Sandner, Chief  
Operations Technical Division  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, CA 95814

Stein Buer, Executive Director  
Sacramento Area Flood Control Agency  
1007 - 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

John Bencomo  
Yolo County Department of Public Works  
292 West Beamer Street  
Woodland, CA 95695

bcc: Les Harder - DWR  
Rod Mayer - DWR  
Keith Swanson - DWR  
Jeremy Arrich - DWR  
Sonny Fong - DWR  
Herman Phillips - DWR

U.S. Postal Service™		CERTIFIED MAIL™ RECEIPT	
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OFFICIAL USE			
Postage	\$	Postmark Here	
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		
Sent To: <u>Mr. Ronald D. Smith</u> Street, Apt. No., or PO Box No. <u>2665 - Sonny Rapp</u> City, State, ZIP+4 <u>Rescue, Calif 95672</u>			
PS Form 3800, June 2002		See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, on the front if space permits.</li> </ul>	A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee B. Received by (Printed Name) <u>Clover Smith</u> C. Date of Delivery <u>5/5/07</u> D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No
1. Article Addressed to: <u>Mr. Ronald D. Smith</u> <u>2665 - Sonny Rapp</u> <u>Rescue, Calif 95672</u>	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
2. Article (Tra)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

2. Arti  
(Tra)

PS Fo

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. LL40

SACRAMENTO, CA 95821

(916) 574-0609 FAX: (916) 574-0682

PERMITS: (916) 574-0653 FAX: (916) 574-0682



July 22, 2008

Mr. Ronald D. Smith  
2665 Sorney Loop  
Rescue, California 95672

Dear Mr. Smith:

The Central Valley Flood Protection Board has received information that unauthorized work may be underway on or adjoining your property in the Yolo Bypass. The Department of Water Resources is sending an inspector, accompanied by a Yolo County Sheriff's Deputy, to visit your property on Tuesday, August 5, 2008 at 10:00 a.m.

The Yolo Bypass is part of the Sacramento River Flood Control Project and is subject to a comprehensive flowage easement recorded for the benefit of the Sacramento and San Joaquin Drainage District. A wide range of projects undertaken in the Yolo Bypass, or anywhere within an adopted plan of flood control, requires a permit from the Central Valley Flood Protection Board pursuant to 23 CCR s. 6, and are subject to inspection by the Department pursuant to Water Code §8360, which gives the Department supervisory powers over the maintenance and operation of the flood control works of the Sacramento River Flood Control Project on behalf of the State.

If you have any questions, please contact Virginia Cahill, Chief Legal Counsel of the Central Valley Flood Protection Board, at (916) 322-5647.

Sincerely,

Jay S. Punia  
Executive Officer

cc: (See Attached List).

cc: Mr. Jim Sandner, Chief  
Operations Technical Division  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

Mr. Stein Buer, Executive Director  
Sacramento Area Flood Control Agency  
1007 – 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814-3407

Mr. John Bencomo  
Yolo County Department of Public Works  
292 West Beamer Street  
Woodland, California 95695



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



April 6, 2011

Mr. Ron Smith  
2665 Sorney Loop Road  
Rescue, California 95672-9483

Subject: Unauthorized earthen pad and hay barn in Yolo Bypass (APN: 033-190-010)

Dear Mr. Smith:

On March 25, 2011 the Central Valley Flood Protection Board ("Board") staff met with Mr. Dustin Smith, acting on your behalf, to discuss the above-referenced encroachment. The purpose of this letter is to summarize our meeting and provide you with guidance on the next steps. Per our meeting, Dustin is working on a habitat restoration project nearby the existing berm and pad and he plans to submit an encroachment permit application for this work. For simplicity, we suggest that the berm and pad remain as a separate permit application, as originally requested by you in Application No. 18160. In order to continue processing this application, you will need to comply with the requirements stated in our letter dated January 18, 2007. A copy of the letter is attached for your reference. In addition, because the work requires a variance to the Board's Regulations, you will need to submit a letter requesting a variance with an explanation of why it is unfeasible to comply with the Board Standards (California Code of Regulations Title 23 Section 136 "Supplemental Standards for the Yolo Bypass").

You should be aware that Yolo County will not issue a building permit for the hay barn until you have complied with the Board's requirements.

We appreciate your willingness to cooperate and look forward to assisting you in resolving this matter. Please respond to our office within thirty (30) days from the date of this letter informing us how you wish to pursue. If a response is not received by the mentioned deadline, you will be subject to an enforcement action pursuant to California Code of Regulations Title 23 Article 4.

Should you have any questions, please contact staff engineer, Ms. Angeles Caliso at (916) 574-2386 or via e-mail at [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Len Marino".

Len Marino, P.E.  
Chief Engineer

Attachment: CVFPB letter to Ronald Smith dated January 18, 2007  
cc: (Please see attached list)

Mr. Ron Smith  
April 6, 2011  
Page 2 of 2

cc: Mr. Dustin Smith  
d.smith@americashabitat.com

Ms. Meegan Nagy, Chief  
Flood Protection & Navigation Section  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Mr. John Bencomo, Director  
Mr. Lonell Butler, Chief Building Official  
Planning and Public Works  
Yolo County  
292 W. Beamer Street  
Woodland, California 95695

Mr. Don Rasmussen, Branch Chief  
Mr. David Pesavento, Section Chief  
Mr. Herman Phillips, Inspector  
Flood Project Integrity and Inspection Branch  
(Department of Water Resources)

Mitra Emami, CVFPB  
Curt Taras, CVFPB  
Angeles Caliso, CVFPB  
Ali Porbaha, CVFPB



**THE RECLAMATION BOARD**

3310 El Camino Avenue, LL40

SACRAMENTO, CA 95821

(916) 574-0609 FAX: (916) 579-0682

Permits: (916) 574-0653 FAX: (916) 574-0681



January 18, 2007

Mr. Ronald D. Smith  
2665 Sorney Loop  
Rescue, California 95672

Application No. 18160

Dear Mr. Smith:

We have received your application for a Reclamation Board encroachment permit to construct a habitat mound within the Yolo Bypass. As Board staff has explained to you, your application, as submitted, is incomplete. If you would like the Board to continue processing this application, you will need to submit a completed application to the Reclamation Board at the above address, which will include all of the following, if not already provided:

- (1) A copy of any draft and final environmental review document prepared for the project, such as an initial study, environmental assessment, negative declaration, notice of exemption, or environmental impact report. For any reasonably foreseeable significant environmental impacts, mitigation for such impacts shall be proposed.
- (2) Complete plans and specifications showing the proposed work, and adequate cross sections through the area of the proposed work. The plans must be drawn to scale and refer to National Geodetic Vertical Datum (NGVD), or other known datum. The plans must also indicate any project features such as levees and/or channels, roads, or other structures, and must show river mile or levee mile references. The dimensions of any proposed or existing fills, excavations, and construction must be given.

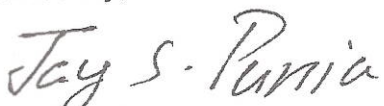
Additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys and other analyses may also be required at any time prior to board action on the application. Once your application is complete, Reclamation Board staff will review it and determine whether to issue a permit for the project. Specifically, because the application relates to a project in the Yolo Bypass, it will be subject to the Supplemental Standards for the Yolo Bypass contained in Board regulations (23 CCR sec. 136). For elevated features, Board regulations require submittal of a detailed hydraulic analysis of the project.

However, as has also been explained to you, based upon our understanding of your proposal, staff will not be able to issue a permit or support this project because your project would require a variance from Board standards. Only the full Board can grant such a variance. Please note that once an application has been denied by the staff, applicant will have the right to have the application heard by the Board.

Ronald D. Smith  
January 18, 2007  
Page Two

For further information regarding this matter, please contact Mike Mirmazaheri, DWR Chief of Floodway Protection, at (916) 574-0609. Please include the application number provided above with any communications to this office.

Sincerely,

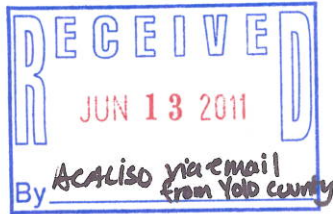
  
Jay Punia  
General Manager

cc: Jim Sandner, Chief  
Operations Technical Division  
Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814

Stein Buer, Executive Director  
Sacramento Area Flood Control Agency  
1007 – 7<sup>th</sup> Street, 7<sup>th</sup> Floor  
Sacramento, California 95814-3407

John Bencomo  
Yolo County Department of Public Works  
292 West Beamer Street  
Woodland, California 95695

bcc: Keith Swanson, Chief  
Flood Maintenance Office



## AMERICAS HABITATS



424 Moon Circle  
Folsom, Ca 95630

T 916 534-8867  
F 916 293-8495

Angeles Costilo  
Department of Water Resources

First off I would like to thank you for your time this past week to discuss the permit issues at my parents property located in the Yolo Bypass, APN number 033-190-10. The concerns from both the Yolo County Building Department, as well as the Department of Water Resources are both valid, and I do want all parties to understand I do agree the Smith Family will need to obtain the correct permits for the agricultural barn in question. As we discussed in the meeting I would like to follow up and reiterate a few of the particular details as well as the outcome of the conversation.

In short the focus of the meeting was on the "mound" the barn is built upon. It was thought by the DWR that the mound had been built by my family in recent years. This is completely false, and during the meeting I was able to quickly show you images I had on my laptop computer that dated back to as early as 1937. Although more pictures, maps, and historic images can be found at the Yolo County Historic Records office in Woodland, Ca, I was able to show you a few that I had on hand. I had explained in the effort to show you our family had nothing to do with this mound and that the mound has been shown on topographic maps as well as aerial photographs for decades.

As we further discussed the mound and the barn could be coupled with the permit that would be going in to the DWR for the conservation project I am doing on this property. I had mentioned that the conservation project had required extensive hydro analysis of the property and with or without the mound the impacts are within tolerances accepted by DWR. I agreed that as long as there are no other adverse affects by combining the mound and the barn with the conservation project then when we submitted our project in the next few months we would include the mound and barn, you felt that was acceptable.

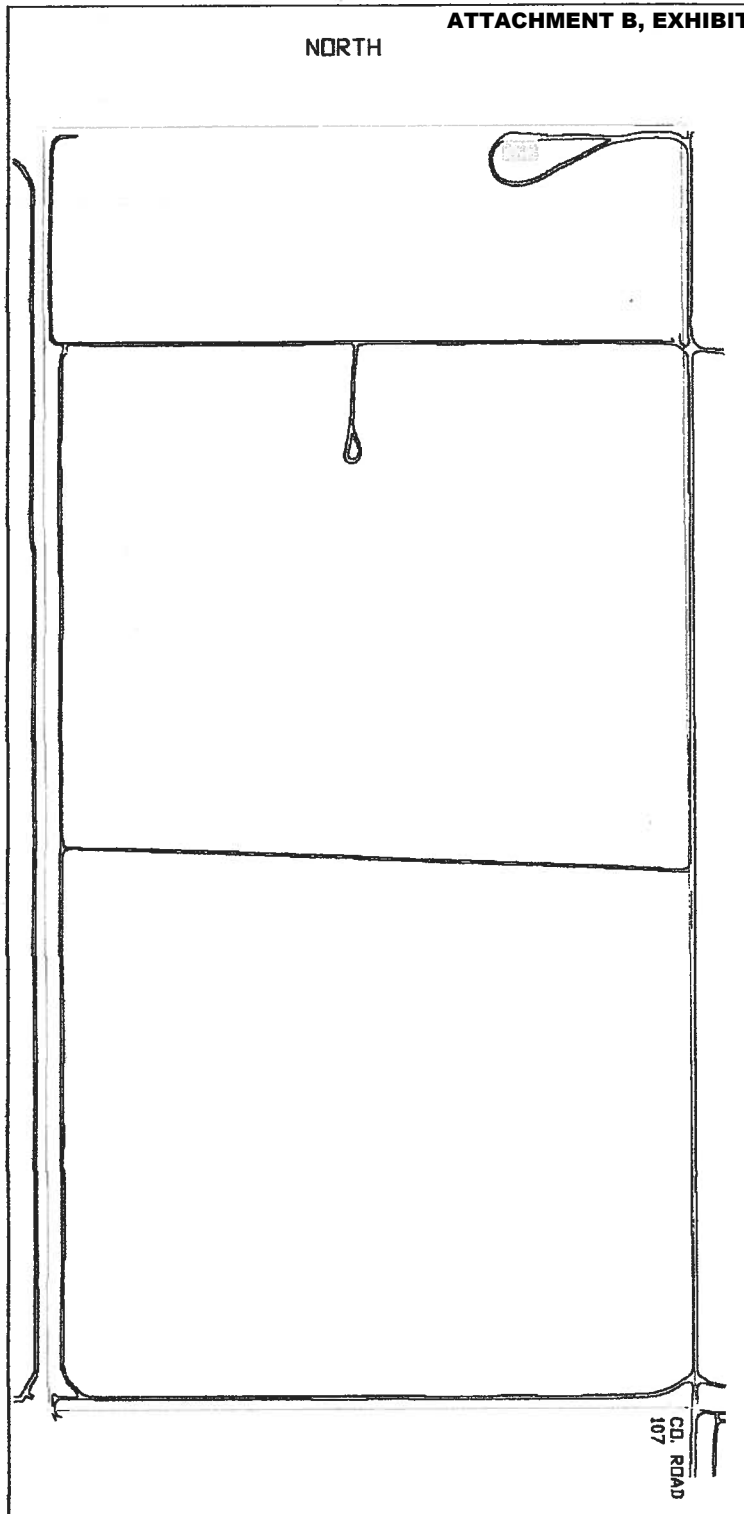
As I mentioned above we do acknowledge the problem that we are lacking the correct if any permits for an agricultural pole barn used for hay storage. I have agreed to resolve this problem by means of coupling the permit for the barn and/or mound with the application for the conservation project I am doing on the property. I will extend this communication and effort with the Yolo County Building Department, and I look forward to finalizing these issues.

