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

**November 15, 2012**

**Staff Report – Enforcement Hearing**
**Carol Miller, Yuba County**

## 1.0 – ITEM

Enforcement hearing requested by Respondent concerning a notice of violation ordering the removal of a private fence located on State property adjacent to the Feather River East levee in West Linda, CA (Yuba County) continued from March 2, 2012.

Consider Resolution No. 2012-05 (*Attachment A*) to:

1. Authorize removal of a private fence and miscellaneous obstructions on State land in accordance with Permit No. 18690.
2. Grant a revocable license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
3. Rescind notice of violation No. 2011-272 subject to voluntary compliance with this resolution.

Note: On this staff report, the term "State" and "Board" are synonymous for the Central Valley Flood Protection Board.

## 2.0 – RESPONDENT/PROPERTY OWNER

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

## 3.0 – LOCATION

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




**Figure 1- Vicinity Map (Source: Google Maps)**

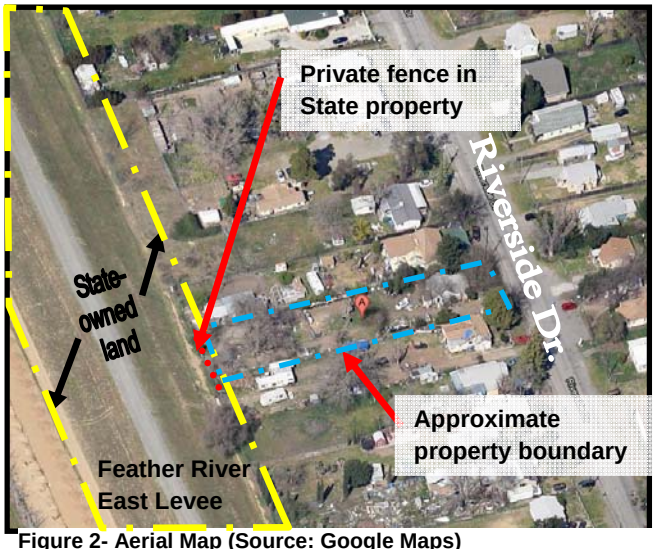


**Figure 2- Aerial Map (Source: Google Maps)**

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

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

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

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

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

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

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

Pursuant to §20 (a): "*The board has the authority pursuant to Water Code section 8710 to require permits and enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including, but not limited to, standards for encroachments, construction, vegetation and erosion control measures. In addition, the board has enforcement authority under Water Code sections 8709.5 and 8709.6 to issue Cease and Desist Orders, the violation of which may subject the violator to fines or penalties pursuant to Water Code section 8709.7*"

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

(1) Undertaking or threatening to undertake any activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board;

(3)(A) Owning, undertaking, or maintaining any work that requires a permit or other approval from the board without securing such permit or approval;

((3)(B) Owning, undertaking, or maintaining any work in violation of Title 23, Division 1 of the California Code of Regulations;

(3)(C) Owning, undertaking, or maintaining any work that is inconsistent with applicable federal regulations where the board has signed assurances with the U.S. Army Corps of Engineers that it will comply with such regulations.

## 5.0 – STAFF ANALYSIS

### 5.1 – Background

Three Rivers Levee Improvement Authority (TRLIA) is completing a $400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst and Plumas Lake. As part of these levee improvements, TRLIA is required to provide a 20-foot wide maintenance corridor in accordance with the Department of Water Resources (DWR) Interim levee Design Criteria. During the preparation of a survey, TRLIA discovered that the land covering the levee and the required 20-foot wide access corridor is owned in fee by the Sacramento San Joaquin Drainage District (SSJDD) acting through and by the Central Valley Flood Protection Board (CVFPB). Vegetation, private fences and structures were located within the required 20-ft wide corridor in State-owned land.

Below is a chronology of correspondence and events. Please note items in bold and underlined identify prior CVFPB hearings.

- In early May 2011, CVFPB staff began an investigation of the existing encroachments identified by TRLIA. CVFPB records indicate there are no Board permits for any of the fences, structures or vegetation within the State's property.
- July 29, 2011 - TRLIA sent letters to all Respondents notifying them of the encroachments located within State-owned land and TRLIA's plan to install a new fence at the State's right-of-way.
- August 5, 2011 - A total of 51 Notices of Violation (NOV) were issued to the property owners where unauthorized encroachments were identified (Enforcement Action No. 2011-243 thru 2011-296). 48 of the 51 Respondents did not respond to the NOV or request a hearing. On March 2, 2012 CVFPB granted Ms. Vasquez a hearing for two properties she owns which were issued an NOV.
- August 22, 2011 - TRLIA held a community meeting in Olivehurst, California which was attended by many of the residents, CVFPB staff, MBK Engineers, RD 784, Yuba County and local representatives. See *Attachment C* for a summary on the questions and answers from the community meeting.
- August 25, 2011 – Respondent requested a hearing in response to issued NOV.
- November 18, 2011- December 2, 2011 Agenda hearing notification mailed to all Respondents

- November 22, 2011 – Staff reports mailed to Respondents
- **December 2, 2011** - the CVFPB held public hearings for the issued NOVs. The CVFPB determined by a majority vote that private encroachments exist on State-owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. CVFPB also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor. See *Attachment I* for copy of official transcript.
- January 10, 2012 – TRLIA held a community meeting in Olivehurst to present 2 alternatives to the Respondents. Option 1 consisted of placing the fence at edge of 20-ft corridor and issuing revocable licenses to allow use of State land. Option 2 was to place the fence at the State right-of-way and at the two locations where permanent structures are located, the fenced would be curved around the buildings and a permit and license would be issued for those two Respondents.
- January 17, 2012 – January 26, 2012 agenda notification mailed to Respondents
- **January 26, 2012**- the CVFPB held public hearings in Marysville for the continued enforcement actions. CVFPB staff recommended option 1 presented at the January 10, 2012 community meeting. The CVFPB voted 7-0 in favor of CVFPB's staff recommended alternative. This decision was later vacated because the staff report distribution did not meet CVFPB's 10-day notification requirement. See *Attachment I* for copy of official transcript.
- February 6, 2012 – a letter was mailed to all 51 Respondents notifying them of the CVFPB's January hearings decision.
- February 14, 2012 – March 2, 2012 agenda was mailed to all Respondents
- February 17, 2012 – staff reports for the March 2012 hearings were published on the Board's website and mailed overnight to Respondents.
- **March 2, 2012** – CVFPB held public hearings in Marysville for continued enforcement actions. CVFPB voted to continue the enforcement hearings to a future date to provide sufficient notification to the Respondents due to CVFPB regulations change. In addition, Ms. Vasquez was granted a separate hearing. Permit No. 18690 was approved 7-0 with several conditions including drainage and mitigation for elderberries. See *Attachment I* for copy of official transcript.
- March 7, 2012 – March hearings Board decision notification letter was sent to all Respondents in English and Spanish.
- March 12, 2012 – Permit No. 18690 BD was issued to TRLIA (See *Attachment D*)
- April 26, 2012 – TRLIA sent letter (in English and Spanish) to all Respondents notifying of status of the project.
- May 3, 2012 – ATKINS provided CVFPB staff a memorandum summarizing their findings of CTA's Record of Survey. ATKINS found CTA's survey was prepared appropriately and accurately represents the location of SSJDD's right-of-way. See *Attachment E*.
- May 11, 2012 – CVFPB staff provided several Respondents copies of ATKINS peer review memo dated May 3, 2012 via email
- June 6, 2012 – CVFPB/TRLIA joint memo response to Ms. Miller via email (See *Attachment F*).

- June 11, 2012 – Community meeting held in Olivehurst. Respondents were presented with current status of drainage plan, fence location and license requirements.
- June 26, 2012 – Copy of documents used by CTA for Record of Survey and other documents in a CD for Ms. Miller and Mr. Hecker
- August 20, 2012 – CVFPB staff response letter for additional documents submitted by Ms. Miller on July 28, 2012 (*Attachment G*)
- September 21, 2012 – November 15, 2012 hearings agenda mailed to Respondents in English and Spanish (meeting 30-day notification requirement per CVFPB Regulations)
- October 22, 2012 – Staff reports mailed to Respondents via overnight delivery to all (meeting 20-day notification requirement per CVFPB Regulations)

## 5.2 – Prior CVFPB Actions

On December 2, 2011, the CVFPB held public hearings for the issued NOVs. The CVFPB determined by a majority vote that private encroachments exist on State-owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. CVFPB also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor. See *Attachment I* for copy of official transcript.

On January 26, 2012, the CVFPB held public hearings in Marysville for the continued enforcement actions. The recommended alternative presented to the CVFPB was to install the new fence at approximately 20-feet from the landside levee toe and issue revocable licenses to allow adjacent parcel owners to allow the use and maintenance of the remaining State land until the need for a public purpose became necessary. The CVFPB voted 7-0 in favor of the recommended alternative. This decision was later vacated because the staff report distribution did not meet CVFPB's 10-day notification requirement. See Figure 3 below for graphic showing the proposed alternative presented on January 26, 2012. See *Attachment I* for copy of official transcript.

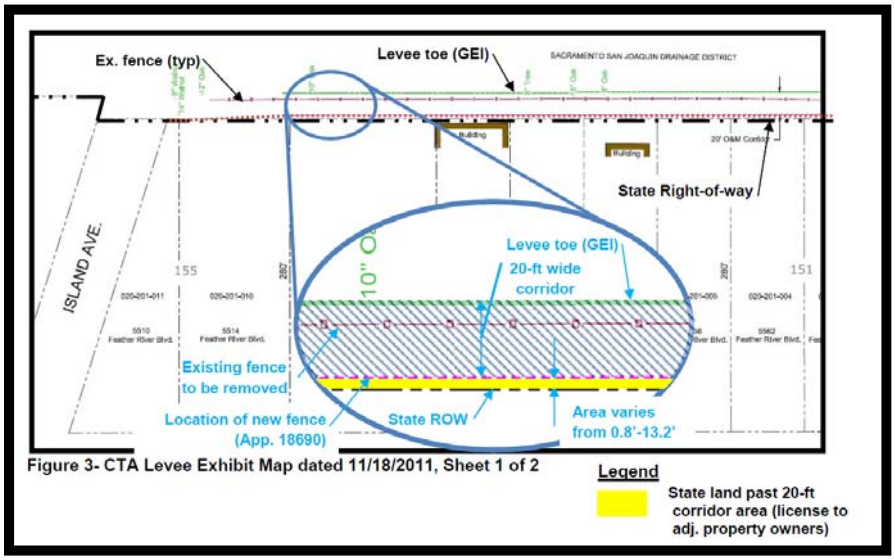


**Figure 3- CVFPB January 26, 2012 hearing proposed alternative**

On March 2, 2012, CVFPB held public hearings in Marysville for continued enforcement actions. Changes to the CVFPB's Regulations were adopted and became effective February 15, 2012. Some of the changes included significant revisions to the enforcement proceedings and timing notification. Consequently, CVFPB voted to continue the enforcement hearings to a future date to provide sufficient notification to meet new CVFPB Regulations. One of the Respondents present (Magdalena Vasquez) expressed concerns and lack of understanding on the process because she did not speak English. As a result, CVFPB granted Ms. Vasquez a separate future hearing for the two properties she owns which were issued an NOV. See *Attachment I* for copy of official transcript.

Permit No. 18690 requesting authorization to install the chain link fence, k-rails and maintenance corridor, was approved 7-0 by CVFPB on March 2, 2012 with conditions. See *Attachment D* for copy of the permit. During the hearing, several Respondents expressed concern over the landside levee toe location and existing drainage conditions. Consequently, the following two special conditions were added to Permit 18690 BD. See Section 5.4-1 for details on the drainage.

> **SPECIAL CONDITION TWENTY FIVE**: The fence parallel with the levee shall be located twenty (20) feet from the levee toe; the levee toe location shall be determined by Permittee in consultation with and with the approval of the Board Executive Officer. Thereafter, Permittee shall submit project plans for Board Executive Officer approval.
>
> **SPECIAL CONDITION TWENTY EIGHT:** The Permittee shall ensure that the project has adequate storm water management so that the maintenance road is passable during wet weather, and that the project does not worsen existing drainage problems in the area. Central Valley Flood Protection Board staff has determined that such storm water conveyance standard can be achieved through minor grading surface drainage features with slopes of less than 10 percent and/or pipes and culverts adjacent to or under the existing maintenance road. More significant grading and pipes/culverts are not authorized by this permit, and would require permittee to amend the permit and to comply with State regulations, including the California Environmental Quality Act. Final plans shall be subject to Central Valley Flood Protection Board staff review and satisfaction of this condition before project construction may begin.

In addition, Permit 18690 was conditioned to include appropriate coordination and mitigation to address the presence of existing elderberry shrubs on State property (see *Attachment D,* Special Condition NINETEEEN). CVFPB staff is in coordination with TRLIA and the USACE to allow for the transplant and mitigation of the existing elderberries under a revision to the original levee improvements for Segments 1 and 3 (Permit 18170). The proposed solution presented in Section 5.4 includes providing TRLIA and their consultant adequate access to the property to allow for the transplant of impacted elderberry shrubs.

## 5.3 – Real Estate

TRLIA hired CTA Engineering and Surveying (CTA) to prepare a Record of Survey ("survey") to delineate the property boundaries of the State-owned parcel and adjacent properties. CTA

prepared Record of Survey dated January 11, 2012 filed in Book 93 of Maps, Pages 36-38 at the Yuba County Recorder's office. See *Attachment H* for copy of recorded survey.

The State-owned parcel where private encroachments exist was purchased in fee by the State in December 1958 and recorded on Book 267 Page 509 (parcel 5). This parcel was originally purchased by Northern Electric Railway Company in December 1909 and recorded on Book 59 Page 441. The land to the east of the Feather River East levee was subdivided and recorded in 1921 as part of the Yuba Gardens Subdivision map recorded on Book 3 of Surveys 2. The adjacent properties subject to the CVFPB's enforcement actions were created in the Yuba Garden Subdivision Map recorded in June 1939 (Tract No. 8, Book 3 of Surveys Page 45).

From the early stages on this project, many Respondents objected to the property boundary identified by CTA's survey. Refer to *Attachment C* for summary on questions raised by Respondents during a community meeting. There were several documents submitted by various Respondents and they were reviewed by TRLIA and CVFPB staff to determine if they had an impact on CTA's survey. None of the documents submitted conflict with the property boundary shown on CTA's survey. CVFPB hired ATKINS to perform an independent review of CTA's survey and review all submitted documents. Their findings are as follows:

> *"While we understand that the adjoining owners are concerned about the ownership and believe that the survey conducted is questionable in their minds, we have not see any evidence to date that supports any conclusion other than that presented on the Record of Survey map recorded by CTA.*
>
> *There is another item that I have noted before and would again like to point out. There is a continuing argument that the CTA survey did not correctly identify the original rail way sidelines. It is still my opinion that CTA established the lines correctly. I would like to point out that the adjacent owners still have no rights to any properties outside the boundaries of the map that established their lots originally which is the re-subdivided a portion of Tract 8 of Yuba Gardens filed in Book 3 of Maps at Page 45 Yuba County Records. We have seen no documentation that supports the adjoiners to claim any ownership outside the lots delineated on that map."* (See *Attachment G* for copy of Atkins Memo dated August 10, 2012).
>
> "*The assertion that the existing fence lines were intended to represent the boundary line of Tract 8 lots is not supported either by the Tract 8 map or any deeds that have been examined by this office. Based on our review of the CTA record of survey and the supporting documents, it is our opinion that the map filed by CTA has been prepared appropriately and according to the standard of practice for a survey of this type, and correctly represents the location of the SSJDD right-of-way.*" (See *Attachment E* for copy of Atkins Memo dated May 3, 2012).

All inquiries and additional documents submitted to CVFPB staff and TRLIA have been promptly reviewed and responded. CVFPB staff is confident that the survey prepared by CTA accurately represents the State-owned property boundary. Staff has recommended to Respondents who are not satisfied with these findings, that they should consider obtaining the services of a licensed surveyor to provide them with an independent review of the survey.

## 5.4 – Proposed Solution

As directed by CVFPB on March 2, 2012 and following several meetings between TRLIA and CVFPB staff, the maintenance corridor and fence at the Respondent's properties is proposed to be placed 8-feet away from the SSJDD right-of-way as shown on Figures 4 and 5. The 8-ft setback will be maintained where it is feasible with the proposed drainage features and it varies between 1 and 8-ft from the SSJDD right-of-way throughout the length of the project. There are no permanent structures on State-owned land that are affected by the proposed solution at the Respondent's property. Surface drainage from the levee and corridor will be drained via gravity flow, concrete-lined v-ditch and a culvert under Island Avenue. See Section 5.4-1 and Figures 4 and 5 for additional drainage details and a typical section.

The real estate proposal is to issue a revocable license to the Respondent to allow the use and maintenance of State land until there is a need for a public purpose. The revocable license will be recorded at Yuba County Recorder's office, run with the title of the land, making it transferable. The license will be prepared, executed and recorded by TRLIA at no cost to the Respondent. The license will include the following provisions:

- No excavation, grading or construction of any work without prior CVFPB approval
- No extraction, removing, drilling, mining or operating through the surface
- No alterations, modifications, additions or improvements or causing damage to fences or gates constructed by TRLIA
- Indemnifications to hold the State harmless
- Release any claim of ownership for State property

As discussed in Section 5.2, due to the location of existing elderberry shrubs on State property, the Respondent shall allow adequate access to TRLIA and their consultants for the transplant of the elderberries located on State land.

## 5.4-1 – Drainage

Several Respondents testified during prior CVFPB hearings that the construction of the maintenance corridor and new fence would impact existing poor drainage conditions at the landside toe of the levee. As a result, Permit 18690 BD was issued conditioned upon the proposed project not worsening the existing drainage conditions (see Section 5.2).

The properties adjacent to State-owned land slope towards the levee with a slight slope towards the south (Island Avenue). There are several low-spots at some of the properties, creating ponding during small rainstorms. The 100-year flood elevation for this area was determined to be 58.5 feet (NGVD 29). The proposed levee toe maintenance corridor will be constructed at elevation 59 feet (NGVD 29) providing access during a major storm event. This will require some fill along the levee toe to bring the road to an elevation of 59 feet (NGVD 29). At the south end of the subdivision, the proposed solution is to install a concrete-lined v-drain ditch with an invert elevation of 56 feet (NGVD 29). The ditch would connect to a 36-inch drainage pipe under Island Avenue at an upstream invert elevation of 55 feet (NGVD 29) and discharge into Reclamation District 784 (RD784) Pump Station 9 detention basin at an elevation of 53 feet (NGVD 29). While the proposed

drainage solution will not eliminate all ponding in this area, it will improve existing drainage and reduce ponding while providing an accessible corridor during a significant storm event.

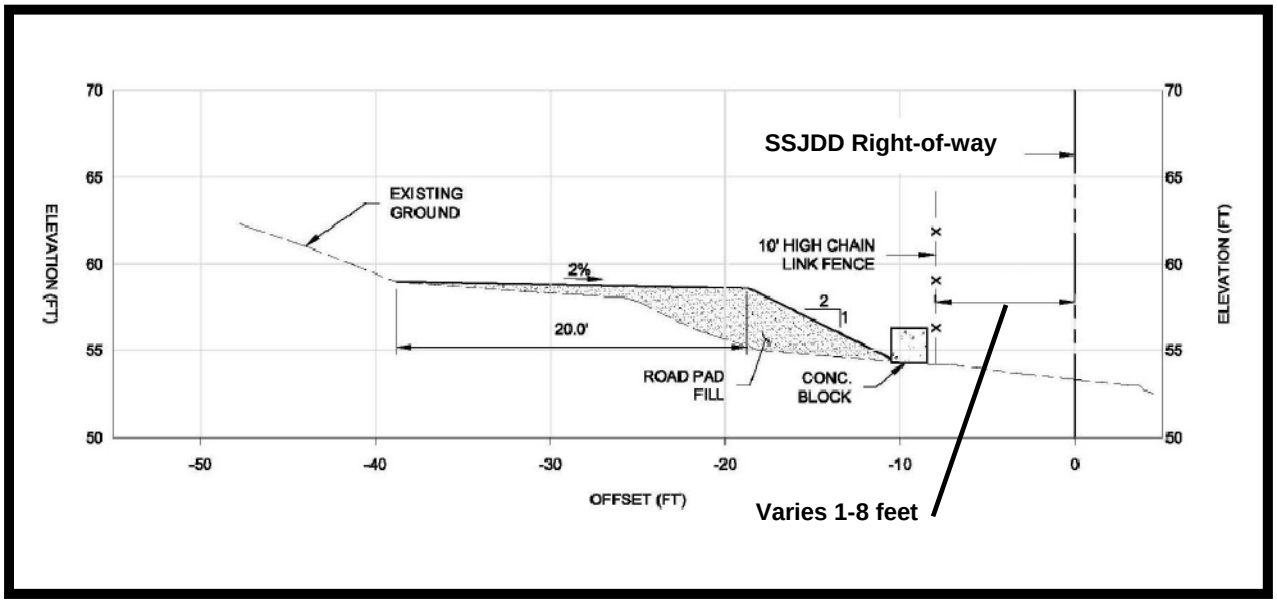


**Figure 4- Typical Cross Section, prepared by GEI**

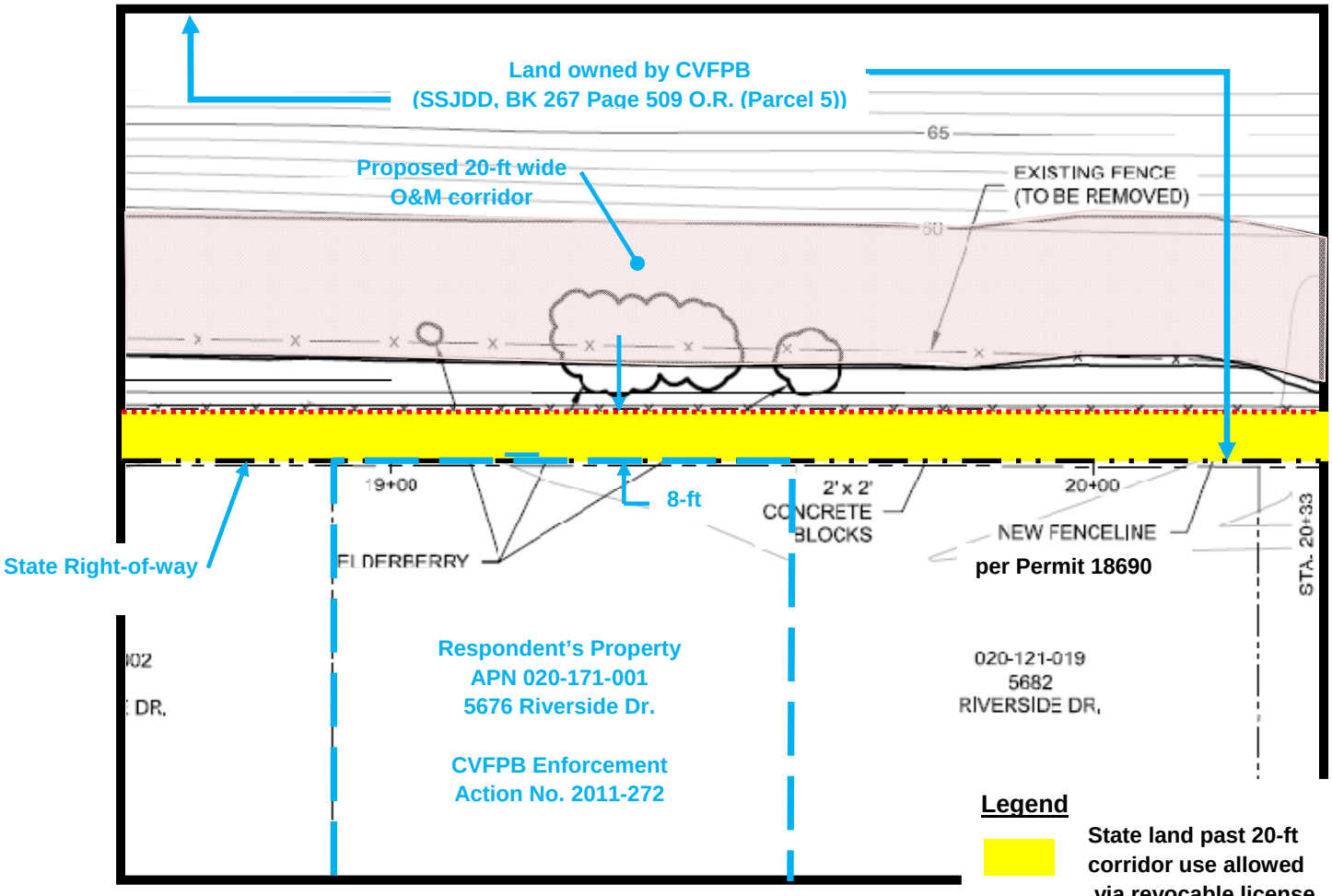


**Figure 5- Drainage plan prepared by GEI**

### 5.4-2 – Legal Analysis of Proposed Alternative

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

## 6.0 – PROPOSED CEQA FINDINGS

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

## 7.0 – STAFF RECOMMENDATION

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

Staff's recommendation is for the CVFPB to approve the proposed resolution which authorizes removal of the private fence and encroachments obstructing the construction of the 20 foot wide levee toe maintenance corridor, issue revocable a license to the Respondent for use and maintenance of State land between the corridor and their property and allow access to transplant existing elderberry shrubs located on State land. In the event that the Respondent refuses to sign the license, the fence shall be placed at the State Right-of-way. For these reasons and those stated on this staff report, CVFPB staff recommends the CVFPB adopt Resolution No. 2012-05 (*Attachment A*).

## 8.0 – LIST OF ATTACHMENTS

A. Resolution No. 2012-05
B. Notice of Violation No. 2011-272
C. TRLIA August 22, 2011 community meeting Q&A
D. Permit No. 18690 BD issued on March 12, 2012
E. ATKINS peer review memo dated May 3, 2012
F. CVFPB/TRLIA joint memo response to Ms. Miller dated June 6, 2012
G. CVFPB staff response to Ms. Miller on letter August 20, 2012
H. Record of Survey 2011-11 (Book 93 of Surveys Page 36, January 11, 2012)
I. Official Transcripts for CVFPB Hearings held on December 2, 2011, January 26, 2012 and March 2, 2012

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-05

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
CAROL MILLER, 5676 RIVERSIDE DRIVE, OLIVEHURST, CA
FEATHER RIVER, YUBA COUNTY

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

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

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

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

**WHEREAS,** California Code of Regulations, Title 23 Sections 6(a), 4(a)(4), 19, 20(a) and 23 were also considered by staff in the analysis of the enforcement action; and

**WHEREAS,** on August 5, 2011 a total of 51 notices of violation (NOV) were issued to property owners adjacent to the Feather River East levee in West Linda, CA. This resolution only addresses the NOV 2011-272 issued to Carol Miller who owns Parcel 020-171-001 (5676 Riverside Drive, Olivehurst, CA); and

**WHEREAS,** on August 25, 2011, CVFPB staff received a hearing request from respondent; and

**WHEREAS,** on December 2, 2011, the CVFPB conducted held public hearings regarding the removal of unauthorized levee encroachments located on State-owned property along the Feather River Levee in West Linda, CA. The CVFPB determined by a majority vote that private encroachments exist on State owned property and directed staff to return with a proposal to clear a 20 foot wide levee toe maintenance corridor while minimizing the impact to adjoining private parcel owners. The CVFPB also requested staff to investigate a real estate solution that would allow the adjoining property owners continued use of the State land beyond the 20 foot maintenance corridor; and

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

**WHEREAS**, on January 26, 2012, the CVFPB held public hearings in Marysville for the continued enforcement actions. CVFPB staff recommended option 1 presented at the January 10, 2012 community meeting. The CVFPB voted 7-0 in favor of CVFPB's staff recommended alternative. This decision was later vacated because the staff report distribution did not meet CVFPB's 10-day notification requirement; and

**WHEREAS**, on March 2, 2012, CVFPB held public hearings in Marysville for continued enforcement actions. CVFPB voted to continue the enforcement hearings to a future date to provide sufficient notification to the Respondents due to CVFPB regulations change. In addition, Ms. Vasquez was granted a separate hearing; and

**WHEREAS**, Permit No. 18690 was approved 7-0 with several conditions including drainage and mitigation for existing elderberries; and

**WHEREAS**, CVFPB hired ATKINS to perform an independent review of CTA's survey and all documents submitted by respondents. ATKINS found that CTA's survey accurately represents the State-owned property boundary; and

**WHEREAS**, As directed by CVFPB on March 2, 2012 and following several meetings between TRLIA and CVFPB staff, the maintenance corridor is proposed to be placed between 1-8 feet away from the SSJDD right-of-way. The 8-ft setback will be maintained where it is feasible with the proposed drainage features. There are no permanent structures on State-owned land that are affected by the proposed solution at the Respondent's property. Surface drainage from the levee and corridor will be drained via gravity flow, concrete-lined v-ditch and a culvert under Island Avenue; and

**WHEREAS**, the real estate proposal is to issue a revocable license to the Respondent to allow the use and maintenance of State land until there is a need for a public purpose. The revocable license will be recorded at Yuba County Recorder's office, run with the title of the land, making it transferable. The license will be prepared, executed and recorded by TRLIA at no cost to the Respondent; and

**WHEREAS**, CVFPB staff, ATKINS, TRLIA, CTA and legal counsel have exercised professional due-diligence in review of all pertinent documents and staff is confident that the proposed alternative remains appropriate and is the best compromise; and

**WHEREAS,** the Central Valley Flood Protection Board has conducted an enforcement hearing for unauthorized encroachments in West Linda, CA and has reviewed the staff report, the documents and correspondence in its file, and given the Respondent the right to testify and present evidence on her behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

**Findings of Fact**

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

2. The CVFPB has reviewed all Attachments listed in the Staff Report.

**CEQA Findings**

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

4. **Custodian of Record**. The custodian of the CEQA record for the CVFPB is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room 151, Sacramento, California 95821.

**Approval of Resolution No. 2012-05**

5. For the reasons stated on the staff report, staff recommends the CVFPB adopt Resolution No. 2012-05 to:
    a. Authorize removal of private fences and miscellaneous obstructions on State land subject to Permit No. 18690, including reasonable access to the State property to allow for the relocation of existing elderberries.
    b. Grant a revocable license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East levee.
    c. Rescind the notice of violation (2011-272) subject to voluntary compliance with this resolution.
    d. In the event the Respondents refuse to sign the revocable licenses, the new fence will be constructed at the SSJDD right-of-way.
    e. Direct staff to file a Notice of Exemption with the State Clearinghouse.
    f. Direct Executive Officer to execute a revocable license subject to review and concurrence from CVFPB President.

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

| | |
|---|---|
| _____ | _____ |
| Bill Edgar | Jane Dolan |
| President | Secretary |

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**CENTRAL VALLEY FLOOD PROTECTION BOARD**
3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682

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

## ENCROACHMENT VIOLATION NOTICE

**Property Owner:** Carol Miller
**Mailing Address:** 935 N Grand Ave
San Pedro, CA 90731

**Date:** August 5, 2011
**Enforcement Action:** 2011-272

**Violating Parcel (APN):** 5576 Riverside Dr., Olivehurst, CA 95961 (020-171-001)
**Encroachment Location:** Feather River, Project Levee, Unit 2, Levee Mile 0.58, Left bank
**Local Maintaining Agency:** Reclamation District 784, (RD 784)

**Description**: The State of California - Central Valley Flood Protection Board (Board) staff has information that encroachment violations of the State Plan of Flood Control exist within its jurisdiction at this encroachment location consisting of a fence, which is located on state-owned property.

**Regulations**: This encroachment is in violation of the California Water Code and the California Code of Regulations (CCR) Title 23 Waters, Division 1. The provision is as follows:

> CCR Title 23, Div 1, Section 19, District Lands: "*No encroachment may be constructed or maintained upon lands owned in fee by the Sacramento and San Joaquin Drainage District, except when expressly permitted by a proper and revocable license, lease, easement or agreement executed between the owner of the encroachment and the district, and upon payment to the district of its expenses and adequate rental or compensation therefor*."

**Conditions**: Removal of the identified encroachments will be completed by Three Rivers Levee Improvement Authority (TRLIA) after forty-five (45) days of the receipt of this notice. If you believe this notice in error, please mail this office a copy of any license, lease, easement, or agreement that authorizes this encroachment, along with a written request for a hearing, within thirty (30) days of receipt of this notice.

**Staff Contact**: The Board Staff assigned this enforcement action is:
Angeles Caliso, Encroachment Control and Land Use Section
acaliso@water.ca.gov Desk: (916) 574-2386

Signed,

Jay S. Punia

Jay S. Punia
Executive Officer

Attachments:
1. Photo of Unauthorized Encroachment
2. Survey prepared by CTA Engineering & Surveying dated June 2011 (Sheet 2)

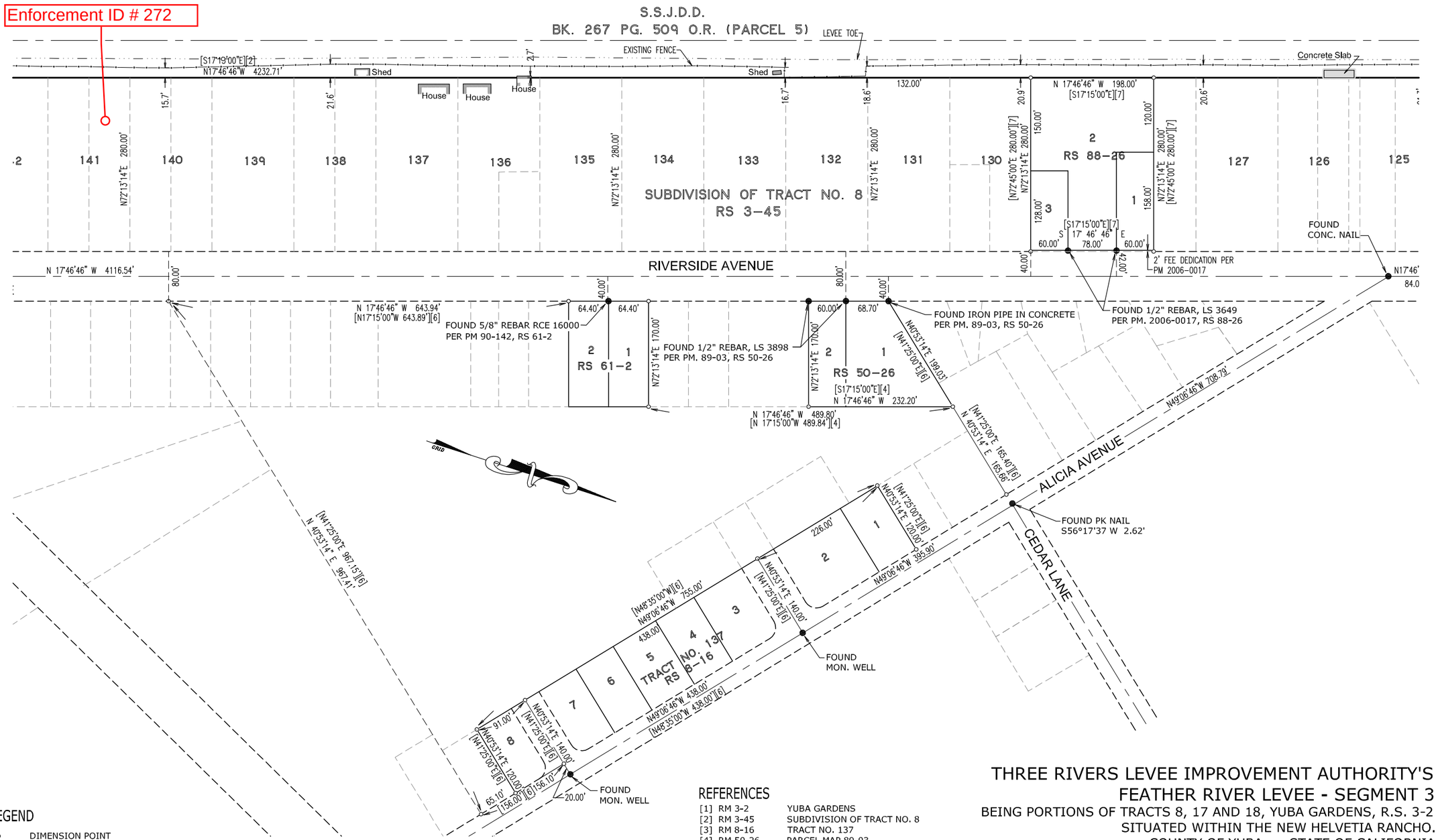
cc: DWR, Flood Project Integrity & Inspection Branch
Steve Fordice - RD 784
Paul Brunner - TRLIA
USACE Flood Protection & Navigation Section
Luke Steidlmayer – Downey Brand Attorneys LLP
Ward Tabor – DWR Office of the Chief Counsel



**APN 020-171-001 (Carol Miller); Enforcement ID #2011-272**

**Notice of Violation**
**Attachment 1 – Photo of Unauthorized Encroachment (Source: Downey Brand 7/14/2011)**
**Central Valley Flood Protection Board**

Enforcement ID # 272




## LEGEND

- ○ DIMENSION POINT
- ● FOUND MONUMENT AS NOTED
- ⊘ SET 5/8" REBAR WITH ALUMINUM CAP STAMPED LS 5914
- △ ORIGINAL PROJECT CONTROL MONUMENT
- ⊕ TRLIA REPLACEMENT CONTROL MONUMENT AS DESCRIBED BELOW
- [ ] RECORD DATA PER REFERENCE NUMBER
- T.R.L.I.A. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
- S.S.J.D.D. SACRAMENTO SAN JOAQUIN DRAINAGE DISTRICT

## REFERENCES

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

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

BEING PORTIONS OF TRACTS 8, 17 AND 18, YUBA GARDENS, R.S. 3-2
SITUATED WITHIN THE NEW HELVETIA RANCHO.
COUNTY OF YUBA STATE OF CALIFORNIA
JUNE, 2011 SCALE: 1"= 100'

cta Engineering & Surveying

SHEET 2 OF 3

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THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
1114 Yuba Street, Suite 218
Marysville, CA 95901
Office (530) 749-7841 Fax (530) 749-6990

**TRLIA Community Meeting – August 22, 2011**
**Segment 3 Access Corridor**
**Questions & Answers**

Q: How long will it take to remove encroachments and build the new fence?
A: We estimate the project will take two to three months, start to finish.

Q: We own a rental property, and our tenants have a dog. What is the timing between removal of the old fence and construction of the new fence?
A: Construction manager will be working with individual property owners to determine whether or not temporary fencing will be needed during the construction process.

Q: Is TRLIA going to install a new fence that is of the same quality as my existing fence?
A: TRLIA will be installing a 6-foot high chain link fence with concrete blocks on the SSJDD side of the fence, see fence detail. In most cases the installed fence exceeds the quality of the existing fence. If a landowner does not think the proposed fence meets the current quality of their existing fence, TRLIA will discuss with the landowner on a case by case basis.

Q: When did TRLIA conduct the survey of our properties?
A: TRLIA conducted two surveys within the past four months to cross-check data and validate the property lines.

Q: Will the new maintenance road be level with our properties, or higher than our properties?
A: We will grade the existing land to create the new road and remove potholes and bumps, but will not add fill to raise the road.

Q: Will the new maintenance road be paved?
A: No.

Q: Where is the toe of the levee? Are you measuring for the 20 feet from the toe, or from our property?
A: The levee toe is located somewhere beneath the prism of the levee. We are not measuring 20 feet from that location. We are reestablishing existing property lines, and the location of the levee toe has no bearing on the location of property lines.

Q: We would like to remove our fence and salvage the materials, but we don't want to be stuck without a fence in the event someone files a lawsuit and stops the project. What happens if there's a lawsuit?
A: TRLIA would set temporary fencing around the property involved in the suit and complete the other portions of the project. In that case, however, the property owner engaged in the lawsuit

may lose his/her opportunity to have TRLIA pay for the removal of the existing fence and construction of a new fence.

Q: Will the fences be constructed in a way that allows access to the levee at a later time?
A: The intent is to prohibit access to the levee from these areas. However, access to the levee will be available at Island Avenue and other designated places along the levee system.

Q: Have the property sizes and lot lines always been the same?
A: Yes, according to subdivision maps on file with the County, along with title and ownership records. Some of the properties have been subdivided, but the depth of the properties (280 feet) has remained unchanged.

Q: Is this project for levee maintenance?
A: Yes. The maintenance access corridor is needed for levee monitoring, maintenance, and flood fighting.

Q: In 2001, they tore down and put up a new levee behind 5578 Feather River Boulevard. When they rebuilt it, they left a gap in the slurry wall at this location.
A: The Corps of Engineers installed a cutoff wall in this reach of the levee in 1997. TRLIA flattened the waterside slope of the levee to 3 horizontal to 1 vertical in 2008. TRLIA has reviewed the Corps of Engineers' as-built drawings for this 1997 work. The as-built drawings do not show any gap in the cutoff wall. Normal procedure when installing a cutoff wall and encountering an obstruction is to suspend cutoff wall installation, excavate the levee enough to remove the obstruction, rebuild the levee to previous geometry, and then continue cutoff wall installation through the rebuilt levee reach. This is what the as-built drawing show the Corps of Engineers did at this location.

Q: There is a two-level system behind Wal-Mart: the levee, and then another "shelf" below the levee. Is that what you'll do with the maintenance road behind our property?
A: The "shelf" behind Wal-Mart is a 300-foot seepage berm. We are not altering the levee behind your property. Our project reestablishes correct property lines and clears an access corridor for levee maintenance and flood fighting.

Q: Will TRLIA remove the old fence, build the new fence and remove vegetation at its own cost?
A: Yes. Property owners are only responsible for relocating belongings onto their property by September 30.

Q: Will TRLIA stake our property so that we know the location of our lot line?
A: Yes. Property owners who want their lot line staked can contact the TRLIA construction hotline at 530-763-7912.

Q: Will people still be able to run their four-wheelers up and down the levee?
A: TRLIA will establish a line of concrete block behind the new six-foot tall chain link fence to discourage this type of activity.

Q: Who is responsible for maintaining the new fence? Who do we call if there's a hole in it, for example?
A: Reclamation District RD 784 is the responsible agency. Property owners who notice damage to the fence should call 530.742.0520.

Q: When did the property ownership transfer from the railroad to the State? The fence line was already established before the railroad abandoned the property, and before the property was transferred to the State. Doesn't that mean that residential property owners acquired a legal property interest in the land before it was acquired by the State?

A: *The following represents the results of a review of the issue by TRLIA's legal counsel:*
One topic that was discussed at the meeting pertained to the legal theory of adverse possession and how that related to the claim that the fence existed prior to the State acquiring the property from a railroad company. In other words, if the fence existed in its current location for many years prior to the State obtaining ownership, could property owners have obtained a legal right to the property located between the legally described property line and the fence?

A person can obtain prescriptive rights to the property of another so long as the person proves the following elements: (a) open and notorious use; (b) continuous and uninterrupted use; (c) hostile to the true owner; (d) under a claim of right; and (e) for the statutory period of five years. *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593. To establish fee title by adverse possession, in addition to the above elements, the property owners need to show that they paid all property taxes validly assessed and levied on the property they seek to acquire. Code of Civil Procedure section 325.

One exception to the above rule relates to property owned by a public entity or public utility. Civil Code section 1007 provides in relevant part: "no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever **dedicated to a public use by a public utility**, or dedicated to or **owned by the state or any public entity**, shall ever ripen into any title, interest or right against the owner thereof." (emphasis added). This statute acts as an absolute ban on acquiring rights to property owned by a public entity or property owned by a public utility that is dedicated to a public use.

The State purchased the property at issue from the Sacramento Northern Railway in 1958. Pursuant to Civil Code section 1007, an adjacent property owner cannot acquire prescriptive rights to land owned by the State.

Prior to 1958, the property was owned by the Sacramento Northern Railway. The section of the Railway that was adjacent to the properties in question was abandoned in 1956. The California Public Utilities Code provides that every railroad performing a service for, or delivering a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received is a public utility. Public Utilities Code sections 211 and 216. Because a railroad is a public utility, an adjacent landowner cannot obtain property rights, through prescription or adverse possession, to land owned by a railroad company that is dedicated to a public use. A railroad right of way is such a public use, and it was not abandoned until 1956. Two years later, the property was sold to the State. Therefore, no property rights could have been acquired prior to the Sacramento Northern Railway deeding the property to the State. This is because a claim for a prescriptive easement or title through adverse possession requires a five year period of use against an owner whose property is subject to acquisition, and only two years passed between railroad abandonment and transfer to the State.

There were also discussions at the August 22, 2011, meeting about the alleged payment of taxes on the disputed property. The Yuba County Assessor's Parcel Map for this subdivision shows the depths of the lots being the same as what is referenced in the recorded subdivision map. We have not seen any evidence that the Yuba County assessor's office taxed any property owner on the additional property between the existing fence and the property line. Furthermore, even if

taxes were paid, it would not create a property right given that the property at issue was owned by a public utility and then sold to a public entity.

Finally, there have been allegations that the Sacramento Northern Railway constructed the fence at its current location based on an agreement between the property owners and the Railway that the fence line would be the property line. However, TRLIA has not been shown any written agreement between the Railway and the property owners in which the Railway agreed that the fence line constituted the property line. The legal description contained in the grant deed for these properties specifies the precise legal boundary. Regardless of whether the Railway constructed a fence that was set back onto its property, the legally defined property line is what governs.

STATE OF CALIFORNIA
THE RESOURCES AGENCY

# THE CENTRAL VALLEY FLOOD PROTECTION BOARD

**PERMIT NO. 18690** BD

**This Permit is issued to:**

Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, California 95901

To install chain link fencing, K-rails, and a maintenance road on State of California property, adjacent to the Feather River East Levee and Yuba River South Levee. Works are located in RD 784 along the east levee of the Feather River, Unit 2 from LM 0.0 to 0.94 and the south levee of the Yuba River, Unit 1, LM 2.1 to 2.2 (Section 25, T15N, R3E, MDB&M, Reclamation District 784, Feather River, Yuba County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project as described above.

**(SEAL)**

Dated: MAR 12 2012

Jay S. Punia
Executive Officer

**GENERAL CONDITIONS:**

**ONE**: This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

**TWO**: Only work described in the subject application is authorized hereby.

**THREE**: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

**FOUR**: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

**FIVE**: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection Board.



DWR 3784 (Rev. 9/85)

**SIX**: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

**SEVEN**: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

**EIGHT**: This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

**NINE**: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

**TEN**: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. 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 permittee shall defend and shall hold each of them harmless from each claim.

**ELEVEN**: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

**TWELVE**: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

**SPECIAL CONDITIONS FOR PERMIT NO. 18690 BD**

THIRTEEN: All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval from the Central Valley Flood Protection Board.

FOURTEEN: The permittee shall contact the Department of Water Resources by telephone, (916) 574-0609, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

FIFTEEN: Upon completion of the project, the permittee shall submit as-builts to: Department of Water Resources, Flood Project Inspection Section, 3310 El Camino Avenue, Suite 256, Sacramento, California 95821.

SIXTEEN: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

SEVENTEEN: The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its

defense, in its sole discretion.

EIGHTEEN: The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation or maintenance of the flood control project to interfere, the permittee shall be required, at permittee's cost and expense, to modify or remove the permitted encroachment(s) under direction of the Central Valley Flood Protection Board or Department of Water Resources. If the permittee does not comply, the Central Valley Flood Protection Board may modify or remove the encroachment(s) at the permittee's expense.

NINETEEN: Permittee acknowledges the presence of elderberry shrubs which could serve as Valley Elderberry Longhorn Beetle habitat in the vicinity of this project. Permittee has structured the project so as not to include any work within 100 feet of existing elderberry plants in compliance with the U.S. Fish and Wildlife Service Conservation Guidelines dated 9 July 1999 (attached to this permit as Exhibit C) until such time as the Permittee consults with U.S. Fish and Wildlife Service to establish acceptable protocols to be used in protecting possible habitat during this project. Permittee shall provide copies of the protocols to be implemented by Permittee within the 100-foot buffer zone to Board staff as part of an application to amend this permit. Until such time and associated approved permit amendment, Permittee may not disturb the area within the 100-foot buffer zone. Prior to construction, Permittee shall submit for CVFPB Executive Officer approval construction plans and related documents showing the 100-foot buffer zone (protected during and after construction, and demonstrating compliance with the other items on page 3 of the Guidelines (Ex. C).

TWENTY: No construction work of any kind shall be done during the flood season from November 1st to April 15th without prior approval of the Central Valley Flood Protection Board.

TWENTY-ONE: The proposed gate shall be installed perpendicular to the centerline of the levee.

TWENTY-TWO: The proposed fence crossing the levee crown shall have a minimum opening width of 14 feet or a suitable gate of equal width shall be installed on the levee crown.

TWENTY-THREE: The proposed fence and gate within the levee section shall be constructed in accordance with Title 23 Section 126 and submitted fence details.

TWENTY-FOUR: Any lock on the gate must be accessible to maintenance and inspection personnel and must not be casehardened.

TWENTY-FIVE: The fence parallel with the levee shall be located twenty (20) feet from the levee toe; the levee toe location shall be determined by Permittee in consultation with and with the approval of the Board Executive Officer. Thereafter, Permittee shall resubmit project plans for Board Executive Officer approval.

TWENTY-SIX: Excavations in the levee section for fence posts and footings shall be a maximum of 3-feet deep, cleaned of all loose soil, and backfilled with concrete cast against firm undisturbed earth.

TWENTY-SEVEN: Prior to placement of fill against the levee slope and within the corridor area at the toe of the levee, all surface vegetation shall be removed to a depth of 6 inches. Organic soil and roots larger than 1-1/2 inches in diameter shall be removed to a depth of 3 feet.