Sincerely yours,

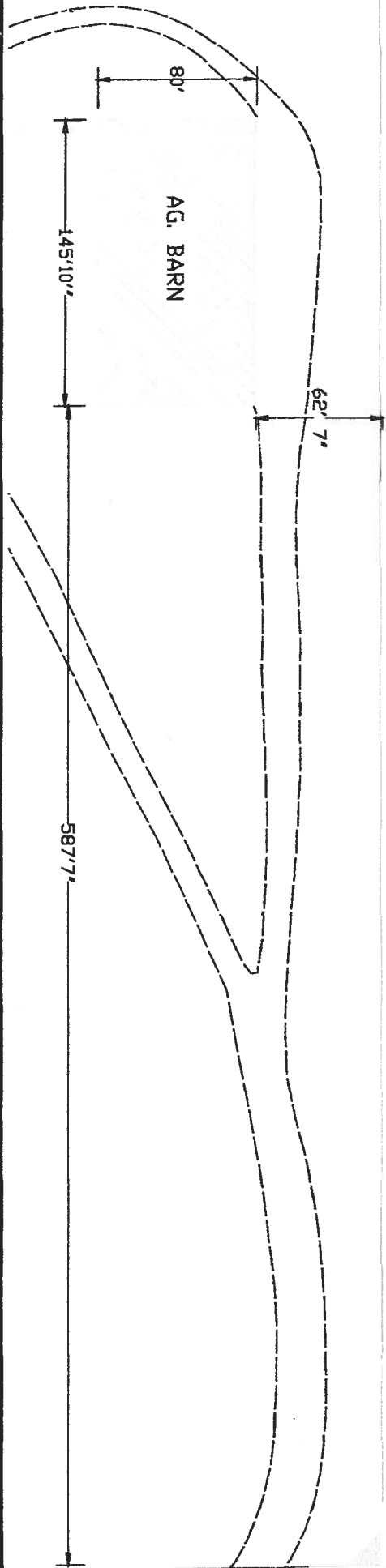
Dustin Smith



NORTH



NORTH



SMITH AG. BARN

YOLO COUNTY, CA  
 APN- 033-190-10  
 DRAWN BY- D.SMITH  
 DRAWING DATE 11/16/2010  
 REVISION NO. 1.0

# ATTACHMENT B, EXHIBIT E

10'-1 1/4" Ø (varies)  
wooden utility pole  
@ 24' o.c. typ.

3'-0" x 4'-0" metal  
roof panels typ.

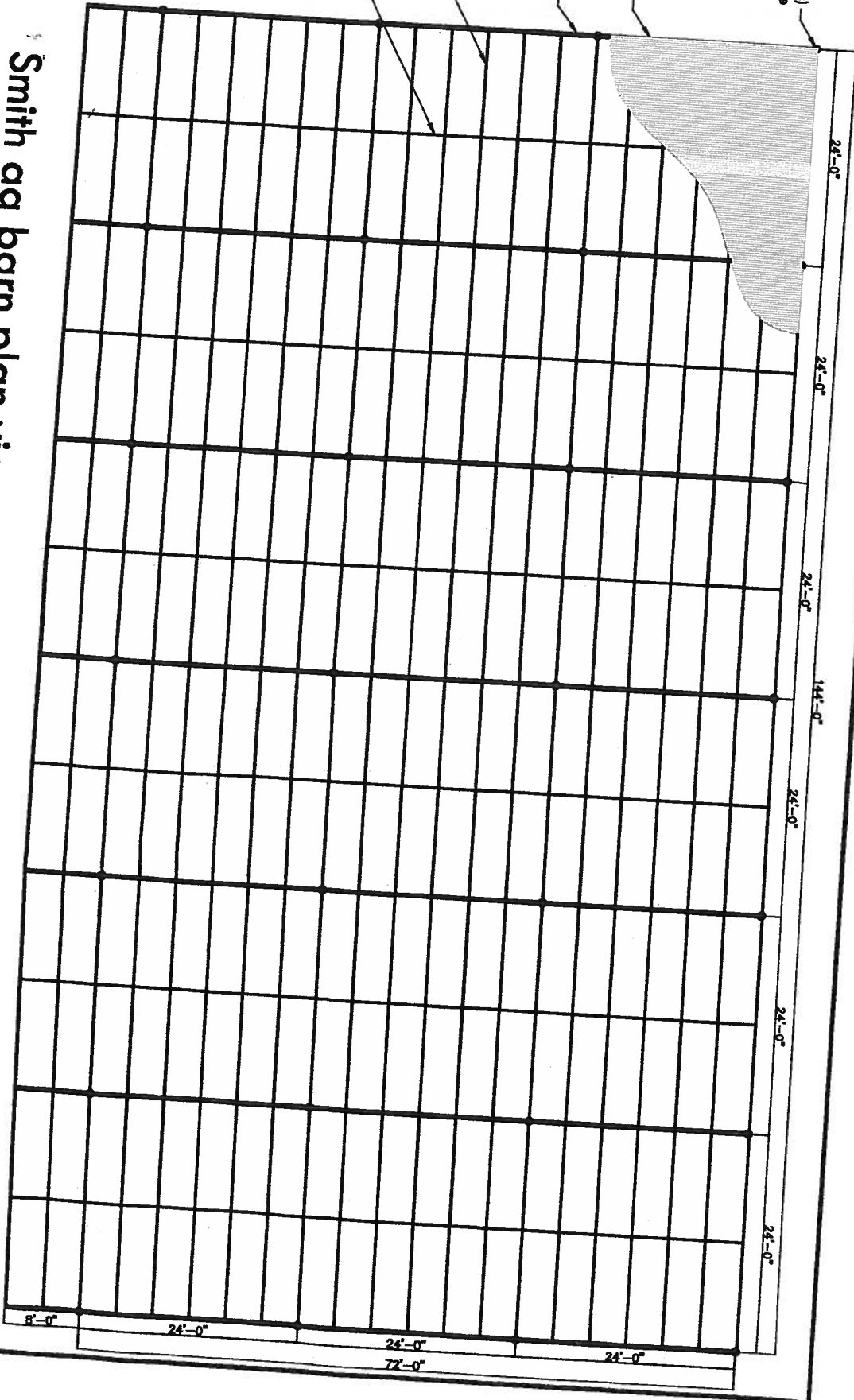
beam - (3) 2x12 d.f.  
nailed together,  
between every  
utility pole typ.

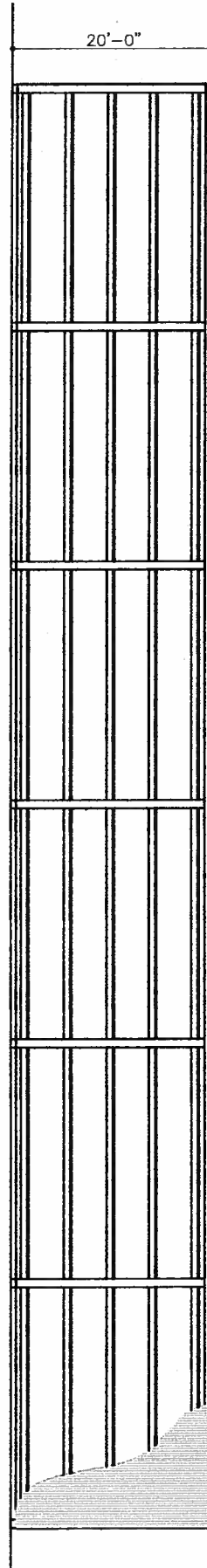
2x12 d.f. roof  
joists @ 4' typ.

2x12 d.f. blocking  
@ center of roof  
joists where  
needed typ.

## Smith ag barn plan view

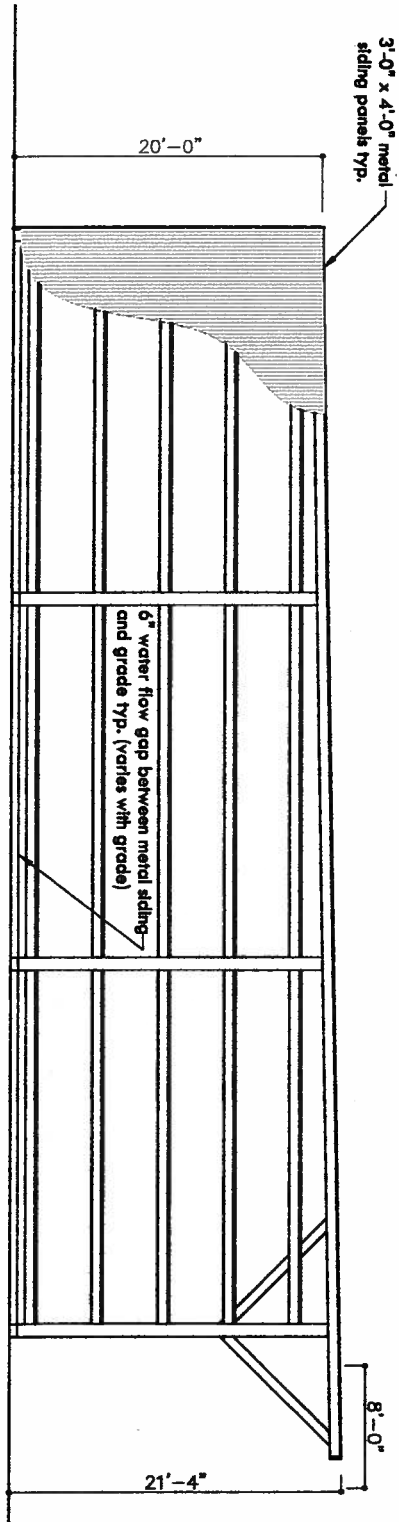
SCALE: 3/32" = 1'-0"





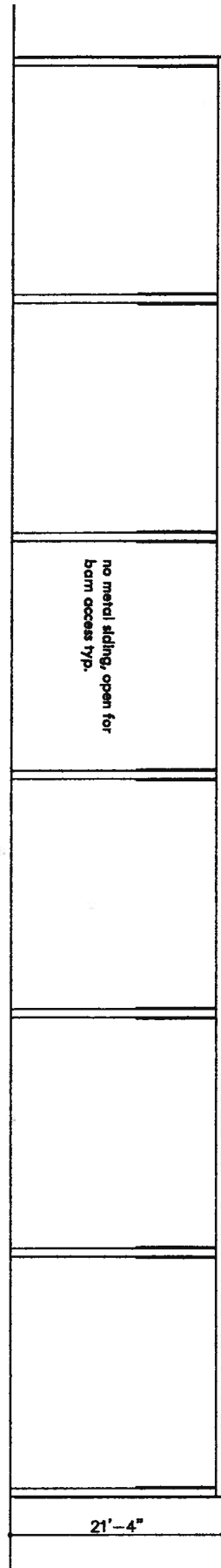
### Smith ag barn (north) elevation

SCALE:  $3/32" = 1'-0"$



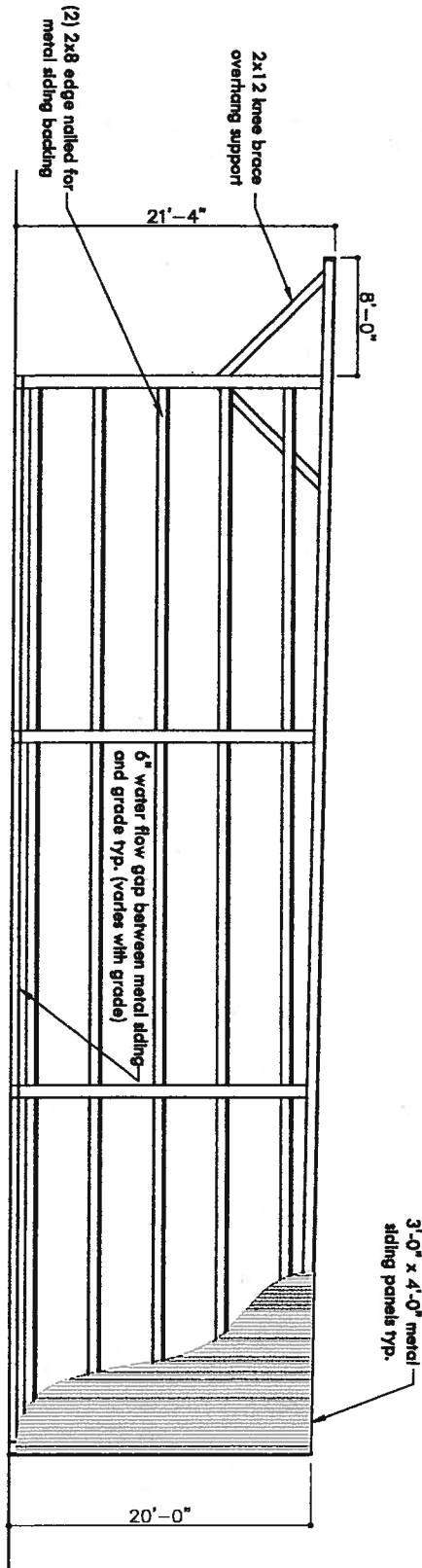
### Smith ag barn (west) elevation

SCALE:  $1/8" = 1'-0"$



## Smith ag barn (south) elevation

SCALE: 3/32" = 1'-0"



## Smith ag barn (east) elevation

SCALE: 1/8" = 1'-0"





## MEMORANDUM

<b>Date:</b>	June 6, 2011
<b>To:</b>	Dustin Smith (America's Habitats)
<b>From:</b>	Chris Campbell and Ali Abrishamchi
<b>Project:</b>	10-1016 – Capital Conservation Bank
<b>Subject:</b>	Flood Conveyance Modeling – Phase 1 and Phase 2

### 1 INTRODUCTION

The proposed Capital Conservation Bank (CBB), located within the Yolo Bypass (YB), is a planned two-phase project to develop the entire 320-acre parcel, with Phase 1 occurring in the southern 135 acres (see Figure 1). The CBB is intended to provide conservation benefits for giant garter snake (GGS) both locally and regionally. These benefits will be met by creating wetland habitat as well as upland habitat with artificial hibernacula. The upland habitats will be constructed to varying elevations, with the highest elevations at 24.5 feet NGVD29, which are 2.0 feet above the Yolo Bypass design water surface elevation (WSE).

To understand the potential flood conveyance impacts of these proposed habitats, especially the uplands which daylight above the design water surface, flood conveyance modeling of the Yolo Bypass was undertaken for both phases of the CBB. The following describes the modeling methods, assumptions, and findings.

### 2 DESCRIPTION OF SCENARIOS

In addition to modeling existing conditions (see Figure 2), both phases of the CBB were modeled (see Figure 3) to assess the potential flood conveyance impacts of the CBB on Yolo Bypass water surface elevations. Phase 1 consists of the southern 135 acres of the 320-acre parcel and will be built first. Phase 2 consists of the northern 185 acres, and while there are no formal plans to develop this portion of the project at this time, it was modeled to understand the potential cumulative impacts of the project as a whole. Also, as a subset of each scenario, the proposed uplands were modeled as grazed and ungrazed (see Table 1).

### 3 FLOOD MODEL SETUP

The Yolo Bypass RMA2 model, developed by the USACE (2007a) for use in permitting and planning within the Yolo Bypass, was used as a basis for assessing the potential flood conveyance impacts of the CBB. The following describes the model domain, topography, boundary conditions, and how the RMA2 model was adapted for this project.

#### 3.1 TRUNCATED MODEL DOMAIN

For computational reasons identified in the Yolo Bypass RMA2 model documentation (USACE, 2007b), the Yolo Bypass RMA2 model was truncated to the extents shown by Figure 4. The northern model boundary was 5.8 miles north of the project site at County Road 35. The southern model boundary was truncated 0.5 miles north of the northernmost Stair Step or 4.0 miles south of the project site. Refinements to the model mesh, which had a nominal size of 500 feet by 500 feet, included refining the mesh within the project footprint to  $\pm 30$ -foot cells (see Figure 5) to adequately characterize the wetlands and upland habitats.

#### 3.2 TOPOGRAPHY

The source hydrographic data in the Yolo Bypass RMA2 model was based on data collected in 1997 to support the Sacramento and San Joaquin River Basins Comprehensive Study. The data was collected to produce 2 foot contours with a vertical accuracy of 1 foot and registered to NGVD29. To supplement this existing hydrographic data, photogrammetric data collected on May 25, 2010 for the project site (see Figure 2) was converted from NAVD88 to NGVD29 (using an adjustment of -2.49 feet) and incorporated into the model domain.

Figure 3 shows the topographic conditions for Phase 1 and Phase 2.

#### 3.3 BOUNDARY CONDITIONS

##### 3.3.1 Hydraulic Roughness

The hydraulic roughness coefficients in Table 1, as adopted from the Yolo Bypass RMA2 model, were used to characterize predominate land uses in the Yolo Bypass and at the project site, namely water conveyance features, agriculture, and wildlife habitat. Water conveyance features include irrigation and drainage canals, tidal waterways, and flooded islands. Agricultural land uses include rice, other crops, and irrigated pasture. Wildlife habitat typically consists of wild grasslands, seasonal and permanent wetlands and riparian areas. The roughness coefficients were initially based on engineering judgment and later verified by the USACE during calibration simulations to the 1997 flood event.

Current land uses at the project site are dominated by rice production in the northern (Field 12) and southern (Field 2) fields with the center field (Field 1) currently fallow. For the purposes of modeling, Figure 6 shows that the project site material types for existing and project conditions. The wetlands

were treated as a mix between fields and reeds since tules will be managed as patches (much like the Yolo Bypass Wildlife Area). The uplands were treated both as grazed fields or ungrazed grasslands to evaluate the need for vegetation management.

**Table 1. Hydraulic roughness coefficients**

Current RMA2 Roughness Coefficients		Project Specific Roughness Coefficients	
Material Type	Manning's n value	Material Type	Manning's n value
Agriculture Fields	0.030	Roads	0.030
Wild Grassland	0.045	Deep Channels	0.025
Open Water	0.025	Potholes	0.030
Maintained Levee Slope	0.050	Wetlands	0.040
Bridges	0.070	Uplands	0.045
Reeds and Rushes	0.050	Uplands Grazed	0.030
Mixed Grassland/Riparian	0.070		
Riparian Woodland	0.120		
Restricted Height Levees	0.100		

### 3.3.2 Flow and Stage

For the truncated model domain, and as derived from the RMA2 model, inflows at the northern model boundary were 490000 cfs and water levels at the southern boundary 19.5 feet NGVD29.

### 3.3.3 Convergence Criteria

As taken for USACE (2007a), the following criteria were used to converge upon model solutions:

*When the maximum change in computed water surface between iterations at any node in the model geometry is less than the convergence criterion, the simulation either proceeds to the next boundary condition revision or stops. The convergence criteria value of 0.0025 ft used assures that the accuracy of impact assessments featuring the comparison of computed water surface data sets is better than +/- 0.005 ft. This allows water surface contours generated from such a comparison to be viewed with confidence at an interval of 0.01 ft.*

## 4 RESULTS

A total of five (5) models were setup and run to assess the potential flood conveyance impacts of the CCB project on Yolo Bypass water levels and velocities. These included 1) existing conditions, 2a) Phase 1 grazed, 2b) Phase 1 ungrazed, 3a) Phase 2 grazed, and 3b) Phase 2 ungrazed. The ungrazed versus grazed options considered the potential benefits of vegetation management on the uplands only.



Figure 7 shows the bounding rectangle within the model domain within which there were changes in water surface elevations (WSE) and velocities. Figures 8 to 11 show the relative change in WSE for Phase 1 and Phase 2. Figures 12 to 15 show the relative change in velocity for Phase 1 and Phase 2. To determine if any scenario resulted in a flood conveyance impact, especially along a project levee, level of significance thresholds were set to 0.05 feet for increases in WSE and 0.5 feet for increases in velocity. The WSE threshold accounts for some degree of model uncertainty given that model input data (i.e., topography) have vertical accuracies far greater than 0.05 feet (i.e., an order of magnitude greater).

Based on CBB model results, potential flood conveyance impacts within the Yolo Bypass are limited to the following:

1. Figure 8 shows that Phase 1 with vegetation management in the uplands increases WSEs up to 0.02 feet just outside the project boundary, which are isolated to the immediate area just upstream of the upland mounds.
2. Figure 9 shows that Phase 1 without vegetation management in the uplands increases WSEs up to 0.01 feet along the eastern levee.
3. Figure 10 shows that Phase 2 with vegetation management in the uplands results in similar increases in WSEs up to 0.01 feet on the upstream side of the Phase 1 upland mounds (see Figure 8); however, there are small decreases of 0.01 feet in WSEs upstream of the northern property boundary.
4. Figure 11 shows that Phase 2 without vegetation management in the uplands results in similar increases in WSEs up to 0.01 feet along the eastern levee.
5. Figures 12 to 15 demonstrate that small changes in velocity are isolated to the project area and immediate vicinity. The largest decreases of 1 fps are located on the leeward side of the upland mounds with the largest increases up to 1 fps localized to the upland mounds as the flood waters flow around the mounds. Figure 16 shows that maximum velocities flowing around the face of the upland mounds are approximately 3.5 fps, which is within the permissible velocity range for native grasses (Fischenich, 2001).

## 5 SUMMARY AND RECOMMENDATIONS

Based on the results presented in Figures 8 to 16, increases in WSE and velocities, both within the adjoining properties and along the eastern levee, are below the stated thresholds of significance. Most notably, increases in WSE up to 0.01 feet along the eastern levee under the ungrazed scenario for both Phase 1 and Phase 2 are reduced to localized increases up to 0.02 feet along the property boundary. Similarly, the adjoining properties only see small changes in velocity well within  $\pm 0.5$  fps for both Phase 1 and Phase 2 under both the grazed and ungrazed scenarios. These results demonstrate that vegetation management of the uplands can be used to effectively eliminate potential freeboard encroachment along the eastern levee and keep small changes in localized to the project vicinity. Therefore, based on the flood conveyance results documented in this report, both Phase 1 and Phase 2 of the CBB as currently designed are recommended for approval assuming vegetation management is included as a strategy to reduce hydraulic roughness in the uplands to the levels assumed in these analyses.

## 6 REFERENCES

Fischenich, C. 2001. Stability Thresholds for Stream Restoration Materials, EMRRP Technical Notes Collection (ERDC TNEMRRP-SR-29). US Army Engineer Research and Development Center, Vicksburg, MS.

USACE. 2007a. Engineering Documentation Report: Yolo Bypass 2-D Hydraulic Model Development and Calibration. US Army Corps of Engineers, Sacramento District.

USACE. 2007b. Yolo Bypass RMA2 Model User Guide. US Army Corps of Engineers, Sacramento District.

## 7 LIST OF FIGURES

Figure 1. CCB location map

Figure 2. CCB existing topography

Figure 3. CCB project topography

Figure 4. Truncated model domain

Figure 5. Refined model mesh

Figure 6. Roughness types

Figure 7. Domain of hydraulic impact

Figure 8. Phase 1 grazed WSE change

Figure 9. Phase 1 ungrazed WSE change

Figure 10. Phase 2 grazed WSE change

Figure 11. Phase 2 ungrazed WSE change

Figure 12. Phase 1 grazed velocity change

Figure 13. Phase 1 ungrazed velocity change

Figure 14. Phase 2 grazed velocity change

Figure 15. Phase 2 ungrazed velocity change

Figure 16. Phase 2 grazed absolute velocity

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



August 2, 2011

Mr. Tony Frayji  
Frayji Design Group, Inc.  
2235 Douglas Blvd., Suite 520  
Roseville, California 95661

Dear Mr. Frayji:

Thank you for submitting an encroachment permit application with the Central Valley Flood Protection Board (CVFPB) related to Capital Conservation Bank (Giant Garter Snake Habitat).

After a preliminary review of your application, we have determined that the application cannot be processed at this time due to outstanding unauthorized encroachments within the project site. Pursuant to California Code of Regulations, Title 23, Section 15 (f), which states that *"the board may deny a permit...if there has been work performed without a permit and that the work is not the subject of the pending permit application..."*

Our office will retain the submitted package related to the Giant Garter Snake Habitat, but it will be placed in an "inactive" status until the pending enforcement action is addressed. Attached is a copy of the notice of violation issued by our office to Mr. Ron Smith for the unauthorized encroachments.

If you have any questions regarding your encroachment permit application, please call me at (916) 574-2363 or e-mail me at [memami@water.ca.gov](mailto:memami@water.ca.gov). For questions concerning the enforcement action, please contact Ali Porbaha at (916) 574-2378.

Sincerely,

Mitra Emami, Chief  
Floodway Protection Section

Attachments: Copy of Notice of Violation dated August 1, 2011

cc: Mr. Dustin Smith  
America's Habitat  
424 Moon Circle  
Folsom, California 95630



**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



September 2, 2011

Mr. Ron and Mrs. Clover Smith  
2665 Sorney Loop Road  
Rescue, California 95672-9483

Subject: Unauthorized earthen pad and hay barn in Yolo Bypass (APN: 033-190-010)

Dear Mr. and Mrs. Smith:

Thank you for accommodating us during our site visit to your property on August 15, 2011. During our site visit, the following findings were observed:

- A. Uncompacted fill was imported to the property (approximately 300-ft long by 90-ft wide) to elevate the pad for the hay barn (50-ft by 90-ft) without a permit or inspection. This fill was measured to be approximately 4-ft high with a 2:1 side slope at the south side. See Figure 1. The fill soil had deep cracking and voids which are evidence it was placed without compaction in accordance with applicable code requirements.
- B. The unpermitted hay barn is structurally unstable. The east side wall had recently collapsed and the beam-to-column connections are not adequately braced. The structure is a hazard to public safety and may contribute to floodway debris.
- C. Fuel and ammonia tanks located within the floodway must be permitted, anchored and equipped to prevent accidental releases. The diesel fuel tank valve was observed to be leaking during the site visit. Please consult with Yolo County regarding regulations and permits for above ground storage tanks for fuel and ammonia.
- D. An accumulation of driftwood from 2011 flows was observed on the side slopes of the mound, which is evidence that recent flood flows were affected by unpermitted earthwork and topography at this location.

The following corrective actions are required:

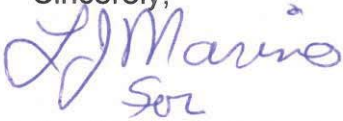
- 1. Demolition and removal of the barn from the floodway.
- 2. Removal of the imported fill used to elevate the barn area and access ramp.
- 3. Replacement of the leaking diesel tank valve.
- 4. Removal of the diesel and ammonia tank to a location anchored from flood flows and equipped with a spill containment system.

Mr. Ron Smith  
September 2, 2011  
Page 2 of 2

Please comply with these corrective actions within 30 days from the date of this letter. These corrective actions were included on the notice of violation dated August 1, 2011.

Should you have any questions, please contact staff engineer Ms. Angeles Caliso at (916) 574-2386 or by Email at [acaliso@water.ca.gov](mailto:acaliso@water.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Punia" with a stylized flourish.

Jay S. Punia, P.E.  
Executive Officer

Attachments: Figure 1- Photos from site visit on August 15, 2011

cc: Mr. Dustin Smith  
America's Habitat  
424 Moon Circle  
Folsom, California 95630

Ms. Meegan Nagy, Chief  
Flood Protection & Navigation Section  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Mr. John Bencomo, Director  
Mr. Lonell Butler, Chief Building Official  
Planning and Public Works  
Yolo County  
292 W. Beamer Street  
Woodland, California 95695

Mr. Don Rasmussen, Branch Chief  
Mr. David Pesavento, Section Chief  
Mr. Herman Phillips, Inspector  
Flood Project Integrity and Inspection Branch  
(Department of Water Resources)

Mitra Emami, CVFPB  
Curt Taras, CVFPB  
Angeles Caliso, CVFPB  
Ali Porbaha, CVFPB



September 29, 2011

Curt Taras  
Central Valley Protection Board  
3310 El Camino Ave., Room 151  
Sacramento, Ca 95821

Subject: Earthen pad and hay barn in Yolo Bypass (APN: 033-190-10)

Dear Mr. Taras and associates:



I appreciate your time talking with myself on the phone on the afternoon of September 2, 2011. I also want yourself and staff to know we fully understand the importance of compliance and appreciate your position on enforcement. Although a violation letter has been sent, I would like to strongly express that it has always been my objection to voluntarily comply.

As we talked briefly about this, I expressed my concern that that letter was written a bit harshly and the recommended corrective actions were a bit harsh as well. Albeit, a difficult job to enforce violations, we, the Smith Family, also need to consider all the facts and considerations for the property. In this case the primary concern is the farming practices and the conservation project for Giant Garter Snakes.

Prior to addressing the violation at hand I would like to address an inaccuracy and/or mixup that has taken place surrounding this property and violations. In the violation letter dated August 1, 2011 the first paragraph states, "...unauthorized construction of an earthen pad approximately 8 feet high, 100 ft wide, 800 feet long and a hay barn..." The letter continues to point out that we submitted an encroachment permit for a 100 ft by 800 ft by 8 ft high berm. Continuing on the violation includes past letters (figures) that point out we continued unauthorized construction for our "habitat mound". All of the aforementioned items as well as others are inaccurate, and are the results of mixing several projects all from this property. The original 8'x100'x800' mound was discussed years ago as a concept we had for the Giant Garter Snake project. As you are aware we are not going that route, and we are going the route of permitting several smaller mounds which we have done complete engineering and hydrology on. I hope you can understand that we do always do our part to comply and we would not want to do something without permits.

I will first address the issue of both the fuel tank and the chemical storage tanks. I will then address the primary issues of the earthen pad and structure. Following this I will provide a summary as well as the corrective actions that have been completed, or are being proposed. I will look for some type of acceptance response as to the proposed corrective actions.

As it goes, farming activities rely on fuel, as well as chemicals. As a farmer with several ranches throughout the valley the tanks at the site are only temporary and used on a seasonal basis. These chemicals tanks are only onsite when needed. The chemical tanks are moved for off season storage to our shop outside the bypass. As for the fuel tank, the same applies. This tank is only on site when needed, and frequently is moved around. Please see Figure 1 (attached), from the violation notice dated August 1, 2011. The picture will show that the chemical tanks are not onsite, and the fuel tank is in a different location than on the day of the most recent site visit, August 15, 2011. Evidence that these items are not permit to the site or even stationed in one location.

To address the leaking diesel fuel, this was brought to our attention no more than 10 days prior to our site visit. As an active manager of the farm my brother promptly ordered a new valve, but had not replaced it yet. Clearly fuel is expensive and not something we want to lose.