TWENTY-EIGHT: Permittee shall ensure that the project has adequate stormwater management so that the maintenance road is passable during wet weather, and that the project does not worsen existing drainage problems in the area. Central Valley Flood Protection Board staff has determined that such stormwater conveyance standard can be achieved through minor grading surface drainage features with slopes of less than 10 percent and/or pipes and culverts adjacent to or under the existing maintenance road. More significant grading and pipes/culverts are not authorized by this permit, and would require permittee to amend the permit and to comply with State regulations, including the California Environmental Quality Act. Final plans shall be subject to Central Valley Flood Protection Board staff review and satisfaction of this condition before project construction may begin.

TWENTY-NINE: Any excavations made in the levee section or within 10 feet of the levee toes shall be backfilled in 4- to 6-inch layers with impervious material with 20 percent or more passing the No. 200 sieve, a plasticity index of 8 or more, and a liquid limit of less than 50 and free of lumps or stones exceeding 3 inches in greatest dimension, vegetative matter, or other unsatisfactory material. Backfill material shall be compacted in 4- to 6-inch layers to a minimum of 90 percent relative compaction as measured by ASTM Method D1557-91.

THIRTY: The patrol road shall be surfaced with a minimum of 6 inches of compacted, Class 2, aggregate base (Caltrans Specification 26-1.02A).

THIRTY-ONE: The levee section shall be restored to at least the same condition that existed prior to commencement of work.

THIRTY-TWO: The maintenance corridor area and adjacent to the patrol road at the levee toe shall be cleared of trees and brush and maintained free of woody vegetation.

THIRTY-THREE: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

THIRTY-FOUR: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

THIRTY-FIVE: The permittee shall comply with all conditions set forth in the letter from the Department of the Army dated January 18, 2012, which is attached to this permit as Exhibit A and is incorporated by reference.

THIRTY-SIX: The permittee shall comply with all conditions set forth by Reclamation District 784, which is attached to this permit as Exhibit B and is incorporated by reference.

THIRTY-SEVEN: Permittee may not undertake any construction work authorized by this permit until the Board resolves the associated enforcement actions (Notices of Violation 2011-243 to 2011-249 and 2011-253 to 2011-296) consistent with the work authorized by this permit. Approval of this permit is no guarantee that the Board will resolve these enforcement actions consistent with this permit.

Prior to such time, any design work Permittee may undertake is done at Permittee's risk. After Board resolution of the above-referenced enforcement actions, the Executive Officer shall determine whether such resolution is consistent with this permit; if it is not, this permit shall require amendment.

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EP 18690 BD
EXHIBIT A
**ATTACHMENT D**

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

REPLY TO
ATTENTION OF

Flood Protection and Navigation Section (18690)

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

JAN 18 2012

Dear Mr. Punia:

We have reviewed a permit application by Three Rivers Levee Improvement Authority (TRLIA) (application number 18690). This project includes installing a 6 foot high chain link fence and K-rails parallel to the landside toe of the left bank levee of the Feather and Yuba Rivers. Work also includes minor grading along the landside toe of the levee. The project is located south of Marysville, west of Highway 70 along the Feather River East Levee and Yuba River South Levee, starting at 39.1272°N 121.5878°W NAD 83 and ending at 39.1126°N 121.5836°W NAD83 Yuba County, California.

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

a. That the proposed work shall not be performed during the flood season of November 1 to April 15, unless otherwise approved in writing by your Board.

b. That the proposed work shall not interfere with the integrity or hydraulic capacity of the flood damage reduction project; easement access; or maintenance, inspection, and flood fighting procedures.

c. All cleared vegetation shall be properly grubbed and the levee embankment returned to existing lines and grade.

d. That the fence and K-rails shall be located outside the limits of the project right-of-way or at least 15 feet landward of the levee toe.

Based on the information provided, no Section 10 or Section 404 permit is needed.

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

Sincerely,

For Rick L. Poeppelman, P.E.
Chief, Engineering Division

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Reclamation District No. 784 has the following conditions to be included on the Central Valley Flood Protection Board Encroachment Permit for installation of chain link fence and k-rail adjacent to the Feather River Levee Unit 2 Levee Mile 0.0 to 1.0. The conditions are as follows:

- All improvements shall meet or exceed Central Valley Flood Protection Board Title 23, Department of Water Resources, FEMA, and U.S Army Corps of Engineers Standards and requirements current and any future modifications of the standards.

- The facilities shall be setback a minimum of twenty (20) feet from levee toe to allow construction of operation and maintenance road. The twenty (20) feet shall be from levee toe to the edge of the k-rail in accordance with the drawings. The would result in the property line being a minimum of twenty two and one-half (22½) feet from the land side toe of levee.

- All work endorsed by this permit shall be in accordance with the submitted drawings and specifications. No further work, other than approved by this permit, shall be done in the area without prior endorsement of Reclamation District No. 784.

- The encroachment permit shall include a provision that the permittee shall be required to remove or alter all or any part of the herein permitted project if removal or alteration is necessary as part of or in conjunction with any present or future flood control plan or project, or if damaged by any cause. If the permittee or successor does not comply, RD 784, USACE, and/or the CVFPB may remove or modify the herein permitted project at the permittee's expense.

- The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation and maintenance of the flood control project to interfere, the permittee shall be required, at permittee's or successor's sole cost and expense, to modify or remove the permitted encroachment(s).

- If the project or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project, at the permittee's or successor's sole cost and expense.

- A set of As-Built Mylar plans and specifications shall be provided to Reclamation District No. 784 upon completion of the work.

- A copy of the final Central Valley Flood Protection Board Permit shall be provided to Reclamation District No. 784 prior to any work.

- Reclamation District No. 784 shall be notified five (5) working days prior to any construction activities.

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

## Conservation Guidelines for the Valley Elderberry Longhorn Beetle
9 July 1999

The following guidelines have been issued by the U.S. Fish and Wildlife Service (Service) to assist Federal agencies and non-federal project applicants needing incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit in developing measures to avoid and minimize adverse effects on the valley elderberry longhorn beetle. The Service will revise these guidelines as needed in the future. The most recently issued version of these guidelines should be used in developing all projects and habitat restoration plans. The survey and monitoring procedures described below are designed to avoid any adverse effects to the valley elderberry longhorn beetle. Thus a recovery permit is not needed to survey for the beetle or its habitat or to monitor conservation areas. If you are interested in a recovery permit for research purposes please call the Service's Regional Office at (503) 231-2063.

### Background Information

The valley elderberry longhorn beetle (Desmocerus californicus dimorphus), was listed as a threatened species on August 8, 1980 (Federal Register 45: 52803-52807). This animal is fully protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The valley elderberry longhorn beetle (beetle) is completely dependent on its host plant, elderberry (Sambucus species), which is a common component of the remaining riparian forests and adjacent upland habitats of California's Central Valley. Use of the elderberry by the beetle, a wood borer, is rarely apparent. Frequently, the only exterior evidence of the elderberry's use by the beetle is an exit hole created by the larva just prior to the pupal stage. The life cycle takes one or two years to complete. The animal spends most of its life in the larval stage, living within the stems of an elderberry plant. Adult emergence is from late March through June, about the same time the elderberry produces flowers. The adult stage is short-lived. Further information on the life history, ecology, behavior, and distribution of the beetle can be found in a report by Barr (1991) and the recovery plan for the beetle (USFWS 1984).

## Surveys

Proposed project sites within the range of the valley elderberry longhorn beetle should be surveyed for the presence of the beetle and its elderberry host plant by a qualified biologist. The beetle's range extends throughout California's Central Valley and associated foothills from about the 3,000-foot elevation contour on the east and the watershed of the Central Valley on the west (Figure 1). All or portions of 31 counties are included: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, San Luis Obispo, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba.

If elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level occur on or adjacent to the proposed project site, or are otherwise located where they may be directly or indirectly affected by the proposed action, minimization measures which include planting replacement habitat (conservation planting) are required (Table 1).

All elderberry shrubs with one or more stems measuring 1.0 inch or greater in diameter at ground level that occur on or adjacent to a proposed project site must be thoroughly searched for beetle exit holes (external evidence of beetle presence). In addition, all elderberry stems one inch or greater in diameter at ground level must be tallied by diameter size class (Table 1). As outlined in Table 1, the numbers of elderberry seedlings/cuttings and associated riparian native trees/shrubs to be planted as replacement habitat are determined by stem size class of affected elderberry shrubs, presence or absence of exit holes, and whether a proposed project lies in a riparian or non-riparian area.

Elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level are unlikely to be habitat for the beetle because of their small size and/or immaturity. Therefore, no minimization measures are required for removal of elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level with no exit holes. Surveys are valid for a period of two years.

## Avoid and Protect Habitat Whenever Possible

Project sites that do not contain beetle habitat are preferred. If suitable habitat for the beetle occurs on the project site, or within close proximity where beetles will be affected by the project, these areas must be designated as avoidance areas and must be protected from disturbance during the construction and operation of the project. When possible, projects should be designed such that avoidance areas are connected with adjacent habitat to prevent fragmentation and isolation of beetle populations. Any beetle habitat that cannot be avoided as described below should be considered impacted and appropriate minimization measures should be proposed as described below.

Avoidance: Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The Service must be consulted before any disturbances within the buffer area are considered. In addition, the Service must be provided with a map identifying the avoidance area and written details describing avoidance measures.

Protective Measures

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the Service, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.

2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.

3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.

4. Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.

Restoration and Maintenance

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.

3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

5. Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).

## Transplant Elderberry Plants That Cannot Be Avoided

Elderberry plants must be transplanted if they can not be avoided by the proposed project. All elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level must be transplanted to a conservation area (see below). At the Service's discretion, a plant that is unlikely to survive transplantation because of poor condition or location, or a plant that would be extremely difficult to move because of access problems, may be exempted from transplantation. In cases where transplantation is not possible the minimization ratios in Table 1 may be increased to offset the additional habitat loss.

Trimming of elderberry plants (e.g., pruning along roadways, bike paths, or trails) with one or more stems 1.0 inch or greater in diameter at ground level, may result in take of beetles. Therefore, trimming is subject to appropriate minimization measures as outlined in Table 1.

1. Monitor. A qualified biologist (monitor) must be on-site for the duration of the transplanting of the elderberry plants to insure that no unauthorized take of the valley elderberry longhorn beetle occurs. If unauthorized take occurs, the monitor must have the authority to stop work until corrective measures have been completed. The monitor must immediately report any unauthorized take of the beetle or its habitat to the Service and to the California Department of Fish and Game.

2. Timing. Transplant elderberry plants when the plants are dormant, approximately November through the first two weeks in February, after they have lost their leaves. Transplanting during the non-growing season will reduce shock to the plant and increase transplantation success.

3. Transplanting Procedure.

    a. Cut the plant back 3 to 6 feet from the ground or to 50 percent of its height (whichever is taller) by removing branches and stems above this height. The trunk and all stems measuring 1.0 inch or greater in diameter at ground level should be replanted. Any leaves remaining on the plant should be removed.

b. Excavate a hole of adequate size to receive the transplant.

c. Excavate the plant using a Vemeer spade, backhoe, front end loader, or other suitable equipment, taking as much of the root ball as possible, and replant immediately at the conservation area. Move the plant only by the root ball. If the plant is to be moved and transplanted off site, secure the root ball with wire and wrap it with burlap. Dampen the burlap with water, as necessary, to keep the root ball wet. Do not let the roots dry out. Care should be taken to ensure that the soil is not dislodged from around the roots of the transplant. If the site receiving the transplant does not have adequate soil moisture, pre-wet the soil a day or two before transplantation.

d. The planting area must be at least 1,800 square feet for each elderberry transplant. The root ball should be planted so that its top is level with the existing ground. Compact the soil sufficiently so that settlement does not occur. As many as five (5) additional elderberry plantings (cuttings or seedlings) and up to five (5) associated native species plantings (see below) may also be planted within the 1,800 square foot area with the transplant. The transplant and each new planting should have its own watering basin measuring at least three (3) feet in diameter. Watering basins should have a continuous berm measuring approximately eight (8) inches wide at the base and six (6) inches high.

e. Saturate the soil with water. Do not use fertilizers or other supplements or paint the tips of stems with pruning substances, as the effects of these compounds on the beetle are unknown.

f. Monitor to ascertain if additional watering is necessary. If the soil is sandy and well-drained, plants may need to be watered weekly or twice monthly. If the soil is clayey and poorly-drained, it may not be necessary to water after the initial saturation. However, most transplants require watering through the first summer. A drip watering system and timer is ideal. However, in situations where this is not possible, a water truck or other apparatus may be used.

Plant Additional Seedlings or Cuttings

Each elderberry stem measuring 1.0 inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) must be replaced, in the conservation area, with elderberry seedlings or cuttings at a ratio ranging from 1:1 to 8:1 (new plantings to affected stems). Minimization ratios are listed and explained in Table 1. Stock of either seedlings or cuttings should be obtained from local sources. Cuttings may be obtained from the plants to be transplanted if the project site is in the vicinity of the conservation area. If the Service determines that the elderberry plants on the proposed project site are unsuitable candidates for

transplanting, the Service may allow the applicant to plant seedlings or cuttings at higher than the stated ratios in Table 1 for each elderberry plant that cannot be transplanted.

## Plant Associated Native Species

Studies have found that the beetle is more abundant in dense native plant communities with a mature overstory and a mixed understory. Therefore, a mix of native plants associated with the elderberry plants at the project site or similar sites will be planted at ratios ranging from 1:1 to 2:1 [native tree/plant species to each elderberry seedling or cutting (see Table 1)]. These native plantings must be monitored with the same survival criteria used for the elderberry seedlings (see below). Stock of saplings, cuttings, and seedlings should be obtained from local sources. If the parent stock is obtained from a distance greater than one mile from the conservation area, approval by the Service of the native plant donor sites must be obtained prior to initiation of the revegetation work. Planting or seeding the conservation area with native herbaceous species is encouraged. Establishing native grasses and forbs may discourage unwanted non-native species from becoming established or persisting at the conservation area. Only stock from local sources should be used.

Examples

Example 1
The project will adversely affect beetle habitat on a vacant lot on the land side of a river levee. This levee now separates beetle habitat on the vacant lot from extant Great Valley Mixed Riparian Forest (Holland 1986) adjacent to the river. However, it is clear that the beetle habitat located on the vacant lot was part of a more extensive mixed riparian forest ecosystem extending farther from the river's edge prior to agricultural development and levee construction. Therefore, the beetle habitat on site is considered riparian. A total of two elderberry plants with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The two plants have a total of 15 stems measuring over 1.0 inch. No exit holes were found on either plant. Ten of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are greater than 5.0 inches in diameter. The conservation area is suited for riparian forest habitat. Associated natives adjacent to the conservation area are box elder (Acer negundo californica), walnut (Juglans californica var. hindsii), sycamore (Platanus racemosa), cottonwood (Populus fremontii), willow (Salix gooddingii and S. laevigata), white alder (Alnus rhombifolia), ash (Fraxinus latifolia), button willow (Cephalanthus occidentalis), and wild grape (Vitis californica).

Minimization (based on ratios in Table 1):

- Transplant the two elderberry plants that will be affected to the conservation area.

- Plant 40 elderberry rooted cuttings (10 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

- Plant 40 associated native species (ratio of associated natives to elderberry plantings is 1:1 in areas with no exit holes):
  - 5 saplings each of box elder, sycamore, and cottonwood
  - 5 willow seedlings
  - 5 white alder seedlings
  - 5 saplings each of walnut and ash
  - 3 California button willow
  - 2 wild grape vines
  - Total: 40 associated native species

- Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 80 plants must be planted (40 elderberries and 40 associated natives), a total of 0.33 acre (14,400 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Example 2
The project will adversely affect beetle habitat in Blue Oak Woodland (Holland 1986). One elderberry plant with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The plant has a total of 10 stems measuring over 1.0 inch. Exit holes were found on the plant. Five of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are between 3.0 and 5.0 inches in diameter. The conservation area is suited for elderberry savanna (non-riparian habitat). Associated natives adjacent to the conservation area are willow (Salix species), blue oak (Quercus douglasii), interior live oak (Q. wislizenii), sycamore, poison oak (Toxicodendron diversilobum), and wild grape.

Minimization (based on ratios in Table 1):

- Transplant the one elderberry plant that will be affected to the conservation area.

- Plant 30 elderberry seedlings (5 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

• Plant 60 associated native species (ratio of associated natives to elderberry plantings is 2:1 in areas with exit holes):

20 saplings of blue oak, 20 saplings of sycamore, and 20 saplings of willow, and seed and plant with a mixture of native grasses and forbs

• Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 90 plants must be planted (30 elderberries and 60 associated natives), a total of 0.37 acre (16,200 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Conservation Area—Provide Habitat for the Beetle in Perpetuity

The conservation area is distinct from the avoidance area (though the two may adjoin), and serves to receive and protect the transplanted elderberry plants and the elderberry and other native plantings. The Service may accept proposals for off-site conservation areas where appropriate.

1. Size. The conservation area must provide at least 1,800 square feet for each transplanted elderberry plant. As many as 10 conservation plantings (i.e., elderberry cuttings or seedlings and/or associated native plants) may be planted within the 1800 square foot area with each transplanted elderberry. An additional 1,800 square feet shall be provided for every additional 10 conservation plants. Each planting should have its own watering basin measuring approximately three feet in diameter. Watering basins should be constructed with a continuous berm measuring approximately eight inches wide at the base and six inches high.

   The planting density specified above is primarily for riparian forest habitats or other habitats with naturally dense cover. If the conservation area is an open habitat (i.e., elderberry savanna, oak woodland) more area may be needed for the required plantings. Contact the Service for assistance if the above planting recommendations are not appropriate for the proposed conservation area.

   No area to be maintained as a firebreak may be counted as conservation area. Like the avoidance area, the conservation area should connect with adjacent habitat wherever possible, to prevent isolation of beetle populations.

   Depending on adjacent land use, a buffer area may also be needed between the conservation area and the adjacent lands. For example, herbicides and pesticides are

often used on orchards or vineyards. These chemicals may drift or runoff onto the conservation area if an adequate buffer area is not provided.

2. Long-Term Protection. The conservation area must be protected in perpetuity as habitat for the valley elderberry longhorn beetle. A conservation easement or deed restrictions to protect the conservation area must be arranged. Conservation areas may be transferred to a resource agency or appropriate private organization for long-term management. The Service must be provided with a map and written details identifying the conservation area; and the applicant must receive approval from the Service that the conservation area is acceptable prior to initiating the conservation program. A true, recorded copy of the deed transfer, conservation easement, or deed restrictions protecting the conservation area in perpetuity must be provided to the Service before project implementation.

   Adequate funds must be provided to ensure that the conservation area is managed in perpetuity. The applicant must dedicate an endowment fund for this purpose, and designate the party or entity that will be responsible for long-term management of the conservation area. The Service must be provided with written documentation that funding and management of the conservation area (items 3-8 above) will be provided in perpetuity.

3. Weed Control. Weeds and other plants that are not native to the conservation area must be removed at least once a year, or at the discretion of the Service and the California Department of Fish and Game. Mechanical means should be used; herbicides are prohibited unless approved by the Service.

4. Pesticide and Toxicant Control. Measures must be taken to insure that no pesticides, herbicides, fertilizers, or other chemical agents enter the conservation area. No spraying of these agents must be done within one 100 feet of the area, or if they have the potential to drift, flow, or be washed into the area in the opinion of biologists or law enforcement personnel from the Service or the California Department of Fish and Game.

5. Litter Control. No dumping of trash or other material may occur within the conservation area. Any trash or other foreign material found deposited within the conservation area must be removed within 10 working days of discovery.

6. Fencing. Permanent fencing must be placed completely around the conservation area to prevent unauthorized entry by off-road vehicles, equestrians, and other parties that might damage or destroy the habitat of the beetle, unless approved by the Service. The applicant must receive written approval from the Service that the fencing is acceptable prior to initiation of the conservation program. The fence must be maintained in perpetuity, and must be repaired/replaced within 10 working days if it is found to be damaged. Some conservation areas may be made available to the public for appropriate recreational and educational opportunities with written approval from the Service. In

these cases appropriate fencing and signs informing the public of the beetle's threatened status and its natural history and ecology should be used and maintained in perpetuity.

7. Signs. A minimum of two prominent signs must be placed and maintained in perpetuity at the conservation area, unless otherwise approved by the Service. The signs should note that the site is habitat of the federally threatened valley elderberry longhorn beetle and, if appropriate, include information on the beetle's natural history and ecology. The signs must be approved by the Service. The signs must be repaired or replaced within 10 working days if they are found to be damaged or destroyed.

## Monitoring

The population of valley elderberry longhorn beetles, the general condition of the conservation area, and the condition of the elderberry and associated native plantings in the conservation area must be monitored over a period of either ten (10) consecutive years or for seven (7) years over a 15-year period. The applicant may elect either 10 years of monitoring, with surveys and reports every year; or 15 years of monitoring, with surveys and reports on years 1, 2, 3, 5, 7, 10, and 15. The conservation plan provided by the applicant must state which monitoring schedule will be followed. No change in monitoring schedule will be accepted after the project is initiated. If conservation planting is done in stages (i.e., not all planting is implemented in the same time period), each stage of conservation planting will have a different start date for the required monitoring time.

Surveys. In any survey year, a minimum of two site visits between February 14 and June 30 of each year must be made by a qualified biologist. Surveys must include:

1. A population census of the adult beetles, including the number of beetles observed, their condition, behavior, and their precise locations. Visual counts must be used; mark-recapture or other methods involving handling or harassment must not be used.

2. A census of beetle exit holes in elderberry stems, noting their precise locations and estimated ages.

3. An evaluation of the elderberry plants and associated native plants on the site, and on the conservation area, if disjunct, including the number of plants, their size and condition.

4. An evaluation of the adequacy of the fencing, signs, and weed control efforts in the avoidance and conservation areas.

5. A general assessment of the habitat, including any real or potential threats to the beetle and its host plants, such as erosion, fire, excessive grazing, off-road vehicle use, vandalism, excessive weed growth, etc.

The materials and methods to be used in the monitoring studies must be reviewed and approved by the Service. All appropriate Federal permits must be obtained prior to initiating the field studies.

Reports. A written report, presenting and analyzing the data from the project monitoring, must be prepared by a qualified biologist in each of the years in which a monitoring survey is required. Copies of the report must be submitted by December 31 of the same year to the Service (Chief of Endangered Species, Sacramento Fish and Wildlife Office), and the Department of Fish and Game (Supervisor, Environmental Services, Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814; and Staff Zoologist, California Natural Diversity Data Base, Department of Fish and Game, 1220 S Street, Sacramento, California 95814). The report must explicitly address the status and progress of the transplanted and planted elderberry and associated native plants and trees, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of beetles or fresh exit holes must be noted. Copies of original field notes, raw data, and photographs of the conservation area must be included with the report. A vicinity map of the site and maps showing where the individual adult beetles and exit holes were observed must be included. For the elderberry and associated native plants, the survival rate, condition, and size of the plants must be analyzed. Real and likely future threats must be addressed along with suggested remedies and preventative measures (e.g. limiting public access, more frequent removal of invasive non-native vegetation, etc.).

A copy of each monitoring report, along with the original field notes, photographs, correspondence, and all other pertinent material, should be deposited at the California Academy of Sciences (Librarian, California Academy of Sciences, Golden Gate Park, San Francisco, CA 94118) by December 31 of the year that monitoring is done and the report is prepared. The Service's Sacramento Fish and Wildlife Office should be provided with a copy of the receipt from the Academy library acknowledging receipt of the material, or the library catalog number assigned to it.

Access. Biologists and law enforcement personnel from the California Department of Fish and Game and the Service must be given complete access to the project site to monitor transplanting activities. Personnel from both these agencies must be given complete access to the project and the conservation area to monitor the beetle and its habitat in perpetuity.

## Success Criteria

A minimum survival rate of at least 60 percent of the elderberry plants and 60 percent of the associated native plants must be maintained throughout the monitoring period. Within one year of discovery that survival has dropped below 60 percent, the applicant must replace failed plantings to bring survival above this level. The Service will make any determination as to the

applicant's replacement responsibilities arising from circumstances beyond its control, such as plants damaged or killed as a result of severe flooding or vandalism.

Service Contact

These guidelines were prepared by the Endangered Species Division of the Service's Sacramento Fish and Wildlife Office. If you have questions regarding these guidelines or to request a copy of the most recent guidelines, telephone (916) 414-6600, or write to:

U.S. Fish and Wildlife Service
Ecological Services
2800 Cottage Way, W-2605
Sacramento, CA 95825



Figure 1: Range of the Valley Elderberry Longhorn Beetle

Literature Cited

Barr, C. B. 1991. The distribution, habitat, and status of the valley elderberry longhorn beetle Desmocerus californicus dimorphus. U.S. Fish and Wildlife Service; Sacramento, California.

Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. Unpublished Report. State of California, The Resources Agency, Department of Fish and Game, Natural Heritage Division, Sacramento, California.

USFWS. 1980. Listing the valley elderberry longhorn beetle as a threatened species with critical habitat. Federal Register 45:52803-52807.

USFWS. 1984. Recovery plan for the valley elderberry longhorn beetle. U.S. Fish and Wildlife Service, Endangered Species Program; Portland, Oregon.

**Table 1: Minimization ratios based on location (riparian vs. non-riparian), stem diameter of affected elderberry plants at ground level, and presence or absence of exit holes.**

| Location | Stems (maximum diameter at ground level) | Exit Holes on Shrub Y/N (quantify)[1] | Elderberry Seedling Ratio[2] | Associated Native Plant Ratio[3] |
|---|---|---|---|---|
| non-riparian | stems > = 1" & = < 3" | No: | 1:1 | 1:1 |
| | | Yes: | 2:1 | 2:1 |
| non-riparian | stems > 3" & < 5" | No: | 2:1 | 1:1 |
| | | Yes: | 4:1 | 2:1 |
| non-riparian | stems >= 5" | No: | 3:1 | 1:1 |
| | | Yes: | 6:1 | 2:1 |
| riparian | stems > = 1" & = < 3" | No: | 2:1 | 1:1 |
| | | Yes: | 4:1 | 2:1 |
| riparian | stems > 3" & < 5" | No: | 3:1 | 1:1 |
| | | Yes: | 6:1 | 2:1 |
| riparian | stems > = 5" | No: | 4:1 | 1:1 |
| | | Yes: | 8:1 | 2:1 |

[1] All stems measuring one inch or greater in diameter at ground level on a single shrub are considered occupied when exit holes are present anywhere on the shrub.

[2] Ratios in the *Elderberry Seedling Ratio* column correspond to the number of cuttings or seedlings to be planted per elderberry stem (one inch or greater in diameter at ground level) affected by a project.

[3] Ratios in the *Associated Native Plant Ratio* column correspond to the number of associated native species to be planted per elderberry (seedling or cutting) planted.

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ATKINS
Atkins North America, Inc.
555 Double Eagle Court, Suite 2000
Reno, Nevada 89521-8991
Telephone: +1.775.828.1622
Fax: +1.775.828.1826
www.atkinsglobal.com/northamerica

Mr. Len Marino, P.E.
Central Valley Flood Protection Board
3310 El Camino Avenue
Room 151
Sacramento, CA 95821

May 3, 2012

Subject: **Review of Record of Survey Map Prepared by CTA**

Mr. Marino

As requested, we have reviewed the Record of Survey map prepared by Kevin Heeney at CTA Engineering and Surveying (CTA) for property owned by the State of California in Yuba County. The map was filed in Book 93 of Maps, Pages 36-38 on January 11, 2012 as document number 2012R-000375, Yuba County Records.

As a result of this review, we present the following findings.

**Project History:**
The Sacramento-San Joaquin Drainage District (SSJDD), acting by and through the State of California, Central Valley Flood Protection Board (CVFPB) currently controls property noted on the above Record of Survey (ROS) as S.S.J.D.D. BK. 267 PG. 509 O.R. (PARCEL 5). It was noted that there appeared to be several encroachments onto the SSJDD property as a result of development over the past several years. As a result of concerns caused by the suspected encroachments, Three Rivers Levee Improvement Authority (TRLIA) contracted with CTA Engineering to determine the boundary lines of the SSJDD controlled property and locate any encroachments upon SSJDD property. The survey filed by CTA indicates several encroachments exist onto the SSJDD property. It was noted in our discussions with CVFPB staff that several of the property owners adjoining the SSJDD property had stated that they believed the existing fence lines indicated the location of the property boundaries. Atkins was authorized to review the Record of Survey prepared by CTA to verify the work followed the industry normal standard of care for surveys of this type.

**Review Steps:**
In the course of our review we looked at several items including:

- Chain of title for the SSJDD property
- Previously filed survey maps in the project area
- Deeds referenced on the survey maps noted above
- The map that re-subdivided a portion of Tract 8 of Yuba Gardens filed in Book 3 of Maps at Page 45 Yuba County Records

- The ROS map 2011-11 as filed by CTA

In addition to document review, we discussed the survey approach and conclusions of the CTA map with Mr. Heeney.

**Review Observations:**

We have made the following observations during our review:

- There are no conflicts in deeds or maps that would indicate a conflict in the property lines. In particular the properties in question are all portions of a subdivision map filed in Book 3 of Maps at Page 45 Yuba County Records shown on the CTA map as a Subdivision of TRACT NO. 8 (Tract 8). It is noted that the deeds of the properties where the subject encroachments exist are described as a portion of this subdivision and do not grant property outside the limits of the subdivision.
- The ROS is based on a number of monuments shown on previously filed maps. These maps are predominantly re-subdivisions of the lots as shown on Tract 8. These maps were based on monuments that were shown as being set on the original Tract 8 map. While CTA did not find the original Tract 8 monuments, they did locate monuments that had been set as part of the more recent surveys that had been tied to the original monuments. This allowed for a position of the original monuments to be determined based on mathematical calculations.
- In their efforts to locate any original monuments, CTA used a variety of search methods that are standard including the use of metal detectors, probing with appropriate tools, and use of shovels to dig where the original monuments were calculated to be. The techniques used were consistent with normal practice.
- It is noted that there were a very limited number of monuments found by the surveys that have been performed between the filing of the CTA map and the original Tract 8 map, but the measurements between monuments found during those intermediate surveys indicated that the Tract 8 survey was accurate as to the dimensions shown on the map. The accuracy of these measurements indicates to us that CTA's use of the record distances shown on the Tract 8 map is appropriate.
- The existing fence lines, which were thought by some owners to represent their property lines, vary from being a straight line and are between 16.7 feet and 21.5 feet from the location of the property line, along the tangent portion of the line as determined by CTA and shown on the ROS. There is one exception to this and that is at the line common to Lot 132 of Tract 8 and the SSJDD parcel, where the fence line is labeled as 2.5 feet from the line determined by CTA. It was noted in conversations with Mr. Heeney that he had been contacted by the owner of Lot 132 who had shown him points indicating the fence was set at the westerly corners of Lot 132. There are no documents that have been found supporting the fact that these points had been placed by appropriate survey procedures. It is further noted that both Tract 8 and the SSJDD property deeds indicate the common ownership line to be a straight line which would conflict with the assertion that the fence lines are indications of the ownership.
- In our discussions with Mr. Heeney, he indicated that CTA had performed additional surveys prior to the filing of the ROS that tied to monuments along the Western Pacific Railroad right-of-way, which runs along the northeasterly

boundary of Tract 8 as shown on the recorded map. He indicated that this additional survey work checked very closely with the ROS performed for TRLIA and supported this survey. This work was done to further justify his boundary location for the SSJDD property and does substantiate his prior findings. I make particular note of this information since this particular portion of the survey work is not indicated on the filed map.

**Conclusions:**

The assertion that the existing fence lines were intended to represent the boundary line of Tract 8 lots is not supported either by the Tract 8 map or any deeds that have been examined by this office. Based on our review of the CTA record of survey and the supporting documents, it is our opinion that the map filed by CTA has been prepared appropriately and according to the standard of practice for a survey of this type, and correctly represents the location of the SSJDD right-of-way.

If there are any further questions regarding this matter by any of the concerned parties, please feel free to contact me.

Sincerely,



Michael E. Bailey, PLS
Associate Vice President
Atkins North America, Inc.



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# MEMORANDUM

**TO:** Carol Miller

**FROM:** Paul Brunner, Three Rivers Levee Improvement Authority (TRLIA) Board
Angeles Caliso, Central Valley Flood Protection Board (CVFPB)

**SUBJECT:** Joint Response to Carol Miller Letter Dated May 31, 2012

**DATE:** June 6, 2012

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Below are the responses from TRLIA and CVFPB to the questions posed on your letter dated May 31, 2012:

**Question 1:** The money used to Survey our private properties on the west side of the levee was a Gift of public funds, DWR is public funds, why wasn't the funds used to Survey the 150ft Underlying Strip of Land that Sacramento-San Joaquin purchased?

**Response:** All survey work that has been accomplished for the Feather River landside access corridor has been done under the DWR Flood Safe Early Implementation Program (EIP). The landside access corridor is part of the EIP improvements. There has been no gift of public funds.

**Question 2:** Since the Levee is more than a 150ft in width why wasn't the underlying 150ft Strip of Land Surveyed first instead of our properties? We have the 1939 Survey that matches the Deeds Issued between 1940 and current.

**Response:** The 150 ft. strip, as well as other surrounding properties were all surveyed together as part of an overall base map.

**Question 3:** Why wasn't the issue of the Orchards on the West side of the Levee addressed first? These Orchards stop the Free Flow of the Flood Waters and cause a Dam Like Effect that will cause the Levees to break. This should have been the first concern of this area! Example is the 1997 Flood. Any more money used would be wisely used to take out the Orchards in the path of the flood waters and clean the silt from the Rivers and Canal's. Then address the issue of a Fence.

**Response:** While it is correct that vegetation in the floodway does impede flows somewhat, it does not act like a dam and vegetation adds very valuable ecological benefits to the natural system. All of the levee repairs accomplished for RD 784 have taken into account the vegetation that exists in the floodway and is planned for the floodway. Hydraulic models have been developed to account for the hydraulic impacts of this vegetation and design water surface elevations were determined based on the vegetation being in existence. All levee repairs have been made to accommodate the vegetation in the floodway. The need for a toe access corridor is not impacted by the size or height of the levee. The maintenance access corridor along the landside toe would be needed and would be the same size if the levee was 10 feet tall or 20 feet tall like the current levee is. In addition, CVFPB Regulations allow for plantings of orchards within the floodways and the existing orchards on the waterside were authorized by the Board.

**Question 4:** Have all the Spanish speaking people on Feather River Blvd and Riverside Ave been informed of all the issue's concerning their properties and has a letter of encroachment been sent in Spanish?

**Response:** Recent communication has been prepared in both Spanish and English and mailed to all affected landowners. TRLIA and CVFPB will provide a translator and correspondence in both Spanish and English for future meetings associated with the existing enforcement actions.

**Question 5:** MHM'S 2010 Survey vs. CTA'S Survey of 2011-12. Why wasn't MHM'S Survey used and recorded instead of CTA'S Survey? Both firms are California Licensed Survey Firm's and have licensed Surveyor's within their firms. Why wasn't the Property Owner's given a copy of the MHM Survey?

**Response:** Both CVFPB and TRLIA are unaware of any 2010 MHM property survey done in the West Linda area. TRLIA asked MHM about such a survey and they stated that the only possible surveying done by their firm in that area might have been some topographic surveying accomplished for an interior drainage study they were completing. These topographic surveys would not have established any property lines in this area and would not have served the purpose of the CTA Survey of 2011-12. TRLIA's surveyor researched all records of survey filed in this area in the past. No record of a 2010 MHM survey was found. A 2006 Record of Survey Map in West Linda by MHM was located and referenced in CTA's Record of Survey. The 2006 MHM property survey fit the CTA 2011 property survey. If made available, TRLIA and CVFPB would be glad to examine the MHM 2010 survey mentioned in your question

**Question 6:** The difference in co-ordinates would it be the way the 2011-12 Recorded Survey was taken, East to West, or should it have been Surveyed to the Original Survey which was West to East and using Mount Diablo Meridian? Mount Diablo Meridian is the Standard for all Surveyor's in California.

**Response:** With modern survey technology, the direction from which a property is surveyed is really unimportant. All the field data and record data are compiled together and an overall analysis is completed. The Mount Diablo Meridian has been used in our survey analysis throughout the TRLIA project areas. However, many parcels also fall within the New Helvetia Rancho. The numerous Ranchos of California were in existence prior to the Public Land Survey System of sectionalized land and are also used as the basis for many subsequent surveys. There is also the Humboldt Meridian in Northwestern California and the San Bernardino Meridian in Southern California.

This question was addressed previously in memo from CTA dated February 14, 2012 and it's reprinted below:

A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit 'E' shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.

- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46'46"E. Above that bearing we show [S17°15'00"E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.

- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.

- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15'00"E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence.

**Figure 1- CTA Memo dated 2/14/2012**

**Question 7:** The Central Valley Board Meeting of March 2, 2012, President Carter requested that TRLIA find the Original Toe of the Levee located inside the Berm and measure from the original Toe out.

Has this been completed because this is a big issue. The width of the Levee right now is wider than 150ft. When Berm moves onto other properties this does not mean the underlying property where the Berm moved onto belongs to someone else. The statement was made that after the Original Toe is located then TRLIA had a responsibility to work with the property owners, instead TRLIA is acting like bully's to take all property. This refers to letting us use our own property.

**Response:** A review of the transcript of the March 2, 2012 CVFPB Meeting finds no mention of President Carter requesting TRLIA to find the "Original Toe" of the levee. There was much discussion regarding how the levee toe could be determined and that this determination is made more difficult when other berms preexisted or were added to the levee. President Carter did ask "Board staff to pay particular attention to how the levee toe is defined. And I think the objective for us is to not impact the integrity of the levee and diminish public safety in any way, but not to move the toe any further than we have to landward of the levee." All of the meeting discussion regarding how the levee toe might be established resulted in Special Condition 25 in the permit that TRLIA received for constructing the fence which reads as follows:

**TWENTY-FIVE:** The fence parallel with the levee shall be located twenty (20) feet from the levee toe; the levee toe location shall be determined by Permittee *(TRLIA)* in consultation with and with the approval of the Board Executive Officer. Thereafter, Permittee shall resubmit project plans for Board Executive Officer approval.

TRLIA has been working closely with CVFPB Staff to determine the best and most equitable way to provide the toe maintenance road, improve drainage, and provide the toe access corridor in this reach. The two teams working together have observed the following design guidelines for this reach of levee.

**Toe Access Corridor Design Guidelines**

- Provide 20-Foot Toe Access Corridor as Required by DWR Urban Levee Design Criteria
- Design Maintenance Road to be Passable During Wet Weather as Required by CVFPB Encroachment Permit
- The Project does not Worsen Existing Drainage Problems in the Area as Required by CVFPB Encroachment Permit
- Allow Use of State Land by Adjacent Parcel Owners Where Construction of Project Facilities Will Allow
- Prevent Need to Modify Encroached Major Structures
- Make Use of State Land by Adjacent Parcel Owners as Equitable as Possible Subject to the Need for State Land for Project Facilities
- Do No Harm to the Flood Protection Facility

The proposed solution to be discussed at the public meeting meets these guidelines and allows the continued use of approximately 8 feet of State land under license by the adjacent property owner. In some areas width constraints will not allow a land owner use of 8 feet of State land and the State land width for private use has been reduced. While portions of the levee have a bottom width which approaches 150 feet, none of the existing levee or its facilities are on private property. None of the proposed new facilities are proposed to be placed on private property. All existing and proposed levee facilities will be on State property as determined by the CTA recorded survey of 2011. Contrary to the reference in the question, TRLIA is not bullying any property owners, nor is TRLIA attempting to take any of the land owned by the property owners. Rather, TRLIA is working with the property owners so that they can continue to use State property under a license agreement.

**Question 8:** The 2011-12 Survey is the property area's on the East side of the Levee, where is the updated Survey of the 150ft Strip of Land sold to Sacramento-San Joaquin Drainage District? Since the width of the Levee is more than 150ft why wasn't the Strip of Land Surveyed first?

**Response:** CTA's survey shows the 150 ft. strip adjacent to the properties along Feather River Blvd. and Riverside Drive.

**Question 9:** Since Northern Electric Railway built the Fence at the side of the 150ft width strip of land. Therefore the fence is the boundary or property line. The Fence is over 100 years old and has been maintained by the property owner's since the 1951 Flood.

**Response:** Prescriptive rights can not be obtained against a state agency, in accordance with Civil Code Section 1007. In addition, real estate transactions must be done in writing (Civil Code 1624). Staff has not been provided documents that establish a written agreement between the parties changing the property line from what is provided on the Grant Deed 2475 where SSJDD purchased the land from the Railroad Company.

**Question 10:** Because of the easement in the front, by the County of Yuba, how is it justified to move our properties into the easement? The Website for Yuba County Planning Commission is stating plans to widen most of the roads for Feather River Blvd and Riverside Dr the plans are to widen these to four lanes by 2025 or later. This means all Fences in the Front will have to be moved back to the original property lines in the front because of the easement.

**Response:** We have not moved your properties into the County road easement. Our survey clearly shows the 80 ft. wide right of way for Feather River Blvd. and Riverside Drive, as shown on the official plat of the "Subdivision of Tract No. 8 of Yuba Gardens" (Book 3 of Maps, Page 45). The TRLIA survey also shows the monuments that were found on either side of this 80 ft. strip which were set by prior surveys. Those monuments (and not the white line in the center of the road) were some of the evidence used in our analysis of the subdivision.

**Question 11:** By Law can you change our 0.424242 Acres or 280ft that is stated in our Deed? If Feather River Blvd and Riverside are widened to four lanes then we will not have 280ft of property. State of California might be encroaching on our property.

**Response:** Neither the CVFPB or TRLIA are not changing the acreage or the depth of the lots within the subdivision or as described in your deeds. CTA survey shows the depth of the lots to be 280 feet. If Feather River Blvd. and Riverside Drive are widened within the limits of the existing 80 ft. right of way, there will be no loss of property by the adjoining owners.

**Question 12:** Why are we still finding monuments and markers concerning the Levee and Land that are not part of CTA Certified Survey of this area? The Yuba County Surveyor Field Books have been missing since January 2009, we cannot check to find answers. Why were more monuments added?

**Response:** The monuments we found that relate to the land boundaries have been shown on the CTA survey. CTA survey also shows that a new monument was set on the East property line of the SSJDD parcel at the intersection of the North line of Island Avenue. Another new monument was also set to along the East line of the SSJDD parcel near the North end where the property line begins to curve. The additional monuments that have been brought to our attention are not related to the land boundaries and are construction control monuments.

**Question 13:** The rocks that are being added to the land side of the levee will cause a waterfall effect, wouldn't the runoff water from this be the responsibility of the Central Valley Flood Control Board or TRLIA?

**Response:** Neither TRLIA, CVFPB, or RD 784 propose to place rocks on the landside of the levee. It is unclear what is being described here.

**Question 14:** The runoff water from the Levee will stagnate in the back of the Fence, but it has been said, that the drainage is the property owner's problem, how can we, as property owner's get in back of the Fence to take care of the problem and does this not make it the State of California's problem?

**Response:** The water that ponds at the back of these parcels is runoff from an area that is enclosed by the levee, Feather River Boulevard, Riverside Avenue, and Island Avenue. Most of this runoff comes from the private parcels. TRLIA and CVFPB propose to improve drainage at the back of these parcels by constructing a drain under Island Avenue. This drain will reduce the ponding elevations and will drain all ponded water above elevation 56 Feet NGVD. Work in the access corridor will ensure drainage in the access corridor towards this newly constructed drain. Some existing isolated low areas will continue to pond water below elevation 56 after the drain is constructed. These low areas pond water under current conditions, are on private land, and will continue to be the responsibility of the parcel owners where the low areas exist.

**Question 15:** There are covers on the Levee that have electrical lines, IMG_0209 through IMG_0216, can these are explained? How far do they go into the Levee? Will these weaken the levee? Is there a pump inside the levee where the hump on the east side of the levee behind Mr. Hecker's property and is this why there are electrical lines?

**Response:** The electrical lines in the vaults at the crown of the levee are connected to measuring devices installed in wells at the toe of the levee. These electrical lines travel through a small diameter (1.25 inch) PVC conduit installed 2 feet below the landside slope of the levee and then down a well at the toe of the levee to measuring devices, approximately 34 to 40 feet in the foundation of the levee. The purpose of these measuring devices is to measure water pressure in sandy layers in the foundation to determine if pressures are reaching a critical level. This will also provide information on the effectiveness of a cutoff wall installed in the levee by the U. S. Army Corps of Engineers. These conduits and measuring devices do not weaken the levee. There is no pump inside the levee behind Mr. Hecker's property. The closest pump is at Pump Station 9 south of Island Avenue. This pump station is not located inside the levee but located behind the levee and pumps interior runoff over the levee to the Feather River.

**Question 16:** The last pictures are showing the width of the Levee and the existing maintenance road. (IMG_0207 – 0209 and 0219). These pictures show the Orchards in the path of the Flood Waters.

**Response:** A previous response described how the existence of vegetation in the floodway has been taken into consideration in the design of levee repairs.

**Question 17:** When will TRLIA start working with us instead of bullying us? You have state if we take you to court win or lose we will have to pay for everything, this isn't working with us.

**Response:** CVFPB and TRLIA's actions have not been those of bullying the affected landowners. To the contrary, we have listened to the concerns raised by the landowners and have tried finding solutions that would have the least impact.

**Question 18:** The Elderberry Bugs are being left behind, these bugs will bore into my Box Elder Tree I have on my property. Who will help me with that problem?

**Response:** Elderberry Beatles are a federally protected species, which require special actions when work is done near or on their habitat area, which are the Elderberry shrubs. TRLIA will be transplanting the elderberry shrubs that currently exist in the landside access corridor project area to another site several miles from their current location.

**Question 19:** We have been told one to many times that trying to save our properties does not matter, well it matters to us!!!!

**Response:** CVFPB and TRLIA have never made these statements to you or other landowners. To the contrary, we have listened to the concerns raised by the landowners and have tried finding solutions that would have the least impact. We will continue to listen and work with you as the needed flood control facilities are improved in the Yuba County and surrounding areas.

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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 20, 2012

Ms. Carol Miller
2110 Virgilia Lane
Olivehurst, California 95961

Subject: TRLIA Segment 3 Fence Relocation – Enforcement Hearings

Dear Ms. Miller:

We have received your letter dated July 28, 2012 and have reviewed the documents you submitted. We asked Three Rivers Levee Improvement Authority's (TRLIA) surveyor, Mr. Kevin Heeney of CTA Engineering and Surveying (CTA), to review these documents. We also asked the Board's peer-review surveyor, Mr. Mike Bailey of Atkins North America (Atkins), to review your submittal independently of Mr Heeney's review. Both Mr. Bailey and Mr. Heeney arrived at the same conclusion and their findings are attached as Exhibits A and B, respectively. Their findings are summarized as follows:

The grant deed referenced on your submitted documents does not correspond to the property owned by the State adjacent to the Yuba Gardens Tract 8 subdivision, where Central Valley Flood Protection Board (CVFPB) enforcement actions are pending. The 1907 grant Deed recorded on Book 56 Pages 273-285 from Decker, Jewett and Co. to Northern Electric Company corresponds to parcels that are located north and south of the Yuba Gardens subdivision Tract 8. See attached Exhibit C for a copy of map prepared by CTA that identifies the parcels referenced in the 1907 deed in relationship to the Yuba Gardens Subdivision.

The State property subject of the CVFPB enforcement actions was obtained through Deed 2475 recorded on Book 267 Page 509 from Sacramento Northern Railway. This property was originally purchased by Northern Electric Railway Company from Isaac G. Cohn et Al through Deed recorded on Book 59 Page 441 on December 14, 1909. Copies of these deeds are attached as Exhibits D and E, respectively.

CVFPB staff is deeply concerned that the landowners are still questioning the accuracy of the CTA survey. As you know, the Board hired Atkins as an independent surveyor to perform a peer review of the CTA survey. Atkins found that CTA's survey was "*prepared appropriately and according to the standard of practice for a survey of this type, and correctly represents the location of the SSJDD right-of-way.*" A copy of this memo is attached as Exhibit F for your reference.

We assure you and the other landowners that all documents submitted to our office have been reviewed without bias and to the best of our professional abilities. To date, none of the submitted documents, reviewed by our office, TRLIA and Atkins, contradict the information shown on CTA's survey. If you feel that there are other documents that have not been taken into account, we encourage you to submit those to our office and we will be glad to review them for relevance to the property boundary issue. If questions remain, we encourage you and

the other landowners to obtain the services of a licensed surveyor who can provide you with another independent review of CTA's record of survey.

Should you have any questions, please contact Ms. Angeles Caliso at (916) 574-2386, or by e-mail at acaliso@water.ca.gov.

Sincerely,

Jay S. Punia
Executive Officer

Attachments:
Exhibit A: Atkins memo dated August 10, 2012 review of submitted documents from Ms. Miller
Exhibit B: CTA Memo dated August 2, 2012 review of submitted documents from Ms. Miller
Exhibit C: CTA Memo dated February 14, 2012 (including attachments)
Exhibit D: Deed from Sacramento Northern Railway to SSJDD recorded Book 267 Pg 509
Exhibit E: Deed from Isaac G. Cohn to Northern Electric recorded Book 59, Pg 441
Exhibit F: Atkins review memo of ROS 2011-11 prepared by CTA dated May 3, 2012

cc: Ms. Carol Miller at pjc77@netzero.com
Mr. Paul Brunner, TRLIA
Mr. Kevin Heeney, CTA
Ms. Robin Brewer, DWR OCC
Mr. Mike Bailey, Atkins
Mr. Len Marino, CVFPB

ATKINS

Atkins North America, Inc.
555 Double Eagle Court, Suite 2000
Reno, Nevada 89521-8991
Telephone: +1.775.828.1622
Fax: +1.775.828.1826
www.atkinsglobal.com/northamerica

Mr. Len Marino, P.E.
Central Valley Flood Protection Board
3310 El Camino Avenue
Room 151
Sacramento, CA 95821

August 10, 2012

Subject: **Review of Carol Miller Correspondence of July 28, 2012**

Mr. Marino

As requested, we have reviewed the Correspondence sent by Carol Miller dated July 28, 2012. Ms. Miller had incorporated by reference a number of previously recorded deeds. Copies of these deeds were delivered along with the letter for our review.

While there are many common names in the deeds, the deeds refer to properties in Townships 13 and 14 North while the properties in question are in Township 15 North. Basically this means the deeds presented for review are somewhere between 6 and 12 miles from the project and aren't applicable to any evaluation of the project ownership as a result.

While we understand that the adjoining owners are concerned about the ownership and believe that the survey conducted is questionable in their minds, we have not seen any evidence to date that supports any conclusion other than that presented on the Record of Survey map recorded by CTA.

There is another item that I have noted before and would again like to point out. There is a continuing argument that the CTA survey did not correctly identify the original rail way sidelines. It is still my opinion that CTA established the lines correctly. I would like to point out that the adjacent owners still have no rights to any properties outside the boundaries of the map that established their lots originally which is the re-subdivided a portion of Tract 8 of Yuba Gardens filed in Book 3 of Maps at Page 45 Yuba County Records. We have seen no documentation that supports the adjoiners right to claim any ownership outside the lots delineated on that map.

Typically in cases of disputed survey lines it is incumbent on the owners that disagree with the findings of the recorded map to disprove the map. While I realize the concerns of owners like Ms Miller it is my opinion that it would be in her best interest to contract with a Licensed Surveyor of her choosing to provide peer

review of the CTA map. This should accomplish two things from her perspective. First it would allow another professional that is trained in boundary establishment to advise her if they note any issues with the recorded map. Second, and possibly most important for all concerned, it would give her input from someone not under contract with the State whose word she may be more willing to accept as a result.

If there are any further questions regarding this matter by any of the concerned parties, please feel free to contact me.

Sincerely,




Michael E. Bailey, PLS
Associate Vice President
Atkins North America, Inc.

cta Engineering & Surveying
Civil Engineering • Land Surveying • Land Planning

3233 Monier Circle
Rancho Cordova, CA 95742
(916) 638-0919
FAX 638-2479
Email: kheeney@ctaes.net

# Project Memo

To: T.R.L.I.A. TAC Team

From: Kevin A. Heeney

Date: August 2, 2012

Re: Surveying issues raised by Ms. Miller

---

In response to the claims and questions raised by Ms. Miller's letter to the Central Valley Flood Protection Board dated July 28, 2012, I provide the following:

All of the issues raised by Ms. Miller, citing the 1907 Indenture recorded in Book 56 Page 273 have been reviewed and responded to in the past. The following is from my Project Memo dated January 31, 2012:

*"Book 56 of Deeds, Page 273 – the document Carol Miller brought forward at the hearing on January 26, 2012, claiming it describes an 80' strip measured from the East side of the Feather River and extends all the way to the Bear River.*

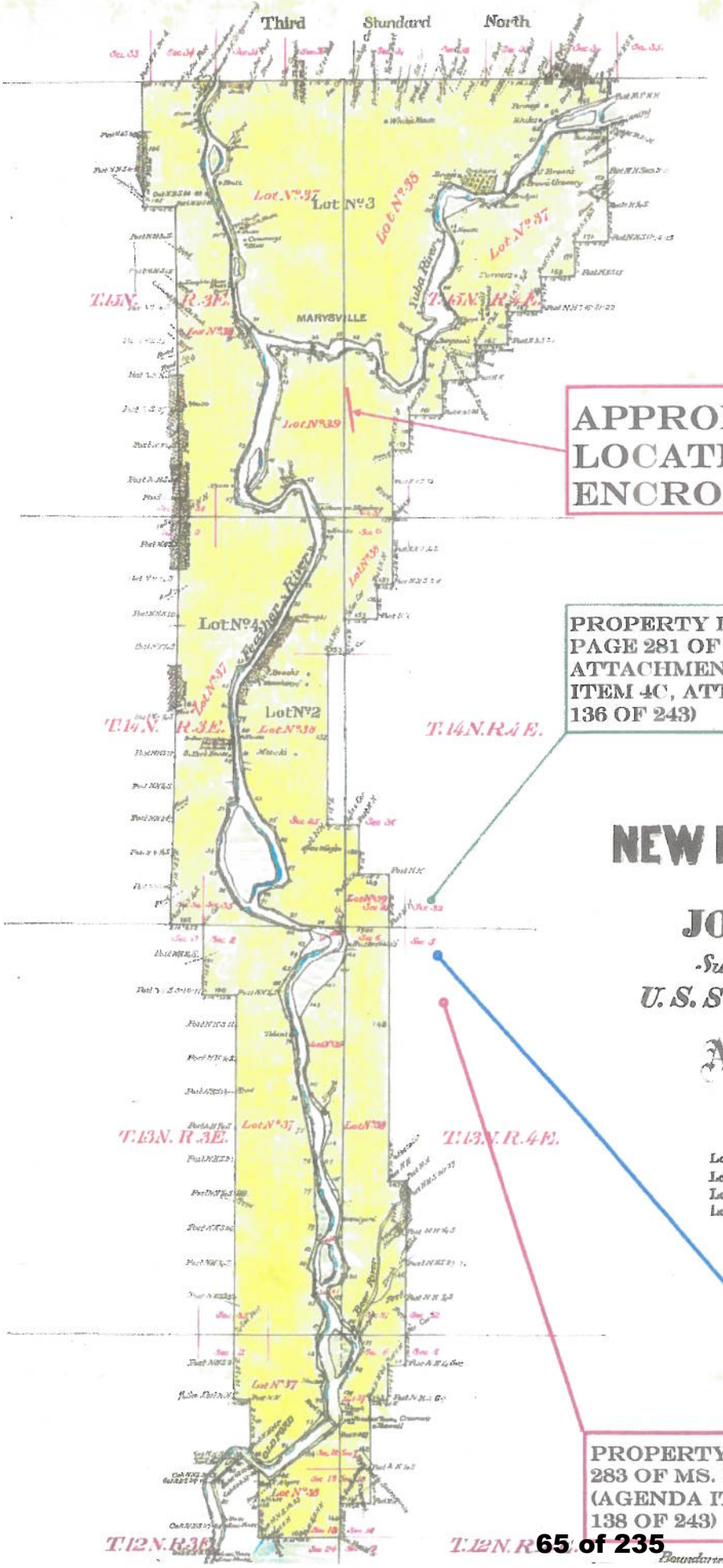
- *We in fact had reviewed that document and had a copy in our files. It describes two parcels or strips of land that are North of the encroachment area and several strips of land which begin at Island Avenue and extend Southeasterly to Highway 70 and beyond. It does not describe any strip of land adjacent to the encroachment areas. Please see the attached Exhibit 'A' which shows some of these parcels. The parcels not shown on Exhibit 'A' are located further to the South."*

I am attaching another exhibit, which may help Ms. Miller understand the error in her conclusions. The specific properties she highlighted in her attachments (which are from the 1907 Indenture) describe properties some eight (8) miles South of the encroachment area. Once again, I would encourage her to engage the services of a licensed land surveyor to review these documents and comment on our prior surveys.

Respectfully submitted,

CTA Engineering & Surveying

Kevin A. Heeney, PLS 5914




APPROXIMATE LOCATION OF ENCROACHMENTS

PROPERTY DESCRIBED ON PAGE 281 OF MS. MILLERS ATTACHMENTS (AGENDA ITEM 4C, ATTACHMENT N, 136 OF 243)

# PLAT

of the

# NEW HELVETIA RANCHO

*finally confirmed to*

## JOHN A. SUTTER

*Surveyed under instructions from the*

*U. S. SURVEYOR GENERAL*

by

A. W. Von Schmidt

Deputy Surveyor

*September and October 1859*

Containing

Lot N°1 including Sutter Lake 8879 1/100 Acres
Lot N°2 16657 26/100 Acres
Lot N°3 9457 8/100 "
Lot N°4 13,844 30/100 "
Aggregate of Lots N°2, 3 & 4 39960 64/100 "
Aggregate 48839 30/100 "

Scale 80 Chs to an inch

PROPERTY DESCRIBED ON PAGE 282 OF MS. MILLERS ATTACHMENTS (AGENDA ITEM 4C, ATTACHMENT N, 137 OF 243)

PROPERTY DESCRIBED ON PAGE 283 OF MS. MILLERS ATTACHMENTS (AGENDA ITEM 4C, ATTACHMENT N, 138 OF 243)

Boundaries of Lot N°1

cta Engineering & Surveying
Civil Engineering ▪ Land Surveying ▪ Land Planning

3233 Monier Circle
Rancho Cordova, CA 95742
(916) 638-0919
FAX 638-2479
Email: kheeney@ctaes.net

# Project Memo

To: Angeles Caliso
Water Resources Engineer
Central Valley Flood Protection Board
Encroachment Control & Land Use Section

From: Kevin A. Heeney

Date: February 14, 2012

Re: Surveying issues raised by Miller and Hecker

---

In response to the claims and questions raised by the Miller's and the Hecker's, I provide the following information and responses:

Book 56 of Deeds, Page 273 – the document Carol Miller brought forward at the hearing on January 26, 2012, claiming it describes an 80' strip measured from the East side of the Feather River and extends all the way to the Bear River.

- We in fact had reviewed that document and had a copy in our files. It describes two parcels or strips of land that are North of the encroachment area and several strips of land which begin at Island Avenue and extend Southeasterly to Highway 70 and beyond. It does not describe any strip of land adjacent to the encroachment areas. Please see the attached Exhibit 'A' which shows some of these parcels. The parcels not shown on Exhibit 'A' are located further to the South.

- Ms. Miller is incorrect regarding calls to the East side of the Feather River being used to locate the railroad parcels/strips. Those calls are used to describe the larger parcels from which the railroad parcels/strips are a portion thereof. Those calls are not used to specifically locate the alignment of the railroad parcels/strips. Please refer to Exhibit 'B' which is a copy of this deed. I have underlined in green, only those portions describing the railroad parcels/strips.

The claim that the area between the existing fence and the subdivision boundary does not belong to the State, as though there may be some gap between the State property (formerly the railroad) and the subdivision lots.

- The railroad was originally deeded the property in 1909. In 1921, Yuba Gardens Corporation filed a subdivision map entitled "Yuba Gardens", which was recorded in Yuba County in Book 3 of Maps at Page 2. On that subdivision plat, the various tracts of land are shown and described (and certified by the engineer who prepared the map, Jason R. Meek) as being "bounded by existing County and State Highways, Railroads, the Yuba River and levees adjacent thereto". Please refer to Exhibit 'C' which identifies that statement and shows "Tract 8" as being enclosed within the boundaries of a County Road, the Western Pacific Railroad, the Sacramento Northern Railroad and a levee.

cta Engineering & Surveying
Civil Engineering ■ Land Surveying ■ Land Planning

3233 Monier Circle
Rancho Cordova, CA 95742
(916) 638-0919
FAX 638-2479
Email: kheeney@ctaes.net

- Tract 8 is further subdivided in 1939 by a subdivision plat entitled "Subdivision of Tract Number 8 of Yuba Gardens" which was recorded in Yuba County in Book 3 of Maps at Page 45. This plat also shows the subdivision bounded by the Western Pacific Railroad, the Sacramento Northern Railroad, Feather River Boulevard and Island Avenue.

- That portion of the deed to the State, recorded in Book 267, Page 509 which is adjacent to the encroachment area is attached hereto as Exhibit 'D'. It cites a centerline curve radius of 5,729.6 feet. Taking into account the strip of land described extends 60 feet to the inside of that curve, would give that Easterly boundary a radius of 5,669.6 feet. That is identical to the data shown on the 1939 subdivision. Please refer to Exhibit 'E' attached hereto.

A discussion on Latitude and Longitude and the claim that the old surveys and my Record of Survey confirm the property line and the fence line are the same.

- None of the maps, surveys or deeds we have reviewed and used in this effort provide any calls to Latitude or Longitude. They do reference bearings which are completely different. A latitude and longitude would define a specific point on the face of the earth. A bearing describes direction, based on some form of datum. Surveyors for centuries have used various ways to describe or relate bearings such as Compass or Magnetic, or North based on solar observations or Polaris (the North Star). More commonly used methods today are either a Basis of Bearings from a prior survey or by State Plane Coordinates. Exhibit 'E' shows the statement on how the bearings shown on that map were derived, which was a prior survey or map.

- Our survey has been prepared using the control which was established from State Plane Coordinates by the Army Corps of Engineers. That is why on my survey the bearing on the common boundary line is shown as S17°46'46"E. Above that bearing we show [S17°15'00"E]. The bearings and distances shown in brackets on my survey indicate the bearings and measured distances of other surveys.

- The fact that the bearing on the common boundary is different from my survey, the 1939 subdivision (Book 3 of Maps, Page 45) and the 1921 subdivision (Book 3 of Maps, Page 2) does not mean we have three different locations for that line. Rather we have one line, shown on three separate surveys, each based upon a different datum or Basis of Bearings.

- I believe there is some misunderstanding in interpreting my survey. The fact that we show the record bearing from the prior survey [S17°15'00"E] drawn above the fence line symbol does not indicate we believe the fence to be the boundary from the prior survey, only the direction of that common boundary line. We could have chosen to put that label in line with the bearing we show or under the common boundary line. It is merely a drafting decision, which we typically tend to show by stacking record data above our data. My survey does not show a gap between ownership of the State or the adjacent property owners, only a gap between the property line and the existing fence.

Hecker's question as to "why are you surveying the property surrounding the property in question and not that specific property?"

- We did make an effort to survey the boundary of the State property, making an extensive search of record data and evidence in the field. Finding no evidence in the form of right of way monuments or

cta Engineering & Surveying
Civil Engineering ▪ Land Surveying ▪ Land Planning

3233 Monier Circle
Rancho Cordova, CA 95742
(916) 638-0919
FAX 638-2479
Email: kheeney@ctaes.net

property corner monuments in the field, we then began to search for the "Best available" evidence. That proved to be, in my professional opinion, the adjacent subdivision. I believe we have shown with the information provided above and our attached exhibits that the intent of the original subdivider in 1921 was to create various tracks of land abutting the railroads and highways. Our evidence also shows that certain record information (the curve radius and centerline offsets) between the deeds and the maps, do in fact correspond with one another.

- It has been argued several times that because the deed to the State refers to the railroad centerline, that we must somehow prove the location of the tracks. I do not believe that to be the case. The centerline referred to in the deed is the line staked out and located in the field sometime back before 1909 and would have been the basis for subsequent railway design thereafter. This may or may not refer to the actual centerline of the railroad tracks. There is evidence that at one time there were two tracks within this area, yet with no reference to their location relative to the described centerline.

<u>The exhibit prepared by Hecker showing my June 2011 survey vs. my Recorded Survey of January, 2012, attached hereto as Exhibit 'F'</u>

- The June 2011 copy was a draft copy of our Record of Survey, prepared to give the DWR Cadastral staff some of the information we had found in our research and field investigations. At that point it was not in final form for submittal to the County as a Record of Survey. Our final Record of Survey was not submitted until August 30, 2011. With that review, the County Surveyors' office supplied us with review comments, requests for additional information and minor drafting revisions. The differences shown in the Hecker exhibit reflect:
    - We added the offset distances (60' and 90') on either side of the described centerline of the State property.
    - We added an overall bearing and distance on the common boundary line.
    - A vicinity map and other required information was added prior to recording.

<u>The newly found monument photographed by the Hecker's attached hereto as Exhibit 'G'</u>

- This monument does not appear, in my professional opinion, to be a record monument relating to any property boundary or corner. I believe it to be a reference or control monument, established some time ago by the Corps of Engineers or one of their contractors. The markings "USA" lead me to believe this to be a federal agency monument. The markings 1+00 would indicate to me a stationing reference to some line, either a control line or centerline of levee. The marking 67' may reference an offset distance. The markings 'C' and '2' are likely some designation number. The monument does not have the markings of any licensed land surveyor or civil engineer, which would be the standard practice and requirement of a property corner marker or reference point.

- While we did not locate this specific monument, I have been told it is near the South end of the encroachment area. We did find another similar monument some 4600 feet North marked the same, but with station markings of 47+00. Again, it is my opinion that these are reference monuments to the levee centerline or some control line previously established.

**EXHIBIT C**

cta Engineering & Surveying
Civil Engineering ▪ Land Surveying ▪ Land Planning

3233 Monier Circle
Rancho Cordova, CA 95742
(916) 638-0919
FAX 638-2479
Email: kheeney@ctaes.net

In closing, I would like to reiterate the point I tried to make at the January 26, 2012 hearing. My survey is consistent with the 1921 Yuba Gardens Subdivision, the 1939 Subdivision of Tract Number 8, the railroad maps and the Grant Deed. It is also consistent with at least 5 other maps of record, independently prepared by other surveyors or engineers. For our survey to be incorrect, as is alleged, then all those surveys would be as well. I have seen no evidence presented thus far to lead me to believe those surveys are wrong.

Respectfully submitted,

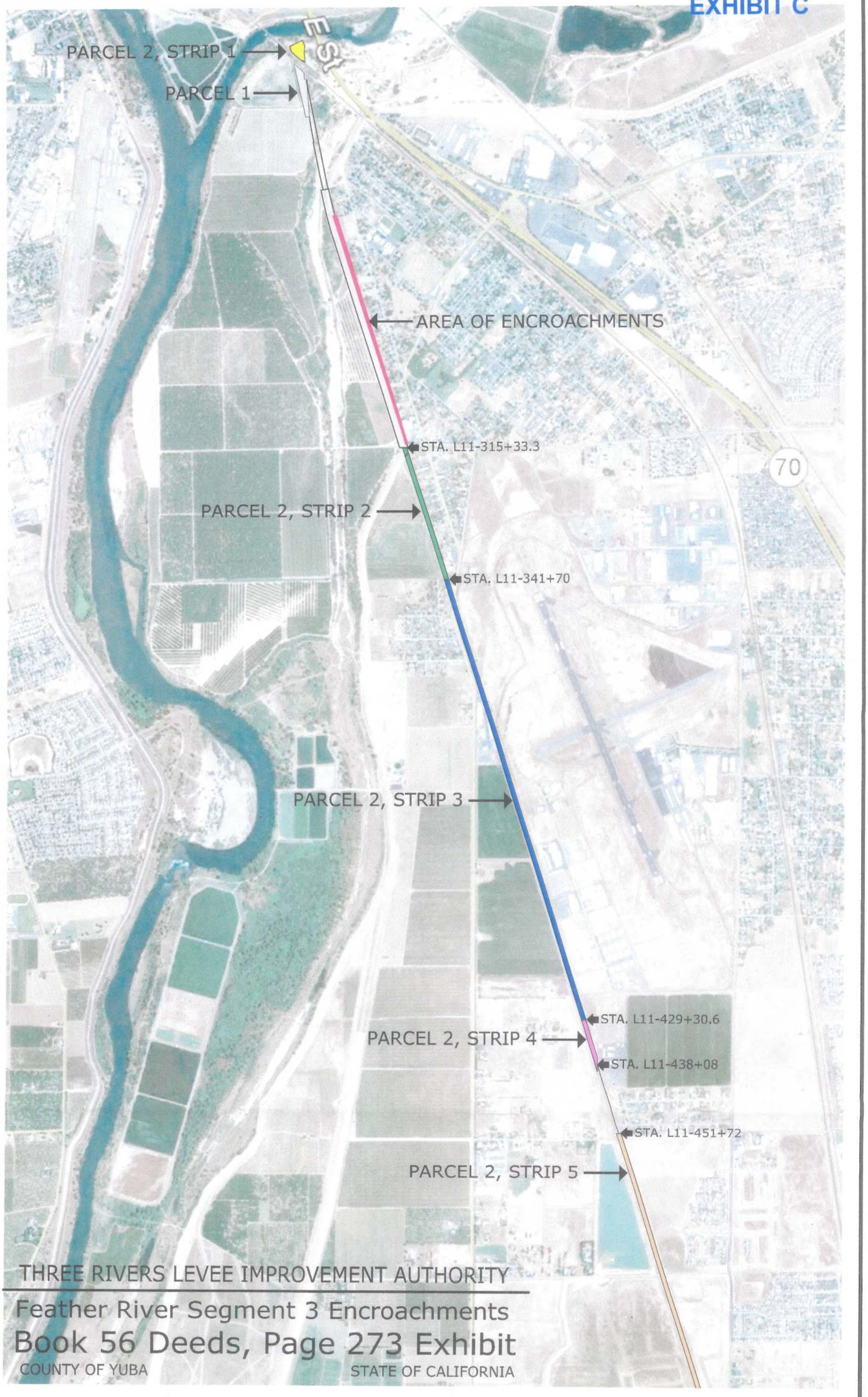
CTA Engineering & Surveying

Kevin A. Heeney, PLS 5914



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

EXHIBIT C




THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Feather River Segment 3 Encroachments

Book 56 Deeds, Page 273 Exhibit

COUNTY OF YUBA STATE OF CALIFORNIA

M:\06-008-005\EXHIBITS\ENCROACHMENTS\56-273 Exhibit.dwg, 1/31/2012 10:31:28 AM

EXHIBIT 'B'

EXHIBIT C

Decker Jewett & Co Bank By A.C.Bingham Cash.

STATE OF CALIFORNIA )
) SS
COUNTY OF YUBA )

On this 19th day of September in the year one thousand nine hundred and seven, before me, C.F.Aaron a Notary Public in and for the said County of Yuba, State of California, personally appeared A.C.Bingham, known to me to be the Casher of the corporation described in and that executed the within instrument and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal at my office in the said County of Yuba, in this certificate first above written. C.F.Aaron (SEAL) Notary Public in and for the County of Yuba, State of California. Recorded at the Request of Geo. E. Springer September 21st A.D. 1907, at 19 min. past 10 o'clock A.M.

S. A. Denning RECORDER.

Decker Jewett & Co Bank To Northern Electric Co.

THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord one thousand nine hundred nine hundred and seven between DECKER, JEWETT AND CO. BANK, a corporation, organized under the laws of the State of California, and having its principal place of business in the City of Marysville, County of Yuba, State of California, the party of the first part herein, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of California, the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents does grant, bargain and sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, the following described strips or tracts of land situate in the County of Yuba, State of California, namely:

1st STRIP OR TRACT:

PARCEL NO I. A strip or tract of land as hereinafter described being situate on each side of the located center line of the Northern Electric Company's line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast

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corner of Lot Six (6) of the One Thousand Three hundred Seventy-three (1373) acre tract of the New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road as same is established by the County Surveyor of Yuba County; thence East forty (40) feet to a point on the center line of said road; thence North 4° 30' West along said center line of abandoned road six hundred ninety-six (696) feet, more or less, to a point on the southerly right of way line of the Western Pacific Railway; thence West forty (40) feet along said line to a point on the West line of the abandoned Sacramento Road; thence North 4° 30' West one hundred thirty-two (132) feet along westerly line of said road, being also the division line between lands owned by the City of Marysville and lands now or formerly owned by the Western pacific Railway, to a point on the southerly right of way line of Western Pacific Railway; thence North 48° 52' West along said southerly right of Way line of the Western Pacific Railway two hundred forty-five and five tenths (245.5) feet to a point on the easterly line of right of Way of Northern Electric Company; thence South 12° 29' East one thousand and eight (1008) feet, more or less, along said easterly right of way line of the Northern Electric Company to a point on the division line between the lands of the City of Marysville and lands now or formerly owned by George Van Buskirk; thence east along said division line twenty seven (27) feet to point of beginning. Containing two and fifty-five hundredths (2.55) acres, more or less.

PARCEL NO 2a. A strip or tract of land as hereinafter described, being situate on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, which said strip or tract of land is described as follows, to-wit: BEGINNING at the Southeast corner of Lot six (6) of the One Thousand Three Hundred Seventy-three (1373) acre tract of New Helvetia Grant, South of the Yuba River, being a point on the West line of the abandoned Sacramento Road, as same is established by the County Surveyor of Yuba County, running thence North 4° 30' West, one thousand and sixty (1060) feet, more or less, along said West line of abandoned road, to a point on the northerly line of the right of way of the Western Pacific Railway, being above mentioned point of beginning; thence South 48° 52' East, fifty-seven (57) feet along said northerly line of right of way of Western Pacific Railway to a point in the center line of the abandoned Sacramento Road; thence North 4° 30' West one hundred eighty (180) feet to an angle point in the center line of abandoned Sacramento Road; thence North 5° 00' East seventy-eight (78) feet along said center line of abandoned road to a point ninety (90) feet at right angle easterly from Engineer Station L15-236+90.37 of the Northern Electric Company's survey;

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thence on a curve to the left of one thousand five hundred twenty-two and sixty-nine hundredths (1522.69) feet radius, sixty (6)) feet to a point ninety (90) feet easterly at right angles from Engineer Station L15-236+30.27 B.C. of the Northern Electric Company's survey; thence North 24° 16' WEst on a line ninety (90) feet easterly from and parallel to the Northern Electric Company's survey, a distance of one hundred twenty (120) feet, more or less, to a point ninety (90) feet easterly at right angles from Engineer Station L15-235+10, being a point on the South bank of the Yuba River; thence South 65° 30' West, two hundred thirty-four (234) feet, more or less, along said South bank of Yuba River to a point on the East line of the Northern Electric Company's right of way; thence South 12° 29' East, one hundred fourteen (114) feet along said East right of way line of Northern Electric Company to a point on the Northerly line of the right of way of the Western Pacific Railway; thence South 48° 52' East along said Northerly right of way line of the Western Pacific Railway two hundred ninety-nine (299) feet, more or less, to a point on the West line of the abandoned Sacramento Road, as same is established by County Surveyor of YUba County; thence North 4° 30' West along said West line of road twenty (20) feet to point of beginning. Containing one and sixty-one hundredths (1.61) acres more or less.----------

2nd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: A parcel of land as per deed of Mrs. Alicia Dufficy, widow, to Mrs. Jane Tomb, recorded in Deed Book 35, at page 62, records of Yuba County, California. " Also that other tract of land in said Yuba County, described as beginning at a post on the East bank of Feather River, marked C.O. designating the Southwest corner of Lot No. Nine (9), as said corner is described on a map entitled Partition of One thousand three hundred seventy-three (1373) acres of land situated South of Marysville, in said Yuba County, into nine (9) subdivisions, for J.M.Ramirez, et al..... which map is recorded in Deed Book 12, at page 569; and running thence due East, following the South line of said tract of land so described on said map of partition, one hundred and twenty (120) chains to a post marked C.O., being the Southeast corner of Lot No. One (1) as marked and described on said map of partition; thence running at right angles due South, thirty-seven and seventy-three hundredths (37.73) chains; thence at right angles due West in a straight line to the East bank of said Feather River; thence up and following the meanderings of said Feather River to the place of beginning." The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the

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boundary line between the property of Mrs. Jane Tomb, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owne -d by J.G.Cohn Estate, said point being one thousand three hundred twenty-one and nine tenths (1321.9) feet, more or less, westerly along said boundary line from the westerly line of the Northerly and Southerly County Road and being at Engineer Station L11-315+33.3 of the located center line of the Northern Electric Company's Survey; thence South 17° 31' East two thousand and six hundred and thirty-six and seven tenths (2636.7) feet more or less to Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey, said point being on the boundary line between the property of Mrs. Jane Tomb and the property now or formerly owned by John Q.Packard and westerly along said boundary line one hundred and sixty-five (165) feet, more or less, from the West line of Northerly and Southerly County Road, Said strip or tract of land containing four and eighty-four hundredths (4.84) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land: Two strips each seventy- five (75) feet in width, lying one on each side of and adjacent and paral -lel to the above described strip or tract of land from Engineer Station L11-315+33.3 to L11-341+70, containing nine and eight hundredths (9.08) acres, more or less.------

3rd STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad as the same is staked out and located over and across the following described parcel of land, to-wit: (Deed of Edwards Woodruff's Estate by Executor to John Q.Packard, recorded in Deed Book 48, at Page 334, records of the County of Yuba, State of California) All that certain real property on the South side of the Yuba River about 2 1/2 miles South of the City of Marysville, commonly know as the Eliza Ranch, and bounded on the North by the land of Mrs Jane Tomb, on the East by the lands of Edwards Woodruff and of Packard and Woodruff and on the South by the lands of Josephine C. Englund (now D.C.Jenkins), and on the West by the Feather River. (Deed of Edwards Woodruff's estate by Executor to John Q.Packard, recorded in Deed Book 48, at page 449, records of the County of Yuba, State of California:) All those certain lots, pieces and parcels of land described beginning at the Northwest corner of the Northeast quarter of Section Seven (7) in Township Fourteen (14) North of Range Four (4) East, M.D.M., said corner being also the Northwest corner of the land owned by Wm.Nutley (now Edward McGowan); thence East along the fence dividing the land of Wm. Nutley (now McGowan) from the land herein described and conveyed, twenty (20) chains, more or

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less, to the line of fence dividing the land herein described and conveyed from the land lately owned by Burkhart Hunwiler and afterwards by the Estate of Edwards Woodruff, deceased thence North forty (40) chains, more or less, to the line of fencedividing the land herein described from the land formerly owned by M.C.Dufficy and afterwards by the estate of Edwards Woodruff, deceased; thence along said fence West thirty-one and seventy hundredths (31.70) chains, more or less, to the line of fence dividing said land of Dufficy on the West from the land of Packerd and Woodruff; thence due South forty-seven (47) chains, more or less, to the line of fence dividing the land of Josephine C. Englund (now D.C.Jenkins) from the land of Packerd and Woodruff; thence East along said last mentioned fence eleven and seventy hundredths (11.70) chains, more or less, to the Northeast corner of said land of Josephine C. Englund (now D.C.Jenkins);thence North seven (7) chains, more or less, to the place of beginning, containing one hundred thirty-six (136) acres. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit:---- BEGINNING at a point on the boundary line between the property of John Q. Packerd, situated in the New Helvetia Grant in the County of Yuba, State of California, and the property now or formerly owned by Mrs. Jane Tomb, said point being one hundred and sixty-five (165) feet, more or less, westerly along said boundary line from the West line of the Northerly and Southerly County Road and being at Engineer Station L11-341+70 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, eight thousand seven hundred and sixty and six tenths (8760.6) feet, more or less, to Engineer Station L11-429+30.6 of the located center line of the Northern Electric Company's survey; said point being in the boundary line between the property of John Q. Packerd and the property now or formerly owned by D.C.Jenkins and Westerly along said boundary line two hundred and seventy-five and three tenths (275.3) feet, more or less, from the common corner of the property of John Q. Packerd and the properties now or formerly owned by Edward McGowan and D.C.Jenkins. Said strip or tract of land containing sixteen and nine hundredths (16.09) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land; Two strips each seventy-five (75) feet in width, lying one on each side of and adjacent and parallel to the above described strip of land from Engineer Station L11-341+70 to L11-429+30.6, containing thirty and sixteen hundredths (30.16) acres, more or less.----------

4th STRIP OR TRACT: A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: That certain piece or parcel of land situate in

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the County of Yuba, State of California, bounded and particularly described as follows Beginning on the East bank of Feather River where the South line of the tract of land known as the City of Eliza touches said river; thence Southerly along the line of said river one mile to the Northwest corner of the Eldorado tract, so called; thence in an Easterly direction one mile; thence in a Northerly direction one mile and thence Westerly one mile to the place of Beginning. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit:----------

BEGINNING at a point on the boundary line between the property of D.C.Jenkins, situated in Section (7) Township Fourteen (14) North, Range Four (4) East, M.D.B.and M in the County of YUba, State of California, and the property now or formerly owned by J.Q.Packerd, said point being two hundred and seventy-five and three tenths (275.3) feet, more or less, Westerly along said boundary line from the common corner of the property of D.C.Jenkins and the properties now or formerly owned by J.A.Packard and Edward McGowan, and said point being at Engineer Station L11-429+30.6 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, eight hundred seventy-seven and four tenths (877.4) feet, more or less, to Engineer Station L11-438+08, being a point on the boundary line between the property of D.C. Jenkins and the property now or formerly owned by Edward McGowan, said point being one thousand three hundred and thirty-six and four tenths (1336.4) feet, more or less, Southerly along the said boundary line from the Northwest corner of the Edward McGowan property, said strip or tract of land containing one and sixty-one hundredths (1.61) acres, more or less. Also the right to use for borrow purposes the following described strips or parcels of land: Two strips each thirty-five (35) feet in width, lying one on each side of and adjacent and parallel to the above described strip or tract, containing one and forty-one hundredths (1.41) acres, more or less.----------

5th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty(40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The West half (1/2) of the Southwest quarter (1/4) of Section Seventeen (17), East half (1/2) of Section Eighteen (18) and South East quarter (1/4) of Section Seven (7), all in Township FOurteen (14) North, Range Four (4) East, The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING At a point in the boundary

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line between the James Clark property situated in Section Seven (7), Township Fourteen (14) North, Range Four (4) East, M.D.M., in the County of Yuba, State of California, and the property now or formerly owned by Edward McGowan, said point being four hundred thirty and five tenths (430.5) feet Easterly along said boundary line from the Southwest corner of the Edward McGowan property, being at Engineer Station L11-451+72 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East eight thousand two hundred forty-nine (8249) feet, more or less, to Engineer Station L11-534+21, said point being on the boundary line between the James Clark property and the property now or formerly owned by W.R.Anderson, three hundred and sixteen and five tenths (316.5) feet more or less, along said Easterly boundary line from the intersection of the center line of the North and South County Road and East and West County Road. Said strip or tract of land containing fifteen and fifteen hundredths (15.15) acres, more or less. Also the right to use for borrow purposes the followinf described strips or parcels of land; Two Strips of land each thirty (30) feet in width, one on each side of and adjacent and parallel to the above described located center line from Engineer Station L11-451+72 to Engineer Station L11-534+21. Containing eleven and thirty-six hundredths (11.36) acres, more or less. Also for the purpose of road change a strip or tract of land sixty (60) feet in width, lying adjacent and parallel to the above described center line from Engineer Station L11-524+80 to L11-533+81. Containing one and twenty-four hundredths (1.24) acres, more or less.

6th STRIP OR TRACT:

.. A strip or tract of land eighty (80) feet in width, being forty (40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANYS line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: West half of Northwest quarter and North half of Southwest quarter of Section Twenty (20) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of W.R. Anderson, situated in Section Twenty (20), Township Fourteen (14) North, Range Four (4) East, M.D.B.and M. in the County of Yuba, State of California, and the property now or formerly owned by James Clark, said point being three hundred and sixteen and five tenths (316.5) feet, more or less, Easterly along said boundary line from the intersection of the center lines of the North and South County and East and West County Road, said point being at Engineer Station L11-534+21 of the located center line of the Northern Electric Companys survey; thence South 17° 31' East, four thousand one hundred and fifty-two (4152) feet, more

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or less, to Engineer Station L11-575+73 of the located center line of the Northern Electric Company's survey, being a point on the boundary line between the property of W.R.Anderson and the property now or formerly owned by M.C.Lazear. Said strip or tract of land containing seven and sixty-three hundredths (7.63) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land Two strips of landeach twenty (20) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-534+2/ to L11-561+00. Said strip or tract of land containing two and forty-six hundredths (2.46) acres, more or less. Two strips or tracts of land each sixty (60) feet in width, one on eah side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-561+00 to L11-568+00, containing one and ninety-three hundredths (1.93) acres, more or less. Two strips or tracts of land each one hundred and fifty (150) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-568+00 to L 11-575+73 containing five and thirty-two hundredths (5.32) acres, more or less.

7th STRIP OR TRACT:

A strip or tract of land eighty (80) feet in width, being forty(40) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: Northeast quarter (1/4) of Section Thirty two (32) in Township Fourteen (14) North, Range Four (4) East. The center line of said strip or tract of land hereby conveyed being particularly described as follows, to-wit: BEGINNING at a point on the boundary line between the property of (Julia A, Tif -ft situated in the Northeast quarter of Section Thirty-two (32), Township Fourteen(14 North, Range Four (4) East, M.D.B.and M., in the County of Yuba, State of California, and the property now or formerly owned by M.C.Lazear, said point being one thousand six hundred fifty-one (1651) feet, more or less, measured Westerly along said boundary line from the center of the County Road, being Engineer Station L11-644+64 of the located center line of the Northern Electric Company's survey; thence South 17° 31' East, two thousand seven hundred sixty-two (2762) feet, more or less to Engineer Station L11-672+26 of the located center line of the Northern Electric Company's survey; said point being on the boundary line between the Julia A. Tifft property and the property now or formerly owned by Sarah Metcalfe, said point being eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured Westerly along said

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boundary line from the center of the County Road North of the jog at said boundary line. Said strip or tract of land containing five and seven hundredths (5.07) acres, more or less

Also the right to use for borrow purposes the following described strips or tracts of lan Two strips of land each Forty (40) feet in width, one on each side of and adjacent and parallel to the above described strip or tract of land. Containing four and fifty-two hundredths (4.52) acres, more or less.

8th STRIP OR TRACT:

A strip or tract of land one hundred forty-eight (148) feet in width, being seventy-four (74) feet on each side of and parallel with the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located ove and across the following described parcel of land, to-wit: The South one-half (1/2) of Sec tion THirty-two (32), Township Fourteen (14) North, Range Four (4) East, M.D.M. The center line of said strip or tract of land hereby conveyed beong particularly described as follows to-wit: BEGINNING at a point on the boundary line between the Sarah A.E.Metcalfe property, situated in Section Thirty-two (32), Township Fourteen (14) NOrth, Range Four (4) East, M. D.B.and M., in the County of Yuba, State of California, and the property now or formerly owned by Mrs Julia A. Tifft, said point being Engineer Station L11-672+26 of the located center line of the Northern Electric Company's survey, and eight hundred twenty-seven and three tenths (827.3) feet, more or less, measured Westerly along said boundary line from the center of the County Road, North of the jog at said boundary line; thence South 17°31' East, one thousand nine hundred eleven and forty-one hundredths (1911.41) feet to Engineer Station L11-691+37.41 B.C. of the located center line of the Northern Electric Company's survey; thence to the right on a tangent Searles Spiral of three (3) thirty-three (33) foot chord lengths, ninety-nine (99) feet to Engineer Station L11-691+36.41 E.S. B.C. of said survey; thence to the right on a tangent curve of two thousand eight hundred sixty-four and nine tenths (2864.9) feet radius, eight hundred thirty-three and six tenths(833.6) feet to a point on the boundary line between the Sarah A.E.Metcalfe property and the property now or formerly owned by Cline Bull, said point being Engineer Station L11-699+71 of the Northern Electric Company's survey, and seventy-nine (79) feet, more or less, westerly along said boundary line from a point on the West line of the County Road, said point being the Southeast corner of the Sarah A.E.Metcalfe property. The strip or tract of land containing nine and thirty-three hundredths (9.33) acres. more or less.

9th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side

EXHIBIT C

of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad, as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Five (5), Township Thirteen (13) North, Range Four (4) East M.D.M. The said strip or tract of land hereby conveyed being particular-ly described as follows, to-wit: BEGINNING at the Northeast corner of the property of Cline Bull, situated in Section Five (5) Township Thirteen (13) North, Range Four (4) East, M.D.B.and M., in the County of Yuba, State of California, being the South-east corner of the property now or formerly owned by Sarah Metcalfe, Said corner being seventy-nine (79) feet, more or less, Easterly along the boundary line of the Cline Bull and the Sarah Metcalfe properties from Engineer Station L11-699+71 of the located center line of the Northern Electric Company's survey; thence Westerly along said boun-dary line one hundred nineteen (119) feet, more or less; thence to the right on a tangent curve of two thousand eight hundred twenty-four and nine tenths (2824.9) feet radius in a Southerly direction forty (40) feet from and parallel to the located center line of the Northern Electric Company's survey, one hundred fifty-one and eight tenths (151.8) feet to Engineer Station L11-701+22.08; thence South 0° 13' West.fofty (40) feet from and parallel to said center line five thousand one hundred twenty-three and ninety-two hundredths (5123.92) feet to a point on the boundary line between the Cline Bull property and the property now or formerly owned by Robert Johnston, said point being forty (40) feet measured Westerly along said boundary line from Engineer Station 752+46 of said survey; thence Easterly along said boundary line one hundred three and five tenths (103.5) feet, more or less, to the Westerly line of the County Road at the Southeast corner of the said Cline Bull property; thence Northerly along the west line of the County Road five thousand two hundred seventy-five (5275) feet, more or less, to the point of beginning, said strip or tract of land containing thirteen and forty-seven hundredths (13.47) acres, more or less. Also the right to use for borrow purposes the following described strips or tracts of land: A strip or tract of land sixty (60) feet in width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-699+71 to Engineer Station L11-707+00 Said strip or tract of land containing one (1.00) acre, more or less. A strip or tract of land one hundred and forty (140) feet in width on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station L11-707+00 to Engineer Station L11-752+46. Said strip or tract of land containing fourteen and sixty one hundredths (14.61) acres, more or less.----------

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10th STRIP OR TRACT:

A strip or tract of land as hereinafter described, being on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad., as the same is staked out and located over and across the following described parcel of land, to-wit: The East quarter of Section Eight (8) and all that portion of the East quarter of Section Seventeen (17), in Township Thirteen (13) North of Range FOur (4) East, M.D.M., which lies in YUba County, State of California. The said strip or tract of land hereby conveyed being particularly described as follows to-wit: BEGINNING at the NOrtheast corner of the Robert Johnston property, situated in Section Eight (8), TOwnship THirteen (13 ) North Range Four (4) East, M.D.B.and M., in the County of Yuba, State of California, being eleven (11) feet Westerly from the Southeast corner of the property now or formerly owned by ClineBull, said corner being fifty-two and six tenths (52.6) feet measured Easterly along the boundary line between the Robert Johnston property andthe property now or formerl owned by Cline Bull from Engineer Station Lll-752+46 of the located center line of the Northern Electric Company's survey: thence Westerly along said boundary line ninety-two and six tenths (92.6) feet; thence South )° 13' West forty (40) feet from and parallel to the center line of the Northern Electric Company's survey, nine thousand and twenty-four(9024) feet to a point on the North bank of the main channel of Bear River, said point being forty (40) feet West of Engineer Station Lll-642+70 of said survey; thence East eighty (80) feet; thence North 0° 13' East, forty (40) feet from and parallel to said survey, onethousand three hundred twenty-four (1324) feet to a point South 89° 47' East of Engineer Station Lll-829+46, said point being on the boundary line between the Robert Johnston property and the property now or formerly owned by Mrs E.A.Rogers; thence Westerly along said boundary line eight and seven tenths (8.7) feet, more or less, to a point on said boundary line thirty-one and threetenths(31.3) feet Easterly at right angles to Engineer Station Lll-829+46 of said survey thence Northerly along the said boundary line seven thousand seven hundred (7700) feet to the point of beginning. Said strip or tract of land containing seventeen and seventy-five hundredths (17.75) acres more or less.

Also the right to use for borrow purposes the following described strips or tracts of land: A strip or tract of land one hundred and forty (140) feetiin width, on the West side of and adjacent and parallel to the above described strip or tract of land from Engineer Station Lll-752+46 to Engineer Station Lll-778+86. Said strip or tract of land containing eight and forty-nine hundredths (8.49) acres, more orlless. A strip or tract of land one hundred thirty (130) feet wide on the West side of, adjacent and parallel to the above

EXHIBIT C

described strip or tract of land from Engineer Station L11-778+88 to Engineer Station L11-790+00 of the above described strip or tract of land. Said strip or tract of land containing three and thirty-two hundredths (3.32) acres, more or less. A Strip or tract of land three hundred forty (340) feet wide on West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-790+00 to Engineer Station L11-808+00. Said strip or tract of land containing fourteen and five hundredths (14.05) acres, more or less. A strip or tract of land two hundred and sixty (260) feet wide on the West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-808+00 to Engineer Station L11-829+46 of the above described strip or tract of land. Said strip or tract of land containing twelve and eighty-one hundredths (12.81) acres, more or less.----------

A strip or tract of land one hundred sixty (160) feet wide on the West side of, adjacent and parallel to the above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70 of the above described strip or tract of land. Said strip or tract of land containing four and eighty-six hundredths (4.86) acres, more or less. A strip or tract of land one hundred forty (140) feet wide at the North end and sixty (60) feet wide at the South end, the East boundary of said strip or tract of land being coincident with the East boundary of the Robert Johnston property and the West boundary being coincident with the East boundary of the above described strip or tract of land from Engineer Station L11-829+46 to Engineer Station L11-842+70. Said strip or tract containing three and four hundredths (3.04) acres, more or less. for the purpose of laying down, erecting, maintaining, repairing and operating a single or double track railroad, to be operated by electricity, compressed air or other motive power, in, over, along and across said lands upon said strip of land hereby conveyed, together with all necessary and convenient means of ingress, egress and regress to and from said right of way for the purpose of erecting, maintaining, protecting and operating said railroad and all privileges necessary and convenient therefor. TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.----------

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenance unto the said party of the second part and to its successors and assigns forever.-----

IN WITNESS WHEREOF, the said party of the first part, in pursuance of a resolution of its Board of Directors, duly passed and adopted has caused these presents to be ex-

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ecuted and its corporate name and seal hereunto affixed the day and year first above written. Reference is hereby made to Volume "3" of Miscellaneous Records at page 150 in the office of the County Recorder of the County of Yuba, State of California.----------

Decker Jewett & Co Bank By A.C.Bingham, Cash.----------

STATE OF CALIFORNIA, )
)ss
County of Yuba, )

On this 19th day of September, in the year one thousand nine hundred seven, before me, C.F.Aaron, a Notary Public in and for the said County of Yuba, State of California, personally appeared A.C.Bingham, known to me to be the Cashier of the corporation described in and that executed the within instrument and also known to me to be the person who executed it on behalf of the corporation herein named, and he acknowledged to me that such corporation executed the same. IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal at my office in the said County of Yuba, in this certificate first above written. C.F.Aaron (SEAL) Notary Public in and for the County of Yuba, State of California. Recorded at the Request of Geo. E. Springer September 21st, 1907, at 20 min.past 10 o'clock A.M.----------

S. O. Gunning RECORDER.

Decker Jewett & Co Bank to Northern Electric Co

THIS INDENTURE, made and entered into this 19th day of September, in the year of our Lord one thousand nine hundred and seven between DECKER JEWETT AND CO. BANK, a corporation, organized under the laws of the State of California, and having its principal place of business in the City of Marysville, County of Yuba, State of California, the party of the first part, and NORTHERN ELECTRIC COMPANY, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada and doing business in the State of California the party of the second part, WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten 00/100 Dollars, United States Gold Coin, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, conveyed and confirmed, and by these presents, does grant, bargain and sell convey and confirm unto the said party of the second part, and to its successors and assigns, forever, the following described strip or tract of land situate in the County of Yuba, State of California, namely: A strip or tract of land as hereinafter described, being on each side of the located center line of the NORTHERN ELECTRIC COMPANY'S line of railroad

1-6 M ED 9/17/58

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R.L. Doc #2475

605

THIS INDENTURE made this 22nd day of December, 1958, by and between SACRAMENTO NORTHERN RAILWAY, a California corporation hereinafter designated as grantor, and the SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency, hereinafter designated as grantee,

W I T N E S S E T H :

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

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

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

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

DOCUMENTARY Yuba County 5 5

Yuba

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RECORDED AT REQUEST OF Yuba County Title Guarantee Co.

Jan 7 1959 AT 2:55 P M. BOOK 267 PAGE 509

OFFICIAL RECORDS, YUBA COUNTY

MILDRED TAPLEY RECORDER BY M. Leighton DEP

No Fee

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

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

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

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

EXHIBIT D

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

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

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

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

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

EXHIBIT D

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

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

SACRAMENTO NORTHERN RAILWAY

By _____
President and General Manager

Attest: _____
Secretary

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

EXHIBIT D

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

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

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

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

My Commission expires April 5, 1959.

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REC'D AM 2:8 10-27-5

EXHIBIT D

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

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

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

PARCEL 1:

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

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

EXHIBIT D



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

PARCEL 2:

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

EXHIBIT D

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

PARCEL 3:

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

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

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

PARCEL 4:

A strip or tract of land as hereinafter

EXHIBIT D

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

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

PARCEL 5:

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

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

EXHIBIT D

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

PARCEL 6:

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

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

BOOK 267 PAGE 519

EXHIBIT D

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

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

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

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

M. T. Richardson
Secretary of
SACRAMENTO NORTHERN RAILWAY

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EXHIBIT D

# R E S O L U T I O N

PASSED AND ADOPTED BY THE RECLAMATION BOARD

AT MEETING HELD MAY 21, 1947

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

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

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

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

George H Holmes
GEORGE H. HOLMES
Secretary
The Reclamation Board

STATE OF CALIFORNIA )
COUNTY OF SACRAMENTO ) SS.

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

DATED: December 22, 1958.

CHIEF ENGINEER AND GENERAL MANAGER,
The Reclamation Board

NOW, THEREFORE, the said party ofthe first part, as executor as aforesaid of the will of said MATTHEW REDMOND, deceased, pursuant to said order of the said Superior Court, and for and in consideration of the said sum of Eleven Hundred dollars ($1100.00) in United States gold coin, to him in hand paid by the said party of the second part, the receipt whereof by him is hereby acknowledged, does hereby grant, bargain, sell , convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest and estate of the said decedent at the time of his death, and all right, title and interest, which the said estate of said deceased has, by operation of law or otherwise, acquired other than, or in addition to that of the said decedent at the time of his death, in, to and of all that certain tract or parcel of land situated in the said County of Yuba, State of California, bounded and particularly described as follows, to wit: - - - The South one half of the South-west quarter of Section Thirty four (34), and all that part of the South one half of the South-east quarter of Section Thirty three (33), described as commencing at the South-east corner of Section Thirty three (33) and running thence West 33 chains to the middle of the road; thence along the middle of the road North 24 ½ degrees East, 22 chains; thence East 23.71 chains; thence South 20 chains to the place of beginning, all in Township Seventeen (17) North of Range Four (4) East, M.D.M., containing One hundred and thirty six and 70/100 acres and being the same land conveyed by J. A. Soul, Sheriff of Yuba County, State of California, to James Redmond, by Sheriff's deed, dated March 2'd 1889, of record in Liber 36 of Deeds, at page 172 et. seq., Yuba County Records. - - - - - - - - - - - - - - - - - - - - - - - - - - - -

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

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

IN WITNESS WHEREOF, thesaid party of the first part, as executor as aforesaid, has hereunto set his hand and seal the day and year first herein written. Roger R. Vair. - - (SEAL) Executor of the Will of Matthew Redmond,Deceased

State of California )
ss.
City and County of San Francisco) On this 20th day of November A.D.