*September 12, 2011- Response Letter to CVFPB*



Further more, according to the California Farm Bureau is authorized to store up to 32,000 gallons of fuel with no permits. Our storage tank is 8,000 gallons, far less than the allowed for farmers. The only violation pertaining to the tanks which is valid, in our opinion, is the leaking valve. As the violation states, we will have this corrected within 30 days.

As aforementioned the primary concern, is the earthen mound and the structure. The actual size of the leveled area in which the barn sits is 200' by 100'. The mound is said to be constructed with fill imported to the property. This is not the case, the "mound" immediately north of the existing concrete slab was an area that was not level. The area had undulations varying in height as much as 18"-24" above the concrete slab. We utilized cut from the surrounding agriculture fields to level this area, to utilize for wintering of farming equipment. The soil type at this site is classified as Capay Soil, one of the natural characteristics of this type of soil is large, deep cracking. Although it is thought to be the outcome of incorrect or no compaction as stated in the violation letter, these cracks and voids are characteristics of the soil type and can be seen throughout the 1242 acre site. The mound was constructed in accordance with California State Building Code, and compacted using standardized methods, contrary to what is stated in the violation letter.

The fill placed in this area is allowed according to the water code, where it states in agriculture practice one may increase the height by up to 36" from surrounding elevations. We are more than within this limitation, seeing is that the elevation of this area was historically higher. More specifically in the violation letter it was expressed that there is a 4' height to the mound. Please understand I say this with no disrespect, but at the site visit the method used to determine the height was incorrect and furthermore the accuracy of measuring in one particular location and using a persons "chest heigh" measurement typically does not produce consistent or accurate determinations. According the the aerial topographic map that was produced less than 1 year ago, and using a construction laser system it can be clear the elevation change from the existing concrete slab, to the highest elevation of the mound is approximately 39.2 inches. Just 3.2 inches more than the allowed 36", but no where near 48" as explained in the violation letter. The area that is at a height of 39.2" is approximately 2,000 square feet in size, see Figure 2, attached. The area is located on the east side of the barn, precisely where the "chest heigh" measurement was taken during the site visit.

Also according to the violation the question of public safety was raised regarding the structure and its integrity. To briefly and completely address this, there is no public access to this property. The closest public road is approximately 1.5 miles south behind a gated entrance, and the possibility of harmful or dangerous wash-down is very unlikely.

Finally the violation expresses concern about driftwood accumulation. The drift would was located on the southern most point of the "lower" historical mound. Approximately 200-300 feet from the elevated mound in which the hay barn sits upon. It has been expressed in conversations that the lower historical mound is acceptable, and thus the driftwood would be there with or without the "upper" mound. Additionally, in a flood event water flows in a northeast to south west direction, if the "upper" mound had affected the flow, causing the driftwood to settle upon the "lower" mound, then the driftwood would have been to the south-west of the hay barn. The driftwood was south-east and was not in a position to have been affected by the "upper" mound.

To summarize, we, the Smith Family agree voluntary corrections will be the best results for everyone. We feel this is in line with our efforts dating back to December of 2010 when we applied for a Yolo County Building Permit to correct this issue. Furthermore our efforts dating back to 2008, when we began the pre application process and asking questions pertaining to building a mound in a different location. To continue our efforts to remediate the outstanding items we have taken the following corrective actions-

- 1). Spoke with FSA, and the Yolo County Ag Commissioner regarding the tanks, the outcome is that the tanks are ok as in and no permit is needed.
- 2) Replaced the leaky valve on the diesel fuel tank.

*September 12, 2011- Response Letter to CVFPB*

- 3) Cut the 3" high area, approximately 2,000 square feet, to the allowed 36" increase. **There is no longer any area on the mound with more than 36" elevation change. Please see figure 5 to see the grading work to lower the area in question.**

As for the barn, we are going to work with the Yolo County Building Department to meet compliance and obtain a permit for the structure. Although this will take some time we feel this will be a great way to close out the open items and be in full compliance with all agencies.

At this time we feel we are in compliance with the CVFPB and would like to see this issue put behind us. Please respond with comments or questions, as well as if the proposed actions, and what has been completed is acceptable in the path to compliance, [D.Smith@americashabitats.com](mailto:D.Smith@americashabitats.com) or (916) 240-1722

Sincerely,



Dustin R. Smith  
America's Habitat's

Figure 1- Aerial Photo from Violation letter dated Aug. 1, 2011





Figure 2- Topographic Map of mound area

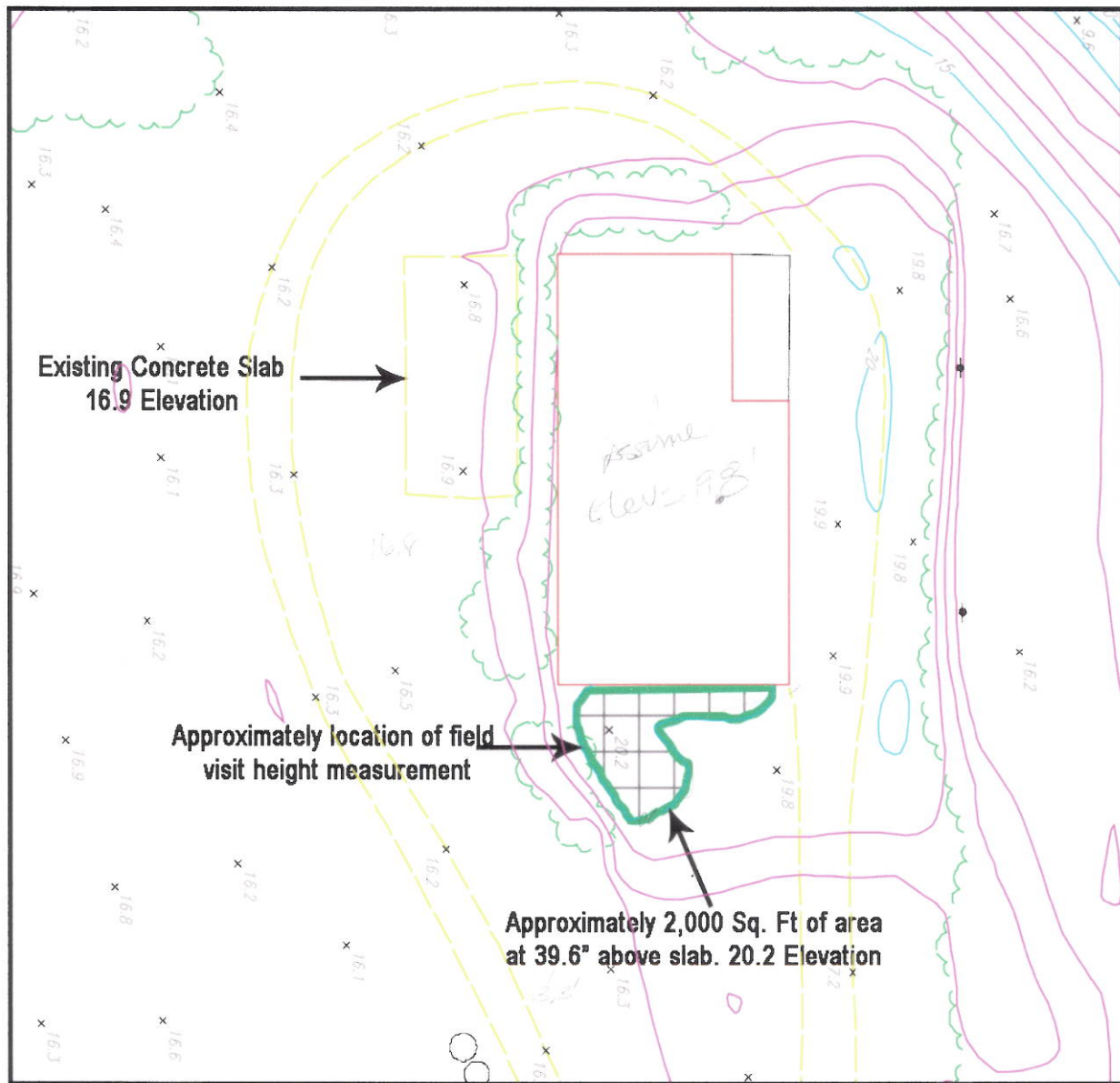


Figure 3- From South-East looking North-West to barn



Figure 4- From East looking West to barn-





Figure 5- Post Grading picture





**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



December 20, 2011

Mr. Dustin Smith  
424 Moon Circle  
Folsom, California 95630

Subject: Response to submitted correction plan for earthen pad and hay barn in Yolo Bypass (APN: 033-190-010) – Enforcement Action 145

Dear Mr. Smith:

We have reviewed your letter dated September 29, 2011, received in our office on October 21, 2011, regarding the subject matter. The corrective actions stated in our letter dated September 2, 2011 remain in effect. Those corrective actions are:

1. Demolition and removal of the barn from the floodway
2. Removal of the imported fill used to elevate the barn area and access ramp
3. Replacement of the leaking diesel tank valve
4. Removal of the diesel and ammonia tank to a location anchored from flood flows and equipped with a spill containment system.

In your September 29, 2011 letter you stated that the fuel tank and the ammonia storage tank did not require permits. The California Code of Regulations, Title 23, Section 137a, requires a permit for tanks placed within the floodway. During our inspection on August 15, 2011, the Barn structure was found to be structurally unstable, had a collapsed side wall, and the fill appeared to be un-compacted. To date, the Board is not aware of any permits issued by Yolo County or by the Board for the fill or the construction of the Barn, nor is the Board aware of any structural verification that the Barn is structurally stable and the fill is compacted in accordance with applicable code requirements. The structural integrity of the Barn raises concern because of the risk to the public presented by floating debris during normal flooding of the Bypass.

Our office has also received a complaint by an adjoining property owner claiming activities conducted on your property are blocking drainage in the Yolo Bypass. Board staff will meet with the adjoining property owners and verify the claim. If you are aware of any work conducted on the subject property that may block drainage from adjacent properties, please take the necessary actions to resolve these drainage issues.

Board staff has attempted to resolve this matter, but to date, the conditions from our August 1, 2011 and September 2, 2011 letters have not been addressed or complied with in the provided time. Please submit your plan, complete with schedule that details your proposal to comply with the conditions presented in our September 2, 2011 letter. If you have already complied with the Board's conditions, please provide documentation detailing the work and

Mr. Dustin Smith  
December 20, 2011  
Page 2 of 2

any inspections or permits obtained. If the Board does not receive your compliance, or a plan and schedule to comply, within thirty (30) days of the date of this letter, a cease and desist order will be issued for the fill and hay barn. Construction of a structure or fill within the Bypass without a Board permit can be subject to a minimum fine of \$1,000 per day per California Water Code Section 8709.7.

Should you have any questions, please contact Michael C. Wright by e-mail at [mcwright@water.ca.gov](mailto:mcwright@water.ca.gov).

Sincerely,



Jay S. Punia, P.E.  
Executive Officer

Attachments: Figure 1- Topographic Map with limits of unauthorized fill & hay barn.

cc: Mr. Lonell Butler, Chief Building Official  
Planning and Public Works  
Yolo County  
292 W. Beamer Street  
Woodland, California 95695

Ms. Meegan Nagy, Chief  
Flood Protection & Navigation Section  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Mr. Herman Phillips, Inspector  
Flood Project Integrity and Inspection Branch  
Department of Water Resources

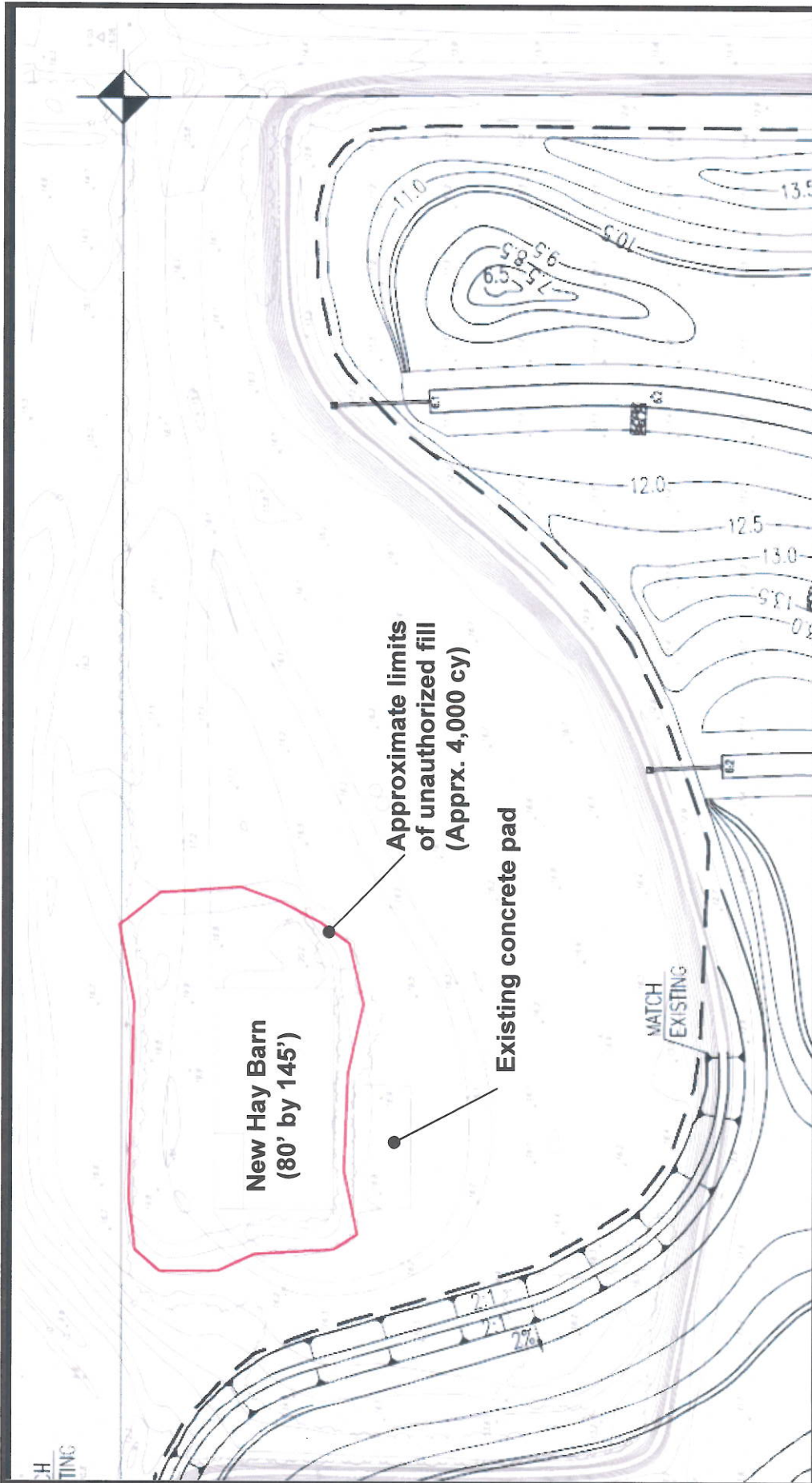
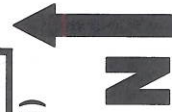


Figure 1- Topographic Map for Smith Property (APN: 033-190-010) (source: Grading Design for America's Habitat, dated 2/4/2011)



March 2, 2012

Mike Wright  
CVPFB  
3310 El Camino Ave, Room 151  
Sacramento, Ca 95821  
Rancho Cordova, Ca 95670-6114

**RE: Complaint of neighboring property illegal drainage**

Mike,

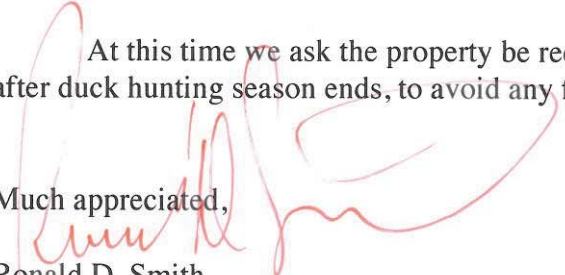
After several conversations that have been had with the various staff members of the Central Valley Flood Protection Board we are writing to you in complaint of our neighboring property to the North. This property is operated under the name H-Pond

H-Pond is a wetland property that operates as a duck hunting club. This property has historically shown to not drain their winter water causing subbing under our road and into our property and agricultural fields. This causes those fields to be left out of our farming operation causing a loss of revenue. Furthermore the property operator illegally installed a drainage culvert, without any drainage easement or agreement of any kind.