EXHIBIT E

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official SEal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written. Henry B. Lister (SEAL), Notary Public In and for the City and County of San Francisco, State of California. - - - Recorded at the Request of Annie Matti, December 15 th, A. D. 1909, at 5 min. past 3 o'clock P. M. - - - - - - - - - -

J.D. Fleming Recorder, By Anna E. Fleming Deputy.

Isaac G. Cohn
et. al.
To
Northern Electric Railway Co.

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

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

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

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

TOGETHER with all and singular the tenements, hereditaments



EXHIBIT E

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written. Maude Lunsford (SEAL) Notary Public in and for the County of Yuba, State of California. - - - - - - - - -

State of California )
County of Yuba ) ss.

On this 7th day of December, in the year of our Lord one thousand nine hundred and nine before me, MAUDE LUNSFIRD, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ISAAC G. COHN, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of HUGO COHN, Emma G. SIMONSOHN, HELENE COHN, ROSA COHN, GEORGE COHN( son of Simon G. Cohn), SIEGBERT COHN, GEORGE COHN (son of David Cohn), and acknowledged to me that he subscribed the names of Hugo Cohn, Emma G. Simonsohn, Helene Cohn, Rosa Cohn, George Cohn (son of Simon G. Cohn). Siegbert Cohn and George Cohn (son of David Cohn) thereto as principals and his own name as attorney-in-fact. - - - - - - - - - - - - - - - - - -

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written. - - - Maude Lunsford (SEAL) Notary Public in and for the County of Yuba, State of California. - - - Recorded at the Request of Thomas Carlin, December 14th A. D. 1909, at 45 min. past 3 o'clock P.M. - - - - - - - - - - - - - - - - - - - - - - - - - -

J.O. Cunning Recorder, By Olivia E. Cunning Deputy.

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John G. Curry To California Midland Railroad Co

THIS INDENTURE, made by and between John G. Curry of the County of Yuba, State of California, the party of the first part, and CALIFORNIA MIDLAND RAILROAD COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, State of California, the party of the second part, - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

WITNESSETH, that said party of the first part, for and in consideration of the sum of ten (10) dollars in gold coin of the United States of America, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged does hereby grant, bargain and sell unto the said party of the second part, its successors and assigns, that certain parcel or strip of land situate in



EXHIBIT E

the County of Yuba, State of California, and more particularly bounded and described as follows viz.:- A strip or parcel of land one hundred (100) feet in width, lying fifty (50) feet on each side of the center line of a certain route which has been surveyed and definitely located and marked upon the ground by the said California Midland Railroad Company under the direction of its Chief Engineer, by means of stakes drived at intervals of approximately one hundred (100) feet, and marked and numbered consecutively from Engineer's Station "G" 2095 X 77 to Engineers Station "G" 2157 X 30 and extending along said route, upon, over and across the lands of the said part of the first part situated in the North East quarter (N. E. 1/4) and the West one half (W. 1/2) of Section Eleven (11), Township fifteen (15) North Range four (4) East Mount Diablo Base and Meridian; said strip having a length of Six thousand One hundred and fifty three (6153) feet, more or less., and containing an area of nine and fifty three hundredths ( 9.53/100) acres. The said center line, where the same crosses the said lands of the part - - of the first part, is described as follows, viz.:- - - -

Beginning at Engineer's Station No. "G" 2095 x 77, which is situate on the Easterly) boundary of said Section Eleven (11) from which the quarter corner between Sections 11 Eleven and Twelve bears south 1319 feet distant, thence by a straight course south 46° 46' West 603 4/5 feet to Engineers Station "G" 21014 X 80 4/5 , thence 330 feet by a curve to the right the rate of curvature of which changes 0°.15' for each 30 feet to Engineers Station "G" 2105 X 10 4/5 , thence by a 3° curve to the right 477 5/5 feet to Engineers Station "G" 2109 x 87 2/5 ; thence by a 2° 15' curve to the right 414 5/5 feet to Engineers Station "G" 2114 x 02 4/5 thence ny a curve to the right the rate of curvature of which changes 0° 15' for each 30 feet, 240 feet to Engineers Station "G" 2116 x 42 4/5 thence by a straight course south 76° 05' West 321 feet to Engineers Station "G" 2119 X 63 4/5 , thence by a 3° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 110 6/5 feet to Engineers Station "G" 2130 x 74 0/5 , thence by a straight course South 54° 40' West 372 2/5 feet to Engineers Station "G" 2134 x 46 2/5 , thence by a 0° 30' curve to the right 413 feet to Engineers Station "G" 2138 x 59 2/5 , thence by a straight course South 56° 44' West 117 7/5 feet to Engineers Station "G" 2139 x 76 2/5 , thence by a 1° curve to the left tapered at each end by a curve the rate of curvature of which changes 0° 15' for each 30 feet 483 3/5 feet to Engineers Station "G" 2144 x 60 2/5 , thence by a straight course south 52° 48' West 1042 4/5 feet to Engineers Station "G" 2155 x 02 6/5 , thence by a curve to the left the rate of curvature of which changes 0° 15' for each 30 feet 227 4/5 feet to Engineers Station "G" 2157 + 30 at the Westerly boundary of Section Eleven. - - - -

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

ATTACHMENT G

ATKINS

Atkins North America, Inc.
555 Double Eagle Court, Suite 2000
Reno, Nevada 89521-8991

Telephone: +1.775.828.1622
Fax: +1.775.828.1826

www.atkinsglobal.com/northamerica

May 3, 2012

Mr. Len Marino, P.E.
Central Valley Flood Protection Board
3310 El Camino Avenue
Room 151
Sacramento, CA 95821

Subject: **Review of Record of Survey Map Prepared by CTA**

Mr. Marino

As requested, we have reviewed the Record of Survey map prepared by Kevin Heeney at CTA Engineering and Surveying (CTA) for property owned by the State of California in Yuba County. The map was filed in Book 93 of Maps, Pages 36-38 on January 11, 2012 as document number 2012R-000375, Yuba County Records.

As a result of this review, we present the following findings.

**Project History:**
The Sacramento-San Joaquin Drainage District (SSJDD), acting by and through the State of California, Central Valley Flood Protection Board (CVFPB) currently controls property noted on the above Record of Survey (ROS) as S.S.J.D.D. BK. 267 PG. 509 O.R. (PARCEL 5). It was noted that there appeared to be several encroachments onto the SSJDD property as a result of development over the past several years. As a result of concerns caused by the suspected encroachments, Three Rivers Levee Improvement Authority (TRLIA) contracted with CTA Engineering to determine the boundary lines of the SSJDD controlled property and locate any encroachments upon SSJDD property. The survey filed by CTA indicates several encroachments exist onto the SSJDD property. It was noted in our discussions with CVFPB staff that several of the property owners adjoining the SSJDD property had stated that they believed the existing fence lines indicated the location of the property boundaries. Atkins was authorized to review the Record of Survey prepared by CTA to verify the work followed the industry normal standard of care for surveys of this type.

**Review Steps:**
In the course of our review we looked at several items including:

- Chain of title for the SSJDD property
- Previously filed survey maps in the project area
- Deeds referenced on the survey maps noted above
- The map that re-subdivided a portion of Tract 8 of Yuba Gardens filed in Book 3 of Maps at Page 45 Yuba County Records

- The ROS map 2011-11 as filed by CTA

In addition to document review, we discussed the survey approach and conclusions of the CTA map with Mr. Heeney.

**Review Observations:**

We have made the following observations during our review:

- There are no conflicts in deeds or maps that would indicate a conflict in the property lines. In particular the properties in question are all portions of a subdivision map filed in Book 3 of Maps at Page 45 Yuba County Records shown on the CTA map as a Subdivision of TRACT NO. 8 (Tract 8). It is noted that the deeds of the properties where the subject encroachments exist are described as a portion of this subdivision and do not grant property outside the limits of the subdivision.
- The ROS is based on a number of monuments shown on previously filed maps. These maps are predominantly re-subdivisions of the lots as shown on Tract 8. These maps were based on monuments that were shown as being set on the original Tract 8 map. While CTA did not find the original Tract 8 monuments, they did locate monuments that had been set as part of the more recent surveys that had been tied to the original monuments. This allowed for a position of the original monuments to be determined based on mathematical calculations.
- In their efforts to locate any original monuments, CTA used a variety of search methods that are standard including the use of metal detectors, probing with appropriate tools, and use of shovels to dig where the original monuments were calculated to be. The techniques used were consistent with normal practice.
- It is noted that there were a very limited number of monuments found by the surveys that have been performed between the filing of the CTA map and the original Tract 8 map, but the measurements between monuments found during those intermediate surveys indicated that the Tract 8 survey was accurate as to the dimensions shown on the map. The accuracy of these measurements indicates to us that CTA's use of the record distances shown on the Tract 8 map is appropriate.
- The existing fence lines, which were thought by some owners to represent their property lines, vary from being a straight line and are between 16.7 feet and 21.5 feet from the location of the property line, along the tangent portion of the line as determined by CTA and shown on the ROS. There is one exception to this and that is at the line common to Lot 132 of Tract 8 and the SSJDD parcel, where the fence line is labeled as 2.5 feet from the line determined by CTA. It was noted in conversations with Mr. Heeney that he had been contacted by the owner of Lot 132 who had shown him points indicating the fence was set at the westerly corners of Lot 132. There are no documents that have been found supporting the fact that these points had been placed by appropriate survey procedures. It is further noted that both Tract 8 and the SSJDD property deeds indicate the common ownership line to be a straight line which would conflict with the assertion that the fence lines are indications of the ownership.
- In our discussions with Mr. Heeney, he indicated that CTA had performed additional surveys prior to the filing of the ROS that tied to monuments along the Western Pacific Railroad right-of-way, which runs along the northeasterly

boundary of Tract 8 as shown on the recorded map. He indicated that this additional survey work checked very closely with the ROS performed for TRLIA and supported this survey. This work was done to further justify his boundary location for the SSJDD property and does substantiate his prior findings. I make particular note of this information since this particular portion of the survey work is not indicated on the filed map.

**Conclusions:**
The assertion that the existing fence lines were intended to represent the boundary line of Tract 8 lots is not supported either by the Tract 8 map or any deeds that have been examined by this office. Based on our review of the CTA record of survey and the supporting documents, it is our opinion that the map filed by CTA has been prepared appropriately and according to the standard of practice for a survey of this type, and correctly represents the location of the SSJDD right-of-way.

If there are any further questions regarding this matter by any of the concerned parties, please feel free to contact me.

Sincerely,

Michael E. Bailey, PLS
Associate Vice President
Atkins North America, Inc.

STATE OF CALIFORNIA
MICHAEL E BAILEY
LS 4736
EXP. 9/30/2013
LICENSED SURVEYOR

# RECORD OF SURVEY 2011-11

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

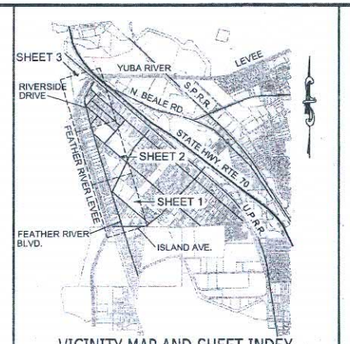
BEING PORTIONS OF TRACTS 8, 17 AND 18, YUBA GARDENS, R.S. 3-2
SITUATED WITHIN THE NEW HELVETIA RANCHO.
COUNTY OF YUBA STATE OF CALIFORNIA
JANUARY, 2012 SCALE: 1"= 100'

cta Engineering & Surveying

SHEET 1 OF 3

### LEGEND

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




VICINITY MAP AND SHEET INDEX
NO SCALE

### BASIS OF BEARINGS

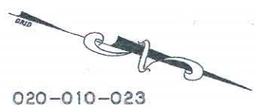
THE BEARINGS CONTAINED HEREIN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 2, NAD 83, 1986 EPOCH AND ORIGINATED FROM THE CONTROL SURVEY FILE NO. 03-25F BY THE U.S. ARMY CORPS OF ENGINEERS DATED OCTOBER, 2003. DISTANCES CONTAINED HEREIN ARE GROUND DISTANCES. MULTIPLY THE GROUND DISTANCE BY 0.9999166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

### CONTROL MONUMENTS

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

### NOTES

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




020-010-023
H. SMITH




### REFERENCES

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

### SURVEYOR'S STATEMENT

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

01/05/2012

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

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

### COUNTY SURVEYOR'S STATEMENT

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

THIS 9th DAY OF JANUARY, 2012

MICHAEL G. LEE, PLS 7853
YUBA COUNTY SURVEYOR

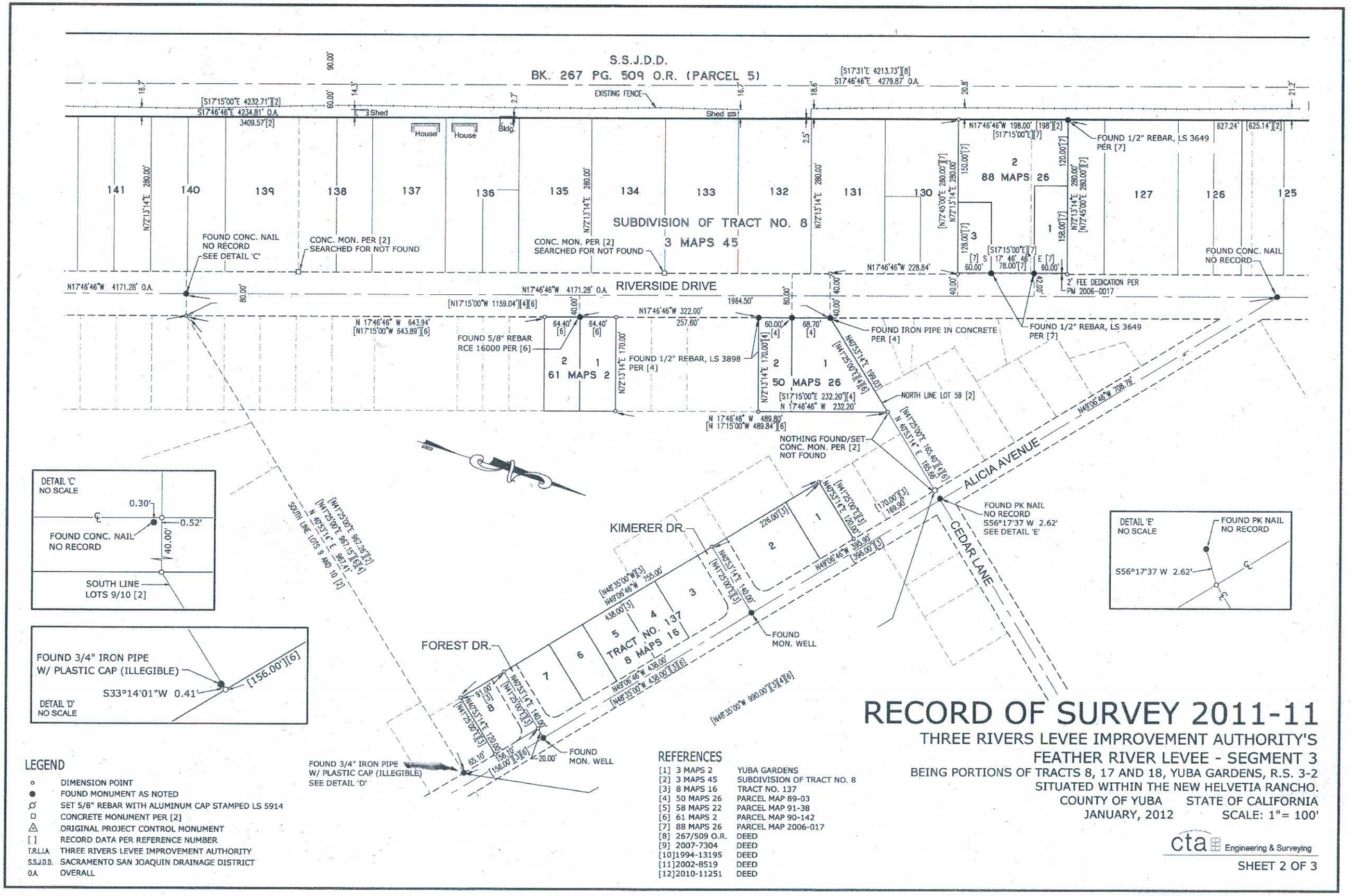
LICENSED LAND SURVEYOR MICHAEL GLENN LEE No. 7853 STATE OF CALIFORNIA

### RECORDER'S STATEMENT

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

TERRY A HANSEN, YUBA COUNTY RECORDER
BY: DEPUTY

BK 93 PG 36




## LEGEND

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

## REFERENCES

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

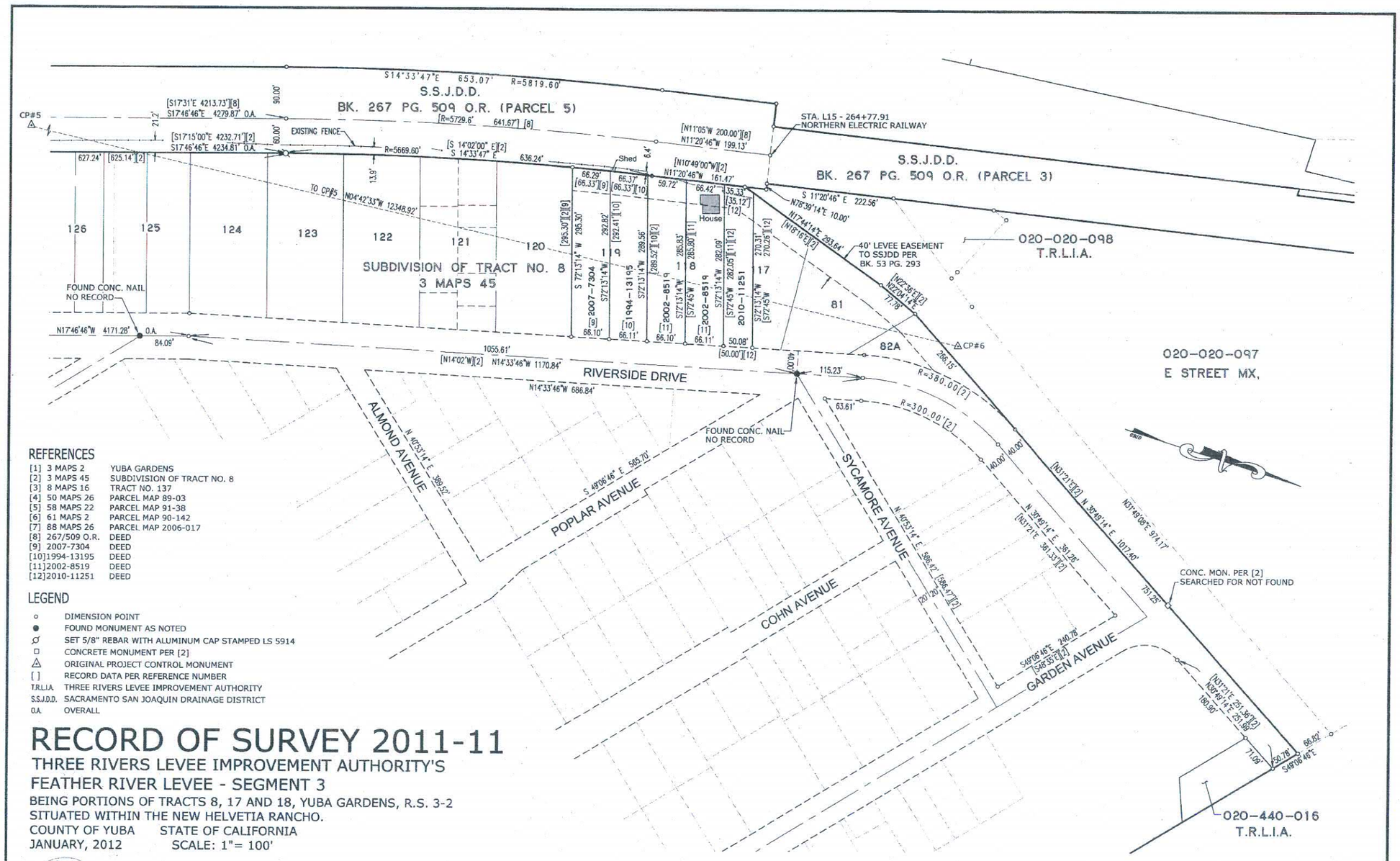
# RECORD OF SURVEY 2011-11

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

cta Engineering & Surveying

SHEET 2 OF 3

BK 93 PG 37




## REFERENCES

| | | |
|---|---|---|
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| [6] | 61 MAPS 2 | PARCEL MAP 90-142 |
| [7] | 88 MAPS 26 | PARCEL MAP 2006-017 |
| [8] | 267/509 O.R. | DEED |
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## LEGEND

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| S.S.J.D.D. | SACRAMENTO SAN JOAQUIN DRAINAGE DISTRICT |
| O.A. | OVERALL |

# RECORD OF SURVEY 2011-11

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

cta Engineering & Surveying

SHEET 3 OF 3

BK 93 PG 38

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

THE RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

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

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





AFTERNOON SESSION

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

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

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

As you'll recall, we pulled two items from consent for hearings. And we also tabled the discussion on Item 9B pending the revision in the resolution. So those all will occur later on this afternoon.

So with that, I'm going to call the hearing to order. This is hearing for Susan LaGrand, Enforcement Action No. 2011-287, regarding the notice of violation for removal of existing encroachments including a portion of a permanent structure located in the State of California, Sacramento/San Joaquin Drainage District property and right-of-way, on the landside of the Feather River levee in West Linda, California - Yuba County.

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





who have not been through it before.

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

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

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

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

So that's the process.

Any questions?

Very good.

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





(Thereupon an overhead presentation was Presented as follows.)

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

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

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

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

--o0o--

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

--o0o--

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

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

--o0o--

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

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

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

--o0o--

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





along the landside of the toe.

--o0o--

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

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

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

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





land is about 14.8 feet at this location.

--o0o--

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

--o0o--

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

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

Some of the background pertinent to this





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

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

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

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

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

--o0o--

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

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

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

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

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

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

--o0o--

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

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





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

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

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

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

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





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

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

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

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





--o0o--

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

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

So it doesn't apply in this case.

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

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

--o0o--

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

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





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

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

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

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





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

And I'll be glad to answer any questions.

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

STAFF ENGINEER CALISO: Thank you, Max.

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

PRESIDENT CARTER: Thank you.

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





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

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

--o0o--

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

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

--o0o--

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





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

--o0o--

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

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

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

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

The encroachment removal is exempt from CEQA; and

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





the State.

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

PRESIDENT CARTER: Are there any quick questions for staff?

Go ahead.

BOARD MEMBER SUAREZ: Thank you.

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

STAFF ENGINEER CALISO: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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





control of its boundary and protect the levee --

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

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

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

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

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

Are there any other questions?

BOARD MEMBER MOFFATT: I did have a question.

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

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





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

BOARD MEMBER MOFFATT: Thank you.

PRESIDENT CARTER: Any other questions?

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

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

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

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

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

PRESIDENT CARTER: What do our standards call

for?
STAFF ENGINEER CALISO: Our standards typically -- or our easements typically are limited to a 10-foot access, an access at the toe -- at the landside toe. This situation is unique, because the property provides not only the 10-foot access that would be required under a standard -- under where -- on other properties where we have an easement, but it provides more than that room that is needed. And I think it's the -- a practice that has been done is where it's not necessarily a 10-foot-wide access that controls the Board's jurisdiction, but it's either -- if we have an easement that is 10 foot or whatever their property rights - and in this case we have -- the Board has property rights over an area that covers more than 10 foot on the landside toe.
VICE-PRESIDENT RIE: Just a follow-up on that last question.
I didn't really understand your response about the urban levee design criteria. I mean the first draft just got released for public review, so those aren't standards. And I think in terms of an enforcement action, we need to rely on Title 23. So I'm not really sure how; that's applicable here.
STAFF ENGINEER CALISO: The 20-foot-wide corridor is required under the interim guidelines. Now, it's not





being a standard at this point. What staff used was the limits of the property that is in ownership by the Board. So we looked at -- if we had a 10-foot easement in this case, then we would be ensuring that the 10-foot easement was provided and was present. In this situation, we have property rights that extend the 10 foot. So we pursued it under the section 19 of our regulations where the Board owns the property.
PRESIDENT CARTER: Mr. Brown.
BOARD MEMBER BROWN: Wouldn't there be a road on that 10-foot easement at the toe of the slope? Wouldn't there be an inspection road?
STAFF ENGINEER CALISO: Yes, the plan under Application 18690 will provide a driveable path. I believe it's 14 feet that will be paved, and then the rest will be graded to allow for vehicles to drive through the 20-foot area -- 20-foot zone.
PRESIDENT CARTER: Question.
DWR ASSISTANT CHIEF COUNSEL TABOR: I wanted to address Ms. Suarez' question, if I might, the jurisdictional basis for this enforcement action.
And, that is, in addition to the Board's property ownership rights is the fact that your permit to Three Rivers Levee Improvement Authority required them as part of their permit to obtain 20 feet landward of the new





levee toe.
All of these fences, the fence on this particular property and the other fences that are the subject of the other -- today are all blocking the ability to comply with the Board's permit. So the handle is the Board's already expressed exertion of its authority over the levee extending out a minimum of 20 feet. And therefore these fences prevent the applicant, the permittee, from complying with the Board's order under its authority.
BOARD MEMBER SUAREZ: Mr. Tabor, is that because we assume that the time that we entered into agreement with TRLIA that we owned that property and that we could go ahead and have those 20 feet?
DWR ASSISTANT CHIEF COUNSEL TABOR: I don't think there was any consideration as to what the Board owned. Because as I understand it - perhaps Mr. Brunner could clarify - what the Board owns in any existing levee situation may vary. Traditionally it is 10 feet. This is a unique area because the Board acquired the railroad right-of-way, which was more than we actually needed for the levee itself. But it was available on the market. We acquired it.
BOARD MEMBER SUAREZ: So, again, we just -- it all goes back to the ownership of that piece of land; and if it's established that we don't own the piece of land,





then we might have a difficulty with enforcement?
DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.
BOARD MEMBER SUAREZ: Thank you. That's all I needed to know.
BOARD MEMBER MOFFATT: I had a question.
If the permit requires 20 feet from the toe - and it looks like the fence and the building go about 14 -- what is it, 14 feet 8 inches beyond what we believe the property boundary to be? But how far into what exists right now -- if you went 20 feet from the toe of the levee, how far in is that line? Does that -- based on your previous statements, I assume that going to what we believe to be the property line is greater than 20 feet, correct?
STAFF ENGINEER CALISO: You're correct. I did identify here -- and that's my apologies for not doing that. But this dash line here on the back of the -- on the screen, this slide up here, that's delineating the approximate location of the levee toe on the landside.
So this is where the levee toe is currently. I wish I had -- that's based on the map that we have. That's what it was identified. So I'll go back.
BOARD MEMBER MOFFATT: Okay. So that's the levee toe.
STAFF ENGINEER CALISO: See, this blowup area

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

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

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

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

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

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

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





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

MR. BRUNNER: Angeles, can I speak?

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

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

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

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

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

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

What has prompted us to go to the 20-foot





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

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

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

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

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

BOARD MEMBER MOFFATT: So --





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

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

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

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

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

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

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

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

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

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

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

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

MR. HEENEY: I don't know --

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

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

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

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

PRESIDENT CARTER: Okay.

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

PRESIDENT CARTER: Okay. Let's do that.

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

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

PRESIDENT CARTER: Okay. Thank you very much.

I'd like to invite the respondent up to offer





testimony.

MS. LaGRAND: Hi.

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

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

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

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

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

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

PRESIDENT CARTER: Please take your time.





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

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

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

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

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





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

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

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

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

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

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

I have been given a letter telling me to demolish

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

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

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

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

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





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

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

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





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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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





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

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

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

PRESIDENT CARTER: Thank you.

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

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

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





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

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

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

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

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

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

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

MS. LaGRAND: That's not us.

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





railroad up over the top and then continues.

--o0o--

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

--o0o--

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

BOARD MEMBER BROWN: Is this the waterside still?

MR. FORDICE: This is landside, sir.

--o0o--

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

--o0o--

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

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

--o0o--

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

--o0o--

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





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

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

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

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





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

--o0o--

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

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

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

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





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

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

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

I'd entertain any questions.

PRESIDENT CARTER: Thank you, Mr. Fordice.

MR. FORDICE: Thank you.

PRESIDENT CARTER: Mr. Brunner.

MR. BRUNNER: Thank you.

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

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

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





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





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





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

that it was State property.
And that was a question that came up. This is not a TRLIA enforcement action in where we are. This is a State enforcement action.
We could accomplish our mission of doing the 20-foot corridor and miss the building, as this diagram shows as to where we are. But the building is on State property, the fences are on State property. And I think that's the crux of the hearing that where we are here.
A couple other corrections that I would like to offer from the testimony that's been given from Ms. LaGrand, is the TRLIA has not received any money free the Corps, we don't have any pending applications to the Corps for funding for this. TRLIA has been out there working on this levee for, we call it, segment 3 for -- gee, for several years now, improving it, putting improvements in, bringing it up to 200-year protection. So we have been there. This levee's been under maintenance and care of RD 784.
TRLIA was formed in 2004. We weren't there right after the '97 flood, in that time period.
So we do care. We've been trying to work and work with the residents to make it as easy or acceptable for them as we work through, understand that this an issue for the folks and we're here to try to work with them.





And if the structure was somewhat allowed to be there, we could work through this process with them on -- or to build their 20-foot corridor.
And with that, those are my comments.
PRESIDENT CARTER: Thank you.
VICE-PRESIDENT RIE: Mr. Brunner, I have a question for you.
PRESIDENT CARTER: Let's hold the questions.
VICE-PRESIDENT RIE: Okay.
PRESIDENT CARTER: Just write it down and we'll get to them.
VICE-PRESIDENT RIE: All right.
MR. SHAPIRO: Good afternoon, President Carter, members of the Board. Scott Shapiro, General Counsel for Three Rivers.
I think Paul really covered Three River's position well. I just wanted to supplement very briefly on two issues.
Some of you may remember when Three Rivers came before you for the permit which is actually causing us to have to provide the corridor. And the original staff recommendation had been 50 feet. And at the time we had said there are homes through here, there are structures, and we don't really want to take out those structures. We don't think it's necessary. And that's where the lower





number came from.
So as Paul said, we can live with whatever is necessary from RD 784 having its O&M ability. It's not our enforcement action. We're here to accommodate everybody else as best we can.
And I did just want to clarify that Three Rivers has never sent a letter to the LaGrand's saying the building should be demolished. We have sent a letter providing that the Board had sent a letter or was going to send a letter saying the structure in the encroachment had to be removed. Our board has never taken a position to remove the structure and that's not our board's position.
Thank you.
PRESIDENT CARTER: Very good.
Ms. Nagy.
MS. NAGY: Good afternoon. Meegan Nagy, Army Corps of Engineers. I just want to hit on a couple of the questions and comments that I've heard today during this.
First of all, from the Corps' perspective, it does appear that these structures are within the right-of-way or fee-owned land from the State. And so at a minimum an encroachment permit would need to be reviewed by the Corps to make a determination on any and all of this space. So regardless of what decisions are made today, that is one thing that I want to make sure you





understand from the Corps' perspective.
The 20-feet urban levee design criteria. The Corps also supports the 20 feet. A technical SOP in urban areas requires a 20-foot O&M corridor for urban areas. And so that matches this. And, frankly, in most of the rest of the system we don't have that luxury. We have less -- the Board usually has a smaller easement or smaller fee-owned area. And we don't previously have that sort of area. So this is kind of a unique situation. And I think when you do have it, it's important to maintain it. Because the minute you give up that ability, we lose our flexibility to operate and maintain properly well, as well as accommodate future expansions of the project as necessary as we see over the years.
So having that ability to have that maintenance corridor is critical.
I wanted to comment too on RD 784's maintenance practices. As I said earlier today, and Mr. Fordice mentioned, we completed -- recently completed a periodic inspection for RD 784. One of the most widespread issues we've seen around the state, frankly, has been animal control. RD 784 had an immaculate animal control program. We haven't seen anything like it. So to say that they aren't maintaining the levee, we've seen from our own inspection that that's not necessarily true.

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

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

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

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

Thank you.

PRESIDENT CARTER: Thank you.





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

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

MR. STEINHEIMER: Oh, sure.

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

MS. LaGRAND: Yeah.

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

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

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

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

PRESIDENT CARTER: Thank you.

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

And this is the actual railroad track running





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

VICE-PRESIDENT RIE: Excuse me for a second.

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

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

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

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

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

MS. MILLER: This one?

STAFF ENGINEER CALISO: Uh-huh, yeah.

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

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

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





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

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

PRESIDENT CARTER: Go ahead. Please proceed.

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

Now, I need that one there.

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

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

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

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

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

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





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





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





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

And I will answer any questions.
PRESIDENT CARTER: Thank you very much.
MR. MILLER: That young lady looks puzzled over here.
PRESIDENT CARTER: I have one other party.
Mr. King, did you want to address the Board on this?
MR. KING: Yes, sir, if I may.
I'd like to refer you to Item 10B --
PRESIDENT CARTER: If you could please just introduce yourself for the record.
MR. KING: My name is Michael King. I own property at 5722 Riverside Drive in Olivehurst, Linda and Marysville.
I'd like to refer you to Attachment B of Item 10B. It shows two pictures. And that's my property.
The house -- on the top picture it shows you where the existent fence is. And the new fence would go right up against that building that's in the center of the picture.
And then on the lower photo it shows you a house that has a little baby pool behind it. That house is actually 2.7 feet onto the State's --
PRESIDENT CARTER: Mr. King, I'm still trying to find your pictures in Attachment B.





MR. KING: Does that help? Because that's the picture I'm referring to --
PRESIDENT CARTER: Okay. And if you --
MR. KING: -- referred to as Item 10B of Attachment B -- for Agenda Item 10B.
PRESIDENT CARTER: Oh, Item 10B.
MR. KING: That's Mr. King, yeah. It's me.
PRESIDENT CARTER: Okay. Is this -- are you speaking to the LaGrand's issue or are you speaking to your issue?
MR. KING: My own -- 10B, yeah. Mn own, yeah.
PRESIDENT CARTER: My notes indicated that you wanted to speak to 10A.
Do you want to speak to 10A?
MR. KING: No, sir.
PRESIDENT CARTER: Thank you very much.
We'll address yours next.
MR. KING: Okay.
PRESIDENT CARTER: I apologize.
Are there any other members of the public that wish to address the Board that have not spoken yet?
Okay. Ladies and gentlemen, we're going to take a ten-minute recess. After the recess, we're going to give those that want to five minutes to rebut anything that they wish to rebut respective to their position.





Okay?
Give five minutes, no more. So that includes staff and that's all the parties.
So we will recess for ten minutes and then we will be back.
Mr. King, did you have a question?
MR. KING: I just wanted to say I had surgery a few days ago. I'd like to go -- I can't stay much longer. If I could get my -- I'm not going to say much because I don't have anything to dispute. I just wanted to show the Board that I was here and --
PRESIDENT CARTER: Let me consider that during the recess.
Thank you
(Thereupon a recess was taken.)
PRESIDENT CARTER: Ladies and gentlemen, if you could take your seats please.
Ladies and gentlemen, during the break I went through the public testimony. I am -- and this is just a statement. I'm at a little bit of a loss as to why we are really here. It appears that the LMA and the State can have the 20 feet of access along the levee toe without potentially removing or causing to move the structure in this case, in Ms. LaGrand's case. And so I'm wondering why we could not come to some sort of an agreement where





the State -- and this is not withstanding the dispute in terms of where the property lines are -- but the State authorizes TRLIA to go ahead and build a fence at the 20-foot line that avoids the building, and then resolve the issues on the property lines and exactly where they are. And if there are encroachments that are outside of the fence but on State property, that we enter into an agreement or negotiations to quitclaim those properties to the owners of the adjacent parcels, and we dispense with virtually all of these enforcement actions that are along here.
If we can accomplish the mission of operating and maintaining the levee and we can, you know, accomplish the mission of having a 20-foot access at the levee toe on the landside, wouldn't this be a more reasonable approach to this whole problem?
So I'm looking for some guidance from staff.
BOARD MEMBER MOFFATT: And, Mr. PRESIDENT, can I ask as staff is addressing this: We already have the numbers on the structure, not the fence but Ms. LaGrand's shop. I'm curious about Mr. Miller's house as well as -- you know, looking through the other enforcement orders, it looks like we've got 48 fences, 2 barbecue areas, a playground, 4 non-permanent structures, and a trailer.
Other than fences, are there any other

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

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

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

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

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

BOARD MEMBER SUAREZ: That's not the question.

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

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





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

So what do you guys think about my proposal?

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

Maybe counsel can address that.

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

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

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

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





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

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

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

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

And this is clearly State property.

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

DWR STAFF COUNSEL BREWER: Okay.

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

DWR STAFF COUNSEL BREWER: Correct, that's not





our issue.

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

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

Mr. Hodgkins.

SECRETARY HODGKINS: Ms. Givens?

PRESIDENT CARTER: Ms. Brewer.

DWR STAFF COUNSEL BREWER: Brewer.

SECRETARY HODGKINS: I'm sorry. Brewer.

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

(Laughter.)

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

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

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

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

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

DWR STAFF COUNSEL BREWER: Okay.

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

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





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

PRESIDENT CARTER: Thank you.

Mr. Shapiro.

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

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

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

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





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

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

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

PRESIDENT CARTER: Thank you.

VICE-PRESIDENT RIE: Can I ask a question?

PRESIDENT CARTER: Just a second.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: I want to get the respondents.

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

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





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

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

You remember me telling you that?

PRESIDENT CARTER: Well, okay.

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

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

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

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

MS. LaGRAND: Okay. Thank you.

SECRETARY HODGKINS: Let me ask Mr. Brunner.

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

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

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

SECRETARY HODGKINS: Okay.

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

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

But I think it would help to have the finding.

PRESIDENT CARTER: Okay. Ms. Rie.

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





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

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

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

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





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

PRESIDENT CARTER: Mr. Moffatt.

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

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

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





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

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

BOARD MEMBER SUAREZ: Sounds like a motion.

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

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

Everybody understand?

Mr. King, do you want to go first?

MR. KING: Yes, sir. Thank you.
PRESIDENT CARTER; Okay. Please reintroduce yourself. And if you would, speak into the mike so that it goes on the record.
The mike is over there to the left of the computer.
MR. KING: Thank you.
My name is Michael King. I own the property at 5722 Riverside.
I'm probably one of the more dramatically affected by this proposal. As you see in the picture there, the house at the bottom with the little baby pool, is 2.7 feet on to what has been established as California land. I cannot move the house. It would effectively have to be destroyed. It's insured for a value of $80,000. This is a low income neighborhood. I rent it for 700 a month for a 3 bedroom, 1 bath.
If I lose that income, probably I will have to have it -- it'll go back to the lender and be foreclosed, because it's -- I can't just dispense with that income and maintain my bills.
So if there's some accommodation that can be met for my 2.7 feet, I hope the Board will help me in that.
Thank you very much.
PRESIDENT CARTER: It's my understanding, Mr.





King, that your home is well outside the 20-foot distance from the toe.
MR. KING: Yes.
PRESIDENT CARTER: And so the proposal that we're considering right now would not require you to move your home.
MR. KING: Right, your proposal would fix my problem.
PRESIDENT CARTER: Okay. So are you comfortable with that proposal and proceeding?
MR. KING: Yes, sir. That would be wonderful.
PRESIDENT CARTER: And you will --
MR. KING: It will still reduce the value of my property because it would move the fence so much closer to my house. But that's okay. I understand the need for levee improvements and I want to be a good community member.
PRESIDENT CARTER: So we would appreciate if you would work with TRLIA and the staff to try and come to some sort of a compromise here.
MR. KING: Thank you very much.
PRESIDENT CARTER: Thank you.
Mr. Miller.
MR. MILLER: Okay. Let me understand. You're going to make a motion that it goes back to -- well, from





what I'm hearing, it would go back to TRLIA and the homeowners and we make the final decision and bring it before this Board, is that what you're saying?
PRESIDENT CARTER: Decision with respect to what?
MR. MILLER: The encroachment, property line, the whole situation.
PRESIDENT CARTER: No, we're going to hear from the surveyor this afternoon right after you. And we'll find out if the Board is able to make a decision on whether or not there are encroachments on State property.
MR. MILLER: Okay. I'm not going to admit there is and I don't think there is. But I think if you let it go back to TRLIA and the property owners and let them make a decision locally, because we know what's going on, we live there. And I'm not saying you guys don't know what's going on, but we have more vested interest in that area. And I think if you'd just let us decide what to do, bring it up and get the okay up here at this point.
PRESIDENT CARTER: Appreciate your comments.
Thank you.
So, Mr. Heeney --
MR. HEENEY: Yes.
PRESIDENT CARTER: -- you are --
MR. HEENEY: Let me address a couple of the issues the Miller's brought up.





First off, the maps -- the old maps. I reviewed those maps. I looked at all the maps that were available with county records. As I mentioned earlier, I met with the county survey staff and inquired of any additional maps and reviewed the right-of-way -- railroad right-of-way maps that they provided me as well.
Mr. Miller made the comment about the right-of-way was 40 feet on either side of the centerline of the track. He is correct south of Island Avenue. But the deed that was given to the State describes the section adjacent to this subdivision as being 60 feet on the east side of the center line and 90 feet on the west side.
So from Island Avenue north, where all of these properties are, the right-of-way is actually 20 feet wider on the east side than the portion south of Island Avenue.
He also commented about you can't survey from one point. Well, with GPS today you can. But we didn't. And if you look at the slide that I have on here, it may be hard to see, but you'll notice dark little circles along Riverside Avenue on both sides. Those are the monuments we found. Those are monuments set by other surveyors. We agreed with where they were within inches and, in my opinion, in acceptable limits of difference. A lot of these were set in the fifties and sixties, before GPS and the modern technology that we use, and it's typical to

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





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





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





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

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





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





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





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

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





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





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





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

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

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

EXECUTIVE OFFICER PUNIA: Board Member John Moffatt?

BOARD MEMBER MOFFATT: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board Vice-President Teri Rie?

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





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

So I'm voting no.

EXECUTIVE OFFICER PUNIA: Board PRESIDENT Ben Carter?

PRESIDENT CARTER: Aye.

So the motion carries, 5 ayes, 2 nays.

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

PRESIDENT CARTER: Very good.

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

(Laughter.)

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





CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board Item 10A meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of December, 2011.

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

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

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

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

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





PROCEEDINGS

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

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

Ms. Caliso, good morning. Welcome.

(Thereupon an overhead presentation was Presented as follows.)

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

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





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

Ms. Caliso, if you would proceed.

STAFF ENGINEER CALISO: Thank you.

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

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





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

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

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

--o0o--

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

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

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

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

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





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

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

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

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

--o0o--

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

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





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

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

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

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

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





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

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

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

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

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

--o0o--

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

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

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

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

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

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

And then in 1958, the State eventually purchased





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

--o0o--

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

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





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

--o0o--

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

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

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

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





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

--o0o--

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

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

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

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

--o0o--

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

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





part of the Notice of Violations that were issued

--o0o--

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

--o0o--

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

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

--o0o--

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





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

And this concludes my presentation.

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

Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President.

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

STAFF ENGINEER CALISO: Thank you.

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

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

Can you --

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





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

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

VICE-PRESIDENT RIE: President Carter, question.

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

LEGAL COUNSEL SMITH: I'm prepared to --

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

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

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

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

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

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

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

LEGAL COUNSEL SMITH: No.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Ms. Rie.

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

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





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

STAFF ENGINEER CALISO: Correct.

VICE-PRESIDENT RIE: Just license agreements.

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

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

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

SUPERVISING ENGINEER TARAS: There's a correction.

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





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

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

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

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

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





recorded.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any other questions for Ms. Caliso?

BOARD MEMBER VILLINES: Yes.

PRESIDENT CARTER: Mr. Villines.

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

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

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

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

BOARD MEMBER VILLINES: Thank you.

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

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

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

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

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

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

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

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





or not.

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

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

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

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

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





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

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

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

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

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





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

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

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

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

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

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

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

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

MR. BRUNNER: Okay.

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

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





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

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

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

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

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

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





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

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

PRESIDENT CARTER: Pools?

STAFF ENGINEER CALISO: Excavations would be one, yeah.

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

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

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

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

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





levee on the land side?

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

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

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

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

MR. BRUNNER: Not within the Three Rivers levee

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

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

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

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Thank you, Mr. Brunner.

MR. BRUNNER: Thank you.

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

Yes, sir.

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

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





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

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

STAFF ENGINEER CALISO: The levee toe.

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

STAFF ENGINEER CALISO: The existing fence.

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

MR. HECKER: There you go.

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

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





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

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

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

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





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

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

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

There you go.

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

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

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

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

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

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

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

MR. HECKER: After rain storms yes, sir.

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





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

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

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

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





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

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

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

We don't. Why?

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

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





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

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

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

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

VICE-PRESIDENT RIE: Four feet of water?

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

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

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

MS. MILLER: Do what?

PRESIDENT CARTER: Make copies.

MS. MILLER: Yeah.

PRESIDENT CARTER: All right.

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

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

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

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





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

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

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

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

VICE-PRESIDENT RIE: You don't know.

MR. HECKER: -- didn't --

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

PRESIDENT CARTER: Thank you very much.

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

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

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

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





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

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

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

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

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





railroad track going in with crossings.

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

Thank you very much for the opportunity.

PRESIDENT CARTER: Thank you.

MS. HOFMAN: Is there any questions?

I'm sorry.

PRESIDENT CARTER: Thank you.

Is there anyone else that wishes to address the Board?

Yes, sir.

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

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

Oh, where's the arrow on that map.

I'm sorry.

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

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

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

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





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

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

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

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

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

Thank you.

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

Yes, sir.

Yes, ma'am.

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

PRESIDENT CARTER: Yes, you do.





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

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

MS. MILLER: Okay. Thank you.

PRESIDENT CARTER: Thank you.

Sir.

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

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

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

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

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

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





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

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

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

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

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

to the levees, so they can expect, possibly repair.
So I'm in support of the project. I also was interested in when the road was to be put there, that they would put grade stakes and locations of the final elevation of the road. That would be very helpful, so that any retaining walls necessary, especially toward this back building, would be necessary, so that there's -- it's maintainable, and it's not an abrupt drop-off. It definitely can't be two to one or three to one slope, but it looks like at these locations some of them -- so that was my concern.
So is there any questions?
PRESIDENT CARTER: Thank you, Mr. Currier.
Ms. Suarez.
BOARD MEMBER SUAREZ: Just a quick one. Were you at the January 7th meeting?
MR. CURRIER: Locally I was in the -- on Riverside, I was at that meeting.
BOARD MEMBER SUAREZ: Is that -- I'm sorry, do I have the right date, the January 7th meeting, the TRLIA community meeting, were you at that meeting?
MR. CURRIER: Yes.
BOARD MEMBER SUAREZ: Okay. Thank you.
PRESIDENT CARTER: I think it was January 10.
BOARD MEMBER SUAREZ: Oh, I'm sorry, January 10.





Thank you.
PRESIDENT CARTER: Thank you very much.
Are there any other members of the public that wish to address this item before the Board?
Very good.
Then what we'll do, ladies and gentlemen, we're going to close the public testimony portion of the hearing, and we're going to take a brief recess, let's -- 10 minutes. And then we'll reconvene for Board discussion, deliberation, and moving forward.
(Thereupon a recess was taken.)
PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats, we'll continue with the hearing.
As you recall, prior to our break, we were on Item 8A. We had entertained staff and proponent and respondent testimony. We're now moving on to the discussion/deliberation phase of the hearing. So with that, I'm going to open it up to the Board. Are there any questions -- additional questions the Board has with respect to what the testimony that they had heard earlier this morning of staff, of the respondents?
Ms. Rie.
VICE-PRESIDENT RIE: This question is for TRLIA and for our staff. We saw photographs of flooding in the





area where we're going to relocate the fence. So my question is, how will we be able to flood fight and patrol the levee during the winter with four feet of ponded water? Now, I would imagine it's not everywhere, but you probably have to cross the ponded water at some point.
So I'm just wondering how are we going to patrol and flood fight with ponding water in this area?
MR. BRUNNER: Paul Brunner from Three Rivers, Executive Director.
The -- maybe if we could pull up the graphic, I could speak to it better again. And I'll try the mouse on it. The area that we're talking about for flood fighting, where the biggest issues are, is really in the south end of the project close to Island Avenue, so it affects several parcels, but not most of them, I believe.
SUPERVISING ENGINEER TARAS: Is this the slide you wanted?
MR. BRUNNER: That works, Curt. Thank you.
As you look through here -- there we go. I'll use this one here -- is that Island Avenue is the end of the project, and it ramps up to the top of the levee. And then along through here there's an access road that comes down from the top of the levee that kind of runs parallel through here, and then it just kind of keeps going through here. But it is elevated in through here along the side





bank of the levee on it, so it isn't down at ground surfaces.
And I would imagine, as when we do our design for the project, is this area down by Island Avenue through Parcels 153, 54, 153, maybe 152 and in that area, the road in that 20-foot area will be elevated somewhat into the bank, like on top of a stability berm or what -- that's currently really kind of their now, but that we would elevate. And they're not going to be driving through this water situation.
Now there are two, three parcels -- and I could be off on the numbering -- 151, could be one of them and that -- that naturally the lot is lower in the back. It is lower than 153 and say 150. So when the subdivision was built, I think the railroad tracks and that were there at least most likely when the subdivision was. The lots were not drained to the street, so they drained to the back and they pond.
So there are some lots that naturally will pond, because of adjacent parcels being higher and definitely the levees higher in the back on it. So for those situations -- some of the parcels very close to the end 154, 155, they do have some drainage issues there.
Potentially, one could go through -- and what I was trying to let the Board know is part of our design as

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

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

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

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

So I think the long-term solution for those homes





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

So did that answer your question?