This property to the North has other options for draining water, including a northern drain with drainage rights to drain their stored water.

At this time we ask the property be required to drain their winter water beginning shortly after duck hunting season ends, to avoid any further damages to our agricultural property.

Much appreciated,



Ronald D. Smith  
2665 Sorney Loop Road  
Rescue, Ca 95672  
530-681-3297

March 2, 2012

Mike Wright  
CVPFB  
3310 El Camino Ave, Room 151  
Sacramento, Ca 95821  
Rancho Cordova, Ca 95670-6114

**RE: Complaint of neighboring property illegal drainage**

Mike,

After several conversations that have been had with the various staff members of the Central Valley Flood Protection Board we are writing to you in complaint of our neighboring property to the West. This property is operated by Wildlands, Inc.

Wildlands Contact information is:

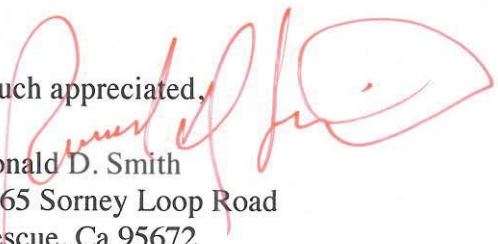
Wildlands Inc.  
3855 Atherton Road  
Rocklin, CA 95765  
(916-435-3555

Wildlands Inc. operates a preserve directly to the West of our property and illegally drains water through our property. In the past this property had a recorded drainage easement (included), which was not maintained. The easement which has been included as part of this letter expresses the conditions to preserve the life of the easement. These conditions have not been upheld by the current property owners and operators, therefore we have deemed this easement to be null and void at this time.

The drainage operations of Wildlands' Inc. have severely impacted our property and increased operating cost. It is because of the lack of up keeping this easement we have been required to maintain the drainage canal and also control the debris by installed a control structure. As well as to control the known quality of the drained waters.

At this time we ask all unauthorized drainage through this southern canal, as explained in the easement, cease and desist until further agreements have been arraigned, and recorded at the county recorders office.

Much appreciated,



Ronald D. Smith  
2665 Sorney Loop Road  
Rescue, Ca 95672  
530-681-3297

March 18th, 2012

Mike Wright  
CVFPB- Violation Division  
3310 El Camino Ave, RM 151  
Sacramento, Ca 95821

**RE: Cease and Desist Enforcement Notice**

Mike,

I am writing in response to the Cease and Desist Enforcement Notice we received, dated February 27th, 2012. We would like to acknowledge the receipt of this notice and provide our formal response as required within the 30 day time period as required by the letter. The letter we received is pertaining to two (2) parcel numbers, 033-190-010 & 033-440-060 in the Yolo Bypass, Yolo County, Ca. Listed in the letter are Seven (7) items and we would like to provide our responses to each of the items.

Since receiving this letter we have had several conversations with different staff members pertaining to many of the different seven (7) items. We will try to include much of the information from the conversations in our responses, as we feel the conversations provided great information.

**1. Damaged agricultural barn missing required structural bracing (Unpermitted)**

I would like to start out by saying not only would we like to find a way to keep the barn, but that we have also done an ample amount of research which leads us to believe, together, us and the CVFPB can work something out to allow the barn to stay. This would of course require the sign-off by a California State registered structural engineer and the Yolo County Building Department, along with any other agencies which would have jurisdiction over the barn. We feel the history of the barn is important to understand, so please allow me to share that in 2008 prior to the structure being built, the Yolo County Building Department provided information to us stating no permit was needed for an agricultural "pole barn". From the time we were informed a permit was needed we proactively sought to make this right. We submitted documents, drawings, and a site-plan and paid the Yolo County Building Department to obtain a permit for this structure. During this process, which was 8 months prior to receiving our first notice from the CVFPB, it was brought to our attention that we needed to be approved by the CVFPB and that a Flood Elevation Certificate would be needed. We obtained the certificate and amongst this process is when the first violation notice was sent to us.

Almost 1 year later we have worked to voluntarily resolve the issue at hand, however along the way we have been faced with other items (to later be discussed).



As mentioned above, we felt we have some valid reasons which if considered would help to allow the barn to remain.

- There are several structures similar to our in the Yolo Bypass, we feel our structure should be allowed to remain, as others have been built.
- These structures are newly permitted within the last 24 months, we feel we could permit our structure as well.
- Other structures have been seen to have been raised upwards of 6' using imported fill.
- While our structure is for agricultural use, other structures have been allowed for recreational use, for example a duck club approximately 3 miles to the south, and 1 approximately 1 mile to the north.
- As seen in several aerial photos from various decades, several existing structures have been on the elevated mound. 1 house, 2 trailer homes, and 1 barn.
- During several conversations with various staff members of the CVFPB have informed us the structure is a permissible structure. If the structure is permissible, lets find a way to keep it.
- Per a conversation with Ronald Smith and Len Marino in late February 2012, it was said that if a structural engineer would sign-off on the structure, the CVFPB would be willing to let the barn proceed to Yolo County Building Department for permitting.

With the above mentioned bullet points we feel we should propose the following-

- Confirm the hydrology of the property and the mound, and that there is no rise in the surface elevation of flood waters, similar to what is required for permitting the mitigation bank.
- We will have a licensed engineer review and provide feedback the CVFPB. The feedback would include any modifications needed to be made, or an approval of the structure.
- If the engineer provides a list of modifications to the structure, with the permission of the CVFPB we would implement the changes to allow the barn to structurally be acceptable.
- Submit for the necessary permits

Finally subject to above if a final approval is denied the remove of the structure will begin. The removal will be subject to safety condition. If the property is experiencing high winds the removal will be delayed.

## **2. Elevated earthen equipment pad in path of floodwaters (Unpermitted)**

We feel it is imperative to understand this mound is a historical, and is a well documented mound. In several documents (attached) the mound, as well as a ring berm can be seen. The document showing the ring berm is important to understand, because it is this ring berm which the dirt came from back in the 1950's to create the raised area in which the barn sits atop. This ring berm was built to protect the various structures in the naturally elevated area of the property. When the berm was deconstructed they stockpiled the soils in the location of where our hay barn is located. Over time this area was leveled off to support the variety of uses such as buildings, equipment, trailers and more. In the mid 2000's we simply leveled this area off by filling in the highs and lows to create a level pad, no import was used. We used this pad in 2006 to safely store

our farm equipment during the bypass flood event. In the winter months of 2008 utilizing the highest ground available we constructed a free standing, 3-sided pole barn to store hay.

As for the mound, this is something that we did not construct. Because of this we are not confident in a resolution of this violation. If the violation was to stand, we would need to be told where the dirt would need to go on the property.

At this time I would recommend the hydraulic study that was submitted as part of our mitigation bank be reviewed. The reason I recommend this is because the hydraulic studies show the end results of our project will not have a net increase to elevation of water in the event of a flood.

### **3. Leaking diesel fuel tank in regulated floodway**

The leaking fuel tank valve and handle assembly was changed in August of 2011. Furthermore the tank has been removed from the regulated floodway as required. To comply with all regulations we have verified our rights as farmers and the tank will only be used during farming season on an as needed basis and will be removed when not in use. A certification of the tank not leaking will be issued to the CVFPB prior to the tank being used in the bypass.

### **4. Ammonia Tank in regulated floodway during flood season**

Similar to the response above, we have removed these tanks from the floodway. If the tanks are needed for farming operations in the future they will be brought in for season use and will be anchored. They will not be on the property in the bypass during the flood season.

### **5. Non- Anchored farm equipment within a floodway during the flood season**

There are two components to this response, first the small items which do not have a substantial weight to prevent wash down occurrences have been removed from the property. This includes smaller items such as tools, parts, misc. debris and more.

The second part of this response is the larger equipment which will be anchored by their own weight. The larger items will be kept on the mound in flood events and will be secured in a way which no wash downs will occur.

### **6. Soil Berms blocking the free flow of drainage within the floodway**

The "berm" of concern is one of our northern roads. This road creates the north border of our field and the road is a common practice throughout the floodway to create the perimeter boundary of farming fields. Also this road, which has been there for decades, recently underwent routine maintenance. This maintenance was done with many purposes in mind, first and foremost as we have improved the field immediately south of the road for irrigated crops. Furthermore the northernly neighbors water, which should drain in the winter months is left on their property, causing seepage subbing under the road into our fields, making them un-workable. This caused vast damages and losses to our farming operations. Evidence of this can be seen in the images attached below.



Furthermore this property to the north of ours, has no drainage rights or easements. There has been discussion of a pipe that was blocked from the north property to ours. This is true, however the pipe has been blocked for some time (2006), and again the property owner has no right to drainage through our property, has not had any communication with us regarding this concern, and lastly has a drain to the north of their property which they have rights to use and should use. Please see the pictures below of their drainage on the north of their property blocked!

We do not feel we need to do anything regarding the road or the drainage at the north end of our property. A complaint letter will be filled.

**7. Blockages of ditches and culverts necessary for the free flow of water from neighboring parcels in the floodway**

The neighboring property do not have any drainage easements. It is our right as a property owner to manager our property as needed. In this case the property owned by Wildlands Inc. to the west has acknowledged they have abandoned the pre existing drainage easement they once had. Also we have been in communication to try to re-establish a new easement with terms than can be agreeable by both parties. The neighboring properties do not have the right to complain about drainage, that they have abandoned and not paid for. They purchased their property with certain rights and obligations. It is not our responsibility to accept the burden of other properties stored water drainage. I have included a copy of the easement dated March 13th 1950 for your records. If this easement was upheld and in good standing, then we would have no problems with the drainage, however it has not been upheld, ever!

This is the same for other properties around us. No other properties have secured easements for the right to drain through our property.

We have worked to address all of the concerns brought forth at this time. We would greatly appreciate a response so we can move forward with getting the cleared up. If there are any questions feel free to contact us.

Regards,

Ronald D. Smith  
530-681-3297





Ground seepage from northern property into agricultural field. Picture taken on 3/23/12



Un-maintained picture of drainage box on northern property  
Picture taken on 3/23/12





Picture of northern drainage canal for H-Pond.  
Picture taken on 3/23/12



Picture of old historic berm around mound. Sits only 12"  
below elevation of barn mound.  
Picture taken on 3/23/12



Book 389 pg 234 3037

1-4' 2-C 3-13-50

Wc, ROBERT SWANSTON, FLORENCE R. SWANSTON, his wife, ROBERT SWANSTON, JR. and LILLIAN SWANSTON, his wife, hereby grant to HOWARD VAUGHN a right-of-way easement over the South sixty (60) feet of our property in Sections 33, 34 and 35, Township 7 North, Range 3 East, S. D. M. & N., Yolo County, California, being from a point where the South boundary of our property intersects the East cut of the Yolo By-Pass, and thence proceeding along the South section lines westward to the East half section line of said Section 33.

The foregoing easement is for the purpose of installing a drainage and irrigation ditch or canal to drain water from Grantors' land North thereof and to convey water from the East cut of the Yolo By-Pass to the land of Grantee, and the life of said easement is subject to the following express conditions:

1. Installation and maintenance shall at all times be at the expense of Grantee.
2. All material excavated from the canal shall be banked on the North side of said canal at a height not exceed Four (4) feet, which bank shall be graded for road use. A berm of at least Four (4) feet shall be established and maintained between the South line of said North road bank and the North line of said canal, and a berm of at least Four (4) feet shall be established and maintained between the South line of said canal and the South property line of Grantors.
3. Adequate pipes to accommodate full drainage of the land of Grantors into said canal shall be installed and maintained by Grantee at four different points.
4. Grantors shall enjoy the preferential right of installing pumps and taking such amount of water from said canal as they may desire for the purpose of irrigating their land North of said canal.
5. Grantee shall install a Calco model 1501 gate at the east end of said canal so that the water level therein can be maintained at a maximum height during the irrigation season. The said gate shall be lifted and kept open during the winter season to the end that it will not interfere with the flow of drainage water.
6. Grantee shall secure all necessary Government permits and shall indemnify and save Grantors harmless from any and all claims for injury to person or damage to property by reason of the installation, maintenance or use of said canal and its works.

WITNESS our hands and seals this 13th day of March, 1950.

ROBERT SWANSTON  
FLORENCE R SWANSTON  
ROBERT SWANSTON JR.  
LILLIAN SWANSTON

STATE OF CALIFORNIA,  
COUNTY OF SACRAMENTO.

Drainage easement between property owners of our property and Wildlands Inc to the west.

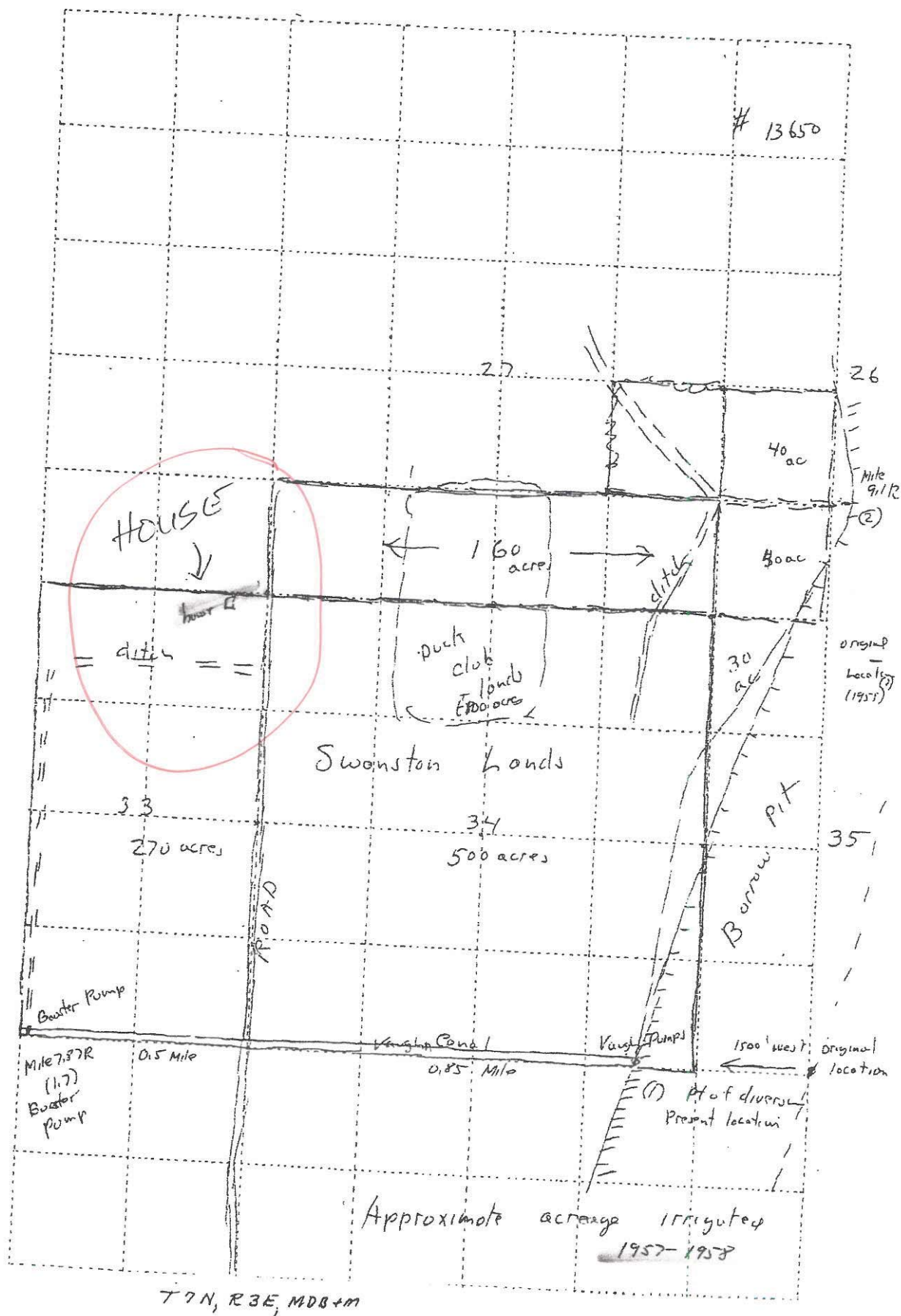
















CALCULATIONS

Since the previous inspection borrow pit channel has been moved west about 1500' resulting in an elimination of about 150 acres as Mr. Gee believes gross acreage is about 1244 acres. Original point known as Vaughn Canal is served by a 54" flap gate during high tide and rest of time by 2-30 hp -12" turbines operating by float system. Canal serves some 200 acres under this permit plus up to 1600 acres under other ownership. Flow goes both ways, being sucked up canal by Swanston pump or flowing the other way via District 2068 drainage in fall and occasionally after rain during irrigation season. The Swanston booster pump located at SW corner of property is designated by W. S. records as 7.87R (1.7) the latter figure about distance west of borrow-pit although by speedometer it was only 1.4 miles. The pump described in the 1955 report has since been moved and is designated as Mile 9.1 by Water Supervision records. Peak monthly use combined was highest in 1956 with 628 ac-ft in August and next highest with 625 ac-ft in July 1957. Use in 1958 maximum was only 314 ac-ft in July. On a 31 day basis peak continuous flow was about 10.2 cfs altho according to Mr Gee such use may be exceeded this year because of early dryness and he wishes postponement of license action till such figures are computed.


Because of the numerous changes a new map will be prepared within 30 days to show land at present being irrigated which according to W. S. crop maps is a maximum of 990 acres in any one year with a 50 acre overlap in 2 years.

The same pump a 40 hp FM motor powered is still being used at a location about 4' higher so that more lands can be served and a new 12' bottom width ditch was constructed in 1958-see photo. The Vaughn canal at south boundary is of similar size and about 6' deep and there has never been any water shortage according to Mr. Pedrick. The booster pump delivers into a typical 4' bottom, 12' dtop width canal starting at high point of field. Contours are spaced 0.3' in elevation apart and resemble rice levees. At time of visit only the pump at Mile 7.87 was operating but leasee said both pumps were working in May of this year. There is about 40 acres of barley not being irrigated this year and some land lost to levees roads, around house so that probably the 1040 acres comprises about all the irrigable land but Mr. Gee will check this.

REMARKS

Mr. Gee wishes license action but a Form 76-c was not prepared until more data describing the project is ready which should be within 90 days. He promised to get his surveyor to work soon. Put under callup.

DATE OF REPORT June 8~~x~~ 1959

  
Senior Hydraulic Engineer



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



April 12, 2012

Mr. Ron Smith  
2665 Sorney Loop Road  
Rescue, California 95672-9483

Subject: Smith Property in Yolo Bypass (APN: 033-190-010)  
Enforcement Action 2012-145

Dear Mr. Smith:

On April 10, 2011, the Central Valley Flood Protection Board (Board) staff and Department of Water Resources (DWR) Legal Counsel participated in a conference call with you and your son, Dustin Smith, to discuss your property in the Yolo Bypass. The purpose of this letter is to summarize our conversation and provide you with guidance on the next steps. During the conversation, the Board staff explained that only the Board, during a public Board meeting, can make decisions regarding the encroachments on your property in the Yolo Bypass. After this was explained, you verbally requested a Board hearing. You also verbally requested copies of easements within the Yolo Bypass and asked to be directed to, and have copies of, the legal authority that the Board is acting pursuant to. This authority was provided to your son via email immediately following our call.

All requests for hearings must be submitted in writing by the respondent. Please submit your written request for a hearing, in writing, to the address shown on this letterhead, labeled attention: Enforcement Section. Board staff will attempt to provide a timely hearing for you at the earliest possible date. You will receive written notice at least 30-days prior to your scheduled hearing.

Your request for documents regarding the easements in the Yolo Bypass must be submitted in writing as a public records act request. In your request, please specify the assessor's parcel number or other identifying data which will help staff identify the specific easements for which you are seeking information.

Should you have any questions, please contact Michael C. Wright, PE, Enforcement Section Chief, by phone at (916) 574-0698, or via e-mail at [mcwright@water.ca.gov](mailto:mcwright@water.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Len Marino".

Len Marino, P.E.  
Chief Engineer

cc: (See attached list)



Mr. Ron Smith  
April 12, 2012  
Page 2 of 2

cc: Mr. Dustin Smith  
[d.smith@americashabitat.com](mailto:d.smith@americashabitat.com)

Robin Brewer, Legal Counsel  
Department of Water Resources  
1416 9<sup>th</sup> Street, 11<sup>th</sup> Floor  
Sacramento, California 95814  
[rbrewer@water.ca.gov](mailto:rbrewer@water.ca.gov)

Len Marino, Chief Engineer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821  
[lmario@water.ca.gov](mailto:lmario@water.ca.gov)

Tuesday, April 24, 2012

Mike Wright  
CVFPB- Violation Division  
3310 El Camino Ave, RM 151  
Sacramento, Ca 95821

**RE:** Cease and Desist Enforcement Notice- Formal Hearing Request

Mike,

After several conversations its has been decided up we should request, in writing, to have our project reviewed by the board. So at this time we would like to request to be schedule for this board hearing at which time we can discuss the matter at hand.

Thank you,

Ronald D. Smith  
530-681-3297

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682

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

May 4, 2012

Mr. Ronald Smith  
2665 Sorney Loop Road  
Rescue, California 95672

Subject: **Acknowledgement of Receipt of Request for Hearing**  
Enforcement Action: 2012-145  
Property Owner: Mr. Ron Smith  
Property Information: Parcel APN 033-190-010 and 033-440-060 located in Yolo Bypass, Yolo County

Dear Mr. Smith:

The staff of the Central Valley Flood Protection Board (CVFPB) hereby acknowledges the receipt of your letter dated April 24, 2012, requesting a hearing in response to the Cease and Desist Enforcement Notice dated February 27, 2012.

A written notice of the hearing date will be mailed to you at least thirty (30) days prior to the date of the hearing. A staff report will be mailed to you at least twenty (20) days prior to the hearing.

If you have additional information pertaining to the upcoming hearing regarding your property in the Yolo Bypass, please submit hard copies to the CVFPB care of Michael C. Wright.

Should you have any questions, please contact Michael C. Wright, Chief of the Enforcement Section by E-mail at [mcwright@water.ca.gov](mailto:mcwright@water.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Jay S. Punia".

Jay S. Punia  
Executive Officer

cc: Mr. Dustin Smith  
[d.smith@americashabitats.com](mailto:d.smith@americashabitats.com)

Mr. David Pesavento, Section Chief, DWR  
Mr. Herman Phillips, Inspector, DWR  
Flood Project Integrity and Inspection Branch  
Ms. Robin Brewer, Office of the Chief Counsel, DWR



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  X <u>Dover Smith</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p><u>MR. RONALD SMITH</u>  <u>2665 SORNEY LOOP RD</u>  <u>RESCUE, CA 95672</u></p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery  <u>5-7-12</u></p>	
<p>2. Article (Trade Name)</p> <p>PS For</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>Domestic Return Receipt</p>		<p>102595-02-M-1540</p>	

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682

**Sent via Overnight Mail**

May 22, 2012

Mr. Ron Smith  
2665 Sorney Loop Road  
Rescue, California 95672-9483

Subject: Hearing for the appeal of Cease and Desist Order No. 2012-145 which ordered the removal of code violations and unauthorized encroachments in the Yolo Bypass

Dear Mr. Smith:

This letter is to notify you of a public hearing to consider the appeal of Cease and Desist Order No. 2012-145 which ordered the removal of code violations and unauthorized encroachments including a barn, tanks, earthwork, and blockages constructed in the Yolo Bypass, approximately 10 miles south of the I-80 causeway and approximately 1.5 miles west of the Sacramento Deep Water Ship Channel.

Hearing Date: Friday June 22, 2012, starting at 1:00 PM.

Hearing Location: State of California  
Resources Building  
First Floor Auditorium  
1416 Ninth Street  
Sacramento, California 95814.

The hearing will be governed by the California Code of Regulations Title 23 Waters, Division 1, Article 4 Enforcement Actions, and is available for public viewing on-line at [www.cvfpb.ca.gov](http://www.cvfpb.ca.gov). A copy of the governing procedures is included. Chapter 5 of the Administrative Procedure Act (commencing with section 11500) shall not apply to your hearing.

If you or any of your witnesses do not proficiently speak or understand English, you may request language assistance by contacting the Central Valley Flood Protection Board (CVFPB) within a reasonable amount of time prior to the hearing to allow appropriate arrangements to be made. You may be directed to pay for the cost of the interpreter.

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 mailed to you at least 20 days before the meeting, and will also be available at [www.cvfpb.ca.gov](http://www.cvfpb.ca.gov). Your written statement of defense previously submitted will be included in the correspondence file for your requested Cease and Desist appeal hearing. If you would like to submit additional information, please submit to our office no later than Thursday, June 7, 2012.

Mr. Ron Smith  
May 22, 2012  
Page 2 of 2

If you have any questions or need assistance, please contact Central Valley Flood Protection Board Senior Engineer, Michael C. Wright, by phone at (916) 574-0698, or via e-mail at [mcwright@water.ca.gov](mailto:mcwright@water.ca.gov).

Sincerely,

  
Jay S. Punia  
Executive Officer

Attachment A: Cease and Desist Enforcement Notice, Enforcement Action: 2012-145  
Attachment B: California Code of Regulations Title 23 Waters, Division 1, Article 3 Application Procedures  
Attachment C: California Code of Regulations Title 23 Waters, Division 1, Article 4 Enforcement Actions

cc: [d.smith@americashabitats.com](mailto:d.smith@americashabitats.com)



✓✓

2345  
COMPARED  
INDEXED  
CONFIRMED

#605

RECORDED AT REQUEST OF  
YOLO COUNTY TITLE ABSTRACT CO.

Aug 14 A. D. 1940  
AT 2 MIN. PAST 2 O'CLOCK P.  
AND RECORDED IN VOL. 143 OF  
OFFICIAL RECORDS Page 289  
YOLO COUNTY RECORDS. 289

L. P. Davis  
RECORDER  
Maryella Davis  
DEP. RECORDER

FEE \$       

SEP 4 1940

R.B. Doc. #605

1 KNOW ALL MEN BY THESE PRESENTS:

2 That we, ROBERT SWANSTON and FLORENCE R. SWANSTON, his  
3 wife, in consideration of the sum of Twenty-four Thousand Seven  
4 Hundred Seventeen Dollars (\$24,717.00) to us in hand paid, the  
5 receipt whereof is hereby acknowledged, do hereby grant to  
6 SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency  
7 operated and created under and by virtue of the laws of the State  
8 of California, its successors and assigns, a perpetual right and  
9 easement, without recourse to compensation for damage therefrom,  
10 past, present or future, for the passage of all flood waters of the  
11 Yolo By-pass, which may from time to time inundate, or which has  
12 heretofore inundated, the lands of the grantors, over, upon and  
13 across all of the following described property in the County of  
14 Yolo, State of California:

11-1E-7N-3E

15 PARCEL 1: The south 200 acres of the W.  $\frac{1}{2}$  of Section 26,  
16 and the S. W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of Section 26, T. 9 N., R. 3  
17 East.

11-2E-7N-3E

18 PARCEL 2: That portion of the E.  $\frac{1}{2}$  of the S.W.  $\frac{1}{4}$  and the W.  $\frac{1}{2}$   
19 of S.E.  $\frac{1}{4}$  of Section 36, T. 9 N., R. 3 E., lying north of the  
20 Southern Pacific Company's right of way.