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

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

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

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





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

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

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

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

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

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

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

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





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

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

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

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

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

BOARD MEMBER BROWN: Good.

PRESIDENT CARTER: Thank you.

MR. BRUNNER: Thank you.

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

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

Ms. Rie.

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

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

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





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

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

VICE-PRESIDENT RIE: Okay. Thank you.

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

PRESIDENT CARTER: Please.

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

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

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

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any other questions?

I have one. I believe it was Mr. Miller





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

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

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

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





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

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

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

Does that answer your question?

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

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

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

PRESIDENT CARTER: Okay. Thank you.

Any other questions?

Ladies and gentlemen, what is your pleasure?

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

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

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

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

So, Mr. Brown, would you consider removing that





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

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

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

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

BOARD MEMBER SUAREZ: Okay. Thank you.

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





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

Everybody understand that?

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

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

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

Is there a second on the motion?

BOARD MEMBER SUAREZ: I second it.

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

BOARD MEMBER DOLAN: Mr. Chairman.

PRESIDENT CARTER: Ms. Dolan.

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





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

PRESIDENT CARTER: Thank you.

Mr. Hodgkins.

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

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

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





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





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





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

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

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

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

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





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

STAFF ENGINEER CALISO: Sure.

PRESIDENT CARTER: Ms. Smith.

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

BOARD MEMBER SUAREZ: I'm comfortable.

PRESIDENT CARTER: Ladies and gentlemen?

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

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

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

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

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

MR. BRUNNER: Three Rivers is fine.





PRESIDENT CARTER: Three Rivers is fine.

MR. FORDICE: As is 784.

PRESIDENT CARTER: And 784 is fine.

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

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

PRESIDENT CARTER: If you could please approach.

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

Thank you.

PRESIDENT CARTER: Okay. Thank you.

Please.

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

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

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

PRESIDENT CARTER: Debra Hecker, thank you.

MS. HECKER: My husband spoke earlier.

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





changed landscape on your side?

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

Thank you.

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

So any other questions, comments?

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

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





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





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





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

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

(Thereupon an overhead presentation was presented as follows.)

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

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

STAFF ENGINEER CALISO: Okay. Perfect. Will do.

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

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





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

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

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

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

This is an aerial view of the property. The





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

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

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

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





damage to the levee.

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

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

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

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

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

An adopted plan of flood control is defined in our regulations under Section 4(a)(4), which defines it as a means of a flood control or reclamation strategy for a specific area that has been adopted by the Board, that includes a 10-foot from the levee toe, except where an O&M manual has been furnished or real property rights acquired by the Board specifically provide otherwise.

Water -- Section 19 of the California Code of Regulations, which states that no encroachments may be constructed or maintained on lands that are owned by the Sacramento-San Joaquin Drainage District, unless they're expressly approved by or permitted by the Board via a revocable license, a lease or an agreement between the Board and the adjacent landowner.

Section 20(a), which allows the Executive Officer to commence an enforcement action against the landowner that maintains encroachments that are not consistent with the Board's regulations.

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STAFF ENGINEER CALISO: Just a quick summary on the background that is also related to this case, similar to the one earlier this morning.





On July 29, letters from TRLIA were mailed, including this property owner, notifying them of the encroachments. August 5th, the Notice of Violation was issued on behalf of the State, noting the unauthorized encroachments. August 22nd, TRLIA conducted a community meeting. December 2nd, the Board conducted hearings. And, at that hearing, the Board noted that the encroachments exist on State land, directing staff to work with TRLIA and the landowners and come back with a plan, that provided the 20-foot corridor and minimize the impact to the adjacent landowners.

Then December 16, all the landowners were notified of the Board's decision. And January 10th, the alternative -- the proposed alternative, that's being presented here to you today, was presented to the landowners at a community meeting.

After some discussion, the landowners by majority did vote -- didn't vote, but did agree that this was the -- supported the preferred -- this as the preferred alternative.

On January 19th, the staff reports were all posted and distributed to the applicable parties.

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STAFF ENGINEER CALISO: A timeline on the property that is owned by the State, that is adjacent to





the parcels, the private parcel here.

Starting back in 1909, the purchase -- the property was purchased by Northern Electric Company from a private individual. And this was recorded at the county's office in Book 59, page 441.

On November 8th, 1921, a survey map was prepared and it was recorded at the county's office on Book 3, page two.

PRESIDENT CARTER: Ms. Caliso?

STAFF ENGINEER CALISO: Yes.

PRESIDENT CARTER: Since -- is this all the same as the --

STAFF ENGINEER CALISO: Essentially, yes.

PRESIDENT CARTER: Could we stipulate for the record that all of these facts are the same as in our prior hearing under Item 8A, heard earlier this morning, and move along.

BOARD MEMBER BROWN: Yes, sir.

PRESIDENT CARTER: Is everyone okay with that?

Let's do that. That will save you some -- save some of your voice.

STAFF ENGINEER CALISO: Okay. So the proposed alternative for this property, it would be to place -- the new fence would be placed at the edge of the 20-foot corridor.





SECRETARY DOHERTY: It would -- existing fences that are located in the corridor would be -- the existing fence located there would be to -- would need to be removed.

The solution -- the real estate solution allowing for the remaining State land would be to issue Mr. Michael Grand a revocable license for the use of that land; and allowing the existing structure that is located on the parcel to remain, and this would be subject to a Board permit that would come before you at a future meeting; restricting the development -- the license would restrict the future development on the parcel. That would include permanent structures, excavations and that type of work.

And the license could be revocable if the need for a public purpose arises. And once again, it would also be recorded against the title of each company -- title of the property.

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STAFF ENGINEER CALISO: This is an exhibit showing the particular parcel. The assigned line shows the approximate limits of Mr. King's -- the southern portion is not reflected. The property goes further south. But at the right-hand side of the screen, you'll see that the residence that is on State land is identified there in light -- in the blue -- with the blue label.

This State-owned parcel is identified in the shaded brown area. Those are the limits of the State-owned parcel. The existing fence is identified in the red line. That is within State land.

The corridor that is being proposed would be -- is the one shade on the screen that is showing in green. And as you can see that the corridor -- the edge of the corridor was to be far enough from the existing structure, so it wouldn't require removal of that said structure.

The shaded blue -- the shaded yellow area, once again, would be that area that would be allowed to be used by the landowner under the license. And that area varies from approximately 12.3 feet on the left-hand side of the screen, so that would be on the south side, to about 13 feet on the right-hand side.

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STAFF ENGINEER CALISO: Once again, the comments of the Three Rivers Levee Improvement Authority and RD 784 support the presented alternative.

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STAFF ENGINEER CALISO: And the CEQA findings for this are noted in staff report Section 6.0. It would essentially mimic the previous findings on the earlier presentation.

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STAFF ENGINEER CALISO: Therefore, staff's recommendation is that the Board adopt Resolution number 1206 and this resolution is -- or this recommendation is reflecting the changes from the earlier -- from the morning.

It would include the deletion of the six -- sentence of the sixth whereas on the resolution on page two reflecting; authorizing the removal of the fence on State land subject to Permit 18690; granting the revocable license to Mr. King for the use and maintenance of the portion of State land that is adjoining the Feather River East Levee; authorizing the structure that is located on parcel with an APN number 020-121-021, owned by Mr. King to remain on State land, subject to a Board permit; and rescinding the Notice of Violation, which was number 2011-268 subject to voluntary compliance with this resolution; directing staff to file a Notice of Exemption with the State Clearinghouse; and authorizing the Executive Officer to execute the revocable licenses, subject to concurrence from Board President.

And that concludes my presentation.

PRESIDENT CARTER: Okay. Any questions for Ms. Caliso?

Ms. Suarez.

BOARD MEMBER SUAREZ: I would like to take this





opportunity to ask again, Ms. Smith, to, for the record, answer the question of whether or not granting a license, in her legal opinion, constitutes a gift of public funds or public property?

LEGAL COUNSEL SMITH: I do not believe so, so long as the landowners relinquish any legal right they may have to challenge the property line.

BOARD MEMBER SUAREZ: Thank you.

VICE-PRESIDENT RIE: Question.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: Ms. Caliso, going back to an earlier question on the previous permit. In this particular hearing, you reference, "subject to permitting". Can you explain what that means, what's the process, and does that permit need to come back to the Board and what's the timing on that?

STAFF ENGINEER CALISO: Yes. So, correct, the subject of permitting on the resolution is referring to the structure. So the plan is that we would process a encroachment permit application for the structure that is on State land. This would be in addition to the revocable license. This permit would come before the Board for approval at a future meeting, potentially at the next Board meeting.

And so this -- the permit would place





restrictions, typical restrictions, that we have used in the past for development, future expansion of the structures and other sorts.

VICE-PRESIDENT RIE: Now, are you going to prepare that permit on behalf of Mr. King or --

STAFF ENGINEER CALISO: We would be coordinating with Mr. King, yes. We would ask that he -- I mean, there would be certain endorsements that would need to get done. So we would be coordinating, following our application process to proceed with this one as well.

VICE-PRESIDENT RIE: Are you going to ask him to apply for this permit or are you going to assist with the preparation of the permit and any necessary attachments or analysis? Are you going to help him with that?

STAFF ENGINEER CALISO: We would ask that he submit an application, and we would try to assist him with the completion of the application. As far as preparation of exhibits, I think those exhibits are available. I'm not sure what additional support you're referring to.

VICE-PRESIDENT RIE: Well, description of the property, any survey data, legals and plats, is all of that going to be provided or are you going to put that burden on Mr. King?

STAFF ENGINEER CALISO: Well, I think this -- a lot of this information has already been prepared by Three

Rivers Levee Improvement Authority. A lot of the exhibits, the survey map has been prepared. This parcel is one of the 51 along that area, so it covers this particular parcel. So I would think that he can use some of the exhibits that are already available and that have been recorded to present and submit for his application.

VICE-PRESIDENT RIE: I think it would be appropriate for the staff to put this together and assist him with this effort.

STAFF ENGINEER CALISO: Okay. We can do that.

PRESIDENT CARTER: Any other questions?

Very good. Thank you, Ms. Caliso.

Does Three Rivers or 784 wish to address the Board at this time?

MR. BRUNNER: Paul Brunner, the Executive Director for Three Rivers. Very similar to last time -- last hearing, but to be on record, the -- we do support the plan that's laid out before you. The only difference, I believe, is the Encroachment Permit for the structure, between this one and the last hearing that we just went through.

On this particular case, Three Rivers is willing to prepare the documents for the real estate license and surveying, and just as last time, and bear that cost. The construction schedule is very similar, where we go through





the design, work with the person, Mr. King, and make sure that we address whatever issues that he has on his plot. And I want to defer any discussion about drainage and that to really the permit discussion that we have, which is Item 8E on the agenda.

I believe that's it that I'd like to address here.

Is there any questions for me?

PRESIDENT CARTER: Will you be able to work with staff, assist staff, and the applicant to complete the Encroachment Permit necessary to allow -- to submit a permit application for the structure?

MR. BRUNNER: Yes. Yeah, we have already provided all the -- many of the exhibits and the drawings and the survey information. So whatever the State staff needs or Mr. King needs, we'll be glad to provide.

During our discussions that we led up to this, one of the things I think from my recollection of discussions is that the State would help Mr. King do this and put it together.

PRESIDENT CARTER: Yes. Okay. Very good. Yeah, we don't want him to have to recreate a lot of things that are already -- have already been created, either by you or by our staff and help him through this process.

MR. BRUNNER: Oh, absolutely. We've already





prepared a lot of the documentation. So if we have it, he should definitely be able to use it, or staff.

PRESIDENT CARTER: Thank you.

VICE-PRESIDENT RIE: And, Mr. Brunner, this would -- all of this assistance would be at no cost to Mr. King, I'm assuming?

MR. BRUNNER: Yes. So far, all the various work that we've done has really not been a burden on any of the residents that are there. We have paid for our costs on surveying and real estate work so far through our local levee funds that we've got to do the project. When we go later on to do the construction of a fence and work on the grading in the area, that is State cost shared under our EIP agreement, 70/30 ratio. But direct charges to the residences would be -- we don't plan to do that or don't see the need to do that.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any questions for Mr. Brunner?

MR. BRUNNER: Thank you.

PRESIDENT CARTER: Thank you very much.

Is Mr. King here?

Are there any members of the public that wish to address the Board on this particular item?

MS. HOFMAN: I think I turned a card in.

PRESIDENT CARTER: I'm sorry, Mrs. Hofman, I





didn't get it. Please go ahead approach.

Oh, I'm sorry. You did turn in a card, and I overlooked the fact that it says 8A, B, C, and D.

MS. HOFMAN: I was trying to save our trees by only using one card.

PRESIDENT CARTER: And I appreciate that.

Please proceed.

MS. HOFMAN: I thank you for the opportunity. And, Board Member Mr. Hodgkins, I agree with you on the drainage issue. At the lunch break, I went home and I looked at the quad sheets, and I looked at some notes that was prepared a long time ago by another engineer. The original railroad tracks in this area was put on the center line. That center line, according to the deed that Dan Fua provided for me, varied in width from 40 feet center line with 40 on each side, some with 60 feet.

There's one that is 60 and 90. In the discussion today, I only hear of the one, and the State was required to fence that. And as my understanding from the older engineer, who has now passed, that the levee was built alongside of the railroad track. When the railroad track was built, they did it with horses. So consequently, the borrow was rather close. So most of the original railroad tracks in Yuba County, according to his statement, was that there was a borrow area or a depression, a ditch.

And when it came to a swale or a drainage, there was a trestle put in, so that allowed the water to flow in its natural pattern. It also kept the water away from the railroad track.

And in the discussion, I heard the engineer say that the levee -- I thought I heard him say -- the levee was put on one side of the railroad track not over the top, alongside it. So -- and I heard the engineer say that he basically surveyed from another railroad track, and done a lot of figuring and got the location.

And I would like to be able to verify with your staff, at their convenience, that the document that Dan Fua gave me is the one that we're discussing today.

And my concern is drainage. There is going to be, number one, the State built something different than the original property owner, was a railroad track. I know from the experience on my ranch, there is more drainage coming off of the levee than bare ground. I know that you're supposed to have 90 percent compaction on your levee. You're supposed to have a hard surface at the top, which means that there's no water coming off.

So there is additional drainage coming to the landowner's side with the construction of the levee. Now, we're going to construct another road alongside of it. TRLIA's responsibility when they were granted the permit





to reconstruct the levee system to provide with an easement right of way for a maintenance -- operation and maintenance.

The levee has been built, and suddenly we don't have enough room. This is something that the -- I'm speaking to the Board that buildings don't appear instantaneously, that this is something that should have been considered in the construction process. This is something that should be considered not at the end of the project, before it starts.

And I believe -- I don't own any land there. I do own land next to a levee. I believe that it is important that there be proper drainage, both for the levee system and the landowner.

If you're building a system, I heard TRLIA say, "We're not having anything to do with the landowner. He's got to drain the other way". The problem being is you shouldn't block your neighbor. And if the quad sheets show a swale drainage towards the river, Three Rivers should be required to provide a drainage system to get that water that they're blocking to get to the river.

I'm just a landowner. And as farmers, we're not allowed to block our neighbor. If we leveled a piece of land that's going to affect him, we have to provide him with drainage in Yuba County.





And I feel that the cost to draining this small amount of land cannot be astronomical. And since it was large budgets for TRLIA, this is something that should have been budgeted in in the beginning.

And if you have any questions, I'd be glad to answer them. And I thank you very much for the time.

PRESIDENT CARTER: Thank you.

Anyone else wish to address the Board on this item?

Okay. I am going to close the public testimony portion of the hearing.

Ladies and gentlemen, discussion.

LEGAL COUNSEL SMITH: Mr. President, since Mr. King is not here, I think it would be wise for staff to affirm that he was given proper notice of this hearing.

STAFF ENGINEER CALISO: Angeles Caliso, Board staff. You are correct, the -- Mr. King was present at the January 10th -- or I take that back. His sister was present at the community meeting on behalf of Mr. King who is currently ill. And she was present during the briefing and presented the alternatives, and she supported the alternative.

On January 19th, an overnight package was sent out to Mr. King at the address that we have on record. And that provided him with a copy of the staff report and





notification of the meeting.

PRESIDENT CARTER: All right. Any questions, discussion, thoughts, motions?

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: I know when we discussed the last permit, we discussed the drainage. And I know Mr. Hodgkins had a proposal on how to deal with the drainage. Can you refresh my memory, what did we decide to do?

SECRETARY HODGKINS: I think Mr. Carter suggested, and I agreed that the condition for dealing with the drainage is appropriately apart of TRLIA's permit to construct the fence. And I think that makes sense.

VICE-PRESIDENT RIE: And what was your proposal again?

SECRETARY HODGKINS: My proposal fundamentally would be that TRLIA fix -- eliminate trapped water to the maximum extent feasible without having to do any work on private property. So to the extent they can get it out of here within the State's right of way and the highways on either side, they would be asked to do it.

In those instances where there may be ground that's just too low, and the only alternative would be to fill not only our easement, but the property itself, I am not asking TRLIA to do that.

VICE-PRESIDENT RIE: Okay. But the plan is to address this with the actual permit to TRLIA's permit that they're requesting?

SECRETARY HODGKINS: Yeah, I would propose to do that.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Which we will do later on this afternoon as part of 8E.

Any other questions, discussion?

Ms. Suarez.

BOARD MEMBER SUAREZ: I have just a quick comment. And again, this to me is to help clarify. We have heard a couple times already mentioned that the property owners affected participated in the January meeting, and they supported an option. And I just want the property owners to understand that I understand from a perspective of some of them, that supporting an option is probably too strong of a word. That I can understand that some of them feel like they don't have a lot of options.

And we -- I think everybody here understands that. So I just wanted to kind of caution, for the record, that I think, at least this Board member and I believe others, understand that support is not the best of words. That maybe more in terms of realization that there are few options for all of us. And the ones -- the one





before us might be the one that keeps everybody out of a courtroom.

PRESIDENT CARTER: Okay. Any other comments, questions, motions, ladies and gentlemen?

SECRETARY HODGKINS: I'll move approval of staff's recommendation.

PRESIDENT CARTER: Okay. We have a motion to approve staff's recommendation.

Is there a second?

BOARD MEMBER SUAREZ: Second.

PRESIDENT CARTER: And we have a second.

Any further discussion?

VICE-PRESIDENT RIE: Well, the staff recommendation that was put up on the PowerPoint is different than what's in the resolution.

BOARD MEMBER SUAREZ: Correct.

PRESIDENT CARTER: Ms. Caliso, could you bring that up for everyone to see, please.

So the staff recommendation has been modified since our hearing, prior to lunch, to reflect the Board's desires deleting the sixth whereas, which refers to DWR legal reviewing the validity of the -- of granting licenses; authorize the removal, subject to -- of the private fence, subject to Permit number 18690; grant a revocable license to Mr. King for the use of the State





property; authorize a structure owned by Mr. King to remain on State property, subject to permitting; rescind the Notice of Violation; direct staff to file a Notice of Exemption; and authorize the Executive Officer to execute the licenses subject to the concurrence from the Board President.

VICE-PRESIDENT RIE: And I think we should add one more thing. I think the Board should direct staff to assist in the preparation of the permit application.

PRESIDENT CARTER: Okay. Does the motioner and the seconder, are they -- they agree with that?

SECRETARY HODGKINS: The change is to direct staff to assist in the preparation of the application for the permit?

VICE-PRESIDENT RIE: Yes.

SECRETARY HODGKINS: Is that what it was?

VICE-PRESIDENT RIE: Yes.

SECRETARY HODGKINS: I'm okay with that.

PRESIDENT CARTER: Seconder?

BOARD MEMBER SUAREZ: I'm okay with that too.

PRESIDENT CARTER: Okay. The motioner and seconder accept that amendment --

VICE-PRESIDENT RIE: Thank you.

PRESIDENT CARTER: -- addition.

Any other comments, suggestions?





Staff, do you have any comments or suggestions on the Board's proposed action?

STAFF ENGINEER CALISO: No, we don't.

SUPERVISING ENGINEER BUTLER: I do.

PRESIDENT CARTER: Mr. Butler.

SUPERVISING ENGINEER BUTLER: Thank you. I think it would benefit staff if you could clarify, since we are about to have Tier 1B come into play, do you -- are you requesting of them that they must bring any subsequent permits back to you publicly, or if it meets the delegation requirements of Tier 1B, and we come back at the point at which they're in place, do they -- can they go ahead and authorize those under delegated authority that you subsequently may provide? I think that clarity might be beneficial.

BOARD MEMBER SUAREZ: I can take a stab.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: I think it's premature for us to make that determination. Put together a permit, go through the criteria, and if the staff determines that based on the criteria it's one the Executive Officer can proceed with.

PRESIDENT CARTER: Although, we haven't delegated that authority to the Executive Officer yet, I don't believe. We haven't -- the Board hasn't taken formal

action to -- in terms of his delegation to do that.
EXECUTIVE OFFICER PUNIA: That's correct.
SUPERVISING ENGINEER BUTLER: I'm not asking that.
PRESIDENT CARTER: So it would have to come back before the Board until that delegation is granted.
SUPERVISING ENGINEER BUTLER: Correct.
PRESIDENT CARTER: It can come back as a consent item.
SUPERVISING ENGINEER BUTLER: I understand.
PRESIDENT CARTER: We don't have to hear it again, unless there are some other extenuating circumstances.
SUPERVISING ENGINEER BUTLER: Okay.
SECRETARY HODGKINS: But on the other hand, if we delegate the authority, and after you prepare the permit it's one that would fall under that authority, the Board has no objection to your pursuing it as a delegated permit.
PRESIDENT CARTER: Correct.
BOARD MEMBER SUAREZ: I'm sorry. I think that's what the regulations do is delegate under certain circumstances.
SUPERVISING ENGINEER BUTLER: That's correct.
BOARD MEMBER SUAREZ: So once they -- yes, once





the regulations become effective, you can -- and this permit, if it's after that point, you can go through the analysis. And if it doesn't fit the delegated authority, then it comes to us. But the regulations, that's what they do, they delegate.
PRESIDENT CARTER: Okay,
SUPERVISING ENGINEER BUTLER: Yes.
VICE-PRESIDENT RIE: But can we delegate the authority now to issue the permit?
SUPERVISING ENGINEER BUTLER: I'm sorry. I didn't mean to sidebar this that far.
BOARD MEMBER SUAREZ: I think it's premature.
SUPERVISING ENGINEER BUTLER: I simply was looking for clarity -- since the permits will be related to some fairly complex hearings, I was merely looking for clarification as to whether or not you wanted to, in advance, say, by the way, bring back any permits related to this publicly. That was my question.
BOARD MEMBER SUAREZ: It's probably premature. That's a great idea. It's a good thing to start remembering, since soon you'll have that authority, but we haven't even heard -- it's not even finalized yet.
SUPERVISING ENGINEER BUTLER: Correct. We expect it to be.
PRESIDENT CARTER: Any doubt, bring it back to





the Board.
SUPERVISING ENGINEER BUTLER: Okay. Thank you.
PRESIDENT CARTER: Okay. So does everybody understand the motion at this point?
The motion is to approve the staff's recommendation as you see on the screen, with the addition that the staff assist the property owner in the preparation and processing of the Encroachment Permit for the structure.
Any questions?
Does anybody from the public or the TRLIA or RD 784 have any comments on the Board's proposed action?
MR. BRUNNER: No.
PRESIDENT CARTER: TRLIA does not.
784 does not?
MR. FORDICE: Correct.
PRESIDENT CARTER: Okay. Members of the public?
Hearing none.
Mr. Punia, would you call the roll.
EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?
BOARD MEMBER DOLAN: Aye.
EXECUTIVE OFFICER PUNIA: Board Member John Brown?
BOARD MEMBER BROWN: Aye.





EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?
VICE-PRESIDENT RIE: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?
BOARD MEMBER VILLINES: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?
BOARD MEMBER SUAREZ: Aye.
EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?
SECRETARY HODGKINS: Aye.
EXECUTIVE OFFICER PUNIA: Board President Ben Carter?
PRESIDENT CARTER: Aye.
The motion carries unanimously.
Then this hearing is adjourned, and we will right away transition into Item 8C.
So I call the enforcement hearing for Carol Miller to order. This is an enforcement hearing as requested by the respondent concerning a Notice of Violation ordering the removal of a private fence located on State land adjacent to the Feather River East Levee in West Linda.
We are here to consider approval of Resolution number 12-05 to authorize the removal of a private fence

on State land, grant a license to Carol Miller for the use and maintenance of a portion of State land adjoining the Feather River East Levee, rescind the Notice of Violation.

And, Ms. Caliso, I think to the extent that we don't need to re-present what we have heard in the last two hearings, to the extent that those are -- those facts are identical, just so state for the record, and then proceed with the additional evidence.

(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER CALISO: Thank you, President Carter. So once again, this presentation -- or this item is for Resolution 12-05 as read by President Carter. And this would be for the removal of the fence, subject to Permit number -- once again, this proposed change reflects the two previous hearings, so it would be the first item.

Remove -- authorize the removal of the private fence subject to Permit number 18690; granting the license to Carol Miller for the use of State land -- the use and maintenance of State land that is adjoining the Feather River East Levee; rescinding the Notice of Violation, subject to compliance; and authorizing the Executive Officer to execute the revocable license subject to concurrence and review from the Board President.

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STAFF ENGINEER CALISO: Once again, this one parcel is located in the same vicinity. This is an aerial map of that property. The property boundary is shown in red. And the property is bounded by Riverside to the east and the project levee to the west. The unauthorized encroachments are identified there. And they essentially consist of minor vegetation and a parallel fence.

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STAFF ENGINEER CALISO: The purpose of this action is the same as that it was for the previous hearing for Agenda Item 8A and B, so I will skip through that, but I want to make sure that goes on the record.

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STAFF ENGINEER CALISO: The applicable codes and regulations that are pertinent to this action as well will also reflect the previous two hearings. And that would include the Water -- California Water Code Section 8534, allowing the Board to take enforcement actions, authorize the Board to enforce the maintenance and protection of the levees in a way that it best serves the benefits of the State.

Water Code Section 8708, where the Board has granted assurances to the Army Corps of Engineers.

8709, authorizing -- allow the Board to commence a suit if the respondent fails to comply with the unauth





-- comply with the Board's direction.

And 8710, stating that any encroachment must come before and for approval from the Board before it takes place. And this would be any encroachment on the adopted plan of flood control, including the Sacramento River, which includes the Feather and Yuba Rivers in this case.

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STAFF ENGINEER CALISO: Once again, the California Code of Regulations that are also applicable to this case would be the Section 6A, requiring approval from the Board for any encroachments on -- where there is an adopted plan of flood control.

Section 4(a)(4), which specifically defines what a flood control -- adopted plan of flood control is, and that being -- I'll read it for the record. It's defined as, "A means for a flood control or a reclamation strategy for a specific area that has been adopted by the Board, including the 10-feet of the levee toe, except where an O&M manual has been furnished or real property rights have been acquired by the Board".

Section 19, essentially not allowing any permanent -- any encroachments to be maintained on State-owned land, unless they're specifically approved by the Board via license, revocable lease, or another agreement between the Board and the private owner.





And Section 20, allowing the Executive Officer to initiate enforcement action.

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STAFF ENGINEER CALISO: The background is, for this case, essentially the same as the previous two hearings. So I will skip through that and just make mention that it will refer to Agenda Item 8A and B.

The only difference in this -- with this background would include the date of August 25, 2011, in which the respondent requested a hearing in response to the Notice of Violation that was mailed on August 5th. The remaining dates are -- match the previous hearings, so I'll skip through those.

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STAFF ENGINEER CALISO: The Section 5.2 of the staff report, which was also noted and read for the record at the earlier presentations are also the same. It remains the same for this hearing, so I will skip through that.

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STAFF ENGINEER CALISO: That brings us to the presented alternative -- the proposed alternative for this particular parcel. And that would be to locate the fence at the 20-foot -- at the edge of the 20-foot corridor. It would require the removal of an existing private fence on

State land. And the real estate solution for that would be to grant the revocable license to Ms. Carol Miller for the use and maintenance of the State land; restricting development on that State land, and that would include structures and other features; and the license could be revocable if the public purpose arises in the future; and it would be recorded against the title of the property.

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STAFF ENGINEER CALISO: This is a screen shot of what that property looks -- the property is. So Ms. Miller's property is identified in the sion color on the screen. The shaded -- light shaded brown corresponds to the State-owned parcel and the limits. The corridor is defined in the shaded green. And the existing fence -- it's hard to tell, but it's behind the green -- is identified there in the light green, so it's clearly within that 20-foot corridor.

The area that would be allowed to be used for Ms. Miller's property would be that one shaded in yellow. And the approximate limits at her property would be approximately 10.8 feet from the edge of the corridor to the State right of way.

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STAFF ENGINEER CALISO: Both TRLIA and the Reclamation District 784 support this alternative.





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STAFF ENGINEER CALISO: The CEQA findings remain the same as those noted in the previous two hearings. Those were also noted on staff report Section 6.0

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STAFF ENGINEER CALISO: Therefore, staff's recommendation would be -- is to -- for the Board to adopt Resolution number 12-05; to authorize the removal of a private fence on State land, subject to Permit number 18690; granting a revocable license to Carol Miller for the use and maintenance of a portion of State land that is adjoining the Feather River East Levee; rescinding the Notice of Violation, that would be number 2011-272, that is subject to voluntary compliance with this resolution; directing staff to file a Notice of Exemption with the State Clearinghouse; and authorizing the Executive Officer to execute a revocable license that is subject to the review and concurrence from Board President.

And that concludes my presentation.

PRESIDENT CARTER: Thank you. Any questions for Ms. Caliso?

Thank you.

I'd like to invite TRLIA or 784 to come up and address the Board. Do you have any traditional evidence you'd like to present?





MR. BRUNNER: Paul Brunner, the Executive Director for Three Rivers. Evidence is the same, just for the record, as that. We do support the plan. There is no cost to the residents for this action. And we will pay for the real estate documents, and go forward, as I stated before, and we'll continue to work with them. And if there's any questions I'll be glad to respond.

PRESIDENT CARTER: Any questions for Mr. Brunner?

Thank you very much.

MR. FORDICE: President Carter, members of the Board, Steve Fordice, General Manager, RD 784. We also concur and support this plan.

PRESIDENT CARTER: Thank you very much.

Any questions for Mr. Fordice?

Thank you very much.

Okay. I'd like to invite Ms. Miller, if she would like to come up and present evidence.

MS. MILLER: Good afternoon, Board, and thank you for coming to Marysville. I have an indenture here between Decker-Jewett and Bank Company to the Northern Electric, which goes from the north -- the southeast corner of Lot 6 to the Bear River. It shows the exact boundary lines. It shows that it was surveyed from the east bank of the Feather River.

The only time they use the west side to survey





was to use the county road and that was it, which is what they're using Island Road as now. And this indenture is very explicit and it does specify fences going north and south and east and west. So if you'd like to have this, I'll be glad to give it to you. I have a copy on my computer.

And then also at the last meeting, we were supposed to have defined the toe of the levee. Now, the toe of the levee has never been defined at all, so what I did I pulled up the Sacramento River glossary, and the definition of the toe of the levee is the outer edge of the levee base where it meets the levee grade. So that's another thing to take into consideration when you're -- when this process is -- when we're going through this process.

And then also on the easement, it states, "A Notice of Intent to preserve an interest in real property shall be in writing and signed and verified by or on behalf of the claimant. This notice to be filed in the county recorder's office of the county the easement is located".

Now, that has to happen at the time or within 20 years of the abandonment.

I'm getting a little bit nervous, excuse me.

PRESIDENT CARTER: Please, take your time.

MS. MILLER: Okay. Now, if it doesn't happen within 20 years, and if it's not filed in the county that the easement is located, then easement is deemed terminated. The property reverts to the property owners. The easement has been located within the fence since 1947 that I know of. And we're also a mile and a half from the city limit sign, so we're not in a municipality, so it doesn't go back to a municipality either. It goes back to the landowners.

So that's what I have. And the part of the Oliver Tract that was abandoned does include our part of the tract, and that was finalized April 17th, 1956.

So 1976, if the county recorder didn't receive it, they would have removed the easement, because it didn't have any intent to preserve it. And that's what I have.

I have more, but I don't want to bring it up right now.

PRESIDENT CARTER: All right.

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Yes.

VICE-PRESIDENT RIE: Can we look at the document? Would it be okay for us to --

PRESIDENT CARTER: Yes.

VICE-PRESIDENT RIE: -- pass it around.





PRESIDENT CARTER: I think Ms. Miller has agreed to supply it.

MS. MILLER: Yeah -- oh, my voice.

PRESIDENT CARTER: No, your document you called it the indenture. Your document that has the survey coming to the east bank of the Feather River.

MS. MILLER: Yes. This was in 1907 with the bank.

PRESIDENT CARTER: Okay.

MS. MILLER: With Northern Electric and the bank.

PRESIDENT CARTER: And you can supply us -- or can you give that to us?

MS. MILLER: Yes.

PRESIDENT CARTER: Okay.

BOARD MEMBER BROWN: Mr. Chairman, has TRLIA had a chance to see those documents where they're surveying them.

PRESIDENT CARTER: We'll have to ask.

So questions?

BOARD MEMBER SUAREZ: Thank you. Ms. Miller, were you at the January 10th meeting that TRLIA organized?

MS. MILLER: No.

BOARD MEMBER SUAREZ: Did you know about the January -- do I have the date right, January 10th?

PRESIDENT CARTER: Yes.





MS. MILLER: Well, I only had five days to get back up here, and I couldn't get a flight, and I was really sick at that time.

BOARD MEMBER SUAREZ: So neither you or a representative --

MS. MILLER: No, neither one of us were there.

BOARD MEMBER SUAREZ: Were you aware of the options that were presented by TRLIA?

MS. MILLER: No, I was not. They talked about option one, option two and I don't know which --

BOARD MEMBER SUAREZ: You haven't been briefed on that?

MS. MILLER: No.

PRESIDENT CARTER: Mr. Brunner, does that sound consistent with your recollection?

PRESIDENT CARTER: I think let --

MR. BRUNNER: Yes. I don't remember Ms. Miller being at that meeting.

PRESIDENT CARTER: Let's -- okay.

BOARD MEMBER SUAREZ: Thank you.

PRESIDENT CARTER: Other questions for Ms. Miller?

BOARD MEMBER DOLAN: Yes. I cannot remember what the date of that document that you call an indenture is?

MS. MILLER: 1907.





BOARD MEMBER DOLAN: 1907.

MS. MILLER: That's when the indenture was made between the bank and Northern Electric.

BOARD MEMBER DOLAN: We have one from 1958 as Attachment H, but --

(Laughter.)

MS. MILLER: I don't mind my age.

BOARD MEMBER DOLAN: I don't know if it supersedes it or not.

PRESIDENT CARTER: Are there questions for Ms. Miller?

Mr. Hodgkins.

SECRETARY HODGKINS: Ms. Miller, I'm trying to be sure --

PRESIDENT CARTER: Your mic.

SECRETARY HODGKINS: I'm trying to be sure I understand what you're trying to tell us. I think, first of all, you're trying to tell us that you don't agree that we have properly located the boundary of the State's land?

MS. MILLER: Correct.

SECRETARY HODGKINS: And then in addition to that, are you trying to tell us that even if we did, it's not the State's land, because when the railroad right of way was abandoned, it should have reverted to --

MS. MILLER: After 20 years, if the intent is not

filed with the county -- intent to -- intent to preserve an interest in the easement.

SECRETARY HODGKINS: Okay, but you understand that this was not an easement to begin with.

MS. MILLER: It's right of way.

SECRETARY HODGKINS: No, the railroad purchased the land in fee in 1907.

MS. MILLER: Right.

SECRETARY HODGKINS: So they owned it.

MS. MILLER: Correct.

SECRETARY HODGKINS: That's different than an easement or a right of way, and I want to be sure you understand that.

MS. MILLER: Okay. No, I do understand, but they were using both the easement and the purchase. Now, the purchase of the property is there, and it shows the exact survey between the bank and northern electric.

SECRETARY HODGKINS: Okay. Well, let me ask a question --

MS. MILLER: And then most of the land was on the river side not on the land side.

SECRETARY HODGKINS: Let me ask a question of the surveyor.

PRESIDENT CARTER: We're going to get to the surveyor issue, I think, and the difference between what





he has come up with and this in a moment. But let's try and wrap up -- or let's continue with Ms. Miller.

Mr. Villines.

BOARD MEMBER VILLINES: Ms. Miller, just a question. Have -- because maybe I misunderstood what you just said, do you -- has anybody briefed you since today being in here where you're just listening to what the options are, on, you know, sort of option one and two?

MS. MILLER: No, nobody has briefed me. I didn't know there was option one or two. I just saw what was on my packet.

BOARD MEMBER VILLINES: Okay. So I get -- just my own process, it would be tough to take a vote unless we had an idea of what you were thinking on those two options, and what others have agreed to, because it seems like we've hit a pretty amicable solution many times. And I'm wondering if that might not be to you as well. I understand that you have an issue about the property line.

But I wonder -- I don't really know how we get around that, but I sure wish we had a chance for you to have a better understanding of what the proposals are, because it may be that there's a chance for a win-win here, because -- I think, right?

Right now, what you're saying is it's a dispute over the property line, but maybe there's a way to work it





out.

MS. MILLER: No, but I haven't had an option to see what the options were. I mean, nobody's told me what the options were on -- and I saw revocable in there. If it said irrevocable, I wouldn't mind.

PRESIDENT CARTER: Okay. Any other questions for Ms. Miller?

Thank you very much.

MS. MILLER: Okay. Thank you for your time.

PRESIDENT CARTER: Thank you. All right. So now we can move on. There were several questions.

Mr. Brunner, you're queued. We're going to need to get your surveyor queued as well, because there are questions there.

Go ahead.

MR. BRUNNER: Sure. I would like to, as Kevin comes forward to talk surveying items, the designs about options, we did notice everyone to come to the community meeting. Not everyone made it to the community meeting. It's difficult for 51 areas to get here.

The two options to know is -- I mean, the best option was the one that we presented here to come forward with the people get the use of the property. The other option that was presented was to put the fence on the State property line, where no one got benefit of any of





the property from the State, and we just kinked around the structures.

Those were the two options. So the best option I think was presented for the residents. So I think it would have been -- if this option didn't work out, I don't think the other one would have been a win-win.

PRESIDENT CARTER: So this question of notice, we just need to resolve. Staff, everyone was properly noticed on this particular hearing? Everyone got the staff reports timely? There were staff recommendations timely?

MR. BRUNNER: Yeah. Well, this particular hearing was your staff's responsibility. I'm talking about the January 10th meeting, the community meeting which was a TRLIA meeting that we held to try to get people to come and explain what we were doing in moving forward.

So your staff did attend that meeting, along with a DWR representative, but it was our outreach effort on January 10th, and we did notice everyone.

PRESIDENT CARTER: Okay. Thank you.

Ms. Caliso, could you go on the record.

STAFF ENGINEER CALISO: Absolutely. Angeles Caliso, Board staff. The December 16th meeting -- letter that went out to the residents that notified them of the

Board decision from the December 2nd meeting, it also notified them the Board was to continue and have the -- was going to conduct the meeting -- the conduct -- the continuation of the meeting would be held here in Marysville and that an agenda would be published at that point in time.

So there's a copy of this letter that was mailed out to all the residents -- a copy of the letter was mailed out to all the residents notifying them of the Board's decision, and that was December 16th. Once the agenda was finalized, a copy of the agenda was mailed out and distributed as well to the residents.

PRESIDENT CARTER: So this letter stated that the --

STAFF ENGINEER CALISO: Let me bring it up on the screen.

PRESIDENT CARTER: Okay.

STAFF ENGINEER CALISO: So this letter on the screen here, it's dated December 16 from our office. And it's essentially a generic letter that went out to everyone of the 51 landowners, which at the bottom of the first paragraph, it identifies -- towards the bottom it says, "The meeting..." -- sorry. "The Board has directed staff to present this plan at the January 26th, 2011 Central Valley Flood Protection Board meeting. The





meeting will be held in Marysville at the following address:", and then it provides the Yuba County Government Center with the address. "Additional details of this meeting will be provided when the agenda is finalized".

BOARD MEMBER SUAREZ: Specific question. The staff report specifically outlines the proposal. When did Ms. Miller get the staff report?

STAFF ENGINEER CALISO: The staff report was mailed out on December 19th via an overnight package.

BOARD MEMBER SUAREZ: So that this staff report that I'm looking at she received on December 19th.

STAFF ENGINEER CALISO: That's correct, yes.

BOARD MEMBER SUAREZ: And again to --

PRESIDENT CARTER: Overnight package, so it probably was received January 20th.

BOARD MEMBER SUAREZ: I'm sorry. So say that again. It wasn't December.

STAFF ENGINEER CALISO: It was January 19th when a copy of the January staff report that is presented to you today was mailed out via overnight to Ms. Miller.

BOARD MEMBER SUAREZ: So that was a week go roughly?

STAFF ENGINEER CALISO: Um-hmm.

BOARD MEMBER SUAREZ: And it included Item 5.3, proposed alternative.





STAFF ENGINEER CALISO: That's correct. The staff report that she received is the staff report that was posted on our website, which also is the staff report that was part of your packages.

BOARD MEMBER SUAREZ: Okay. Thank you.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: Just to follow up on that, that's only six days. Not to be technical or anything, but I believe the requirement is seven.

STAFF ENGINEER CALISO: You're correct. We were running on a crunched timeline. The January 10th meeting was -- all the landowners were notified at the community meeting. And so the plan was that at the community meeting with the landowners present, we would have -- if we had a concurrence on the two alternatives presented, we could move forward. But you are correct, we weren't able to meet the seven-day requirement because of the holiday.

SUPERVISING ENGINEER TARAS: No, there's seven days between the 19 and the 26th.

BOARD MEMBER VILLINES: I think when it's received.

VICE-PRESIDENT RIE: Yes.

PRESIDENT CARTER: Okay. Thank you. All right. So we -- I think we've established notice, at this point, and timing. Now, the question of the surveys and





ownership. So what I'd like to do -- Ms. Miller, we'll give you an opportunity in a moment.

MS. MILLER: Okay. Because I was going to clarify the timeline. I live in San Pedro.

PRESIDENT CARTER: We'll give you an opportunity in a moment.

Okay. So Mr. Brunner, I guess the question is -- and Ms. Miller presented evidence of this 1907 indenture between the bank and Northern Electric showing the survey from the east bank of the Feather River. Can you give us an explanation as to if and how that was incorporated in the -- your survey, and how you established the property lines?

MR. BRUNNER: Sure. We'll work to address that. We looked at many documents. Could we actually see the document and -- as Kevin looks at it and responds to the question as to what -- which one we're talking about specifically?

PRESIDENT CARTER: Who has the copy?

MR. BRUNNER: Well, Kevin, why don't you look at it first.

MR. HEENEY: I do believe this is one that we've looked at in the past. The names ring a bell. Some of the older -- calls to some old survey maps are in the same area. Specifically, how it affects this, I'd have to

review it a little deeper. I've reviewed probably a stack an inch or two deep of similar documents. I don't know though that it's really relevant.

The subdivision, as I tried to explain earlier, that was done in 1921 excluded all the levees, highways, and railroads that are shown thereon. These lots that we're talking about today were further subdivided from a chunk of that subdivision.

If their contention is that we have not located this property line properly, then the measurements of those prior surveyors and engineers and the other ones that I've cited would also all have to be wrong.

As a surveyor, I have to look for the best evidence available. The center line of the railroad is no longer there, so the best evidence is what others before me have done. That's what my survey reflects. That's why I'm not real sure how pertinent this might be.

My recollection, this particular grantor was for most properties either north or south of here. But again, I'd have to review the details. There's several descriptions in here, but I'm not sure it's still relevant.

PRESIDENT CARTER: Questions?

Thank you very much.

BOARD MEMBER BROWN: I have no questions, Mr.





Chairman, but it would seem to me like it is possibly relevant. And to that degree, we need to determine if it is or isn't.

PRESIDENT CARTER: Okay. Any other questions?

Thank you, Mr. Brunner.

I'd like to -- Ms. Miller, if you would want to come up and rebut or add to.

MS. MILLER: I wanted to come up and say the timeline now. I never received anything for the resolutions, but I did receive the packet for the -- for this meeting. And I received that this Tuesday, because I have been going back and forth from San Pedro to here. And then I had -- I was sick for two weeks, and I didn't receive anything, so I had my mail forwarded to here. And then when I get back home, I'll take care of that part of it. But so far, I've been receiving everything, except this one packet on time.

PRESIDENT CARTER: And the one packet that you did not receive on time was --

MS. MILLER: Was this last one of this meeting, but I didn't receive anything from the meeting of January 10th.

PRESIDENT CARTER: You did not receive?

MS. MILLER: I did not.

PRESIDENT CARTER: So you did not receive





anything for the meeting on January 10th and you did not --

MS. MILLER: From the meeting.

PRESIDENT CARTER: Oh, from the meeting.

MS. MILLER: Yeah, right. I received the letter that we were going to have the meeting January 10th, but that was the time frame where I was sick, and I couldn't make it up here, so -- but I did receive this packet, but I received it on Tuesday, because it was forwarded to me.

PRESIDENT CARTER: All right. Very good.

MS. MILLER: That's what I wanted to say.

PRESIDENT CARTER: Thank you for clarifying that.

Any other questions?

Ms. Smith pointed out to me, reading from Title 23, Section 21, regarding hearings, 21(d), "Written notice of the hearing shall be mailed to the respondent and each other party at least 10 days prior to the date of the hearing. Respondents and other parties shall be mailed a copy of any staff report or recommendations on enforcement proceedings at least 10 days prior to the hearing". That's what our regulations state. That's Title 23, Section 21, Items (d) and (e). I just want that to go on the record and for everybody to be aware of that.

So ladies and gentlemen, any further discussion?

VICE-PRESIDENT RIE: I move to continue this





hearing.

PRESIDENT CARTER: Okay. We have a motion to continue the hearing.

BOARD MEMBER DOLAN: I'll second that.

PRESIDENT CARTER: And there's a second.

Any discussion?

BOARD MEMBER SUAREZ: Sure. What's the rationale?

PRESIDENT CARTER: Ms. Rie, do you want to tell us why you want to continue the hearing?

VICE-PRESIDENT RIE: Because Mrs. Miller has not had a time -- has not had an opportunity to review her options, and she did not receive the staff reports before 10 days.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: My question then becomes is this a defect of all the actions that we have before us? Did all the staff reports go out late?

PRESIDENT CARTER: That's a question for staff.

STAFF ENGINEER CALISO: All staff reports were mailed out on -- and distributed on January 19th.

BOARD MEMBER SUAREZ: Ms. Caliso, did they go out within the 10 days or not?

STAFF ENGINEER CALISO: They met the seven days.

SUPERVISING ENGINEER TARAS: President Carter,

this is Curt Taras, Chief of Enforcement, which Section are you referring to in Title 23, is it 21(d)?

PRESIDENT CARTER: Section 21 (d) and (e).

SUPERVISING ENGINEER TARAS: Okay. Because the evidence shows that written notice of the hearing was mailed in December, as well as the previous staff report that was also mailed in December that contained a lot --

BOARD MEMBER SUAREZ: The staff report that this Board is considering today, when was that mailed?

SUPERVISING ENGINEER TARAS: January 19th.

PRESIDENT CARTER: January 19th.

BOARD MEMBER SUAREZ: And that's the case for all the actions before us?

SUPERVISING ENGINEER TARAS: The Board's Executive Committee approved the agenda, I believe, on the 18th, and the reports were mailed on the 19th.

PRESIDENT CARTER: Okay. So the answer to the question is January 19th. And if the question is did it meet the 10-day notice period for the regulations? The answer would be no, is that correct?

STAFF ENGINEER CALISO: If I may just add one thing to that. I did have Email communication with Ms. Miller. I don't have printed PDFs of the emails that I did send to her, but I know that they were before the -- before the January 19th deadline, in which I sent --





distributed to her and Ms. LaGrand and Mr. Monty Hecker were all included in that email notifying them of the Board -- the meeting and the Board's decision and the distribution of the staff reports.

So I wanted to make sure that, yes, you are correct. We didn't meet the 10-day deadline for the staff reports, but we did meet the seven days for distribution for all 51. So all 51 staff reports were mailed out on the 19th.

PRESIDENT CARTER: I don't know where you're getting the seven days. Where does that come up in the regulations under Hearings?

VICE-PRESIDENT RIE: That's probably my fault, because I quoted seven days 20 minutes ago incorrectly.

PRESIDENT CARTER: 21(e) says, "Respondents and other partners shall be mailed a copy of any staff report or recommendation on enforcement proceedings at least 10 days prior to the hearing". I don't see a reference to seven days.

LEGAL COUNSEL SMITH: The seven day requirement is in Section 13, which relates to permits.

PRESIDENT CARTER: Permits. Okay.

SUPERVISING ENGINEER TARAS: President Carter, staff would like to propose, because the respondent has gone to the expense to fly up from southern California,





that perhaps they'd like to have the hearing conclude today with the full evidence and vote on it. It's their option, but they may have an input into that to avoid having to return for a future hearing.

PRESIDENT CARTER: Well, let's hear from the respondent in that regard.

Ms. Miller.

MS. MILLER: Yes.

PRESIDENT CARTER: There's a motion before the Board right now to continue the hearing because the notice requirements in our regulations were not met properly. That means that we did not supply you sufficient notice for you to be able -- a 10-day notice for you to be able to review the documents, the staff recommendations and whatnot that we are considering in this hearing.

And the Board is considering continuing the hearing, which means that it would -- we would continue the hearing and then come back in a month's time and rehear the same evidence we've heard, along with any additional evidence that comes to light between now and then. And so that is one option.

The other option is, if you would prefer that we conclude the hearing today, at your -- you can tell us that and we will continue.

MS. MILLER: I would prefer to continue.





PRESIDENT CARTER: You'd prefer to continue the hearing today or wait and revisit it in a month?

MS. MILLER: Wait in another month, yes.

PRESIDENT CARTER: Okay.

MS. MILLER: I would rather do -- I'd rather wait for another month, so I can see what my options are.

PRESIDENT CARTER: Okay. That's fine. That will give the surveyor a chance to review the documents that Ms. Miller provided. And we would appreciate any evidence that you supply today or any additional evidence you'd like to supply, please supply that to the staff, so that all parties are aware of it, ahead of the hearing.

MS. MILLER: Okay. I can do -- can I do that over the Internet, like --

PRESIDENT CARTER: Absolutely. Absolutely.

MS. MILLER: Okay. That will be fine.

PRESIDENT CARTER: Okay. So ladies and gentlemen, we have a motion and a second before us. The motion is to continue this hearing.

Any discussion?

BOARD MEMBER SUAREZ: I'd like a quick discussion.

PRESIDENT CARTER: Okay.

BOARD MEMBER SUAREZ: It seems to me that, as a matter of fairness, the way we treat Ms. Miller needs to

be the way we treat everybody else. So I'd like to have some discussion then what do we do with the action we did earlier today, and the action -- the remainder of the actions before us?

PRESIDENT CARTER: So our options are to vacate the decision that we made earlier, with respect to Items 8A and 8B, and then rehear those at the same time we rehear the Items 8C and 8D at a future date, should the Board choose to continue, or we can let those stand. Are there any other options that you're aware of?

BOARD MEMBER VILLINES: Mr. President, is it an option to -- the ones that were done today to simply move to a consent agenda item for next month? Could that be done? Not in the case of Mrs. Miller who wants to have a hearing. But for the other actions that we took, we would move it and just put it onto the Consent Agenda, so that we're not actually having the hearings, because we've heard them. I mean -- and then, of course, during that month if the decisions we've made, if somebody opposes them, they can be pulled.

So at least we're not setting up a series of hearings, that I think that maybe nobody wants to have, because I do believe we actually got to a win-win on this through the process, but --

PRESIDENT CARTER: That's a legal question. It





depends on -- well, Ms. Smith, could you weigh in on that, please.

LEGAL COUNSEL SMITH: I question the idea of putting an enforcement hearing on consent. I don't think that would be wise. However, at least the first decision the Board made, the notice issue was not raised and therefore it was waived. So that decision can stand, unless the Board wants to reopen it. I have a concern about the second item, because Mr. King was not present.

BOARD MEMBER VILLINES: Correct, but even on the first one, did they waive it?

BOARD MEMBER SUAREZ: She didn't --

BOARD MEMBER VILLINES: I mean, we don't know that they waived it.

BOARD MEMBER SUAREZ: I raised the issue here.

BOARD MEMBER VILLINES: Yeah.

BOARD MEMBER SUAREZ: Not Ms. Miller.

BOARD MEMBER VILLINES: So they could bring it back up and say well, we weren't informed either. That's -- it wasn't waived. Nobody waived it, and nobody received the packet in the timeline that you stipulated.

PRESIDENT CARTER: Our counsel is just saying that potentially we could let the first one stand. That's at the discretion of the Board.

Any other comments, questions?





VICE-PRESIDENT RIE: President Carter, I would recommend that we let the two items 8A and 8B stand, but leave open the possibility that someone could come back and ask for reconsideration. And if, at that time, someone did ask for reconsideration, we could rehear either one of those items next month.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: But I don't think that knowing that we don't have proper notice, I don't see how we can proceed with the remainder of the items.

PRESIDENT CARTER: Okay. Other comments?

BOARD MEMBER VILLINES: Just to clarify, because I like the solution you came up with, I just want to make sure I understand it, so I can vote appropriately. What you're saying is, is that we would notice the folks that we've already voted on saying -- I mean, somehow we have to inform, so if they do want to have it pulled, they could, not that they will. I think they'll agree, but that way at least we've noticed them. And then we're not -- because what I don't want to do personally is vote to just say yes to what we've done today and then not this one. I do want to make sure that we, like you, articulate it are going to say well those will stand. The ones that we can say stand, but we need to notify them that somehow that the packet didn't come in time and is that a problem





for them.

BOARD MEMBER DOLAN: Mr. Chairman.

PRESIDENT CARTER: Ms. Dolan.

BOARD MEMBER DOLAN: I think there's another distinction with this one, if I might. I'm kind of reluctant at my first meeting to be accused of having done something unfair in the last half hour.

Mrs. Miller has brought forward a document that appears to be new to us and to the surveyor. It also appears to be remarkably similar to documents that are attached to ours, except that it doesn't have exactly the same names. It has the same year, same descriptions, I think. And the surveyor said "looks like it", "likely", "might be". Those are a little more vague than what he said before of some more -- some more certainty, so she brought them forward.

The other distinction is for a variety of reasons, Mrs. Miller has not been involved. And everyone else said I was at this meeting and I did this, I went there, I got talked to. Maybe, it's her own personal circumstance. I think -- from my perspective, I think all of the things that I've seen, read, the transcriptions, the efforts, the staff reports, the analysis show we probably are going to make the similar decision. And I'll tell you that, unless you come up with something that's

like a Ah-ha.
But just in the abundance of fairness, because she has not been involved as the others are, let's just have a chance for the surveyor to read this one new indenture that probably got resubdivided and changed with future ones, but just give him that chance. And I think that's a distinction of the previous two hearings.
PRESIDENT CARTER: So --
BOARD MEMBER DOLAN: So I agree with Ms. Rie, let those stand and continue this one.
PRESIDENT CARTER: Let those stand and continue this one.
VICE-PRESIDENT RIE: Okay. Let me withdraw that motion and make a new motion. I move that we continue Mrs. Miller's hearing, and in consideration of hearing 8A and 8B, we let those stand, but as Mr. Villines recommended, we should provide notice to those 48 respondents and Mr. King that we have made a decision. However, if they would like us to reconsider those decisions, we could certainly do that. And I think that was it.
BOARD MEMBER DOLAN: Rehear.
VICE-PRESIDENT RIE: Pardon me?
BOARD MEMBER DOLAN: I would second that, if you'd say rehear rather than reconsider.





VICE-PRESIDENT RIE: Rehear.
PRESIDENT CARTER: The enforcement process calls for a -- actually, it's a reconsideration process, as it's stated in the regs, and so I --
VICE-PRESIDENT RIE: Reconsider.
PRESIDENT CARTER: -- think reconsideration is the -- or reconsider is the appropriate word.
BOARD MEMBER DOLAN: All right.
VICE-PRESIDENT RIE: Reconsider.
BOARD MEMBER DOLAN: Okay. Thank you.
PRESIDENT CARTER: All right. So Ms. Rie has withdrawn her original motion and put forward another motion. Is there a second for that one?
BOARD MEMBER DOLAN: Yes.
PRESIDENT CARTER: Ms. Dolan seconds. Okay. Discussion.
BOARD MEMBER SUAREZ: Yeah, and then what do we do with LaGrand, same defect, same problem? Are we continuing that one, is that part of your motion also, Ms. Rie.
PRESIDENT CARTER: That would be a postponement, not a continuation, I guess.
BOARD MEMBER SUAREZ: So we'll deal with it that way.
VICE-PRESIDENT RIE: And if I could add that we





postpone --
PRESIDENT CARTER: Actually, it's continued from December 2nd, so it would be continued again, you're right. I'm sorry.
VICE-PRESIDENT RIE: That we further continue Item 8C, Carol Miller, as well.
BOARD MEMBER SUAREZ: And LaGrand.
PRESIDENT CARTER: Carol Miller and Susan LaGrand.
VICE-PRESIDENT RIE: I'm sorry. Continue the enforcement hearing for Susan LaGrand as well.
PRESIDENT CARTER: Okay. So that's the motion. Is there -- and do you agree with that modification, Ms. Dolan?
BOARD MEMBER DOLAN: Yes.
PRESIDENT CARTER: Okay. Just as a point of reference, Ms. LaGrand, do you -- does postponing the hearing or continuing your hearing present a hardship for you, postponing it for another month?
MS. LaGRAND: It shouldn't no.
PRESIDENT CARTER: Just for the record, Ms. LaGrand said it shouldn't -- "it shouldn't, no".
MS. LaGRAND: It should not.
PRESIDENT CARTER: Okay. Very good. Any other question, discussion?





Mr. Hodgkins.
SECRETARY HODGKINS: Item 8A, while it's not listed as an enforcement item, it is in Resolution 41 Notices of Violation, is it okay?
LEGAL COUNSEL SMITH: I believe it's defensible, because the issue was not raised during the hearing, and that's a requirement. You need to exhaust your arguments before the Board, and that was not done.
SECRETARY HODGKINS: Okay.
PRESIDENT CARTER: Okay. Any other questions, discussion from the Board?
Sir, would you like to address the Board?
MR. HECKER: Sure.
PRESIDENT CARTER: Please approach.
MR. HECKER: And I have another person here who couldn't make it this morning because of his age and that and his health, Mr. Arnold Craft.
PRESIDENT CARTER: Can you identify?
MR. HECKER: My name is Monty Hecker, and I was here this morning. And, no, it didn't come up. You know why it didn't come up? Because we didn't know it was an issue. I think it all should be set for another month, only because it's the right thing to do. And if this paperwork turns out, we can address it at the same time. That's all I have.

PRESIDENT CARTER: Thank you. Is there anyone else from the public that wishes to address the Board?

Okay. Ladies and gentlemen, we have a motion before us. The motion is to continue the enforcement hearing for Carol Miller and Susan LaGrand, and for clarification let the Board's decision on Item 8A, 48 Notices of Violation, and 8B, the resolution enforcement for Mr. Michael King to stand with staff notifying them that they have an opportunity to -- for reconsideration of the Board's decision.

Did I miss anything?

VICE-PRESIDENT RIE: No. But, Ms. Smith, since we now know that we have a request for a reconsideration, would you recommend that we change our motion?

PRESIDENT CARTER: Well -- okay.

LEGAL COUNSEL SMITH: You know, actually there is something that I'm having a bit of a second thought on this, in that I don't know if a court would find that a waiver is proper when notice wasn't properly given in the first place.

BOARD MEMBER VILLINES: Right.

PRESIDENT CARTER: So, Ms. Rie, would you like to amend your motion?

VICE-PRESIDENT RIE: Yes. I'm going to withdraw the last motion, and I move to vacate Enforcement Hearing





8A, the 48 Notices of Violation, 8B, the Enforcement Order for Michael King, postpone and continue the enforcement hearing for Carol Miller, postpone and continue the enforcement hearing for Susan LaGrand.

PRESIDENT CARTER: Okay. Is there a second for that motion?

BOARD MEMBER VILLINES: Second.

PRESIDENT CARTER: We have a second from Mr. Villines.

All right, any other discussion?

BOARD MEMBER SUAREZ: Mr. President, if we could clarify that all the respondents understand that our next meeting will be in Sacramento, so we will not -- it would be likely that we'd be here in Marysville for those hearings, and the issue of hardship that -- you understand the next time we meet we'll be in Sacramento, not here.

PRESIDENT CARTER: That's not fixed in stone, but that's a distinct and very real possibility.

Any other questions, comments from the Board?

Staff, do you have any comments?

Staff does not.

Mr. Punia.

EXECUTIVE OFFICER PUNIA: I just want to apologize that I think we -- due to this not properly noticing, we wasted a lot of public and the Board's time,





so we'll make sure it doesn't happen again.

PRESIDENT CARTER: Okay. Any comments from the public on the Board's proposed decision?

MS. LaGRAND: It's not on your decision. It's on something else.

PRESIDENT CARTER: Is it -- does it relate to this?

MS. LaGRAND: It relates to this.

PRESIDENT CARTER: Thank you.

MS. LaGRAND: Hi. I'm Susan LaGrand. I'd like to thank you for coming here, first off. What my comment was about when you first approved the 48, the proposal, this gentleman right here held a paper up, turned around to the man in the herringbone jacket, fist pumped, mouthed Woohoo, then a few seconds put the paper up again and mouthed Woohoo again.

Now, I might have done that if the 49ers had won Sunday, but I found that behavior immature, unprofessional, and just rude. And I think he demands -- or I think we should all get an apology from him.

Thank you.

SUPERVISING ENGINEER TARAS: Ms. LaGrand, I -- if there was any -- I -- if there was any other witnesses to a fist pump, I apologize for any misconstruing that I looked back at the Section Chief and -- I did not, but I





did look back at this other Section Chief.

MS. LaGRAND: Yes, you did, sir.

SUPERVISING ENGINEER TARAS: Okay. I apologize for anything that might have been done or said.

Thank you.

PRESIDENT CARTER: Okay. We have a motion and a second before us.

Mr. Punia, would you call the roll.

EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?

BOARD MEMBER VILLINES: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Butch Hodgkins?

SECRETARY HODGKINS: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?

BOARD MEMBER DOLAN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member John Brown?

BOARD MEMBER BROWN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

Board Member Teri Rie?

VICE-PRESIDENT RIE: Aye.
EXECUTIVE OFFICER PUNIA: Board President Ben Carter?
PRESIDENT CARTER: Aye.
Motion carries unanimously. I think that this should stand as a reminder that the Board wants to follow its regulations, and it is appropriate to follow its regulations accordingly, and we take those things very seriously. So that's a message for both our staff as well as the public. And, Mr. Punia, we accept your apology, but we expect better from the staff in the future.
All right. So Mrs. Hofman, you said that you wanted to address Item 8E, we're going to be doing that right now. So I will give you that opportunity.
Let's take a 10-minute recess, and we will then reconvene on Item 8E, the Permit Number 18690.
Thank you.
(Thereupon a recess was taken.)
PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats, we'll go ahead and continue with our meeting.
We are on to Item 8E. This is Permit number 18690 Three Rivers Levee Improvement Agency. Consider approval of Resolution 11-31, granting authorization of protested Permit number 18690 to install a chain link





fence, K-rails as agendized.
Ladies and gentlemen of the Board, I would suggest that since we have continued the hearings that preceded this, Items 8A, B, C, and D -- actually vacated A and B -- that we postpone this to the date at which we hear the hearings that we had before us. So that would be my proposal.
BOARD MEMBER SUAREZ: Mr. President, I would support that.
PRESIDENT CARTER: Okay. Does the applicant have any objections to postponing this particular item?
MR. BRUNNER: The applicant does not.
PRESIDENT CARTER: So for the record, the applicant does not have any objections to postponing this particular item.
Mrs. Hofman, did leave me a card. She has --
SUPERVISING ENGINEER BUTLER: She's left for the day.
PRESIDENT CARTER: She left. Okay. She did want to speak on this. Ladies and gentlemen, if there are no objections, then we will go ahead and postpone this item to a future date. Are there no objections from the Board?
All right. We will move on then.
Also, let the record reflect that Ms. Rie had to leave early for a personal matter, so she's no longer with





us here.
(Thereupon the hearings on Items 8A, B, C, D, and E concluded.)





CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:
That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board Items 8A-E meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.
I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.
IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of February, 2012.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063

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MEETING

STATE OF CALIFORNIA

THE RESOURCES AGENCY

CENTRAL VALLEY FLOOD PROTECTION BOARD

YUBA COUNTY GOVERNMENT CENTER

BOARD CHAMBERS

915 8TH STREET

MARYSVILLE, CALIFORNIA

FRIDAY, MARCH 2, 2012

9:07 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063



APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Ms. Teri Rie, Vice-President

Ms. Jane Dolan, Secretary

Mr. Bill Edgar

Mr. Tim Ramirez

Ms. Emma Suarez

Mr. Mike Villines

STAFF

Mr. Jay Punia, Executive Officer

Mr. Len Marino, Chief Engineer

Mr. Eric Butler, Supervising Engineer

Ms. Angeles Caliso, Staff Engineer

Ms. Alison Tang, Staff Engineer

Mr. James Herota, Staff Environmental Scientist

Ms. Amber Woertink, Staff Assistant

Mr. Jim Andrews, Legal Counsel

ALSO PRESENT

Mr. Francis Coats

Mr. Larry Dacus, Three Rivers Levee Improvement Authority

Ms. Debra Hecker

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Monty Hecker

Mr. Kevin Heeney, CTA Engineering & Surveying

Ms. Frances Hofman

Ms. Susan LaGrand

Ms. Carol Miller

Mr. Scott McElhern, Downey Brand, Three Rivers Levee Improvement Authority

Mr. Scott Shapiro, Downey Brand, Three Rivers Levee Improvement Authority

Ms. Magdalena Vasquez

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PROCEEDINGS

PRESIDENT CARTER: Good morning, ladies and gentlemen. If I could ask you to please take your seats, we'll go ahead and begin. This is the Central Valley Flood Protection Board meeting for March 2nd. And I would first like to thank the County of Yuba and all of the folks here for hosting this meeting today, and allowing us to use the Board Chambers. This makes it very convenient for us to come up here and be closer to the stakeholders involved in this particular action. And so we really do appreciate the hospitality of the locals. Thank you very much.

Mr. Punia, would you please call the roll?

EXECUTIVE OFFICER PUNIA: Good morning. Jay Punia. Except Board member Mike Villines, the rest of the Board members are present. And I've been just informed by the Board President that Mike Villines will be here a little later.

PRESIDENT CARTER: Okay. Moving on to Item 2, Approval of the Agenda. Are there any proposed changes to the agenda for today as published?

Seeing or hearing none, we'll entertain a motion to approve the agenda as published.

SECRETARY DOLAN: So moved.

PRESIDENT CARTER: We have a motion. Is there a





second?

BOARD MEMBER EDGAR: I'll second.

PRESIDENT CARTER: Okay. We have a motion and a second. All those in favor indicate by saying aye?

(Ayes.)

PRESIDENT CARTER: And opposed?

The motion carries unanimously.

Okay. At this time, Item 3, we have time budgeted for public comment. This is when we ask members of the public to -- we invite them to come and address the Board on non-agenized items for today. I do not have any cards. We do ask that folks fill out these speaker cards, which are available at the entrance to the auditorium, as well as here in the front from Ms. Woertink.

I don't have any cards. Are there any members of the public that do wish to address the Board? If you would, just please come and approach, introduce yourself for the record.

Good morning.

MR. COATS: Good morning, I'm Francis Coats from Yuba City, and I'd like to address the Board on a really minor issue. I've been following the planning for the Central Valley planning project work, and I've been bothered because I see no references to the navigable servitude, and no references to the public's right to be





on the river, and no references to the concern about preserving the public's right to access to the river, which, in a way, is the critical piece,

There's a lot of concern about landowners, and there's a lot of concern about environmentalists, but not to the real property interests of the public to get to the river, and not to the issue of identifying access and not destroying access, not extinguishing access by physical structures. So I just hope that in the planning process, people include some concern for the public right to be on the rive and access to the river.

Thank you.

PRESIDENT CARTER: Thank you, Mr. Coats.

Are there any other members of the public that wish to address the Board on non-agendized items?

All right. Thank you. We'll move on.

At this time, we'll move to Item 4, and this is under Hearings and Decisions. We'll do Item 4A first. And this is a proposed resolution for 48 Notices of Violation issued for the removal of unauthorized encroachments and fences on State property adjacent to the Feather River east levee in West Linda, Yuba County.

This item was continued from December 2nd. The Board considered this item in our meeting here in January. There was an action taken by the Board, which was





subsequently vacated because of some notice defects for that particular meeting. So we are reconsidering this item at this time.

Ms. Caliso from Board staff has a couple issues that we would like to discuss prior to getting into the facts of, and the details of the resolution and Notices of Violation. And they are with respect to the timeline that we've had and the notice history for this.

So with that, I will call this hearing to order, and turn it over to Ms. Caliso. For those of you who are not familiar with the hearing process, we ask staff to present evidence on behalf of the enforcement action. We invite the applicants or the respondents to come up and present evidence. We invite the public to submit evidence, at that point. Then we close the public testimony portion of the hearing. We then -- the Board will go into deliberations, at which time the Board can ask questions of any of the folks who have testified, questions about the evidence, and discuss possible decisions of the Board or actions of the Board with both the staff and the respondents, and then the Board will make a decision. So that's the process.

Ms. Caliso, please proceed.

STAFF ENGINEER CALISO: Good morning, President Carter, members of the Board. Angeles Caliso, Board

staff.

As President Carter indicated, there are a couple of issues that I'd like to highlight to the Board members and get your direction.

One of them, it's related to the Tier 1B regulation changes that took effect. Those changes were -- included revisions to the Board's regulations that -- in the delegation authority for minor encroachment permits, and also regarding to the enforcement proceedings, actions and timelines. And as you're well aware, the hearings before you this morning are enforcement related as well.

Those regulations became effective February 15th. And the West Linda hearings that have been continued and that are here before you this morning are -- were initiated back in December.

(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER CALISO: So this is a timeline that I created to demonstrate the timelines as to how they're affected, and how they relate to both the old regulations and the new regulations. We will begin with the hearing notice for those hearings, was originally November 18th, 2011. That was for the December 2nd hearing. That puts us at 105 days from today's, March





2nd, hearings.

Based on the old regulations, that would require 10-day notification. And the new regulations require a 30-day notification.

The staff report in distribution that was for these hearings was done on January 19th. This was for the January 26th meetings that were postpone from December. That puts us at 43 days from March 2nd -- from today's hearings. The old regulations required 10 days, which are being met. And the new regulations require 20 days, which are also being met there.

The subsequent -- the following items here, the continued hearings, the notice went out to the respondents on February 6th, and this is approximately 25 days from today's date. And then the repeated staff reports with the additional information submitted by the respondents was distributed on February 17th of this year, and that's 14 days from today's hearings.

So I wanted to identify and highlight that the regulations went into effect, once again, February 15th. Staff, we believe, that the enforcement hearings before you were continued from the December hearing, and therefore we should be following the old regulations and timeframes apply here.

However, we have gone back and looked at the





changes to the new regulations and how those impact, and we believe that with -- as the table shows in front of the screen here, that we are still meeting those requirements as well.

--o0o--

STAFF ENGINEER CALISO: So with that, I'd like to, I guess, get a consensus of the Board on whether or not this -- the intention --

PRESIDENT CARTER: Yeah, the issue that Ms. Caliso is asking us to consider first is, has the notice been sufficient to proceed?

BOARD MEMBER SUAREZ: Mr. President.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: Are we going to also discuss the issue of whether these staff reports were appropriately sent to the respondents, which is another due process issue that appears to be on the table? Is that something that's part of this discussion or is that a separate discussion?

PRESIDENT CARTER: Well, I think it's closely associated. I think the staff wanted to try and resolve the timing issue first, and then the form of the notice second. If the Board chooses to proceed otherwise, that's fine as well, but, yes, we need to discuss both.

So as far as timing, which is the question that





are -- is -- are folks comfortable with the timing as it rolled out?

Mr. Edgar.

BOARD MEMBER EDGAR: Mr. Chair, please excuse my voice. I'm just getting over a cold, so it may sound a little squeaky.

I think we need to have our attorney weigh in on that. Obviously, the safest course of action would be to strictly comply with new regulations, which it looks like we don't. We're off a few days. But there's this issue of substantial compliance and court decisions that we need to get his opinion of.

But the safest course of action, it seems to me, would be to for those contested cases, which I guess are the three -- not the 48, but the three contested hearings, would be to ask them to waive their rights or something before we. Proceed if they don't, we would simply continue it a month. That would seem to me to be the safest strict way to do it.

But if the attorney can convince us we are in substantial compliance, and the court cases back up the idea that we can proceed today, it seems to me we have to have his advice on that.

PRESIDENT CARTER: Okay.

LEGAL COUNSEL ANDREWS: Thank you. The

standard -- the legal standard in California is one of substantial compliance for noticing requirements under statutes, and the Board's regulations are treated as a statute.

So I think just point one is the standard is not a strict compliance standard. It's a substantial compliance standard. So the Board then needs to consider whether the standard -- the timing requirement has been substantially complied with, given the history of a December meeting, the notice given for the January 26th meeting, which I understand was three days late, but it was still seven days before January 26th, I understand. And that, at the January 26th meeting, I wasn't present, but in looking at the transcript, I believe it was stated by the Chair that the meeting would be -- the hearing would be continued for approximately a month's time. And I'm not personally aware of whether the three respondents were present at that meeting to hear that the notice would be -- sorry, that the hearing would be continued for approximately a month's time, and then the February 6th follow-up letter, which was 25 days rather than 30 days.

So I think the Board has to evaluate, in light of the substantial compliance standard, the December meeting, which was noticed, I presume, the January meeting which was noticed, the statements on the record at the January





meeting, whether or not that amounts to substantial compliance

It's not -- and that's assuming that the new regs actually took effect. It's not clear, as a legal matter, that the new regs actually apply. There's some case law out there that suggests that it does, notwithstanding the fact that the time for compliance actually predates the effective date of the regs.

But even assuming that it does, the question I think for the Board is, is there substantial compliance with the 30-day requirement in light of the history.

PRESIDENT CARTER: For today's record, it's my recollection that Ms. Miller and Ms. LaGrand were in attendance in the January meeting. Mr. King was not in attendance. Those are the three separate hearings. In addition, there were others that were involved in what is today's Item 4A, the other 48 Notices of Violation. A small subset of that 48 were present as well. That's for the record for today.

So, ladies and gentlemen, what are your thoughts?

Nobody has any thoughts.

BOARD MEMBER EDGAR: Well, what's the recommendation of the counsel and the staff is to proceed.

PRESIDENT CARTER: Mr. Punia.

EXECUTIVE OFFICER PUNIA: Yes. In our mind, we





have complied, and it's a continuation of our previous hearing when we started. So our recommendation is to continue with the hearing process.

LEGAL COUNSEL ANDREWS: May I add one other thing, if I can, which is the law also applies a prejudice standard, which is a court looks at whether there was substantial compliance. And even if there was not, a court cannot undue a Board's action, unless there was actually prejudice to the parties who didn't actually receive proper notice. So there's both the substantial compliance element, and even if that fails, there's a prejudice standard.

So I think you have to lineup those standards in light of the December and January meetings, and all the other noticing that has happened. And I think between the facts and those two legal standards of substantial compliance and prejudice, the Board then needs to weigh that and make a decision.

PRESIDENT CARTER: Okay. So ladies and gentlemen, as you can see, this is a gray area. It is not black and white. If I could ask of those folks that are out here -- out in the audience that are respondents to this, are there any folks out there who object to the Board proceeding today?

If there are any, would you please raise your





hand and perhaps approach and express your objections on the record?

MS. MILLER: My name is Carol Miller. I didn't hear all of what he -- of what he was saying, and I own the property at 5676 Riverside Drive in Linda. And what is this an objection to?

PRESIDENT CARTER: Okay. Ms. Miller, there remains an issue with the notice that was given. And there are two issues, one is timing and the other is the form in which the notice was given to the respondents, namely yourself and the other 50 folks involved in this action today.

The timing issue has to do with the fact that the notice was given. Our regulations changed in the meantime, in the middle of February, and by the letter of the law, the notice that we have for today's hearing may not comply with our regulations. And so there is a potential defect, as I understand the situation.

So what I'm asking you is do you feel you have had sufficient notice to respond to the proposed enforcement action for your property today?

MS. MILLER: Okay. No, I have not. I have been trying to go through all the paperwork that I have, and I haven't got through half of it.

PRESIDENT CARTER: Okay.

MS. MILLER: And I received it on Monday. I did tell Ms. Caliso for a month that my address to where I'm at now is 2110 Virgilla, and all my paperwork has been going to Virginia, but there is no 2110 Virginia.

PRESIDENT CARTER: Okay. All right.

MS. MILLER: So it took another two days to get my packet to me.

PRESIDENT CARTER: Okay. All right. And when did you receive the package?

MS. MILLER: I received it on Monday after it was sent overnight on the 17th.

PRESIDENT CARTER: So --

MS. MILLER: So I received it the Monday after the 17th.

PRESIDENT CARTER: And that date, Monday -- that would have been the 19th.

EXECUTIVE OFFICER PUNIA: The 20th.

PRESIDENT CARTER: No, I'm sorry. I'm in the wrong month. The 20th.

Okay. So that is 10 days prior to today, 10 working days prior to today.

MS. MILLER: Correct.

PRESIDENT CARTER: Okay. Very good.

LEGAL COUNSEL ANDREWS: If I may, just to clarify what the regulations say, just for the record. The old





regulations say respondents and other parties shall be mailed a copy of the staff report at least 10 days prior to the hearing. So it's 10 days, it doesn't say working or calendar, but generally the law implies calendar, unless it says working.

So the old regs say mailed 10 days prior to the hearing. The new regulations say shall provide the respondent with a copy of the staff report, at least 20 calendar days prior to the hearing. And again, whether the new one -- regulations apply as a legal matter is not clear. It does not say mailed. It says provide.

PRESIDENT CARTER: So --

LEGAL COUNSEL ANDREWS: Just so it's clear on the record.

PRESIDENT CARTER: -- Mr. Andrews, what is your interpretation of, one, whether or not the new regulations apply, and, two, what the -- the way the new regulations language is, does that mean mailed or does that mean received? At what point does the -- is the trigger pulled, in terms of timing -- measuring time for notice?

LEGAL COUNSEL ANDREWS: Well, let me answer that as a second part. I think the other thing to -- again, substantial compliance standard is the applicable standard. And one question the Board could ask itself is what is different about this staff report than the staff





report that was given for the prior meeting, and when was that actually received?

And maybe staff can answer the question as to the differences in the staff reports, because this is a continued hearing -- a staff report -- I don't know the facts on how the staff report was given to respondents for the prior meeting. If there is little to no new information in the staff report for this meeting that was available prior to 20 days from to date -- from today's date, then I think the Board should ask itself and could conclude that there has been much greater than 20 days in terms of receipt of the staff report, because the staff report may be substantially, not virtually the same as today's staff report.

So I think because of the substantial compliance standard and the prejudice requirement, I think looking back at what happened prior to January 26th, in terms of staff report receipt, and how that may or may not be different than the existing staff report, is something the something the Board should consider.

PRESIDENT CARTER: Okay. And, Ms. Miller, you were here for our January meeting?

MS. MILLER: Correct.

PRESIDENT CARTER: And did understand that your hearing was being continued till -- for 30 or more days?





MS. MILLER: Correct.

PRESIDENT CARTER: Thank you. Okay. Any other questions?

Are there any other folks out there that are respondents that have a potential problem with the timing of receipt, delivery of staff reports, notice of this hearing?

Okay. Very good. Are there any other questions from the Board for staff, any comments?

LEGAL COUNSEL ANDREWS: May I suggest one question for staff would be when -- how was the staff report for the January 26th given to respondents, I think would be a question for staff?

PRESIDENT CARTER: Okay.

STAFF ENGINEER CALISO: Yes. The staff report for the January staff -- Board meeting was mailed out to Ms. Miller, Ms. LaGrand and Mr. King and Mr. Hecker. They received overnight copies. They were mailed overnight copies. And they were notified, via email, of the availability as well of the staff reports on the Board's website, and notify that the hard copy on the mail was being sent out to them as well.

BOARD MEMBER SUAREZ: How about THE other --

STAFF ENGINEER CALISO: I'm sorry.

BOARD MEMBER SUAREZ: How about the others?

STAFF ENGINEER CALISO: The remainder -- the other 48 -- 47 landowners, that would be, were notified on the -- at the January 13th agenda notification that was mailed out, a cover letter that included the agenda, was sent out to all the landowners. And on the letter, it notified the staff report would be distributed or would be available within 10 days prior to the meeting, and that it would be available on the website. If a hard copy of the staff report was preferred, that they would -- we ask that they contact our office to request a copy of that.

PRESIDENT CARTER: So just so I understand perfectly, the notice to the 48 under consideration for today's Item 4A, notice was sent to them as in the form of an agenda notification, and an attached letter that indicated that if they required -- that the staff report was available on the website, and if they required a hard copy to contact the Board's office and that would be sent to them?

STAFF ENGINEER CALISO: Correct.

PRESIDENT CARTER: And that was done on what date?

STAFF ENGINEER CALISO: That was -- for the January meeting, that was on January 13th.

PRESIDENT CARTER: And that went out on the 13th?

STAFF ENGINEER CALISO: And for this meeting --





I'm sorry?

PRESIDENT CARTER: And that went out on the 13th?

STAFF ENGINEER CALISO: Yes.

PRESIDENT CARTER: And the staff report came up on the website on the 19th?

STAFF ENGINEER CALISO: Correct.

PRESIDENT CARTER: Okay. Very good. And then for this particular hearing, or this -- I'm sorry, not this particular hearing, this meeting, the March 2nd, how was notice delivered?

STAFF ENGINEER CALISO: In the same manner as the previous one. The agenda for the 48 -- the agenda for all was mailed out to all the landowners with a cover letter. And that was mailed out on February 6th -- sorry. I'm sorry. February 14th the agenda was mailed out with the same notification, that if a hard copy of the staff report was preferred, that we would ask them to contact our office and request that.

The exception to that was Ms. Miller, Ms. LaGrand, and Mr. King who had their separate enforcement hearings, they were mailed the same agenda. And on February 17th, they were mailed the -- mailed out a -- overnight, a copy of the staff report.

PRESIDENT CARTER: Thank you.

EXECUTIVE OFFICER PUNIA: And I want to add --





PRESIDENT CARTER: Mr. Punia.

EXECUTIVE OFFICER PUNIA: -- and Mr. Monty Hecker asked that he be mailed a copy. And my understanding is a hard copy was mailed to him.

STAFF ENGINEER CALISO: Well, he didn't necessarily ask for a copy, but we had been in communication with Mr. Hecker for some time, so he had expressed interest in the process, so because he was acting as a representative for some of the other 48 landowners, I was -- I made the decision to provide him with a copy of the staff report, so that he would be able to share that with the landowners.

So my communication with him, he indicated that he was sharing this information with the remainder -- with some of the other landowners.

PRESIDENT CARTER: Okay. And that went out on the same date, February 17th.

STAFF ENGINEER CALISO: Correct.

PRESIDENT CARTER: And that is when the staff reports became live on the website.

STAFF ENGINEER CALISO: That's correct, yes.

PRESIDENT CARTER: Okay. Mr. Andrews.

LEGAL COUNSEL ANDREWS: So I -- just to -- if I may, it seems like from what staff has said, there was strict compliance with respect to the old regs, vis a vis





the overnight mailing and --

BOARD MEMBER SUAREZ: That's not correct.

LEGAL COUNSEL ANDREWS: -- the timing - okay - for the three.

BOARD MEMBER SUAREZ: For the three.

LEGAL COUNSEL ANDREWS: Yes, for the three.

BOARD MEMBER SUAREZ: But not for the remainder.

LEGAL COUNSEL ANDREWS: And strict compliance on the notice for all 51.

PRESIDENT CARTER: In terms of timing.

LEGAL COUNSEL ANDREWS: In terms of timing with the old regs.

PRESIDENT CARTER: Okay. So there's a question with some of the 48 with respect to strict compliance, in terms of form, because Mr. Hecker --

BOARD MEMBER SUAREZ: Can I just --

PRESIDENT CARTER: -- who has three of the Notice of Violations did receive a staff report timely under the old regulations, is that correct?

STAFF ENGINEER CALISO: Yes, that's correct.

BOARD MEMBER SUAREZ: Can I just state for the record, I don't know why we correct characterize strict compliance. Our regulations are pretty clear, either you comply or you not. So clearly, when it came to the regulations requirement, that the materials be sent to the

respondents.
And let me take this opportunity to remind everybody that we're talking about the portions of our regulations dealing with enforcement actions that protect the due process rights of those people. So in those circumstances, kind of complying, maybe complying, getting close to complying, at least in my perspective might not do it.
These are again deal with due process rights that these people have that we provide, and the Constitution provide, to make sure that as we're proceeding to deal with their property rights and future requirements, that they be fined administratively. We have to go all the way to make sure that they can be as prepared as they can be to present and defend their position.
So I just go back, you might want to characterize it as strict compliance, kind of compliance. When it comes to due process, our regulations are very clear.
PRESIDENT CARTER: So --
LEGAL COUNSEL ANDREWS: Sorry, if I may.
PRESIDENT CARTER: Go ahead, Mr. Andrews.
LEGAL COUNSEL ANDREWS: The one issue to be considered, and I need to think about this for a moment, is for the 48 that did not request a hearing under the Board's regs, the question is did they waive their right





to the hearing, and thereby waive their right to receive the materials about the hearing at which they waived their right to attend or to be heard on their matter?
So the question of whether the regs actually required the materials to be provided to those who had actually not requested a hearing.
PRESIDENT CARTER: That's a very good question with respect to -- and they are silent on that issue. We don't know. I don't -- I personally don't know that silence constitutes waiving the right to receive the materials. I think they obviously have the right to receive the materials, but do they waive their right to a hearing? They have done that by their silence. I think the regulations are clear there. And that's kind of where I come out.
They should -- everyone has the right to receive the materials in terms of what pertains to their particular property.
LEGAL COUNSEL ANDREWS: So then the question becomes whether the Board's comfortable with applying a substantial compliance standard. And, if so, whether -- because that's what the law requires. And if so, whether those other property owners -- whether that substantial compliance standard was met with respect to those other property owners.





PRESIDENT CARTER: Okay. So ladies and gentlemen, any -- what are your thoughts. Has the Board substantially complied with its regulations with respect to those hearings? If we have not, if you decide not, then let's not waste anybody else's time with respect to that.
Ma'am, would you like to address the Board.
MS. HECKER: My name is Debra Hecker. I'm one of the 48. And one thing I would like clarified, these encroachment notices have never been explained. What do they involve? Are you going to fine us?
We don't know. All's we've been told and assured, and most of the 48 out there, is that there's encroachment notices, but don't worry about it, TRLIA will take care of it and you don't have anything to worry about.
Now, if there are fines or any other actions involved, other than moving that fence line, these residents do not know it.
PRESIDENT CARTER: The Board -- the only evidence we have with respect to the implications of the Violations of Notice, at this point - and I'm just trying to shed some light - is that the Board took action on those in January -- at the January meeting, and then vacated that action, because of the notice defect.





And the action the Board took was to direct TRLIA to work with the landowners to move the fences, and enter into agreements where those landowners could occupy the Board's property under an agreement. And TRLIA would take care of the expenses of removing the old fences and putting in the new fences. So the intent was that all of this would happen. There would be no expense to the landowners with respect to moving the fence and no fine.
MR. HECKER: The encroachment process has never been explained to most of these people. If they do not want -- if they do not comply with your encroachment, if they do not sign the permit, is there a fine involved?
PRESIDENT CARTER: There is not a fine today.
MS. HECKER: In the future?
PRESIDENT CARTER: Again, we -- I can't tell you how the Board is going to decide. That's up to this Board.
MS. HECKER: Is there a possibility? Do they know what they're getting into? Even with the permits, a lot of people are saying, okay, TRLIA is picking up the permit process, which is probably like going to the County, getting a permit for the building, you pay some upfront. Is there a future fee? Is there an annual bill coming through on these permits? Nobody has been answered on those questions. Nobody has been explained what the

permit process is, other than, well, TRLIA is going to help us with it.

PRESIDENT CARTER: Yeah, I think -- again, the intent was that the fence would be -- the old fences would be removed, a new fence would be installed, and there would be no expense to the landowners today, tomorrow --

MS. HECKER: In the future either?

So the encroachment -- it's not like if you don't pay your parking fine, it just builds up in the future. That's not going to happen to them?

PRESIDENT CARTER: That's not the intent of the Board.

MR. HECKER: Okay. Thank you.

PRESIDENT CARTER: So, ladies and gentlemen, any discussion on substantial compliance. We need to come to some determination, so that we can either decide to continue these or proceed. And the options before the Board are to continue all of them, continue some of them, continue none of them, or proceed with all, proceed with some, or proceed with none.

VICE-PRESIDENT RIE: President Carter.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: One of the reasons why we changed our regulations, in terms of the noticing requirements, was because we heard every time we had an





enforcement hearing, that the respondents didn't have adequate time, once they received the materials, to prepare and respond and absorb the information and understand the information.

And we, as a Board, decided that we agreed with that, that 10 days was not enough time to digest this material, and really understand it, especially if it's your first experience with an enforcement order.

So we decided we were going to change the regulations and give everybody more time, more notice, more time to have the materials, read the materials, and understand the materials. And we heard from Ms. Miller that she received the materials on February 20th. Maybe that's 10 days -- so maybe that meets the old regulations, but it doesn't meet the intent of the new regulations. And I guess there's a question of when exactly the regulations would go into effect.

But I think, you know, it really doesn't matter if Mrs. Miller needs more time, it's two hundred and -- over 200 pages of information. I think we should give her more time. She raised the issue of the legal description at our last hearing, and we told her we were going to research that issue, provide her the information, and, you know, I don't know if she's had time to look at the response on the surveying issue, but it would seem fair





that if she wants more time that we give her more time.

PRESIDENT CARTER: Okay. So are you making a motion to continue the hearing for Ms. Miller, which is Item 4C on today's agenda, and proceed with the balance?

VICE-PRESIDENT RIE: No, I'm not making a motion. I was just making a comment.

PRESIDENT CARTER: Okay. Mr. Punia.

EXECUTIVE OFFICER PUNIA: I just want to add for the Board's information that the staff report is essentially is the same, which was given to the respondents on January 19th. So the only information, which was added, was what was submitted by the respondent. So it's essentially the same staff report, which was given to the respondents.

PRESIDENT CARTER: And the staff recommendation is the same, conclusions are the same?

EXECUTIVE OFFICER PUNIA: That's correct.

PRESIDENT CARTER: Dates are changed.

EXECUTIVE OFFICER PUNIA: That's correct.

PRESIDENT CARTER: In terms of the date of the staff report.

EXECUTIVE OFFICER PUNIA: That's correct.

VICE-PRESIDENT RIE: Mr. Punia, did staff address Mrs. Miller's concerns? I mean, she raised some issues. We told her we would look into it, research it. Have we





provided a response or did we not provide a response?

STAFF ENGINEER CALISO: Angeles Caliso. Yes, we did. Part of the staff report. So the first attachments, the first A through, I want to say, J or K attachments were all the same from the previous staff reports. The only changes to this month's staff report were highlighted in blue. And that was intentionally done, so that it would be easy to distinguish what changes took place from the previous staff report to this one.

As Mr. Punia indicated, the staff recommendation remained the same. A memo was prepared and was attached to the staff reports as Attachment O. And it was a memo that was intended to respond to Ms. Miller's and Ms. LaGrand's additional evidence or documents that were submitted, including the deed that had been submitted at the January 26th meeting.

BOARD MEMBER SUAREZ: So again, the item addressing her concern regarding the property rights in her -- where is it again, I'm looking it up on the report?

STAFF ENGINEER CALISO: It's just a minute. It will open up in a minute. So the staff report on the screen here is for Ms. Miller's hearing. The additional documents that were prepared or that were added, under Attachment O of the staff report, there is a memo that was prepared by staff. And on here it addresses the letter

that was submitted from Ms. LaGrand dated January 29th, and Ms. Miller on February 10th.

So those two documents intended to respond several issues that had been raised previously and addressed in other staff reports, but they were summarized on this memo.

PRESIDENT CARTER: Okay. Questions, thoughts?

BOARD MEMBER EDGAR: Mr. Carter, you know, a few of us here have not been involved in the details of this, and we're coming in the middle of a movie and apologize for that, but it seems to me that maybe a way to deal with this is to -- is not to have these hearings but to grant the permit to Three Rivers, who would then be authorized to go out and construct the fences in accordance with the Board's desires and the desires of the landowner. And then we'd have some -- if they run into problems with those fences, and I'm thinking of most the 48 individuals, then we could know what specific enforcement hearings we have to do. And in the meantime, notice these, and give the information to as many people as we want, but to get some actual data and facts to allow TRLIA to go out there and start replacing fences, seems to me to be a way to get some real empirical data as to where our real problems are. Maybe that's a way to proceed. I don't know.

PRESIDENT CARTER: Okay. Thank you. Thoughts on





that?

Other thoughts?

I appreciate those thoughts in terms of a way forward here. It would be nice to make some positive progress on this after four months.

Ladies and gentlemen?

STAFF ENGINEER CALISO: If I might just add, President Carter, members of the Board. I know this has been an ongoing, you know, item that we've been trying to find a resolution. And I think as staff, I can speak for myself and the rest of the management, we've been trying to work really hard to find an amicable solution and a way to move forward with these enforcement actions. I think that the resolution and the enforcement action -- the resolution before you is a good compromise to that. We have been reaching out to the landowners, along with TRLIA doing some outreach since back in July.

So I would like to just express that as staff, we have been working really hard an diligently with TRLIA to reach out to the community to try to explain to them what it is the process that we are doing. And so in no way have we intended to treat anyone, any of the landowners differently.

PRESIDENT CARTER: Okay. With respect to Mr. Edgar's proposal, that is a possibility, and is a way





forward on Item 4A today, and Item 4D, Ms. LaGrand, on the other two with respect to 4B, Mr. King, and 4C with Ms. Miller, there -- hopefully, I've got that correct or maybe I'm -- I'm sorry. I'm sorry. I misspoke. It applies to 4A and 4C, Ms. Miller, but for Ms. LaGrand and Mr. King, who have structures on the State property, those would require some additional action by the Board, in terms of authorizing those structures on State property as an encroachment. So that's -- but it gets us part of the way there.

BOARD MEMBER EDGAR: Yeah. My thought would be to just give TRLIA the authorization to start putting up the fences, and in the meantime, fix our notice proceedings. And as they go along, they've got a lot of work to do, between now and our next meeting, it seems to me that we'd bubble up some problems that we'd have as they begin to put those fences in. If there were any problems within the 48, we could address those too, later on.

PRESIDENT CARTER: So if I might ask, is there somebody from TRLIA out there that could speak to that possible action, and that proposal, so that -- and if I can clarify then, the proposal would be to take action on our Item 4E granting Three Rivers the authority to install chain link fence, K-rails, maintenance road, so forth and





so on as agendized here on 4E today, and work with the landowners. And those landowners who protest the action, you would notify us and we'd come back and try and reach some resolution with those folks at a later date.

MR. SHAPIRO: President Carter, Scott Shapiro, general counsel for Three Rivers.

Paul Brunner sends his apologies. He was not able to make it today, and has asked me to speak on the agency's behalf.

Three Rivers' perspective all along has been that the current fences are improperly located on State property, should be removed to make way for a new fence to comply with our O&M obligations, consistent with our past permits.

Three Rivers has been an advocate for a reasonable solution, one which does not create a burden on the landowners. And as we've indicated in past meetings, we believe that a 20-foot O&M corridor is a reasonable solution in allowing the landowners to continue to use through a license, for example, the other State property, which is at issue.

From our perspective, at your December hearing, the Board made a factual determination that there were encroachments by the landowners on State property. And with that, we're now prepared to move forward with our

fence. The advantage to issuing us a permit on the fence would be that it would allow us to know definitively where the fence would be. That will allow us to start designing the fence, designing grading, designing drainage issues. We've heard extensively from landowners that there is concern about drainage. And Three Rivers is committed to not making any of the drainage worse, and to doing what we can to make it better. And knowing where the fence is will allow us to start that design.

So we would be supportive of proceeding today with the fence permit. And if the Board feels it does not have the ability to proceed with the enforcement actions, that's certainly your discretion. We have no objection.

My only caveat, President Carter, to the way you voiced it, is that if we ran into objections to our fence, we'd come back. And I don't really think that's quite the standard. If the Board issues the permit to Three Rivers, then we believe we have a permit. And it wouldn't be if we run into objections, it would rather be that if we run into an inability to construct we would come back. As a practical matter, we're not going to be constructing in the next month. We're going to be working with your staff to demonstrate that we can meet all of your standards, that we can address the drainage issues. This gives us a path forward and allows us to start working.





PRESIDENT CARTER: Okay. And with respect to the licenses for the folks to occupy State Lands on the landward side of the new fence, TRLIA is going to be working with those folks, or is that Board staff that's going to be working with those folks to execute those licenses.

MR. SHAPIRO: We remain committed to taking the lead in working with your staff to achieve that goal. We have a Board authorization to expend the funds necessary to make that happen. We would obviously not do it without coordinating with your staff, because ultimately you need to sign those licenses. We don't. But we are happy to take the lead and essentially work under the direction of your staff in making it happen.

PRESIDENT CARTER: Okay. All right. Ladies and gentlemen, thoughts. I need feedback.

LEGAL COUNSEL ANDREWS: One comment.

PRESIDENT CARTER: Mr. Andrews.

LEGAL COUNSEL ANDREWS: The TRLIA permit, does it authorize TRLIA to remove the fences on -- the property owners' fences?

MR. SHAPIRO: I'm going to defer to Board staff on that, but I don't think it's actually -- I don't know if it does actually. Larry Dacus is here, who's our design manager. Larry, do you know?





PRESIDENT CARTER: We can refer to the staff report.

MR. SHAPIRO: I left my 65-page packet back in my chair, so I can't quickly look.

Larry.

MR. DACUS: Larry Dacus, Design Manager with Three Rivers. I don't know right off the top of my head. We'd have to read the language to see what's specific, but generally the permit language is very specific as to what we can and cannot do. And I got the draft permit here somewhere in amongst all of this.

EXECUTIVE OFFICER PUNIA: If I can clarify this. Removal of the fences is part of the enforcement notice. It's not part of the permit the way I understand.

PRESIDENT CARTER: Not part of Three Rivers permit?

EXECUTIVE OFFICER PUNIA: Permit, that's correct. If you read the language on the enforcement hearings, it is to authorize removal of private fences and miscellaneous obstructions, so that's part of the enforcement process. But then, based upon TRLIA's permit, they can install the new fence.

PRESIDENT CARTER: But is there any reason why the Board can't amend TRLIA's permit to include authorizing them to remove the existing fences that are





in -- that are obstructing the construction of the new fence?

LEGAL COUNSEL ANDREWS: It would seem that the purpose for having set up the enforcement hearing, first, and then the order on that, first, was to clarify legally that those fences were there impermissibly, so for --

BOARD MEMBER SUAREZ: That's occurred already. That occurred in December.