138 E-7N-4E

21 PARCEL 3: That portion of the S.E.  $\frac{1}{4}$  of Section 25, T. 9 N.,  
22 R. 3 E., lying south of the south levee of the Sacramento By-  
23 pass and east of that portion of said S.E.  $\frac{1}{4}$  which was deeded  
24 to the Sacramento and San Joaquin Drainage District by deed  
25 dated November 13, 1917, and recorded November 16, 1917, in  
26 Book 93 of Deeds, at page 263. Also that portion of the S.W.  $\frac{1}{4}$   
27 of Section 30, T. 9 N., R. 4 East, lying south of the south  
28 levee of the Sacramento By-pass and west of the west levee of  
29 Reclamation District No. 537. Also that portion of the E.  $\frac{1}{2}$  of  
30 the W.  $\frac{1}{2}$  of Section 31, T. 9 N., R. 4 E., lying north of

#605

2E-8N-3E

105E-7N-3E

140540  
ACRES

Reclamation District No. 900 and excepting therefrom the right of way of the Southern Pacific Company.

PARCEL 4: All of that portion of Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15 and 16, of Eucalyptus Grove, as shown by map thereof filed on June 2, 1909, in Book 3 of Maps and Surveys as Map No. 83, lying east of the west line of the Yolo By-pass and north of the Southern Pacific Company's right of way.

PARCEL 5: The W.  $\frac{1}{2}$  of the S.W.  $\frac{1}{4}$  of Section 26; the S.  $\frac{1}{2}$  of the S.  $\frac{1}{2}$  of Section 27; the E.  $\frac{1}{2}$  of Section 33; all of Section 34; the N.W.  $\frac{1}{4}$  of the N.W.  $\frac{1}{4}$  of Section 35, all of that portion of the S.  $\frac{3}{4}$  of Section 35, lying west of the right of way of Reclamation District No. 999, all in T. 7 N., Range 3 East, M. D. B. & M.

Subject to:

1. County of Yolo taxes for the fiscal year 1940-41, together with any personal property taxes, now a lien, but not yet due and payable.

2. The land herein described lies within the boundaries of Sacramento and San Joaquin Drainage District and is subject to all taxes, assessments and obligations of said district.

3. The land herein described lies within the boundaries of Reclamation District No. 2076 and is subject to all taxes, assessments and obligations of said district.

4. As to Parcel 4: Right of way for the transmission and distribution of electricity conveyed by H. S. Kirk to Bay Counties Power Company, by deed dated August 31, 1904, and recorded September 7th, 1904, in Book 65 of Deeds, at page 364.

5. As to Parcel 3: Right of way for the transmission and distribution of electricity, conveyed by Catherine E. Allen to Bay Counties Power Company, a corporation, by deed dated



1 September 30th, 1904, and recorded October 5th, 1904, in  
2 Book 65 of Deeds, at page 432.

3 6. As to Parcel 3: Right of way condemned for back  
4 levee and drain canal in action entitled, Reclamation District  
5 No. 537 vs. Charles Swanston, George Swanston and Reclamation  
6 District No. 785, Final Order of Condemnation dated September  
7 7, 1900 and recorded September 7, 1909, in Book 73 of Deeds, at  
8 page 176.

9 7. As to Parcels 3 and 4: Right of way and easement for  
10 all purposes of the Yolo By-pass, granted by George Swanston  
11 and Jennie E. Swanston, his wife, to Sacramento and San Joaquin  
12 Drainage District, by deed dated November 13th, 1917, and re-  
13 corded November 16th, 1917, in Book 93 of Deeds, at page 261.

14 8. As to Parcel 3: Right of way for a line of poles  
15 conveyed by Jennie E. Swanston, Robert Swanston and Lillis N.  
16 Krebs to Pacific Telephone and Telegraph Company, a corporation,  
17 by deed dated October 11th, 1926, and recorded January 15th,  
18 1927, in Book 113 of Deeds, at page 297.

19 9. As to Parcel 5: A perpetual right and easement for  
20 the purpose of constructing, maintaining and operating all and  
21 any levee, drainage and other reclamation works, granted by  
22 George Swanston and Jennie Swanston, his wife, to Reclamation  
23 District No. 999, dated September 15th, 1920, and recorded  
24 October 8th, 1920, in Book 99 of Deeds, at page 422.

25  
26 This grant is made and given in final consummation of that  
27 certain option and agreement, dated June 27, 1935, executed by C.  
28 Swanston & Son (grantors' predecessor in interest) in favor of said  
29 Sacramento and San Joaquin Drainage District, and recorded August 3,  
30 1935, in Volume 84 of Official Records, at page 65, Records of Yolo

#605

County, and all of the rights of said Sacramento and San Joaquin Drainage District under said option and agreement and which have not heretofore been granted, stand merged into this agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 9th day of August, 1940.

Robert Swanston

Florence R. Swanston

STATE OF CALIFORNIA, }  
County of Sacramento. } ss.

On this 9th day of August, 1940, before me, MARY W. WENTWORTH, a Notary Public in and for said County of Sacramento, duly commissioned and sworn, personally appeared ROBERT SWANSTON and FLORENCE R. SWANSTON, known to me to be the persons whose names are subscribed to the within instrument, and they duly 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.

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

319 2307 519

# Flowage Easement Option

To  
C. Swanson & Son

SACRAMENTO AND SAN JOAQUIN  
DRAINAGE DISTRICT

Dated June 27, 1935 193

RECORDED AT REQUEST OF  
*Reclamation Board*  
Aug 3 A.D. 1935  
BY *ST* 8:00 CLOK A.M.

AND RECORDED IN VOL. 874 OF  
OPTIONAL RECORDS Page 65  
YOLCO COUNTY RECORDS

*[Signature]*  
RECORDER

DEPT. RECORDER

REFILED WITH  
DEED # 605

Packet Page 85 of 109



# Option and Agreement

ATTACHMENT C, EXHIBIT A

THIS OPTION entered into this 27<sup>th</sup> day of June, 1935, 1934, by and between C. Swanston and Son, hereinafter designated party of the first part, and SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency operated and created under and by virtue of the laws of the State of California, hereinafter designated as party of the second part,

## Witnesseth:

WHEREAS, On June 27, 1911, there was submitted to Congress a report by the California Debris Commission, designated as House Document No. 81, Sixty-second Congress, First Session, setting forth the plan for a flood control project for the Sacramento Valley which report and plan were heretofore adopted by the Congress of the United States and by the Legislature of the State of California; and

WHEREAS, On January 5, 1925, the California Debris Commission submitted to Congress a further report, Senate Document No. 23, Sixty-ninth Congress, First Session, modifying the said plan in some particulars and presenting a revision of the costs of completion of the flood control project for the Sacramento Valley and reallocating the division of those costs among the federal government, the State of California and local interests, and said report having been adopted by Congress in Public Law No. 569, Sixty-ninth Congress, approved May 15, 1928, 45 Stats. L., page 534, and by the Legislature of the State of California in Chapter 176 of the Statutes of 1925; and

WHEREAS, The Yolo By-pass is an integral part of the said plan as adopted and is necessary for the safe passage of excess flood waters of the Sacramento River and its tributaries through said valley and to the sea for the protection of the lands in said valley and for the navigation of said river; and

WHEREAS, By said Senate Document No. 23, the State of California is required as a portion of its share in completion of the said flood control project to acquire the necessary easement and flowage rights over, upon and across the lands situated within the boundaries of the said Yolo By-pass; and

WHEREAS, The Legislature of the State of California, in accordance with Chapter 176, Statutes of 1925, has made appropriations biennially to meet its share of the cost of completion of the flood control project, the larger proportion of which has been used in the past in completion of levee construction and in refinancing of assessments for portions of the flood control project; and,

WHEREAS, The said construction of levees and the refinancing of assessments are now nearing completion and the sum of \$280,000 is now available for further work and the purchase of easements and flowage rights aforesaid for the passage of floods through the Yolo By-pass; and

WHEREAS, Chapter 176, Statutes of 1925, has limited the sum to be appropriated by the State of California toward the completion of the Flood Control Project to \$17,700,000, of which sum \$11,870,000 has been heretofore appropriated; and,

WHEREAS, The Reclamation Board desires to complete the State's share of the project within the amount set forth in Chapter 176, Statutes of 1925, in all portions of said project and in the area affected by the Yolo By-pass:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid, the receipt of which is hereby acknowledged and for other good and valuable considerations, it is understood and agreed as follows:

1. That the party of the first part does hereby grant to the party of the second part, its successors and assigns, an option to purchase a perpetual right and easement, without recourse to compensation for damage therefrom, for the passage of all flood waters of the Yolo By-pass, which may from time to time inundate the lands of the party of the first part, over and upon and across all of the following described property in the county of YOLO, State of California:

1. The south 200 acres of the west half of Section 26 and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 26, Township 9 North, Range 3 East.

2. That portion of the East half of SW $\frac{1}{4}$  and the west half of SE $\frac{1}{4}$  of Section 36, Township 9 North, Range 3 East, lying north of the Southern Pacific Company right of way.

3. That portion of the SE $\frac{1}{4}$  of Section 25, Township 9 North, Range 3 East, lying south of the south levee of the Sacramento By-pass and east of that portion of said SE $\frac{1}{4}$  which was deeded to the Sacramento and San Joaquin Drainage District by deed dated November 13, 1917, and recorded November 16, 1917, in Book 93 of Deeds, at page 263. Also that portion of the SW $\frac{1}{4}$  of Section 30, Township 9 North, Range 4 East, lying south of the south levee of the Sacramento By-pass and west of the west levee of Reclamation District No. 537. Also that portion of the east half of West half of Section 31, Township 9 North, Range 4 East, lying north of Reclamation District No. 900 and excepting therefrom the right of way of the Southern Pacific Company.

4. All of that portion of Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15 and 16 of Eucalyptus Grove, as shown by map thereof filed on June 2, 1909, in Book 3 of Maps and Surveys as Map No. 83, lying east of the west line of the Yolo By-pass and north of the Southern Pacific Company right of way.

5. The west half of SW $\frac{1}{4}$  of Section 26; the south half of south half of Section 27; the east half of Section 33; all of Section 34; the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 35, all of that portion of the South 3/4 of Section 35 lying west of the right of way of Reclamation District No. 999.

2. This option shall be deemed accepted if and when at any time prior to July 1, 1935, the party of the second part shall pay to the party of the first part twenty-five per cent (25%) of the purchase price hereinafter specified. If not accepted by payment of twenty-five per cent (25%) of the purchase price prior to July 1, 1935, this option will cease and terminate.

3. The total purchase price of the easement and flowage rights aforesaid over, upon and across the premises aforesaid shall be \$ 24,717.00 , of which \$ 6,179.25 shall be paid by the party of the second part to the party of the first part upon acceptance of this option, and the remainder of the total purchase price shall be paid only if and when appropriations are made by the State Legislature in connection with the flood control project pursuant to the provisions of Chapter 176, California Statutes of 1925, and then only out of the joint navigation and flood control project fund, or such other fund as the Legislature may create for the flood control project. It is expressly understood that said payments are to be paid from no other source than legislative appropriations for the flood control project under Chapter 176, California Statutes of 1925 aforesaid, and out of the joint navigation and flood control project fund, or such other fund as the Legislature may establish in connection with the flood control project aforesaid, and then only in the event that there shall be sufficient money received into that fund, or such other fund as the Legislature may create under Chapter 176 of the California Statutes of 1925 aforesaid and made available for that purpose.

4. At least twenty per cent (20%) of the total amount made available for the flood control project by the Legislature as aforesaid for expenditure by the State Reclamation Board under Chapter 176, California Statutes of 1925, shall be set aside and allocated by the State Reclamation Board for the purpose of meeting payments on accepted options for purchase of flowage rights in the Yolo By-pass, and the amount so made available shall be pro rated annually upon such accepted options. Such pro rating shall be made so that the party of the first part shall receive such proportion of said money so available as the total purchase price hereunder shall bear to the total amount of all accepted options.

5. In the event that full payment of the purchase price hereunder, to wit, \$ 24,717.00 , shall not have been made to the party of the first part prior to July 1, 1945, all rights of the party of the second part hereunder shall cease and terminate, and the flowage rights and easements upon, over and across the lands hereinabove described, herein contracted to be sold, shall revert to the party of the first part, his successors or assigns.

Any and all payments made hereunder shall be deemed full compensation for all use made by the party of the second part of the property hereinabove described for flood control purposes during the period of this agreement.

6. Upon full payment by the party of the second part to the party of the first part of the purchase price as aforesaid, prior to July 1, 1945, the party of the first part shall contemporaneously execute and deliver to the party of the second part a deed covering all of the rights and easements hereinbefore specified upon, over and across the lands of the party of the first part in Yolo and Solano counties, hereinbefore described.

7. Title insurance in the full amount of the purchase price issued by a responsible title insurance company shall be provided by the seller, at his sole cost and expense, contemporaneously with final payment and delivery of deed. Said policy shall insure the party of the second part in the flowage rights hereby granted; subject, however, to state and county taxes and public easements, assessments and taxes of all kinds, including roads, rights of way, reclamation assessments, and any other charges or assessments or incumbrances which in the opinion of the party of the second part will not affect its enjoyment of the flowage rights herein granted.

8. Acceptance of this option or any compliance with its terms by the parties hereto shall not be deemed or considered an admission of legal liability or obligation except as herein specifically provided contractually, and shall be without prejudice to the right of the parties hereto, and The Reclamation Board of the State of California, to set up any defenses in any action or proceeding now or hereafter brought not growing out of the specific contractual provisions of this option and agreement.

9. This option and agreement and all of its terms and provisions shall be binding upon the parties hereto, their successors and assigns.

2E-8N-3E 10. The party of the first part does hereby grant to the party of the second part right of way for construction of the west levee of the Yolo By-pass through Lot Nos. 1, 2, 7, 8, 9 and 16 of Eucalyptus Grove Subdivision in that portion of the west one-half of Sec. 3, T. 8 N., R. 3 E., M. D. B. & M., lying north of the Southern Pacific Railroad.

11. The party of the first part does hereby waive, now and forever, all claim for Federal and State aid in construction of the east levee of the Yolo By-pass, through Reclamation District No. 1009, between the Sacramento By-pass and Reclamation District No. 900.

Objection oug 2E-8N-3E

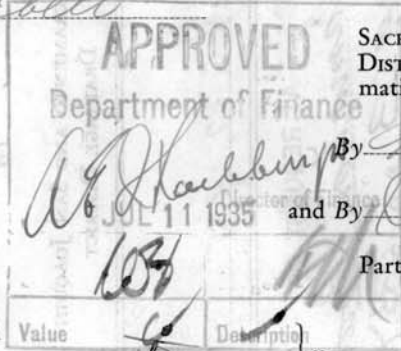
IN WITNESS WHEREOF, This option and agreement, on the day and year first above written, has been executed in duplicate by the party of the first part, who has hereunto set his hand and seal, and by the proper officers of the party of the second part, hereunto duly authorized, and its corporate seal affixed hereto.

C. SWANSTON & SON (Inc.)  
 President  
 Secretary

Witness

Party of the first part

*Ray M. Gay*  
*L. E. Barrett*



SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through The Reclamation Board of the State of California,

By *A. K. Gallaway Jr.* President  
 and By *D. C. Honaker* Assistant Secretary

Party of the second part

STATE OF CALIFORNIA

COUNTY OF

*Sacramento*

On this *27<sup>th</sup>* day of *June*, A. D. 193*5*, before me,

*P. L. Danz*

, a Notary Public in and for the said county and State, duly commissioned and qualified, personally appeared

*Robert Swanston*

known to me to be the person whose name *is* subscribed to the above instrument and acknowledged to me that *he* executed the same.