PRESIDENT CARTER: Mr. Andrews, I don't think you were here in December, the Board took action in December, recognizing and stating that there -- that the fences were encroaching on State property. What happened was the Board accepted the results of the surveyor that did the survey, defining the property line of State property, and in the process of that testimony identified where the fences were relative to the property line. And the Board made a determination that, in fact, there were encroachments, these fences, and a couple structures that were encroaching on State property at that time, so that -- the Board has made that determination.

MR. SHAPIRO: From Three Rivers' perspective, we don't want to make this more difficult than it already is. We are not --

PRESIDENT CARTER: We can make it more difficult than it already is.

(Laughter.)
MR. SHAPIRO: We will not be constructing anything in the next month. If the Board believes that it will be bringing the enforcement actions back for resolution in a month, and desires to deal with taking out the fences at that hearing, we have no objection.
The Catch 22 we don't want to get into is getting a permit which doesn't let us take out the existing fences, then the Board never acts on the existing fences to have someone take them out, and then we have to construct a fence through what these folks are treating as their backyard, which just doesn't work logistically. So we're happy to have you change the permit to allow us to take out the fences. We're happy to have you next month determine that the fences should be taken out.
What we'd like is determination of 20 feet is where the new fences is going, and then we can start our design process and try to deal with the drainage issues and other issues that have come up.
PRESIDENT CARTER: Okay.
BOARD MEMBER EDGAR: Mr. Chair, just my perspective. I think it makes a lot of sense to amend the permit to allow TRLIA to take out the fence also, because what will happen then, if this continues, is that you will at least get some of the fences out and the new fences in.





It's kind of a private sector component, rather than having our staff do it. But it seems to me that that makes more sense. We'll have more data on how it's going at our next hearing, if we can proceed that way.
PRESIDENT CARTER: Okay. I would love -- I would entertain a motion from the Board.
SECRETARY DOLAN: Mr. Chairman, this is my first experience with these enforcement hearings as well, so I've sort of been trying to listen to those of you who have been part of this process from the beginning.
I just feel that while we might be able to make a finding of strict compliance or even substantial compliance, when there is confusion from the public, our best course of action is to listen to that and continue those hearings where people have asked for a specific hearing on their Notice of Violation.
I recognize that in December the issue of the ownership of land was determined by this Board. And I clearly recognize that our staff and Three Rivers staff have made great efforts to explain what it is very confusing, complex, and troublesome matter to the property owners in this area. So I compliment on all that, but I don't feel that every single property owner feels settled on how the issue affects their own property.
So it seems to me that -- we're talking about the





hearing at one o'clock on the fences, I think -- that we ought to continue with that at one o'clock. That that's -- that seems to me in order.
The 48 Notice of Violations seem to be in order to me, because folks didn't ask for a hearing on those, so we can go forward with those. But to hear comments on the three hearings where people protested today, allow them to talk, but to continue final action on those to our next meeting. That seems a comfortable process to me, but --
PRESIDENT CARTER: Are you making a motion?
SECRETARY DOLAN: That's a pretty long motion. If I said so moved, would someone be able to figure that one out?
PRESIDENT CARTER: I can try and paraphrase.
Did you say so moved?
SECRETARY DOLAN: I would.
PRESIDENT CARTER: Okay. So ladies and gentlemen, my understanding is the motion for your consideration, that lacks a second at this point, is that we proceed with today's agenda with respect to Item 4A, and 4E, and we continue Items 4B, C, and D, is that an accurate summation, Ms. Dolan?
SECRETARY DOLAN: It is. I would add that we offer any comments that the ones to be continued be made today and be entered as part of the record.





PRESIDENT CARTER: Okay. Everybody understand the motion?
Do we have a second on that motion?
BOARD MEMBER EDGAR: Ms. Dolan, I would think that you'd want to also continue the 48 at this point, assuming that we're going to give TRLIA the permit, because we've had -- we've had some comments from at least one individual in the 48 who had some issues. And it seems to me that we might want to just continue all of these hearings, and then deal with the permit itself this afternoon when it's timed at one, and give TRLIA a chance to move forward and start taking down the fences and building the new ones.
PRESIDENT CARTER: I guess I would ask Ms. LaGrand, I believe is in the audience, and in consideration of her time, she has not made an objection to the notice. She -- we may want to ask her whether or not she would like to go ahead and proceed anyway today --
BOARD MEMBER EDGAR: Sure. That's fine.
PRESIDENT CARTER: -- on her particular hearing. And if there are any others out there that would like to go ahead and proceed and get some clarity on this issue and be able to move forward. So perhaps at their option, we can continue at their suggestion or proceed at their suggestion.

BOARD MEMBER EDGAR: That's good.
PRESIDENT CARTER: Because we're -- I mean, they have been here three months.
BOARD MEMBER EDGAR: No, I know.
PRESIDENT CARTER: And if I were them, I'd be -- I would not be happy.
VICE-PRESIDENT RIE: President Carter, we have a motion on the table. But I wasn't sure exactly if President Carter characterized your motion the way you were hoping it would be characterized. So I just wanted to get some clarity on what the motion was.
PRESIDENT CARTER: We better allow Ms. Dolan to clarify her motion then, and see if there's a second.
Ms. Dolan.
SECRETARY DOLAN: I was somewhat thinking out loud, and then it became a so-moved motion. I felt like you did restate it, though abbreviated, pretty well. My thinking is that we proceed with those notices and encroachment actions for which people did not request a hearing. I recognize that in January and today, there are some folks who still want information about that, but the questions that they've brought forward and comments, I feel can be answered without a hearing.
And I think the ones for which people asked for a hearing need to be continued. I think there's enough





question about them receiving information in time that's comfortable for them, whether it is compliance for us, comfortable for them. And I would like us to proceed at one o'clock with the hearing on that fences.
PRESIDENT CARTER: Okay. Would --
SECRETARY DOLAN: And I'm hearing Mr. Edgar saying continue the others as well. So perhaps if my motion dies for lack of a second, he can make one subsequent.
PRESIDENT CARTER: Would you consider an amendment to your motion should any of the two that have -- or, in this case, Ms. Miller has asked for more time. We know what her answer is. I think, at this point, we can confirm that. But with respect to Ms. LaGrand, if Ms. LaGrand wishes to proceed today, would you entertain a --
SECRETARY DOLAN: Oh, If the property owner wants to proceed today?
PRESIDENT CARTER: Yes.
SECRETARY DOLAN: Let's get that question answered and then, of course -- because my concern here is the property owners feeling they had enough notice, enough opportunity to comment, enough time to understand and an opportunity to express that to us.
PRESIDENT CARTER: Okay. Very good. Ms.





LaGrand, if I may ask you, are you prepared to proceed today, and are you comfortable proceeding today with respect to Item 4D on our agenda. And if you could, just approach for the record, please. I'm sorry to ask you to do this, but I think it will help our outcome.
MS. LaGRAND: I will go ahead and talk today. I probably wouldn't use the full hour that you guys have allotted me. I would like to give part of the time to Monty and Debra Hecker to speak. They're part of the 48. For lack of a better term, I feel the residents are being railroaded. This is all about a railroad.
I have neighbors who are so elderly that they can't make it here. They're part of that 48. I will tell you that they're not pleased, you know, but they can't be here. You know, I have other neighbors that -- unlike, you know, I'm very lucky. I have 300 hours of vacation time. They don't. They can't be here. That's why you're not seeing a big turnout.
You know, it is difficult for people. I will go ahead, if you wish for me to.
PRESIDENT CARTER: We want to know that if -- are you comfortable going ahead today?
MS. LaGRAND: Yeah, I might as well.
PRESIDENT CARTER: Okay. Very good. Thank you. Mr. Hecker, did you want to address the Board?





MR. HECKER: Yes.
PRESIDENT CARTER: And if I may, just -- this is with respect to proceeding today.
MR. HECKER: Yes, I understand that. And I can proceed. I'm sure my wife doesn't want to, but I do. And my reason being is there's some discrepancies that we have. I appreciate you guy's time coming up here, but you're requesting information from TRLIA. It's not an open item when you come back here, and they're not being answered.
I am flabbergasted to sit back there in the back and hear TRLIA say that they've been working with the homeowners. You have other homeowners here that are here to represent their properties. Their English isn't real good, but they don't understand the system, and no, TRLIA is not coming out and working with us.
When I do my presentation, that's what I want to show you. The very questions I asked of this Board last time have yet to be answered. And it's frustrating. I love the fact that you type this out. I took time to read what you guys requested. You're great. You ask very intelligent questions, because you deal with this all the time, but you're not having them get back with you with answers. And they walk up here and their first words are they're working great with the people. I'm here to tell

you they are not working great. We get patted on the head.

We went to a meeting, the meeting that they sat here and told you that they called to have us vote on Option 1, and Option 2, okay. Those were the only two options. Guess what, that's not what you folks told them to go back and do. You told them to go back, talk to the homeowners, and come up with a good solution that they agree with also.

The gentleman that come up here, he says he'll work with you, you noticed. And go back and read the transcripts, he didn't say he'd work with the homeowners. I am so tired of what's been happening down there.

And Susan is right, we have elderly people. I'm here for Arnold Craft. He owns two properties. I have a picture in here that I want to bring up, that I gave to TRLIA, and it shortens the front of his property by 15 feet, so it puts the fence line where it's supposed to be.

Now, Mr. Bill Edgar, I hope I said it right, I apologize. But I'm offended in a sense that we're going to pass a permit to take down our fences, to put their fences up in an area that we don't agree with. We agree they came in and made a measurement of my house. I agree, and it's supposed to be 280, but nobody measured the back.

Susan, when she talks, she's going to talk to the





railroad, I urge you to take time to read it. Your Board brought up. Ma'am, you do a fantastic job, and so do you. You two bring up the best questions I've ever heard. You got me inspired to go back, and I studied this whole time up to March 2nd. And I want to show you pictures, because we're measuring my property. We're not saying the State owns this amount. There could have been an easement right with the railroad, and they're coming back now and saying that's their property, because they will not -- I repeat, will not get the railroad stuff that we have copies of, and measure that side to see if this property is ours.

Now, please, I hope that we don't pass the permit. I'm here to talk. I think you folks need to know, because of your concern. You're for us. Right now, TRLIA is not for us. It's a game. You heard last time. Sir, you weren't here. We had one of their people from TRLIA go like this -- ask Susan, because I told Susan to come up and let them know.

This is not a game. This is our property. And we've got people that my taxes pay for to do a job, and they won't listen to me. They won't even come to my property. Paul Brunner has told me if you want to meet with me, you'll come to my office, and gave me the time frames. Ask the folks. They're here. Okay.

I said, I'd like you to come out to my place so I





can show you the discrepancies that we have. I brought up the drainage. They never brought up drainage. So if you want me to talk today, I'm more than happy. I brought pictures, that I can show you the situation. Our five properties, including Susan's, their toe line is right along our fence.

As you go down, you guys heard it, there's a yellow area. They're willing to let those people share some of the property, because they've got room for the fence. They have room to put their two roads and everything on my property. The old railroad part is still there, so that moves the toe out. I explained that last time.

PRESIDENT CARTER: We're kind of getting into the details, at this point, Mr. Hecker.

MR. HECKER: The point is I'd be happy to talk.

BOARD MEMBER SUAREZ: Can I ask a quick question for the gentleman?

PRESIDENT CARTER: Yes.

BOARD MEMBER SUAREZ: Sir, just to make sure, I understand you'd like to able to present information to this Board. Do you want us to make a decision on your enforcement action?

MR. HECKER: Absolutely not.

BOARD MEMBER SUAREZ: Okay. So that's very





clear. You want to present information, but you don't want us to make a decision today on your enforcement.

MR. HECKER: I think once you hear what I've got to say, I don't think we should make a decision, and especially on the last item about putting the fence up as you requested, that they need the right to do that to go forward. No. Nobody has been given the right answers. And I've got some pictures to show you that I hope really clarifies that.

There's an area that TRLIA owns that I can't go down here to the County and pull it up. And I've got the lot number and everything, and it's right on the back of my property. And they can't answer it. Mr. Paul Brunner even told me, you've got to go research it. We're not.

PRESIDENT CARTER: Thank you.

MR. HECKER: Thank you.

PRESIDENT CARTER: So ladies and gentlemen, we have a motion before us.

SECRETARY DOLAN: Well, Mr. Chairman, I don't want this motion before us anymore.

PRESIDENT CARTER: Okay. So you withdraw your motion. That's fine.

(Laughter.)

PRESIDENT CARTER: And I think that -- and perhaps Mr. Andrews can help me with this, but in order to

allow Mr. Hecker to present his information today, we have to open up the hearing -- or reopen the hearing and then continue it later, should the Board decide to do that.

So we would be handling Item 4A today to hear additional evidence, and enter that into the record. And then, depending on what the Board wants to do, we can continue a decision for a later date or make a decision.

LEGAL COUNSEL ANDREWS: Correct.

PRESIDENT CARTER: Okay. And that goes with anybody who presents evidence today.

So Ms. Suarez.

BOARD MEMBER SUAREZ: May I make a recommendation that perhaps we can open all the hearings to gather more input from the property owners and continue all the hearings to a further date to make a determination, and perhaps that way we can give the homeowners an opportunity to present information that, as Ms. Dolan has suggested, but give time to cure the defects regarding noticing, information and really give more time to staff to research and give us their opinion regarding some of the property issues that keep coming up.

Even though this Board has already made a determination on that matter, it certainly is an issue that is still out there. And, in all fairness, we do have three new Board members that were not a participant in





that original decision. So that would be my suggestion to my colleagues.

PRESIDENT CARTER: Thank you. Let the record reflect that Mr. Villines has joined us at this time.

And so, ladies and gentlemen, anybody have any objections to going ahead and proceeding with the agenda as published? We'll march through them and decide what we're going to do accordingly.

Staff, have any problems with that?

BOARD MEMBER SUAREZ: I would move that we open the hearings just for testimony purposes with the understanding that they will all get continued, and then proceed this afternoon with the TRLIA permit discussion.

PRESIDENT CARTER: Okay.

SECRETARY DOLAN: I will second your motion.

PRESIDENT CARTER: Okay. We have a motion and a second to proceed with the agenda as published, with the understanding that the hearings and decisions under Items 4A, B, C, and D will be continued to a later date, and then we will hear Item 4E after lunch, and the remainder of -- the balance of the items.

Any questions?

Mr. Punia, would you call the roll.

EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?





BOARD MEMBER VILLINES: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Bill Edgar?

BOARD MEMBER EDGAR: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Tim Ramirez?

BOARD MEMBER RAMIREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?

SECRETARY DOLAN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

VICE-PRESIDENT RIE: Aye.

EXECUTIVE OFFICER PUNIA: Board President Ben Carter?

PRESIDENT CARTER: Aye.

Motion carries unanimously. Thank you very much.

So ladies and gentlemen, let'sa take a 10-minute recess and we will continue with Item 4A.

Thank you.

(Thereupon a recess was taken at 10:21 a.m.)

(Thereupon the meeting reconvened at 10:42 a.m.)

PRESIDENT CARTER: Ladies and gentlemen, if I





could ask you to take your seats, please, we'll go ahead and continue with our meeting.

As we start, Mr. Punia wants to clarify one issue, and then we will call our hearings to order.

Mr. Punia.

EXECUTIVE OFFICER PUNIA: Jay Punia. I just want to set the record straight. Mr. Monty Hecker referred to an employee's inappropriate action during the previous meeting. I just want to set the record, he indicated that he was a TRLIA employee. He was not. He was a State employee with our Board, and I apologize for that action.

Thank you.

PRESIDENT CARTER: Okay. Ladies and gentlemen, I am calling the hearing to order under our agendized Item 4A. This is to consider approval of Resolution Number 02 -- excuse me, 2012-03 to authorize removal of private fences and miscellaneous obstructions on State land, grant revocable licenses to adjacent private parcel owners for the use an maintenance of a portion of State land adjoining the Feather River east levee, and rescind the Notices of Violation subject to voluntary compliance with the Resolution 2012-03.

Today, as the Board noted, we will accept evidence into the record on this hearing from the respondents. We will dispense the staff report today,

unless requested by a Board member or a member of the public. That staff report will be presented when we reconvene this hearing at a later date.

So with that, I will go ahead and invite -- I have two cards for this particular item. Mr. Monty Hecker up first and then Ms. Debra Hecker up second. I did have one request during the break. Just so we know who our audience is, how many people here in the audience today are the property owners along this stretch of the Feather River, any of the 51? There's -- okay. Very good.

Thank you very much.

BOARD MEMBER SUAREZ: Mr. President, if I may quickly.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: During our break, I had an opportunity to visit with Ms. Vasquez, one of the property owners. It appears that in that area there are numerous property owners that are only Spanish speakers, and she, of course, is having difficulty following the deliberations of this Board.

She is prepared to present her -- some testimony in Spanish. And Ms. Caliso has agreed to provide translation. But just for future discussions, as we move forward, it appears that there's numerous property owners that are only Spanish speakers in this area. So we might





have to make some accommodations on that matter.

PRESIDENT CARTER: Okay. Which we will do.

Okay. With that, Mr. Hecker. Good morning. Thank you and -- one and all for your patience.

MR. HECKER: Thank you. And thank you guys again for coming up here. It's just fantastic that you take time out of your day and that -- to help us the way that you have, and you have greatly.

I want to bring up some pictures of some of the stuff that we -- I talked about last time. With the new members, this is a good opportunity to share some of that.

As well as with the agenda, I kind of wish they'd take out the unauthorized encroachment. Everybody is willing to work together. When you say unauthorized, it just sets everybody off. It's like telling you, you know, your kid did this, and you'ed going to protect and you protect your property.

With the Spanish side, I think these letters really, because of our area, need to be in Spanish. I brought those people because we don't have a representation down there, as I told her, of Spanish speaking people that can explain what's going on. So they're just kind of standing back, and not being represented. So I'm glad that came to the forefront.

The other part is, is you guys type all of this





out. I would really like to see a part that's -- and just a suggestion, open items. You bring up good things. And because it's not an open item, nobody comes back to you. Now, if they're coming back to you at your other jobs and that's great. But us as the people that hear this stuff come up, we don't see it.

In the December meeting, there was stuff that was said. We couldn't make it there. I was sick, and my wife was sick. And you definitely didn't want us there passing this bug around, or we'd a been there to hear you folks say TRLIA go back and work with the homeowners, and let's work this out.

There's a simple thing to working it out. The reason I brought the pictures is this is the levee. This is actually my shop over here. This here -- this is -- and it's hard to tell.

PRESIDENT CARTER: Mr. Hecker, maybe if you could use the mouse, just because from over there, we can't get an accurate record of what you're saying.

MR. HECKER: Not a problem, and I apologize.

This part here -- and it doesn't really show. And I encourage anybody here to come out, any time of day, anything, I will walk you around this property, so that you can see it. But that's the railroad track. And if you notice down here, there's these little orange flags.





Okay. Well, on my property - that's the fence line - they run right along the fence line exactly.

Now, you can't really make it out, and we'll show you in some later pictures, but down here, they completely jump to the right side of the fence side of the road, and that's a road right here. This is the road that they currently use, that they drive up and down. It goes all the way over to Linda

This is what we talked to them about. All of the arrows right here, this one, this one, as you can see is an orange flag right on down. Now, once you get to Susan's place, everything jumps over to the left side of this same very road. This is an existing road. This is what they use to go along the levee.

This is about four foot up from my place. You have to look up to it. This is why we worry about the water problem. Our question was, and I asked this in the December -- in the January meeting, why do these fence lines down here, where my little hand is, all run on the left side of the road?

Mr. Paul Brunner came back and told me the reason for that is, is because somebody has never taken out the old railroad track up here, which widens this area right here down to the road. So that moves the toe wider. Well, I said, well, that's exactly what I've been

explaining all along. The wider the levee, then you guys are allowed to move the toe. So now you've moved it down to my fence. In the previous drawings, you'll see a yellow area for the people, the other 42 people, that down here they get to have this yellow road part, that they can utilize and work with the State on. I have none, absolutely none. It will go into my property.

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MR. HECKER: And that's another closer picture. That's my vehicle that's sitting over there to the right of where the fence is. And it's actually -- there's an orange tag right there. It goes -- because they can't put a marker in. Those are all blackberry vines.

Again, you guys asked TRLIA to come out and meet with us, and talk to us and discuss this. I had Larry come out. He's the gentleman with the blue shirt. He's the surveyor guy. When he came out - there was two of us - he said he couldn't answer questions and he wasn't there to argue with us. And we weren't arguing. We was asking questions about this, and why the fence went to the right side of the road, when, for over a mile, it runs to the left side of the road. He said it wasn't his job to answer that. That's real working with you.

I called Mr. Paul Brunner and asked for a meeting to come out, that we had five of us that all wanted to





meet at my office. I have a big meeting room. Paul said, no, you have to come to my office. We said we'd -- anytime. You name the time of the day, we'd be happy to meet. We want to meet out here, because we want to point out some of the problems that we have. Now, is that working with you?

I was told I would meet at his office. And if that wasn't able to do, we didn't have a meeting. And we didn't have a meeting. I've had John Nicoletti, who's a Supervisor, come out. Mary Jane is supposed to. I called her last weekend, and asked her to come out. She's head of the Board now for TRLIA. I didn't even get a call back. And I've never had that happen with Mary Jane. I'm very upset about that, and I will be talking to her about it, because she's a recipient of a lot of homeowners as a supervisor to here, and it's unacceptable.

My next problem happened with this marker.

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MR. HECKER: If you'll look, where the little mouse is, the hand, there's a metal piece right there. TRLIA nor anybody else found that. I found it. I cleaned it up. I made it clean. It was actually underneath some brush and dirt. I asked them what it meant. I even took a picture of it. That's it right there.

Well, that's insignificant. Folks, that's in the





back of my property. It may be insignificant, but the very people that have -- Larry, who's a surveyor, Paul Brunner who's the boss of the Department, couldn't call. They say that's the Corps of Engineers. I said what does it mean? I'm a homeowner. It's on the outside of my fence. It's on the levee, your road. It's insignificant.

I says, well, can you tell me more about it? Can we look into it? Can you tell me who I need to call to find out about it? I'm told it's insignificant. It was never addressed, other than it's something with the Corps of engineers. I never got a phone number of who to call. I'd been happy to do that.

And I don't understand what the 67 feet is, because as you'll see as other people come up here, and we start talking about the railroad, this is where the old tracks were. And if I back up to the picture, you'll kind of get an idea of where it's at. And it's right -- let me back up one more. The arrows will show it. It is right there. And this is the gate that you have to open to use their road to drive down the backside. And I found that right there on the edge of that road.

Now, let's go forward.

The other thing I called Mr. Paul Brunner on was a surveyor came out. I don't know if it's Larry. He can answer to that. This is Island Road. This is the road





that you go over the levee that we were looking down to gain the entrance at that site.

They posted down here by the orange sign, they put in a marker. Again, I don't know about markers. It's going to be talked about with some of the other people. But I went to the County and asked, they posted a marker over here that says that that's their property. It hasn't really been established, can I see it?

There's no record of this, and I will get a picture for the next time to bring it to what it exactly looks like. It should be filed -- if we all agree that that's their property and that, then it should go in, and it should be registered in that. Not put there, so that in five years when somebody finds it and says oh look, here's a marker. It's not on any survey map, but they must have forgot, so let's make it a part of the rule. Now -- if you see what I mean.

And I can see that happening, because all of the markers that we're going to bring up today, nobody can find. Larry cannot find. Larry had to go back to markers that were previous. We have surveys from 1966 that show that a person surveyed and found land markers that now can't be found, so they couldn't use them.

We also asked for them to go and get the railroad. Now, this area is the overflow. The only

reason that I show you this picture is on the left side way over here, there's a crick, and Island runs on that. That's where they're going to take and pipe the drainage issue that we have. There is no pipe underneath the road. I don't want to dwell on the drainage. Because of you folks, it's an issue now, and it's in paper. It's in writing. And I thank you for that, because it wouldn't have been.

You'll have one person in here that will really talk about it, because when it floods his place, we're talking six to eight feet of water, and it has nowhere to go but his property. And when they put the road in, all we're going to do is get more water.

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MR. HECKER: With that, I bring you this here. It's not going to make a lot of sense to anybody here. I've called TRLIA. I asked them. I've been down here to the County. I don't have it written up here, but this number 22, 2.28 acres, if you notice the red square, that's my building. Okay.

So TRLIA is going for the property that's going to go right behind my building. Yet, I cannot find any paperwork on this. And I'd like that to be an open item that TRLIA would come back because it's -- TRLIA is not State. They're part of it. But they're saying that all





of our property that's on this line now is State owned. I don't know. Maybe TRLIA, they can consider that being State owned.

But this is showing it's owned by TRLIA. And it runs from this corner, which is Arnold's property, all the way down to Susan's, just the other side of Susan's property. But, yet, I can find no paperwork on it, and that's the map and the references that we use. And that's why we were trying to say with the railroad, that we could come up with measurements.

I would really like that to be an open item of explaining where the paperwork is for 22 that shows it's owned by TRLIA.

--o0o--

MR. HECKER: This is our map. Again, it's from not the one that Larry used. What I want to bring up on it is this is our backside of the lots. If you'll go to number 10, and look at it where my little hand is, it's inserted. Well, on every map and description that I can find, it's inserted. Nobody else is on Feather River Boulevard.

Well, I'm in the process of buying that property from Arnold. And the reason I bring it to your attention is it says it's supposed to be 280. It's written right there above my hand, 280. And if I go to that line that





they show, which Mr. Paul Brunner would not answer. I emailed him this, asked for an answer on it.

My fence line is perfect right where it's at. Now, I couldn't get an answer back on that again, so that's the TRLIA that's working with me, and coming out to my place. That's the TRLIA that I'm taking my time and emailing, and not getting answers back. And I'd be happy to share my emails that say it's a mistake, or because this is not a survey. Well, the surveys, when you go and look at them, they make that all one straight line. Well, why they do that, and these people show me that I have to lose that much of the property, that it is indented.

So that's my basic presentation. I really hope that you -- some of this makes sense. Again, I encourage you to come out to my property any time. I'd be happy to take anybody around and show you, walk the levee, and that. If it's a nice day, it's a beautiful walk. And encourage us to use the open items, so that these things can be answered back to you, and that I can see what the answers are, since they won't answer me.

Thank you. And if you have any questions, I'd be happy to answer them.

PRESIDENT CARTER: Thank you, Mr. Hecker.

Just for the record, and for all of the public that's out there, Mr. Hecker has invited us out to his





property. And I'm sure all the Board members would be delighted to accept that invitation. Unfortunately, we're under some restrictions in terms of our -- with respect to enforcement hearings and permits, we have ex parte rules that apply to the Board. And the only way we could do that, ladies and gentlemen, is if we held the hearing out there on site together in a properly noticed forum. And that's -- we're bound by law to act that way. So even though some of us would --

MR. HECKER: Not a problem. I just wanted to --

PRESIDENT CARTER: -- love to come out and see the property and walk with you, individually, no Board member is allowed -- is prohibited from doing that. And the only way it can happen is if we all go out there, in a group, in a properly noticed forum.

MR. HECKER: Thank you for that.

PRESIDENT CARTER: And that's so that all parties have a chance to share their perspective with the Board at the same time, and all parties have a chance -- opportunity to hear what everyone is saying about this, and hear what the Board is hearing about it. So it's part of the process.

MR. HECKER: Not a problem. Thank you.

PRESIDENT CARTER: Thank you. Any questions for Mr. Hecker?

VICE-PRESIDENT RIE: Yes.
PRESIDENT CARTER: Ms. Rie.
VICE-PRESIDENT RIE: Mr. Hecker, can we get a copy of your presentation today? Is it something that can be left on the computer.
MR. HECKER: Yes, it's on here. They can email it to everybody there. I have no problem with that whatsoever.
Thank you.
VICE-PRESIDENT RIE: Thank you.
PRESIDENT CARTER: Any other questions for Mr. Hecker?
Thank you very much. Then Ms. Debra Hecker.
MS. HECKER: Good morning. My name is Debra Hecker. Thank you very much for coming back. We really appreciate that. Having somebody concerned enough to come to us instead of the other way around is very, very nice.
I have two major concerns. I'm going to read my statement or whatever, because I forget. I get wound up and excited and nervous, and I forget what I wanted to say.
I have two major concerns. Your vote on December 2nd to vote that it was your findings that the 51 property owners have been encroaching on State property for the past 56 years. I feel this was done in haste without





properly validating all the evidence brought before you.
Your own Board members brought up numerous questions. Board Member Suarez questioned if you had the authority to issue encroachments if the property did not belong to the State. That was never answered. Would you have had the authority to issue these encroachments if it was ever found this was not State property?
I'd like to know.
Vice-President Rie questioned TRLIA's difficulty in finding the monuments and locating the original railroad tracks. He also questioned if the San Joaquin Drainage District map had been reviewed, and was told by the surveyor though -- by the way, Monty knows it's not Larry. He got that mixed up -- that only Yuba County documents were reviewed.
Has anyone ever taken the time to review the State's map -- the State's, California's, maps on this, not just the deed?
He also asked if DWR's real estate branch had been involved and was told they did a quick review based on the survey submitted.
Board Member Villines -- I'm sorry, if I mispronounced names -- did not believe the encroachment was proved based on one survey by a third party and made that statement. I would like answers to those questions.





Did the DWR real estate branch have any documents to prove or disprove the property is owned by the State? Does the San Joaquin Drainage District have maps or documents that had not been brought to light during this process? Was the 1956 deed filed with any supporting document, such as maps, to show the property lines?
The reason I'm asking these questions is because the property owners do not feel that the State owns this land. And the more we raise questions, the more questions emerge. You are claiming property that you did not know you had until a few months ago.
Property that 51 private landowners believe to be theirs for the last 56 years. Property that was -- that the railroad fenced off long, long ago. And you are doing this based on the results of one survey that was very beneficial to the State and the County, and was, in fact, paid for by TRLIA, who has the most to benefit from this.
As I've said, a few Board members have raised very valid questions that have been swept over, but then so have we the property owners. For example, you were briefed and assured on 2 December that Mr. Heeney, a licensed surveyor, had established the State's property line. Mr. Heeney went so far as to assure you that the Yuba County Surveyor's Office had approved the survey map dated June 2011, and given to the Board and all property





owners as proof of the State's ownership. And that was just -- and that it was just awaiting recordation.
He went on to brief you that, and I quote, "The review of the County Surveyor's Office had no change whatsoever to its analysis".
After reading that in the transcripts, I asked Mr. Brunner to please clarify when the June 2011 maps -- survey map that the Board and landowners were given was approved by the Yuba County Surveyor's Office, and when it was recorded by the Yuba County Recorder's Office, since we could find no record of it on file.
His response was, and I quote, "I'm happy to provide that information. For clarification, Mr. Heeney's statement to the Central Valley Flood Protection Board was that there were no changes whatsoever to his analysis. There were changes requested, such as adding dimensions, recording data callouts and a vicinity map. Those were added to the final submittal.
"Regarding the survey dates, Mr. Heeney made his first submittal on August 30th. The County had a backlog of work, and it was not until November 30th when Mr. Heeney contacted the County regarding the survey status. They indicated that they were nearly finished with their review. Mr. Heeney's final submittal was handed to -- hand delivered to the County on January 6th, 2012. The

County recorded the survey on January 11th, 2012", end quote.

What Mr. Brunner left out is that the map had not been approved by the Yuba County Surveyor's Office until January 9th. You were told it was approved in December, and that it was significantly different from the map we had been reviewing. Bearings on property, fence lines change, detail was added, and the new improved map noted the purpose was to delineate various encroachments.

Were you aware that the original map dated June 2011 has quietly been replaced on this agenda with a new and improved map dated January 2012, and titled 2011-11. And this one survey is the only thing on file in Yuba County?

Mr. Heeney was unable to find concrete monuments documented in other surveys, especially the 1939 recorded subdivision survey, that all surveyors seem to refer to.

Yet, a parcel map titled 2006-017 done in 2006, shows two of those monuments as found. There has been no road work done in the area in the last five years. So why was the other surveyor able to find them?

When the property owners keep questioning why he didn't survey the railroad property to find the property line, we were told he could not find any landmarks or monuments behind the private properties. When we found





one, it was blown off as a irrelevant and he said he had found another probably by the Corps of Engineers also.

He also told this Board that his analysis was based on a 2004 survey. It is not on the survey legend. What map? We would like to look at it.

We have been told that all documents used to identify the property line were listed on the map that was dated June 2011, that we were all given. Now, we find out that there are railroad maps, a 2004 map, and who knows what else not listed.

As Mr. Heeney told you in December, he never went past Yuba County records to document State owned property. For your information, and to the concern of we the property owners, I feel you should also be aware that Mr. Heeney has filed no field book with the Yuba County Surveyor's Office, nor is there any record in their office of the corner monument placed by the surveyor according to this map of survey on the west corner of the State property off of Island Avenue, State property.

I am not an expert on the requirements of the Surveyor's Land Act regulations, but wouldn't you think a survey map claiming 51 property owners are encroaching would have a bit of documentation filed with it?

There are other deed issues that have been raised by Ms. Miller with both staffs and ignored. Is that





because you've already ruled on the encroachment?

Concern number two. Working a solution out with the property owners in December 2011 after voting that we are encroaching, you instructed TRLIA, and thus gave them the authority to work out a solution or compromise with the property owners. That never happened.

What did happen is this. We were called to a community meeting on January 10th. We were given handouts with two options available to us. Option 1 was to have certain property owners sign permits to lease, rent something the property.

Option Two was the original option to remove all encroachments including buildings. We were told at the meeting that this was the best TRLIA could get from the Central Valley Flood Board. We were made to believe it was the best it could be. We were never told -- we were never asked for input to provide alternative solutions or negotiated with. It was Option One or lose it all.

We were surrounded by lawyers, experts, and staff from all agencies. There was never a formal vote. We were ran over. Our questions were side stepped, ignored, and dismissed. No one came out of the meeting even understanding what the permit issue meant. We were told that TRLIA would pick up the cost, but it was never clarified what signing that permit meant.





Was TRLIA paying for the permit process? Would there be any costs or fees in the future? And who would pay? It was all very vague and very overwhelming.

Quit claim deeds were never discussed, buying the property back from the State was never discussed, issues you, the Board, raised. We were briefed plain and simple Option One means you can keep your buildings, Option Two means you'll lose it all.

I'm not sure why I'm standing here really, because my husband and I do not have any options. You are taking it all from us and several property owners. Some may have a fence wrapping around buildings, but we have no choice.

I sent you a letter requesting that the permit be suspended until questions and concerns are answered. I would ask that this be included in your considerations and made a matter of record.

And one more question, originally this Permit number 18690 was for road maintenance and a fence. It was referred to as the fence permit. In this agenda, it is formally being called the encroachment permit. Just as the survey changed from a generic purpose to identified land issues, and now has been filed with the purpose noted as to delineate encroachment issues, were you aware that throughout the entire levee project, the January map

survey is the only one that has ever been filed with Yuba County? Of all the work TRLIA's done up here, that's all that's ever been formally filed in Yuba County. The rest sits in TRLIA's offices or with the surveyor's offices. Most of these documents are never made public record.

The manner in which this matter has been handled and the treatment of the public has been very poor. Because we have questioned the process and the results, we have become the nuisances, holding things up and made to feel like criminals.

Both staff's dedication to overcoming us, the property owners, was illustrated at the last meeting when one of the attorneys gestured his delight. I thank you for your apology, sir.

Private citizens and property owners should not have to battle your agencies in these processes. Although you are providing the service, we are paying the bill.

Thank you.

Does anyone have questions?

PRESIDENT CARTER: Thank you.

Questions for Ms. Hecker?

SECRETARY DOLAN: Mrs. Hecker, do you have a copy of what you read that --

MS. HECKER: Yes, ma'am.

SECRETARY DOLAN: -- we might be able to have





that, if you give it to staff, so we can have it. I tried to take a lot of notes, but it would be helpful to have that. Thank you.

MS. HECKER: Thank you.

PRESIDENT CARTER: Any other questions for Ms. Hecker?

BOARD MEMBER SUAREZ: I don't have a question, Mr. President, but I have a suggestion, if I may?

PRESIDENT CARTER: Please.

BOARD MEMBER SUAREZ: It's already been referred twice the behavior of a Board staff member that's been unfortunately characterized as the behavior of TRLIA staff, and now it's characterized as the behavior of an attorney. For the sake of attorneys, me being one --

(Laughter.)

BOARD MEMBER SUAREZ: -- and TRLIA, I think it would be good if the President would take an opportunity to clarify that the staff person in question is not a TRLIA employee or an attorney, but et cetera, et cetera, et cetera.

PRESIDENT CARTER: I can do that.

So once again, the individual who made the inappropriate gesture at the Board -- at the meeting -- the hearing that we had in January was a Board staff employee. He's an engineer. He is -- his exact title is





Chief of Encroachments and Enforcements, I believe. And for the record, disciplinary action has been taken with respect to that employee, and we are -- the Board apologized. I apologize for that. That was inappropriate behavior. And as you can see, that gentleman is not here today, and that is not by accident. That was a conscious decision on the part of the Board and Board staff.

So, again, I apologize. And please don't implicate anyone or any entity other than the Board and its staff with respect to that, because it's our problem.

Anything else?

Any other questions?

Okay. We'll proceed. Ms. Magdalena Vasquez. And Ms. Vasquez is most comfortable with Spanish, so Ms. Caliso is going to translate for the Board and for the record. So we will endeavor to work this out. Please be patient with all of this.

STAFF ENGINEER CALISO: Thank you. And I will do my best to translate as accurately as I can.

MS. VASQUEZ(through interpreter): So she's introduced herself as Magdalena Vasquez. And she owns two pieces of property, which the addresses are 5682 Riverside Drive and 5648 Riverside Drive

Okay. She said when she purchased the property, she was never notified or told that part of the land





belonged to the levee. She's stating that now she's been told that part of her land does not belong to her. It belongs to the State, but she has not had anyone come to her house to do any measurements.

She's indicated that there were some people that came to her property to the back, and placed some K-rails right up along the fence. So she's attended some of the meetings, but she obviously did not understand most of the discussions that were going on, so she had difficulty coming in and trying to have an understanding of what was being discussed.

She's saying she's not alone, that there were other people that are also in the same situation, and that they have -- they feel that there's no point in them attending the Board meetings or the meetings here in public, because they feel that they're not being listened to, because there is no -- they are not being offered something that is reasonable for them.

So she's indicated that one of the properties she purchased, she purchased it for $190,000. And, at this point, she owes -- well she purchased it for 200,000, and she currently owes $190,000 on the property.

So she's saying that now her property value is going to be affected because additional land is being taken away, that it belongs to her.

Okay. I'm going to try to recap. So what she's indicated was that the property values for the property in her -- the property value is going to be impacted or affected and she's going to have additional hurdles to try to selling a property now that because the lot size has been diminished.

She also indicated that she -- when she purchased the property, she had someone come out and verify the property, and that she -- to make sure that what she was buying was -- the property that she was buying was, in fact, what documents were being reflected.

So she's saying that if we were -- wanted to do anything in her property where the fence is currently located, she's indicated that you would need authorization from her to do so. That would include the installation of the K-rails that happened apparently some time back. And she has not given that authorization to do so.

She's saying that if you want that land, that she's entitled to compensation for that piece of property.

That's it.

PRESIDENT CARTER: Thank you. Are there questions for Ms. Vasquez?

VICE-PRESIDENT RIE: Yes, I have some questions.

PRESIDENT CARTER: Okay. Ms. Rie.

VICE-PRESIDENT RIE: When she purchased the





property, she said that she had the property verified. Did she have a survey done, and does she have a copy of whatever verification she received?

MS. VASQUEZ(through interpreter): So she's indicated that she had the real estate broker was the person that she had or that the transaction when she purchased the property. There was not an engineer, a surveyor involved in the preparation of any of the documents.

VICE-PRESIDENT RIE: Okay. And then my next question is when Board staff sent out the original notice of an enforcement hearing, you gave them 30 days to request a hearing, did you send those notices out in Spanish?

STAFF ENGINEER CALISO: No, we did not, ma'am. We were not aware that this was -- that the language was an issue. However, Ms. Magdalena did contact me, I want to say following the -- following the July Board -- the July community meeting that we had here in Olivehurst. She was present at that. That's when I was made aware that she did not understand some of the -- what was going on, what the action was before her.

So I'd expressed to her, that if she had any questions and there was anything that was not clear, I gave her my contact information and asked her to contact





me directly, but I never heard back from her at that point. So I didn't do much follow-up. That was the only communication I had.

VICE-PRESIDENT RIE: Can you ask her this question, if she had known that she had the right to request a hearing, and if it was communicated so she could understand, would she have requested a hearing?

MS. VASQUEZ(through interpreter): So she's indicating she was not aware of that, that she would have requested that.

STAFF COUNSEL CALISO: And now, if I may. In my discussions with her, I did indicate to her some of the options that were available to her. And one of them was requesting a hearing. And I indicated to her to submit those documents. But, you know, once again, this was a conversation at the community meeting that we had there, and then there was no follow-up. And I failed to follow-up with her to see if she had additional concerns still on that issue.

BOARD MEMBER VILLINES: Mr. President?

PRESIDENT CARTER: Did you say, or did she say, that had she known that requesting a hearing was an option for her, she would have requested it?

STAFF ENGINEER CALISO: That's correct.

MS. VASQUEZ(through interpreter): Okay. So





she's explaining that at the community meeting, she indicated that I'd -- we discussed that -- she says that we discussed very briefly, and the discussion was limited to the work that we were doing, essentially putting in the fence and the project that was coming aboard.

So she does not recall me notifying her of her option to request a hearing and submit that information to our office.

VICE-PRESIDENT RIE: Okay. The final question is, we're going to continue these hearings, so when we come back in a month or so and continue the hearings, does she want her own hearing now, because it sounds like she has some issues?

BOARD MEMBER SUAREZ: Angeles.

(Thereupon a discussion occurred off the record in Spanish.)

BOARD MEMBER SUAREZ: She wants an individual hearing.

VICE-PRESIDENT RIE: Thank you.

PRESIDENT CARTER: So, Ms. Suarez, could you translate what you asked for the record and for everyone else.

BOARD MEMBER SUAREZ: Sorry. We just -- I was just clarifying for her what -- the terminology, the hearings, in Spanish. I explained to her that because she

didn't respond to the original notice, we lumped her in in the general action. And I asked her if she wanted her individual hearing, and said she preferred to have her individual hearing.

PRESIDENT CARTER: Thank you.

Any other questions?

VICE-PRESIDENT RIE: Just one more follow-up question for Ms. Caliso. How many of the 48 property owners are you aware of that are in a similar situation where they're Spanish speaking?

STAFF ENGINEER CALISO: As far as I know, I'd only know Ms. Vasquez. There was someone else that contacted me sometime ago, but they were a representative of another landowner, but they spoke English.

PRESIDENT CARTER: That was Ms. Maria.

STAFF ENGINEER CALISO: Yes, correct.

VICE-PRESIDENT RIE: Can you ask her if she knows how many other Spanish-speaking property owners are out there.

MS. VASQUEZ(through interpreter): She says there's at least four or five others.

VICE-PRESIDENT RIE: Okay. Thank you.

PRESIDENT CARTER: Any other questions?

Okay. Thank you.

Mr. Shapiro.





MR. SHAPIRO: Thank you, President Carter, members of the Board. Again, Scott Shapiro, general counsel for Three Rivers.

I'm actually struggling a little bit with what to share at this point. On the one hand, you've already made a determination that there's no decisions to be made today, and, in some sense, we'll be retreading a lot of this at the next meeting, so I really don't want to waste everyone's time. On the other hand, there's at least three new Board members sitting up there who have not heard all of the testimony that was given in December, where the Board actually made the determination that the survey was legitimate and the property line is where we're now acting as though it is.

And I'm reluctant to let a full month pass and have you, in your minds, thinking, well, maybe it's a very one-sided thing, when actually it's not so one-sided.

So what I'd like to do as part of, I guess, an interested party's perspective is share a few thoughts. Limit myself, so it's not exactly what we would put on. And then express that assuming the next hearing is going to be a little bit more in-depth, as you've indicated, and perhaps a brand new hearing for Ms. Vasquez, which I hear may become an option, then we would present a full testimony at that Board meeting.





But so that we don't have an impartial record, and what appears to be a one-sided record, I do want to make a few comments.

For those new Board members, the way this started was that Three Rivers simply went to do a survey and determine where we were going to put the access road we need to meet the best O&M standards. And we actually did it for the purposes of determining what properties we needed acquire or condemn. That was our belief and intention. We wanted to see what we needed and where there was room, and then make the determination. And we were the ones who, I think, discovered, and were surprised to find, it was actually State property.

And so our desires from the beginning, and I think the majority of your staff's desire, was never to create an enforcement morass. It was to simply get access to the property we needed, so we could put in the fence and have an adequate O&M corridor. Of course, things have spun out in a very different way over time.

In regard to a few of the specific items that came up today, I'd like to provide a brief overview and then I'd like to ask Larry Dacus to address one issue raised by Mr. Hecker and Mr. Heeney to address two other issues.

Mr. Carter -- President Carter, do you have a





concern?

PRESIDENT CARTER: I apologize for interrupting, but just for the edification of Board members who weren't here at the time, you referred to property that you needed. You should probably clarify that you needed that because the Board directed TRLIA to establish a 20-foot access road and -- 20-foot access and --

MR. SHAPIRO: Toe access corridor.

PRESIDENT CARTER: -- corridor between the levee toe and the fence line. So it's not what you needed, it was what you were directed to do by this Board.

MR. SHAPIRO: Yeah. And we'll go into the depth of exactly what the requirements were, but there were two issues. One was the Board permit, which directed us to have an O&M corridor, and the second is the urban levee design standards, which DWR is in the process of adopting, which determine that we should have, in urban areas, access along the toe to do levee fighting and inspection.

Thank you, President Carter. I appreciate that clarification.

So, first, I do want to note that, again Paul Brunner apologizes for not being here. He had a minor medical procedure on Monday, and has been out all week. And so, if indeed, Mr. Hecker has sent any emails this week to Mr. Brunner, he's not on the computer and that's

why he hasn't responded. So I thought I should note that for the record.

I do think, however, that Mr. Hecker has presented some of the past communications in a way which I don't think is really the most accurate. For example, there was a whole discussion about Paul Brunner's refusal to meet at his particular location. As I reviewed the emails, which are actually in your packet, pages 230 to 234, the last email exchange I've seen is an email exchange in which Mr. Brunner agrees that he'll meet either at our office or with Mr. Hecker at his location. There may be email exchanges past that, but I don't have a copy of it. I don't believe your staff has a copy, and I haven't seen anything from Mr. Hecker on that issue.

In addition, we have -- we actually had a meeting scheduled that Mr. Hecker and his group cancelled, so I'm not sure why that was. I understand great frustration on the part of Mr. Hecker and his neighbors, and I appreciate that frustration, but the reality is, is we're not trying to be difficult. We're just trying to do what we think is the appropriate thing, which is to provide a compromise between the current position, which is occupying State land with no permission, to occupying less State land with permission with a toe access corridor.

Also wanted to note a few other things. One was





there was a map that Mr. Hecker put up as part of his presentation showing Three Rivers property a long strip and wondering what that was. That's property on the other side of the levee. We did some acquisitions on the waterside of the levee, and according to Mr. Heeney that's actually our property on the water side. It's irrelevant to this issue.

Mr. Heeney will address the recordation issue, but I do want to provide a big picture. Mr. Heeney did a survey, reviewed all of the normal data that would be reviewed, met the best standards required for this kind of work, and that was his survey which was submitted to the County, and which the County did say it really had no comments, other than there will be some little cleanups.

Over time, Mr. Hecker and the other neighbors have somewhat helpfully actually submitted additional information, documents we hadn't seen, copies of markers that we weren't aware of. Every time that information has been submitted, we have reviewed it. We have provided feedback. There is an extensive memo on page 226 of your record, which we addressed every single outstanding issue that existed as of the time of that memo. And everything we have found has only made the survey stronger.

And so while Mr. And Mrs. Hecker have said well, we are not addressing everything, we are addressing





everything we're aware of, and doing our due diligence. And as they uncover more and more, we continue to address it, and it only strengthens the case of where the survey would be.

I'm confident that given more time, more information will be found. That's way this stuff is. But that doesn't mean we haven't done a good job, and it doesn't mean that the survey is not accurate.

In terms of the meeting, the workshop -- not the workshop, the meeting that was held in the community, it is correct that Three Rivers presented two options to the landowners. That's absolutely correct.

What that doesn't tell is the story of what led up to that. The month or so of Three Rivers working with Board staff and DWR staff to say what options would be acceptable to the other partners, the Board, and DWR? We actually presented a slough of options. We presented options that included the State purchasing property. And DWR probably rightfully said, we don't think we can go there. There were other options that were rejected as well.

At the end of the day, we were down to two options. Option One was a full enforcement hearing and move the fence to the real property line. Option Two was the one that we have been pushing, which is give us our





minimum toe access corridor, let us put a fence in, and we will, at our own expense, at Three Rivers, about a hundred thousand dollar cost, take our levee improvement money and do all the paperwork so that the landowners can have a legal right, a license to continue to use the property.

And so while I understand from their perspective, if feels forced down. It feels like do it our way or take this compromise. Three Rivers has worked hard with all of our partner agencies to try to find a compromise, and this was the best we were able to find.

I've heard several times today the notion of how will this work in the future? Will landowners have an obligation to renew encroachment permits and have a financial cost associated with it? Will there be a fine? I think those are all excellent questions that should be answered. In fairness, my team and I haven't heard those questions before today. We didn't realize they were questions, so we weren't answering them.

I think your staff can address the issue that you're not intending follow-up costs. From Three Rivers perspective, it's suppose be to costless now and costless into the future for the landowners.

The statement was made that no other surveys have been filed for the Three Rivers project. That's not true. A significant survey was filed for the Feather River

setback levee lands. It has not yet been recorded by the County, but it has been filed and the County is working through minor issues for that as well.

I did just find out today there's actually one property where the fence is on the property line. So it's -- I don't want you to walk away today thinking that there is just a constant fence the entire length. There is one property owner who, for whatever reason, it's property setback on the property line.

And I want to finally address Ms. Vasquez's situation, and then again ask Kevin Heeney and Larry Dacus to offer a few quick remarks.