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

*P. L. Danz*

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

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On this *28* day of *June*, A. D. 193*5*, before me,

*J. A. Meier*

, a Notary Public in and for the said county and State, duly commissioned and qualified, personally appeared

*A. K. Gallaway Jr.*

and *D. C. Honaker*, known to me to be the President and Assistant Secretary, respectively, of the Reclamation Board of the State of California, and acknowledged to me that they executed the same for and on behalf of the Reclamation Board of the State of California.

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

*J. A. Meier*

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



IN WITNESS WHEREOF, This option and agreement, on the day and year first above written, has been executed in duplicate by the party of the first part, who has hereunto set his hand and seal, and by the proper officers of the party of the second part, hereunto duly authorized, and its corporate seal affixed hereto.

C. SWANSTON & SON (Inc.)

*Robert Swanston*  
PRESIDENT  
SECRETARY

Witness

*Roy M. Gey*  
*L. E. Bartlett*

Party of the first part

APPROVED  
Department of Finance

SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, acting by and through The Reclamation Board of the State of California,

*A. H. Housh*  
JUL 11 1935

and By

*A. R. Gallaway Jr.*  
President  
*A. H. Housh*  
Assistant Secretary

Party of the second part

STATE OF CALIFORNIA,

County of Sacramento ss.

On this 27th day of June, in the year one thousand nine hundred and thirty five, before me, E. D. H. D. H., a Notary Public in and for the County of Sacramento, State of California, residing therein, duly commissioned and sworn, personally appeared Robert Swanston known to me to be the PRESIDENT of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

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

MY COMMISSION EXPIRES DEC. 15, 1935

Cowdery's Form No. 28—(Acknowledgment Corporation).

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

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

STATE OF CALIFORNIA

COUNTY OF SACRAMENTO ss.

On this 28 day of June, A. D. 1935, before me, J. A. Mear, a Notary Public in and for the said county and State, duly commissioned and qualified, personally appeared A. R. Gallaway Jr. and A. H. Housh, known to me to be the President and Assistant Secretary, respectively, of the Reclamation Board of the State of California, and acknowledged to me that they executed the same for and on behalf of the Reclamation Board of the State of California.

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

*J. A. Mear*  
Notary Public in and for the County of Sacramento, State of California

ATTACHMENT C, EXHIBIT E

THIS INDENTURE, Made this 15th day of September, 1920, by and between GEORGE SWANSTON and JENNIE SWANSTON, his wife, of the City of Sacramento, County of Sacramento, State of California, the parties of the first part, and RECLAMATION DISTRICT No. 999, a reclamation district duly organized and existing under and pursuant to the laws of the State of California, the party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns forever, a perpetual and continuing right and easement for the purpose of constructing, maintaining and operating all and any levee, drainage and other reclamation works, including the right to dig, excavate, construct, maintain and operate borrow-pits, canals, mounds for the purpose

of planting thereon willows, or other trees, or affording other levee protection, and all other works that may be necessary or desirable for the purpose of said reclamation district; also the right and easement to free and unobstructive passage by all means of transportation for itself, or any person under its license; also the right and easement for all incidental purposes connected with any of the above and foregoing purposes along, across, under, upon, above and through all that certain real property, situate, lying and being in the County of Yolo, State of California, described as follows:

Beginning at a point which is South 89° 54' East 1922.0 feet from the Northwest corner of the Southwest  $\frac{1}{4}$  of Section 35, Township 7 North, Range 3 East, Mount Diablo Base and Meridian; thence North 19° 55' 37" East 1414.3 feet, South 89° 57 $\frac{1}{2}$ ' East 212.66 feet to the Westerly right of way line of the West Levee of Reclamation District No. 999; thence along said Westerly Levee right of way line South 19° 55' 37" West 1414.34 feet; thence leaving said Westerly Levee right of way line North 89° 54' West 212.59 feet to the point of beginning.

Containing 6.49 acres and being a portion of said Section 35,  
County of Yolo, State of California.

IN WITNESS WHEREOF the parties of the first part have hereunto set their hands the day and year first above written.

GEORGE SWANSTON  
JENNIE E. SWANSTON

STATE OF CALIFORNIA,        ss.   On this 5th day of October, 1920, before me, DONALD E.  
COUNTY OF SACRAMENTO        WACHHORST, a Notary Public in and for said county, personally  
appeared GEORGE SWANSTON and JENNIE E. SWANSTON (his wife) known to me to be the persons  
whose names are subscribed to the within and foregoing instrument and they acknowledged to  
me that they executed the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal  
the day and year in this certificate first above written.

(SEAL) DONALD E. WACHHORST, Notary Public  
In and for the County of Sacramento, State of California.

Recorded at request of Theodore W. Chester, Oct. 8 A.D. 1920, at 45 min. past 11 o'clock A.M.

Le R. PIERCE, Recorder.

**Wright, C. Michael**

---

**From:** Poletti, Kacy  
**Sent:** Friday, May 04, 2012 8:43 AM  
**To:** Wright, C. Michael  
**Subject:** FW: Legal Description of the Yolo Bypass

Hi Mike,

It appears Bob Chesner did some additional research regarding the Yolo Bypass inquiry – please see below. Also, do you have a cost object number he can charge to?

Thanks!  
Kacy

---

**From:** Chesner, Robert  
**Sent:** Friday, May 04, 2012 8:38 AM  
**To:** Poletti, Kacy  
**Cc:** Leong, Carrol  
**Subject:** RE: Legal Description of the Yolo Bypass

Kacy,

The Smith property in question is in encumbered by the following SSJDD easement deeds:

APN 033-450-001: SSJDD DEED NO 519, recorded November 10, 1939, in Book 133, Official Records, at Page 28

APN 033-450-002, 033-440-006, 033-190-010: SSJDD DEED NO 605, recorded August 14, 1940, in Book 143, Official Records, at page 289

For Deed No 605, the recorded grant of easement document supersedes the Option Agreement as stated in the last paragraph of the deed. Also, there are several documents of record in the subject to portion of this deed including paragraph number 7. that cites SSJDD DEED NO 6, recorded November 16, 1917, in Book 93 of Deeds, at Page 261, for the Bypass that may also affect the easement area of Deed No 605 and the Smith property.

The document provided dated March 13, 1950, in Book 329, Official Records, at Page 234, document number 5037 for the 60 foot drainage ditch would be subject to the senior rights of SSJDD.

I am not sure why the Board staff wants the “Western” boundary of the Bypass, as the Smith property is adjacent to the “Easterly” portion of the Bypass. The boundaries of the Bypass are basically the East and West levees of the Bypass.

Please provide a cost account number to charge my time and Carrol’s time to which will be approximately 8 hours. If you have any further questions, let me know.

Thank you,



**From:** Taras, Curt  
**Sent:** Tuesday, January 17, 2012 4:37 PM  
**To:** Wright, C. Michael  
**Subject:** FW: Mr. Smith's violations to our property

**From:** Timothy French [\[mailto:tfrench@ucdavis.edu\]](mailto:tfrench@ucdavis.edu)  
**Sent:** Tuesday, November 08, 2011 12:08 PM  
**To:** Taras, Curt  
**Subject:** Mr. Smith's violations to our property

Mr. Taras, I am in the process of mailing the sheriff's report, photos and other documents concerning Mr. Smith's violations to our property in the Yolo Bypass. Could you please enclose this in your file concerning Mr. Smith.

Mr. Smith came on the H Pond property, which is encumbered with a U.S. Fish and Wildlife Service (FWS) Easement, and buried (essentially removed) water control structures that were purchased and installed under a North American Wetland Conservation Act (NAWCA) Grant.

With regard to the FWS Easement, the landowner is required to contact and receive written authorization from the FWS prior to removing existing and or installing new water control structures on easement lands.

With regard to the NAWCA Grant funds, the H Pond has likely entered into an Agreement with California Waterfowl Association to maintain the infrastructure (water control structures) purchased with these funds for a minimum of ten years (maybe longer). NAWCA Grant funds are administered by the FWS but it is the recipients (CWA, H Pond) responsibility to ensure that the improvements are maintained for a certain time period.

Illegally dumping of garbage on our property.

Illegally blocking our drainage of our property affecting our NAWCA Grant funds and creating drainage issues for us and the clubs to the north of us that drain through our property.

Illegally trespassing through our property on our SE corner and along the Toe Drain.

Illegally moving fill to prevent us from access on our property along the Toe Drain.

Harassing waterfowl on our property with a air plane.

Illegally moving earth and constructing buildings out in the Yolo Bypass which is a flood plain and requires the issuance of permits prior to any changes to land in the bypass.

I will probably have the documents mailed to you by the end of the week. I will also notify the a joining clubs to the south of Mr. Smith's property.

Sincerely,

Tim

French



3855 Atherton Road • Rocklin, CA 95765 • Telephone (916) 435-3555

September 6, 2011

Mr. Curt Taras, PE, MSCE  
 Supervising Engineer  
 Branch Chief, Encroachment and Enforcement  
 State of California  
 Central Valley Flood Protection Board  
 3310 El Camino Ave, Rm. 151  
 Sacramento, CA 95821

Mr. Taras:

I am writing to discuss drainage violations caused by the actions of Ron Smith. We own and operate the Pope Ranch Mitigation Bank that is situated west and adjacent to property owned by Ron Smith. Our property is further described as parcel numbers: 033-190-036, 033-190-038, 033-190-035, and 033-190-037.

RD 2068 has historically drained irrigation tail water and winter storm runoff along the northern and eastern edge of our property and then through a canal crossing Mr. Smith's property to the Toe Drain. This arrangement has been in place for nearly fifty years. Two years ago, Mr. Smith constructed a headwall structure across the drainage and now refuses to allow drainage to the toe drain for all of RD 2068 tail water and drain water from the Pope Ranch Mitigation Bank and lands owned by the Berta Trust to our south. The blockage is manageable in the summer months as we are able to use the backed up water for irrigation purposes. The winter season runoff, however, causes severe ponding on both my property and that of the Berta Trust resulting in crop loss and undue pressure on all water delivery infrastructure. During bypass flood events, this backup certainly causes a build up of debris and exacerbates local flooding. This entire situation could be resolved by Ron Smith simply opening the water control structures after October 15 and allowing the winter drainage to flow to the Toe Drain. I have had discussions with Dustin Smith regarding draining along the historic path but have been told that we would have to negotiate a financial settlement to reinstate the drainage. In my mind this is tantamount to extortion.

Additionally, I am somewhat surprised that Mr. Smith is not held to the same standard as other landowners that operate within the bypass floodplain. Prior to construction in the floodway we have undertaken significant efforts to obtain approvals. Also, during the construction of our Pope Ranch Mitigation Bank, a managed marsh for the Federally and State listed- Giant Garter Snake, we were required to lower the level of our roads surrounding the bank by six inches. We complied with the requirement at significant cost but have watched Mr. Smith build structures and raise road elevations by several feet. I would like to see Mr. Smith comply with the same standards.

Please feel free to contact me if I can provide further information. I thank you for your interest and involvement in this important issue.

Sincerely,

Dan Kominek



**Photos taken October 30, 2008**



Looking at Barn Construction from the South



Looking at Barn Construction from the East





Looking at Barn Construction from the East



Looking at Barn Construction from the South-West





Looking at Barn Construction from the South-West



**FIELD INVESTIGATION REPORT**

(FI ID: 1143)

**Contact Information****Name:** Ron Smith**Title:****Contact Type:** Contact Person**Agency/Company:** Not Specified**Mailing Address:** 2665 Sorney Loop  
Rescue CA 95672**XXX:****Business E-mail:****Location****LMA:** Designated Floodway**Unit:** N/A**Loc Desc:** This property is located in the Yolo By Pass at the end of County Road 107 off road 155.**County:** Yolo**Stream/Watershed:** Yolo Bypass**Designated Floodway:** N/A**Start****End****Latitude\Longitude:****Levee Mile:****River Mile:**

**FIELD INVESTIGATION REPORT****(FI ID: 1143)****Incident Details****Date:** 05/11/2007**Category:** Encroachments**Damage:** N/A**Description:**

There is an earthen pad which does not appear to be new presently in the Yolo By Pass. This pad appears to be approximately 7 to 8-foot high, approx. 100 wide running east and west and approx. 700 to 800 foot long running north and south. This mound is in Section 33, about one mile west of the toe drain and immediately south of the section line that county road 152 runs on, about 1.5 miles east of where county road 152 ends. There is equipment stored on top of the mound along with power poles (2), grasses has grown over the entire area.

Mr. Smith pointed out to me where off in the distance where two Duck Clubs that he said were denied permit. One he said was constructed in 1969 the other was constructed in 1975. He said that there is no violation procedure against either of the two. From where we were standing I couldn't see if there were similar pads and or mounds at the duck clubs. From the distance I couldn't see what would or wouldn't be permitted at either club.

It appears that Mr. Smith had constructed this mound prior to submitting an application to the Reclamation Board. Unless he build a structure on this mound I don't see nor do I beleive that the Department will spend too much time making him remove it.

**Recommendation:****Action Taken:**

Took photos and GPS of the mound (1) GPS after entering the gate 38.40647-121.63849 (2) mid way to the mound GPS 38.41405-121.63849 Elv. 18.0' (3) top of mound GPS 38.41560-121.63877 Elv. 8.3' (4) 50 to 60 feet away also on top of mount GPS 38.41512-121.64075 Elv. 7.22'

**Encroachment Details**

Encroachment	Levee Side/Part	Levee Mile Start/End	River Mile Start/End	Lat/Long Start	Lat/Long End
Miscellaneous	N/A				
	N/A				

## FIELD INVESTIGATION REPORT

(FI ID: 1143)

**Status/Activities**

<u>Status Date</u>	<u>Category</u>	<u>Status Desc</u>	<u>User</u>
05/11/2007 14:01	General	Field Investigation Entered	hphillips



## FIELD INVESTIGATION REPORT

(FI ID: 1143)

### Photos

This photo shows the mound from a distance



## FIELD INVESTIGATION REPORT

(FI ID: 1143)

### Photos

This photo shows the equipment with the power poles



## FIELD INVESTIGATION REPORT

(FI ID: 1143)

### Photos

This picture shows the closer view of the equipment on on this mound.





CVFPB Staff Field Investigation Pictures taken August 15, 2011



South side of barn



Fill under South side of barn



South side of barn showing existing concrete pad



Damaged side of barn, panels blown off by wind





Typical Structural Connections





Damaged side of barn, panels blown off by wind



Unpermitted Berm, east side of barn



Unpermitted Berm, east side of barn





Unpermitted Berm, east side of barn