I am aware, through talking with Kim Floyd, our Public Outreach Officer, that at the community meetings, your staff very kindly provided translation services, and they were provided at those community meetings. We recognize that there may be folks out there who didn't come to the community meetings in the first place, and who are getting letters from us, and they may not understand what's going on. And we will commit, next week, to Three Rivers to send out a letter in Spanish to all the property owners identifying that if anyone doesn't understand what's going on to please contact us, and we will arrange for translation services to make sure those people are properly informed.





I understand you may do something different in regard to your notices, but our goal is to have informed citizens, and we will incur that cost and take that effort to reach out to them.

So with that, I'm going to ask Larry Dacus if he can just address the one issue Mr. Hecker raised about the fence on one side of the road versus the other. And then I'll ask Mr. Heeney to spend just a minute seeing if there's any details to fill in that I didn't fill in in discussing the surveys.

MR. DACUS: Good morning. I'm Larry Dacus. I serve as Three Rivers Design Manager.

I am not a licensed surveyor and so we probably need to get that very clear. There was some misconception about that. Kevin is our public surveyor and we rely on him to do these survey things.

I did go out to meet with the Heckers and several other people at their property to talk about the levee toe. Urban levee design standards talk about providing a 20-foot clear corridor from the levee toe. So in order to figure out where that corridor needs to be, you first need to define the levee toe. And one might think that's very simple. You go out there and look and there it is, because most of us are familiar with the trapezoidal shape where you have a crown and some side slopes. It comes





down. It meets natural ground. And there where that side slope meets natural ground is where the levee toe is.

That becomes complicated when you have cross sections that have been altered on the backslope through the years or else they served as something else and you built a levee onto it. This particular case, the original embankment out there was a railroad embankment. The Sacramento Northern Electric Railroad, I believe, was the name of it.

And then as years came by, people began to add levee embankment to the waterside of that railroad embankment. And so you have remnants of that old railroad embankment on the landside of the levee embankment. So you have not quite the standard shape. You come down and then there's a railroad embankment. And then at the very southern end of this reach of levee at Island Avenue, there's also a ramp off of Island Avenue down to the levee toe.

And we have discovered in other places where there's actually been additional fill placed at the bottom of the levee, which we think -- we don't have records of it, but was probably placed there to elevate that area, because the area to the east of this reach of levee, it was a historic borrow area. We have maps which show that probably through construction of the railroad and other





embankments in that reach, they borrowed from that site, so you have low areas there. And someone probably placed some fill to elevate a road so that you weren't down in this water that ponds back there after heavy rains.

So all of those different fills somewhat complicate where that levee toe lies. In our case, we asked our engineer back in the mid-summer when we started this process to go and make their best -- well, make their engineering judgment as to where that toe lied.

And, I mean, you could go out there and you could chase these numerous embankments down to where it was finally flat ground and say that's the levee toe. Sometimes that final spot is actually over into the residence, what appeared to be passed the fence line. That spot was passed the fence line.

Our engineers looked at the embankments that existing there. What they tried to do was put a -- I'll say an average slope through those embankments, so that it encompassed all of the fill that was on the back of the embankment. We're not recommending any of that fill be removed. It's there now. It provides stability. It provides protection. Our analysis for that reach of levee took into account all of the embankment that exists there.

And we also looked at some as-builts that the Corps -- or we looked at construction drawings that the

Corps of Engineers had in 1997 when they came through their and installed a cutoff wall. And on their maps, they had identified a line as the levee toe.

So looking at both those things, we came up with what we think is our -- the best engineer's establishment of levee toe. At the southern end, I understand there's some concern as to why does that toe appear to curve as you go farther to the north.

And the answer is we have these various embankments at the very southern end, the railroad embankment, the ramp, some fill for another road that pushes that toe out a little wider down there. As you go to the north, the ramp disappears. There are still some remnant railroad embankments. But then as you get where you see that very furthest point in Mr. Hecker's photograph, there's actually a point where there's no additional fill on the back of the levee.

And so that's where you see this levee toe kind of curve in. You can see -- if you had our map and you could see further to the north past that, you'd see that that levee toe comes back out a little bit, because for whatever reason, and I don't know why, the old railroad embankment has gone from a short reach of the existing levee, but then it picks back up again as you go past that. So that's the reason you see this curvature.





PRESIDENT CARTER: Mr. Hecker, so you're saying that in the pictures that Mr. Hecker showed us, there were orange flags that were placed on the berry vines and some were staked and whatnot, and there was a line of those going down, that delineates the levee toe?

MR. DACUS: Correct.

PRESIDENT CARTER: Because he was under -- or he represented to us that that was the property line where the fence goes.

MR. DACUS: No. The line he showed you was what we considered the levee toe. That was our commitment to them was to go out and actually stake the levee toe, after we came up -- after we had discussed this option where we said, the new fence would be 20-foot past the levee toe, and whatever, so we were --

PRESIDENT CARTER: So where those orange markers that are out there now define the levee toe, the fence -- the proposed fence is to be placed 20 feet landward of those orange markers.

MR. DACUS: That's correct.

PRESIDENT CARTER: Okay. Thank you.

MR. DACUS: Any other questions?

VICE-PRESIDENT RIE: Yes.

PRESIDENT CARTER: Ms. Rie.

VICE-PRESIDENT RIE: In Mr. Hecker's





presentation, he showed a slide of some kind of a round object on the ground that was recently discovered. Do you know what that is?

MR. DACUS: I have seen those. I have seen several of those in that reach. I can't say -- okay. I will tell you what I know. I can't speak with certainty as to what those are. They do not appear -- and Mr. Heeney will verify -- they do not appear to be land survey markers, because they have a very definite -- land survey markers need to be done a certain way. As best as we can determine our, I will say, guess, this appears to be perhaps a construction control marker for the Corps of Engineers. I think on there it says US -- I don't know if it says USCE U.S.A. But it is our guess that perhaps these were construction control monuments placed by the Corps of Engineers when they were doing their work and they were just left in place. So they're not designating a land boundary, but are more likely were used to control construction.

BOARD MEMBER SUAREZ: I'm sorry. What does that mean, control construction?

MR. DACUS: Well, when you prepare a set of plans, you tell the contractor you need to follow this alignment. You know, you place your fill on this alignment. There's generally a control alignment, and





that fill will be placed along that alignment.

So there are survey controls, such as this, this line that starts here, and it goes a certain direction for so many feet and things like this. Because you're working where that alignment is - let's say, it's the center line of the levee - you'll often place, what are called, offset monuments. And that is you'll place something that will be out of the area of construction, so that it won't be disturbed.

And you say this -- the center line will be offset so many feet from a certain monument. And that's our best guess as to what that might be.

VICE-PRESIDENT RIE: Okay. And then my next question is Mr. Brunner told us at the last hearing that you guys would look at the drainage situation. When you go in there and regrade the road, you're going to push that water further into these properties. And he said that you guys would look at trying to resolve that.

So what exactly is the plan to resolve the drainage in the cases where you need to do some regrading and the drainage is going to get worse?

PRESIDENT CARTER: If I may, I mean that's really a topic of this afternoon, for -- because that's when we hear the permit for the fence. So I think I'd like to postpone that, because we will address that this

afternoon.
VICE-PRESIDENT RIE: Okay. I only bring it up, because it was part of the 48 properties and Mr. Hecker brought it up, so I was just trying to get some clarification on that.
PRESIDENT CARTER: Yeah, drainage is definitely an issue, and -- but that's a topic of the grading and installing the fence portion.
VICE-PRESIDENT RIE: Okay. That's fine.
PRESIDENT CARTER: As opposed to -- I mean, we're still on 4A, just to remind you, of these hearings and decisions.
Any other questions for Mr. Dacus?
Mr. Villines:
MR. VILLINES: I'm hoping that somebody has -- can we go back to the picture that has, you know, the flags that jump to the opposite side of the road. I just want to make sure I heard you right.
STAFF ENGINEER CALISO: This one?
BOARD MEMBER VILLINES: Yeah. So this -- what you're saying is it would be 20 feet from -- this is your mark, 20 feet in is where you want to go for the property owners?
MR. DACUS: That's correct. The new fence would be 20 feet in from these red markers.





BOARD MEMBER VILLINES: So as you getup on the screen looking to the left, that 20 feet, you know, is going to come over the road a little bit, and be somewhat not as much. What they're saying is this his property, these -- Mr. Hecker, these are your photos, right?
MR. HECKER: Yes. In fact, there's one more. It will show the stakes a little bit. And what it is is the stakes go to the light in front of the little --
PRESIDENT CARTER: We're having trouble getting you on the record, Mr. Decker. Mr. Hecker, I'm sorry.
BOARD MEMBER VILLINES: And as you're coming up, Mr. Hecker, all I really wanted to know was -- I don't mean this rudely. I mean, all I really want to know are those original maps -- I mean those original flags, is that your property? Is that -- because I see your truck. I'm trying to figure out, 20 feet into your property is different than 20 feet into somebody else's, based on where those curve out. So I'm just trying to get a general sense.
MR. HECKER: That's my property.
BOARD MEMBER VILLINES: I see.
MR. HECKER: I'm going the wrong way for some reason.
Okay. That one shows you the flags, which are here. If you take the mouse, watch my hand, there's the





flags.
BOARD MEMBER VILLINES: Well, that was the photo earlier.
MR. HECKER: This is the earlier photo where they all run down on this side of the road. We felt is that they all should stay right along this road. The reason they don't is because of this little gnome(sic) that sticks out. I apologize that I misled. These is where the toe of the levee is being set. It moved because of this wide spot right here. It's moved clear out to here rather than stay with all of these other ones that should have. My feeling was it should have stayed and ran down that side of the road, not went across the road. The hill was never explained to me, that it pushed the toe out. And, yes, it would go 20 feet into my property.
BOARD MEMBER VILLINES: Got it. So could you, sir, rehash that answer. I know you did answer that about why, but you just sort of looking at that photo, it's a logical question to ask why.
MR. DACUS: And let me -- I mentioned there is this old railroad embankment, but this is also a ramp. This area right here is four to five feet higher than the ground as you go down this way. You don't see that slope, but it is four to five feet higher than that slope. This ramp I mentioned that comes from Island Avenue.





So when we were looking for where that levee toe would end, it included including this ramp on the back of this levee, and that's the reason. And then when you get down to, I'll say, right about here somewhere, this ramp is back down to natural ground. It's not there, and so then you see our toe go back this way.
PRESIDENT CARTER: When you're defining the levee toe, are you using the levee prism or are you using the angle of the repose of the dirt as it falls from the maintenance road or the railroad embankment? I mean, typically when we define a levee toe, we have a levee prism, which is what we try and protect for public safety. And there are often stability berms on the waterside and landside of these levees for various reasons, but those don't define the levee toe in every case.
MR. DACUS: Well, maybe not in every case, but I think that you'd talk to a lot of geotechnical engineers who would tell you that when you have a berm or an embankment on the back of the levee that becomes part of the structure. And when you evaluate it, you evaluate it with what's there.
PRESIDENT CARTER: Right, and there's no argument that that's part of the structure, but our regulations talk about the levee prism. And the levee toe often we project the slope of the levee, and on the land side, it's

a 2 to 1 slope and on the water side it's a 3 to 1 slope.
And so we take that 2 to 1 slope on the land side and we project it down from the crown road or the top of the levee hinge point, the crown road down. That's the standard definition. And I understand that all levees don't comply with the standards, but we -- when we define the levee toe, oftentimes these landside stability berms are -- obscure the levee toe and are on top of it.
And that -- so I'm wondering if we're -- if we're really defining this levee toe appropriately. This brings up -- it certainly brings it into question.
MR. DACUS: Let me say just one. And I think those are discussions that we can certainly have. I mean our intent is to meet the levee design criteria, which says 20 feet of the levee toe. And this was our engineer's evaluation of where that levee toe would be, but -- and we'd certainly be open to other discussion from other engineers about what the intent of that 20-foot corridor is, and where that levee toe and how it should be defined.
The whole idea behind that, and I'm not the one writing the criteria obviously, to give the local maintenance agencies who have the responsibility to maintain these levees adequate room on the toe of the levee to do their job. And that's what we're after here.





And we can certainly talk about whether or not this toe could be defined a little differently in this particular position.
PRESIDENT CARTER: Thank you.
MR. SHAPIRO: And President Carter, the only other thing I wanted to add is I thought I had a copy with me, but I don't, of the original permit. And your standard condition for real estate says not 20 feet actually from the levee toe. It says 20 feet from the most landward encroachment. And what his standard is, is where there's a ramp, you go further out. Where there's a seepage berm, you go further out. In other words, you don't work from the levee toe, you work from the most landward of the authorized encroachments.
And so, in this case, where there is a ramp, we're jutting out consistent with standard practice. And whether there isn't a ramp, we're jutting back. Otherwise, you'd have a situation where you'd have a hundred foot seepage berm and the land requirements would only be to 20 feet off the levee toe, even though there was 80 feet more of seepage berm going beyond it.
And so that's the standard language. And I don't know, Jay, if you have one in front of you. I see you paging through.
EXECUTIVE OFFICER PUNIA: I'm trying to find a





drawing showing it.
PRESIDENT CARTER: And you could be opening up a whole nother can of worms. And because that brings up the question whether or not these were permitted encroachments or not, and -- with respect to the ramp and the railroad had. And I understand what you're saying, but clearly, we need to have a clearly defined levee toe that meets the standards and meets the intent of the urban levee design criteria, as well as the permit that the Board issued to establish the 20-foot maintenance corridor on the land side of this levee.
MR. SHAPIRO: We would agree. And what we did -- excuse me -- what we did was is Larry did exactly what we said. We had the engineer. We drew it up. And we looked and said can we maintain it with that being the levee toe. And as you can see in this case, with that being the levee toe, and the fence being 20 feet off, we don't have a 20-foot road. We have 20-foot road minus the slope that's still going to be there, and we said, yes, we can still maintain it. The further you move towards the levee, the less the road actually becomes a road and the more it become a bike path and then a walking trail and then nothing.
Perhaps Kevin Heeney can address two specific survey issues that have been raised by the Board members





and by the landowners, and then we can blissfully stop our talking and allow you to move on.
BOARD MEMBER VILLINES: Mr. Shapiro, can I -- I'm sorry to do this to you, because that was a perfect close, but I do have a quick question, just so I can understand. Is that okay, Mr. President.
PRESIDENT CARTER: Go ahead, Mr. Villines.
BOARD MEMBER VILLINES: The -- just so I know on those bubbles, you know, to the right on the photo, you're saying that -- did I hear you say that it's 20 feet from that or are you saying that you go to the first property line and then go 20 feet? I was confused on what you said. I'm sorry. If you could clarify, that would be helpful.
MR. SHAPIRO: And I apologize if I've confused you.
BOARD MEMBER VILLINES: It just me. No one else asked.
MR. SHAPIRO: I'll ask Larry to check me if I get this wrong. We have drawn the line for where the fence would be 20 feet landward from the bubbles, which, in some cases, gives us less than a 20-foot road, but we can still work with it, and in other places gives us the full 20-foot road. Is that correct, Larry?
Uh-oh.

BOARD MEMBER VILLINES: Let's order dinner.
MR. DACUS: No. I think our intent is to go 20 feet from those stakes.
BOARD MEMBER VILLINES: Twenty feet from those stakes. Okay. And that's what Mr. Hecker had said. Okay, so you're saying from those spots, 20 feet in. Okay. That clears it up.
MR. DACUS: And I might clarify that even with that 20 foot, that still places that fence on land that we feel is owned by the State.
BOARD MEMBER VILLINES: But the fence, as proposed, there is still on the -- even though I acknowledge that it's not necessarily a road road, and it does disappear as you go further up the left, looking at the photo, but it is on the opposite side of the road, at least for those pieces right there.
MR. SHAPIRO: I think the fence will all be on the landward side of the road. The markers vary from the landward side of the road to the levee side of the road.
BOARD MEMBER VILLINES: Right. Thanks.
MR. SHAPIRO: Mr. Heeney.
MR. HEENEY: Good morning, President Carter, members of the Board. Kevin Heeney with CTA Engineering & Surveying. I just want to address just a couple of issues that have been brought up.





And the first one would be the markers. The marker that Mr. Hecker has identified here we didn't find this one, but we found a similar one, about 4,600 feet further up the levee. We actually found another one not marked like this, but similar in nature that was even kind of around the corner, where the levee makes a bend. Those two monuments didn't fit anything of record, didn't show up on any map, and they're not stamped or marked as a typical surveyor would. It's my opinion that this is, as Larry described, a construction control monument, probably set by the Corps of Engineers or an agency thereof. TRLIA even took it upon themselves to ask another local surveyor if they have seen monuments like this in the area, and they indicated that they had. And their opinion was, as well, that they were probably Corps of Engineers construction monuments.
Mr. Hecker also talked about another monument that our surveyors set near his fence corner, and that it was not of record. That's not true. My survey clearly shows that I set a monument at that end, and at the further north end of that line that we're talking about, the property line, and that's shown on the survey that I recorded. That monument has my license number on it, as you would expect any land survey property corner monument to be marked.





The other issue I wanted to talk about just briefly were the two maps. There are two maps. And I could go through item by item all the changes, if we had to, but I'm going to try and just explain how they were generated and what we have.
The first map was done in June, was at the request of TRLIA staff, that they were going to meet with DWR cadastral staff and surveyors, and could I please prepare an exhibit map, so that the survey staff at DWR would have the confidence level that they needed. And the work that I did, was accurate, sufficient, and that we had come up with the proper analysis. That's the map you see in June.
I set the map up to -- knowing that we would probably file a record of survey down the road. It's set up very similar to a record of survey, but it doesn't have all the requirements that a record of survey requires by law.
As we proceeded with filing that record of survey, we added the necessary statements. We added more information. We submitted it to the County. The County reviewed it. They asked us to add more information. They asked to us clarify a few things. They asked us did you look for monuments here, did you find anything here?
We responded to all of their comments, all of





their questions, produced the final record map in January, delivered it to the County. The County Surveyor signed it, and it was recorded, I think it was, January 11th or 12th - I don't remember the exact data -- a few days after we delivered it.
So there are two maps. The differences between the two maps do not change where the boundary line is. It just merely is additional information, and the required information of a record of survey. When I did the map in January, I was asked did I care, you know, if it was shared with people? No. Because it didn't -- it wasn't like we were coming up with different boundaries with the other one. That was my information. That was my analysis that I did. There was enough information on it that it showed DWR staff that we had done the appropriate surveying work, that we had done a thorough analysis, so that they were comfortable with our boundary determination.
And I hope I've clarified that a little bit.
Happy to answer any other questions you may have.
PRESIDENT CARTER: Any other questions for Mr. Heeney?
VICE-PRESIDENT RIE: Yes. Can you clarify who at DWR reviewed the survey maps that you've prepared, because we had heard back in December that the Real Estate Branch

was not involved in any review, and Mr. Punia had said that the surveying group had not reviewed any of these maps either

MR. HEENEY: It was my understanding it was the cadastral group. They're the surveyors in DWR. That was my understanding who was doing the review. I don't have knowledge of who actually reviewed it.

PRESIDENT CARTER: Who -- which group?

MR. HEENEY: The Cadastral survey group.

PRESIDENT CARTER: Cadastral.

VICE-PRESIDENT RIE: And did you work directly with them, and did they provide comments to you?

MR. HEENEY: No, they didn't. I have worked with them. When we started this job, we went down to their office and went through their files to see what information we could find. But, you know, they don't review our maps like -- in that extent. They will at the -- as this progress -- as this project winds down and the land is transferred from TRLIA to DWR, there will be a review process at that point.

VICE-PRESIDENT RIE: But there hasn't been a review process yet?

MR. HEENEY: Well, like I said, I was asked to prepare this map, so that they would be comfortable with the analysis that we had before they moved forward with





this encroachment issue.

VICE-PRESIDENT RIE: And who did you give the map to?

MR. HEENEY: The TRLIA staff.

VICE-PRESIDENT RIE: Okay. So you don't know if it was submitted to DWR or not?

MR. HEENEY: I don't have the record of it. I can only assume that it was.

PRESIDENT CARTER: Mr. Punia.

EXECUTIVE OFFICER PUNIA: Maybe I can clarify. Our staff gave the package to the DWR cadastral surveyor people. And they look at, on a cursory review, they said it's following the standard practices. They told us that if they want extensive detailed per review, then it will cost money and time for them. And then we decided that we will do it at our staff level and not ask them to do a detailed peer review at the DWR cadastral level.

And their proposal -- their recommendation was, in this type of situation, the property -- if the property owners are not comfortable with them, they need to hire their own surveyor to verify the validity of this survey. And then our staff looked into that survey too. They're not professional land surveyors, but they're civil engineers. Then everything what we looked, looks that it followed the standard engineering practices.





VICE-PRESIDENT RIE: Well, what does that mean, follow the standard engineering practice?

EXECUTIVE OFFICER PUNIA: That based upon our best judgment, the surveyor -- the survey showed that we are comfortable with the result of the survey. And we have people with experience. They're professional civil engineers. They're not land surveyors. They reviewed, and in their professional judgment, it meets the standard engineering practices. And we did not ask the DWR surveying group to go into detailed extensive review. So I just want to share with the Board.

MR. HEENEY: And if I could reiterate. You know, my survey, the measurements that we found substantially match what the 1921 survey and the 1939 survey, and all the other prior surveys in that area.

PRESIDENT CARTER: Any other questions for Mr. Heeney?

Thank you very much.

Anything else, Mr. Shapiro?

MR. SHAPIRO: I just want to note that in addition to Mr. Dacus and Mr. Heeney, we also have with us today Kim Floyd, who's our public outreach officer, if anyone has questions about how we have reached out and what happened at the community meetings. And we also have Scott McElhern with us, who is the attorney that did the





eminent domain -- excuse me, the inverse condemnation analysis, where landowners believed they had acquired the property through holding it, and who also did the analysis on the effect of the abandonment of the railroad right of way by the railroad.

I think we can hit both of those topics at the next hearing, when we're actually going to resolve this. But if you have questions, they're both here and available. And with that, thank you for your indulgence and the additional time.

PRESIDENT CARTER: Thank you, Mr. Shapiro.

Okay. I don't have any other cards of people who want to speak on this particular item, but we do have three more of these before we will get to the permit this afternoon.

So what I'd like to do is -- is Mr. King here today?

Not seeing him.

So we will again continue that -- what I'm going to do is I'm going to go ahead and take a recess on this particular hearing, and this -- and it will be continued to a future date to be properly noticed to all. We are going to continue the hearing scheduled under Item 4B today regarding Mr. King. And then we will come back after lunch and begin with 4C, the hearing regarding Ms.

Miller, and follow that with testimony from Ms. LaGrand, and then we'll continue.

So at this point, it's the lunch hour, I would like to take an hour recess, and we will reconvene in one hour and continue with our agenda on Item 4C. So thank you very much.

(Thereupon a lunch break was taken at 12:08 p.m.)





AFTERNOON SESSION

(Thereupon the meeting reconvened at 1:09 p.m.)

PRESIDENT CARTER: Good afternoon, ladies and gentlemen. If I could ask you to take your seats, we'll go ahead and continue with our meeting. As you recall, we wrapped up Item 4A on our agenda, we are now moving on to 4B. I just want to confirm that Mr. Michael King is not here this afternoon. And if he is not, we will go ahead and continue that item.

And seeing that he is not present, we'll continue Item 4B.

So we'll move on to 4C. And I'd like to call the hearing to order on Enforcement Hearing for Carol Miller this is Enforcement number 2011-272 continued from our December 2nd 2011 meeting. And as we did on the 4A item today, we will dispense with the presentation of the staff report, which will be presented at a future meeting, and we invite the respondent to present evidence, if she so chooses.

So with that, Ms. Miller, are you -- would you like to address the Board this afternoon?

MS. MILLER: Yes, I would.

PRESIDENT CARTER: Okay.

MS. MILLER: Good afternoon. My name is Carol Miller, and my property is at 5676 Riverside Drive, in





Olivehurst. And thank you very much for coming up here.

The reason in the last meeting that I brought up the 1907 indenture was to specify that the survey that the railroad did was the survey on the existing fences that the railroad was alongside. There were existing fences there, and it was the dividing lines between the Northern Electric and the property owners at that time.

And in the meantime, since then, I received a 1908-09 deed, which is on your page 442. And it's -- oh, it's on your page 171, Attachment O.

Now, on page 442 of that deed, paragraph two is being a width of 150 feet, and can be located on the Northern Electric Company's survey, which is -- it's in your notes, but I didn't put it down on here, page 72, Attachment H, and it looks like this. And it's the property of G. Cohn Estate between Northern Electric Railway.

STAFF ENGINEER CALISO: This one here.

MS. MILLER: Okay. "The aforesaid conveyance is made upon the expressed condition that Northern Electric, its successors, will build and maintain good and sufficient fences on each side of the 150-foot underlying strip of land."

Now, nobody has even told us how wide that levee is, if it's 150 feet or 160 feet, whatever. I did a





cross-check with Google Earth and measured it from the fence on the land side to the levee side of the water side, and there's more than 150 feet there. In some places, it's 160 feet, some places it's 164 feet.

And I know that's an approximate measurement, but it couldn't be off 14 feet or 12 feet or whatever. And it also says a flood gate sufficient to permit the passage of all surface and drainage waters. And that is back there. The flood gate was there. And I think it's where they were -- they are showing you that the water flows into from the other side of Island Road, that's where the flood gate was.

Okay. And the 1939 Yuba Gardens subdivision survey map, it was surveyed east to west from the Feather River, and that is on this one also. This paragraph two on this one deed specifies that this was parcel five on your deed for the Sacramento-San Joaquin Drainage District. And the existing fence has been back there, according to this deed from 1908-1909. The fence has been there for over 103 years, according to that deed.

So if there was something purchased between that time to this time, there's no record of it, or I don't have a record of it, and I couldn't find a record of it.

Most of the questions that came up about the prism of the -- the toe of the levee being in the prism.

That was one of my questions and it hasn't been answered yet. And that's one you brought up this morning.

So that should about cover it. And as far as maintaining the fence now, the successors were supposed to maintain the fence, Sacramento-San Joaquin Drainage District did not maintain that fence once they purchased that property. Sacramento Northern did. And Northern Electric did until they were taken over by Sacramento Northern.

Well, thank you very much.

PRESIDENT CARTER: Thank you, Ms. Miller.

Any questions for Ms. Miller?

Okay. Thank you very much.

MS. MILLER: Okay.

PRESIDENT CARTER: Is there anyone else that wishes to speak and offer testimony or evidence on this item for the Board today?

Okay. Very good. Then I will go ahead and recess this hearing. We will continue it at a future date, where the staff will present its findings and evidence, and will -- again, there will be additional opportunities for the respondents to present evidence and rebut testimony from other folks, all right?

We'll move on to Item 4D. And I will call this hearing to order. It's an enforcement hearing for Susan





LaGrand. It's Enforcement Number 2011-287. Also continued from our meeting of December 2nd 2011. And as we've done in the previous two hearings today, we'll dispense with the staff report presentation and evidence, and invite the respondent or the members of the public to make comment on this particular item or present evidence.

So with that, I invite Ms. LaGrand up to present her evidence and testimony.

MS. LaGRAND: Hello. Hi. Thank you all for being here. President Carter, I told you I'd try to come up here and be comic relief today. You all look rather board.

BOARD MEMBER SUAREZ: We're not, trust me.

MS. LaGRAND: I want to give a little -- just a little hypothetical thing here. Say that Ms. Suarez pulls out of the parking lot today, Mr -- I can't pronounce your last name.

BOARD MEMBER VILLINES: It depends. How is the story going to end?

(Laughter.)

MS. LaGRAND: You wham into her car, and Ms. Suarez, boy, she is hurting. She has to go to a chiropractor. She has to do all this different stuff. So she -- you don't want to pay, so she is going to sue you and your insurance company. Your attorney that you hire





has to bring all kinds of expert witnesses to help prove your point that your back is injured, your neck hurts, boy you are hurting. Now, Mr. Michael here --

(Laughter.)

MS. LaGRAND: -- his insurance company is able to afford the best. They get Robert Shapiro. They bring in all these doctors from the Mayo Clinic. They even bring in Dr. Phil to say that you're crazy. You know, he wins, because his experts were better than your experts.

Now, this is what TRLIA is doing. They have experts. They have a buffet of them. They have engineers, surveyors, everybody, everybody, everybody you could ever want to have. And every time we present something, they come up here and they rip us to shreds and tell you all how we're all insignificant. It's their favorite word, "insignificant".

We, however, can't afford those expert witnesses, I wish we could. I mean, I'm not saying we're poor people necessarily. Obviously, I eat well. You know, I can afford to live, but I can't afford to pay for a survey on my property. Mr. and Mrs. Hecker checked into it, $10,000 a lot. Obviously, surveys are very expensive.

I don't know what TRLIA paid for their survey. I have no idea. It's none of my business, but obviously it's a lot of money. They can afford attorneys. We can't





afford an attorney. One that we talked to wants $5,000 down, another one wants $15,000 down. Biting off our own noses to spite our faces, so to speak.

So we don't have the expert witnesses. All we have is what we're finding. We find old maps. We find markers, various things, but they're all discounted. Everything is. Anything we bring up is just disregarded.

That marker Mr. Hecker found, if you think it's put there by the Army Corps of Engineers, find out. Call them. Ask them is that yours? Find out what it means. It could be significant.

If the survey you had done, why did you not call the people who did the original survey and have them do it? I'm just -- would it not go in your favor that way? You know, I have to question that. You know, why is there not a second opinion on this survey?

As far as the markers on the levee how they move -- and if you go behind my property, there's a marker along the edge. You look down, it's like maybe one or two homes, and it is not a gradual. It is abrupt jump to the other side. Now, I live there. I know what that levee looks like. I see it every day of my life. That ridge does not abruptly move over.

I told you I was going to be short and sweet here today, because I don't want to take up a lot of your time.

This is where the whole thing lies, and this is my unprofessional opinion. There was a railroad there. That property was measured out from the center of that track. That was the railroad's property. If you do not know where the exact spot of the center of that track was, then you do not know exactly how much property you have.

I don't care how many surveys you do. You can go from the front of my property and tell me my property is 280 feet deep, and it doesn't match up to my fence. But, in my opinion, you have not proven to me that that means it's yours. That just means my property doesn't meet up to my fence. That empty space, if you can find where the center of that railroad is, and you can bring it out, which they can't, because it's covered up by that levee, but if you can find where the center of that railroad is, measure it out from their measurements, then that's when you can tell me exactly where your property line is.

That, and only that, will tell me where your property line is. Otherwise, it's just a survey telling me my lot isn't deep enough. That's all it tells me.

One other thing I did want to bring up, however, in 1998, my mother put the property up for sale. It's a very difficult sale, because although it's a decent sized home, it only has two bedrooms, then another house. And, you know, it's a property that is hard to sell.





Four people tried to buy it. Two of them didn't get a loan. The other two wanted it for commercial use, so they couldn't do it.

These people all wanted that property. They didn't care about either one of the houses. They wanted it for that shop building. If that building -- even though TRLIA has offered to do all this stuff for me, and, you know, that's generous. If it still has it hanging over its head in the future they can come back and take more, my property is going to be almost impossible to sell, besides the fact that I'm already in a bad neighborhood. It already has that going against it. If this is on top of it, it will never sell, because no one will want to have that hanging over their head. No one.

Thank you.

PRESIDENT CARTER: Thank you, Ms. LaGrand.

Any questions for Mrs. LaGrand?

Mr. Villines.

BOARD MEMBER VILLINES: Ms. LaGrand, and you don't necessarily have to come up to answer, you can just -- but I'm -- just as a thought, it seems to me that it would make sense for us to get this resolved, so you wouldn't have that hanging over your head, or at least come to some kind of compromise, so that you wouldn't be in a position where you try to sell in the future and have





this hanging over. Because if, let's say just, you know, using a hypothetical, that as you started -- but I won't use layers.

But let's just say we continue on this road and we just -- somehow it just doesn't get resolved. I mean, that's not going to happen. It has to. Let's just say it doesn't, then you have that lingering over you, and so does every property owner. So what we're really trying to get to, right, is some kind of compromise that makes sense. And at least I just say that, because I really was listening to you, and I heard you say that, you know, you want to get to that. We've got to find a way to get that line, and that's what we're all trying to get to.

I do think that there's a successful, you know, win, win, win here for the Board, for you, and TRLIA, and so -- and I hear that in you, so I know you want to get there. But if we don't, you're going to have this lingering over you, and then that property is not worth the value, because somebody is not going to do it. So I think it's in all of our interests to get moving forward, but thank you.

MS. LaGRAND: Well, one thing I did forget to say however.

PRESIDENT CARTER: If you could, just so that we can get it on the record.





MS. LaGRAND: I apologize. They can all come up and refute me now after I'm done.

The only one thing I did want to say is TRLIA said we have spent a hundred thousand dollars of our own money. Basically, that's taxpayer money. It's not theirs. It's taxpayer money. They're not a money making organization. I mean, unless they're holding bake sales or car washes.

It's on my tax bill. I can show you where I pay money to TRLIA and RD 784 every year. Their money is taxpayer money. So, you know, don't act you're making some grand gesture, because the money comes straight out of my pocket and everyone in here.

Thank you.

PRESIDENT CARTER: Thank you.

Any other questions?

All right. Thank you.

Mr. Shapiro.

MR. SHAPIRO: Good afternoon, President Carter, members of the Board. Again, Scott Shapiro, general counsel for Three Rivers.

Just a few quick points to share with the Board. First of all, we very much appreciate Mrs. LaGrand's acknowledgement of our offer as being generous. We are trying not to be generous. We are trying to be fair, and

hopefully we can resolve this.

I did want to assure the Board and the landowners actually that we don't actually view their concerns, complaints, documents they provide as "insignificant" or "discount" them, which were the terms she used. We actually take them very seriously. We've spent tens of thousands of dollars responding to, reviewing, assuring that our information is correct, once we've reviewed that information. We do believe our survey information remains correct, but we don't want the impression that we're indicating the information is insignificant. It is all significant. It just might support the arguments they're making.

Also, I had a chance to talk with our surveyor, Mr. Heeney, about their notion of the high expense, five to ten thousand dollars a property, I think, was what I heard, for some sort of peer review. And there might be an opportunity for them to do something significantly less. It might be that much to do a survey of an entire property, but Mr. Heeney has indicated to me that in the past, he has actually done peer reviews for other surveyors, spends two or three hours, bills someone 300, 400 dollars just to peer review the documents. And that may be an opportunity for them, which is much lower cost than the quotes they were getting.





I just wanted to close by noting that while it is true that there is an RD 784 and Three Rivers assessment on the tax rolls, as Mrs. LaGrand said, that's not the money that's paying for this. That's operation and maintenance money. This is coming out of our capital budget. The capital budget is a combination of State funding and a combination of the original developer funding. It's not clear at the moment that DWR is really going to fund any of this, or what portion will be funded by DWR.

So I do want to confirm there is an assessment for O&M, and this is not where that money is coming from. This is coming from a different pool of funds.

Unless you have any questions, thank you. And it's not our intention to offer any additional evidence in these hearings. We'll wait until next month.

PRESIDENT CARTER: Thank you.

Any questions for Mr. Shapiro?

Thank you.

All right. Anyone else want to address the Board on this particular item?

Thank you very much. So we will recess this particular item and it will be -- and continue it -- continue the hearing to a future date, which will be properly noticed.





With that, we will move on to our Item 4E. This is a hearing. It's on a permit. This is Permit number 18690 for Three Rivers Levee Improvement Agency. This is to consider approval of Resolution number 2011-31 granting authorization of a protested permit to install chain link fences, K-rails, and a maintenance road on State of California property adjacent to the Feather River east levee and Yuba River southwest -- south levee in West Linda, California, Yuba County.

BOARD MEMBER SUAREZ: Mr. President.

PRESIDENT CARTER: Ma'am.

BOARD MEMBER SUAREZ: I'm sorry. If I may, before we begin, I just want to take an opportunity to share some thoughts, if I may.

PRESIDENT CARTER: Please.

BOARD MEMBER SUAREZ: And I want to speak directly to the property owners that were here today, and thank you again for coming, for sharing information, and helping us further understand the challenges and dilemmas and the information problems and communication problems that we face dealing with a very complicated issue.

I do want to take this opportunity to -- at least from my perspective, it troubles me that there has been -- there appears to be a deteriorating relationship between the local homeowners and our local partner, TRLIA. And it





pains me to hear expressions of really negative expressions against an organization that's working with us to improve safety in this community.

And for that I'm really sorry. And in as much as our Board, and our work has instigated that acrimonious relationship, I think it's very unfortunate. I think we're all partners. We're here to serve you as a community to provide safety and flood protection. TRLIA is a key component of that. Without their partnership, we can't do our job.

And I'm hoping that after we've had an opportunity to air all these concerns, that we can kind of, like Hillary Clinton said, reset the button and see if we can get our working relationships back in order, because TRLIA is our local partner. We count on them to work with you, and we need to make sure that you gain again a comfort level to work with them, because otherwise it's just -- we can't do our job.

So thank you, Mr. President.

PRESIDENT CARTER: Thank you, Ms. Suarez.

With that, Ms. Tang, if you would like to proceed. This follows the same form as all other hearings. Staff will present their evidence, the applicant will be invited to present their evidence, and we will invite members of the public to comment on this as

well.

Thank you. Go ahead, Ms. Tang

(Thereupon an overhead presentation was Presented as follows.)

STAFF ENGINEER TANG: Good afternoon, President Carter, members of the board. Alison Tang, Board staff.

Today, I'm presenting Agenda Item 4E. The applicant is the Three Rivers Levee Improvement Authority, otherwise known as TRLIA, and the location is in West Linda, California.

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STAFF ENGINEER TANG: Today, staff brings consider -- I'm sorry. Today, staff asks the Board to consider the approval of Resolution number 2011-31 to authorize protested Permit number 18690 for the installation of chain link fencing, K-rails, and a maintenance road on State of California property adjacent to the Feather River east levee in West Linda, California; to provide a 20-foot operations and maintenance corridor; and to prevent unauthorized access to the levee.

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STAFF ENGINEER TANG: This is a vicinity map of the area. The red rectangle shows location of the proposed project. You can see that it's in West Linda. The project is bounded to the north by Marysville and the





Yuba River. It's also along -- adjacent to a project levee. It's bounded to the west by the Feather River, and to the east by Highway 70.

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STAFF ENGINEER TANG: The LOCATION map showing a closer view. Please note that north is oriented to the right in this situation, and it will continue to be so for ease of viewing purposes.

That dotted magenta line shows the approximate project limits. Feather River Boulevard and Riverside Drive are adjacent to the project. Project is bounded to the south by Island Avenue. And to the west of it is the Feather River, and there's Highway 70.

And that red line indicates a 40-foot levee easement to the Sacramento-San Joaquin Drainage District, which I'll get into in more detail in a few slides.

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STAFF ENGINEER TANG: So for a little background on this project, TRLIA is completing a $400 million levee improvement program to increase the level of flood protection for Linda, Arboga, Olivehurst, and Plumas Lake. A 20-foot wide maintenance corridor is required in accordance with DWR's urban levee design criteria, which was developed pursuant to Senate Bill 5.

Work under this permit does not include





construction activity within 100-feet of existing elderberry plants, and that's in compliance with the U.S. Fish and Wildlife Service conservation guidelines. Work within the 100-foot buffer area would only occur after the permitting consultation with the Fish and Wildlife Service's and a Board permit amendment.

TRLIA hired CTA Engineering & Surveying to prepare the survey map, and discovered that in this area the land for the levee and the required 20-foot wide access corridor is owned by the State of California.

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STAFF ENGINEER TANG: Some real estate background. The proposed 20-foot corridor borders on 58 private parties. The survey shows encroachments on State owned land for 51 of those properties. The Board may issue revocable licenses to the 51 private owners for use of State property landward of the new fence location.

On the north end of the project, the State does not own the land within the proposed 20-foot corridor. It has a 40-foot wide easement. This was in the picture from the vicinity map that was the red line that I pointed out, and I will talk about it more in the next couple of slides.

TRLIA is in negotiations with owners of these lots to acquire that land in fee that they need to





complete the 20-foot wide maintenance corridor.

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STAFF ENGINEER TANG: So I'm going to show you some property survey maps. I'm starting on the south end. I realize that it's a zoomed out image, but we will zoom in. North is still oriented to the right. And that is the proposed south gate location indicated by the orange line.

Feather River Boulevard and Riverside Drive are shown there. And that highlighted orange -- I'm sorry, highlighted yellow area is the State property that's beyond the 20-foot O&M corridor.

Notices of violation were issued for 51 properties, and that's denoted by the blue line.

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STAFF ENGINEER TANG: This is a typical layout plan of the area where the State owns the property. The green line shows the levee toe as surveyed by the geotechnical engineer -- as established by the geotechnical engineer.

That blue line shows the proposed new fence. There's a magenta line that's a little bit hard to see, but that shows the 20-foot corridor. And the black line is the property line. The yellow area is State property beyond the corridor. And that red line is the existing

fence.

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STAFF ENGINEER TANG: In the north, here's another property survey map. That would show -- the orange line shows the proposed north gate location. And again, the yellow area shows State property beyond the corridor. And the blue line is there again for Notices of Violation issued.

Now, we're going to look at that easement area where the State does not own the land in fee, but has the 40-foot easement.

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STAFF ENGINEER TANG: Again, the existing fence is in red. The property line is in black. The levee toe is green. The magenta shows the 20-foot corridor. And the blue line shows where SSJDD has a 40-foot levee easement. In these areas, TRLIA is in negotiations with the landowners to require -- to acquire those rights.

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STAFF ENGINEER TANG: This is a typical fence detail, where you've got the dotted line showing the 20-foot operations and maintenance corridor. There's a six-foot chain link fence proposed with this project. And that's shown a foot offset of the corridor, inside towards the levee.





And further in, by about a foot and six inches, they propose putting concrete block or K-rail, and this will restrict access to the fence from trespasser and vehicular activity.

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PRESIDENT CARTER: Is that K-rail on the levee side of the fence or the landward side of the fence?

STAFF ENGINEER TANG: It is on the levee side of the fence.

Applicable laws and regulations in this case with the California Water Code, pursuant to Section 8708, the Board is given assurances to the Corps to maintain and operate federal flood control works in accordance with federal law.

The Board must -- pursuant to 8710, the Board must approve any encroachment into an adopted plan of flood control, such as the Sacramento River Flood Control Project, which includes the Feather and Yuba Rivers.

Title 23 regulations, pursuant to Section 6(a), Board approval is required for work within or near an area where there is an adopted plan of flood control.

And pursuant to Section 4(a)(4), adopted plan of flood control means a flood control or reclamation strategy for a specific area that's been adopted by the board. And it includes a 10-foot -- 10 feet from the





levee toe, except where an O&M manual furnished or real property rights acquired by the Board specifically provide otherwise.

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STAFF ENGINEER TANG: And now a little timeline on the permit application. In August, TRLIA held a community meeting in Olivehurst, California to discuss the proposed project with the locals and interested parties. They then submitted an encroachment application to place the proposed fence at the State of California property line.

In October, adjacent landowners were notified by Board staff in writing of the proposed project. Board staff received six protest letters in response.

On January 10, 2012, TRLIA held a community meeting in Olivehurst to discuss the proposed fence location options with affected landowners. And as you've heard before, one alternative was to install the new fence at the edge of the 20-foot corridor, execute licenses for all landowners to allow use of remaining State land, and to issue the permits for two permanent structures.

The second alternative was to install a new fence at the State right of way, kink the fence around the two existing permanent structures, and issue licenses and permits for the two properties only.





The local preferred option, when given these two options, was Alternative 1.

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STAFF ENGINEER TANG: Some enforcement action background.

May of 2011, CTA identified private encroachments located on State-owned land. No records of Board permits were found for any of the encroachments.

In July of 2011, TRLIA sent letters to the landowners to notify them of the encroachments that they found on State land, and to notify them of TRLIA's plan to install the new fence at the State's right of way.

In August of 2011, Board staff issued a total of 51 Notices of Violations, otherwise known as NOVs, to the property owners where the unauthorized encroachments were identified.

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STAFF ENGINEER TANG: Enforcement hearings. December 2nd, 2011, the Board held enforcement hearings requested by the NOV respondents. At that hearing, the Board determined by majority vote that private encroachments exist on State-owned property.

The Board also directed staff to return with a proposal to clear 20-foot wide maintenance corridor while minimizing the impact to adjacent private property owners.

Then on January 26th, 2012, the Board continued with the hearings in Olivehurst. The Board voted unanimously in favor of the proposed resolution for Agenda Items 8A and 8B. And then it vacated the previous decisions from that day, and continued all four of those enforcement hearings to meet a 10-day requirement notification.

Then today, Board continued the hearings with agenda Items 4A through 4D, where the staff requested that the Board authorize the removal of the existing fence, the issuance of revocable license agreement with the adjacent landowners, and to rescind Notices of Violation.

Since the preparation of this presentation, the Board has decided to continue those hearings.

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STAFF ENGINEER TANG: Protests. Board staff received six letters of protest from landowners, who have property adjacent to the proposed project. Some of the issues that they had in common, one argument, the methods used for the developments of the survey map completed by CTA are inaccurate, and therefore the parcel boundaries shown on the map are incorrect.

Board staff feels that CTA has shown that the surveying work was done in accordance with professional codes and using due diligence. And Board staff is confident that the CTA licensed professional surveyor





prepared the map using the best available record documents, monumentation and thorough field verification.

The Board determined by unanimous vote at the December 2nd 2011 enforcement hearing, that the encroachments existed on State-owned land.

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STAFF ENGINEER TANG: The second argument, the existing location of the fence has remained the same prior to the State purchasing the land from the railway company. Given the length of time that the fence existed, can the landowners claim prescriptive rights?

Staff response is that the property was purchased by the State for $5,440 on December 2nd of 1958 from the Sacramento Northern Railway. And in accordance with Civil Code section 1007, which is below, and I'll read in a second, no adjacent landowner can acquire prescriptive rights to land owned by State.

Civil Code Section 1007 states that, "No possession by any person, firm, or corporation, no matter how long continued of any land, water right, easement or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the State or any public entity, shall ever ripen into any title interest or right against the owner thereof".

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STAFF ENGINEER TANG: The third argument, will the landowners be compensated for the loss of use of land and/or the property taxes paid by the landowners for the portion of the land in question.

The portion of the land where the encroachments exist is owned by the State. And any encroachments within that land are not entitled to compensation.

TRLIA also verified with the Yuba County Assessor's Office that the parcel map for the properties adjacent to the levee are the same dimensions as shown on the recorded subdivision map, and are reflected on the survey map prepared by CTA.

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STAFF ENGINEER TANG: Fourth argument, will the drainage for the landowners worsen, due to the proposed project?

Board staff response is no. The project plans will prevent the project from worsening seasonal ponding issues on adjacent property. Board staff will review TRLIA finding engineering plans to verify per the permit condition.

In addition to these specific arguments made in the letter staff received, the community expressed its concerns at the community meeting that TRLIA hosted in August of 2011. The arguments and their answers from that





meeting are included in Attachment D of the staff report.

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STAFF ENGINEER TANG: Engineering analysis. Hydraulically and geotechnically, they weren't required. The work is limited to the crown and land side of the levee. And for geotechnical, the work is limited to minor grading and earth work, and it improves the access road and the installation of fence posts.

For stormwater management, going back to the drainage and fleshing out a little bit more, Board staff recognizes is that there is a history of localized flooding problems during the wet season. And once the fence location is authorized, TRLIA can perform topographic studies, and a specific grading plan can be designed. These plans are subject to Board staff review and approval prior to construction.

The project plans will ensure the adequate storm water management, so that the road is possible in wet weather, and it will also ensure that adjacent drainage is maintained or improved. And Board staff will review the TRLIA final engineering plans to verify per the permit condition.

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STAFF ENGINEER TANG: The project has the following benefits associated with its completion:

It provides for an accessible 20-foot wide corridor at the toe of the levee for maintenance and flood fight control as required by State regulations. It will prevent unauthorized access to the levee, while also protecting private property from trespassers.

It will prevent the illegal driving of off-road vehicles on the levee slopes, which has been cited by the Army Corps of Engineers and the State of California as damaging the levee.

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STAFF ENGINEER TANG: This page is from the periodic inspection report from the U.S. Army Corps of Engineers. And that picture, in particular, the caption says, "Observation Remarks. Unauthorized Vehicle Encroachments".

Tire ruts up the entire landside slope greater than six inches in depth. Recommend action is to fill and compact to match the surrounding grade per operations and maintenance manual design documentation, and to monitor vehicle activity.

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STAFF ENGINEER TANG: Comments from agencies. Reclamation District 784 supports the proposed project. And the Army Corps of Engineers issued a comment letter dated January 18th 2012, confirming that the Corps has no





objection to the project. This is included in the permit 18690 as Exhibit A.

And also the 2011 USAC periodic inspection report draft rated this levee as unacceptable, and it cited the levee damage from illegal off-road vehicles accessing the levee. The rating will result in ineligibility for PL 84-99 federal levee repair funding, if off-road vehicle damage isn't repaired and prevented.

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STAFF ENGINEER TANG: CEQA analysis. Board staff has prepared the following CEQA determinations. The project is categorically exempt from CEQA, under Class 1, which covers existing facilities, including addition of safety and health protection devices.

Class 2, which covers replacement of existing structures and facilities where the new structure will be located on the same site with the same purpose as the prior structures and facilities.

Class 3, which covers new construction of small structures.

And Class 4, which covers minor alterations to the land, which includes grading on slopes of less than 10 percent.

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STAFF ENGINEER TANG: 8610.5 considerations from





the Water Code can be found in the staff report in Section 8.

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STAFF ENGINEER TANG: And finally, staff recommends that the Board authorize TRLIA's proposed project to install the fence, K-rails and a maintenance road within the maintenance corridor boundary; adopt Resolution number 2011-31, which constitutes the Board's written findings and decisions in the matter of Permit 18690; and, to direct the Executive Officer to take the necessary actions to prepare and execute Permit 18690, and file a Notice of Exemptions with the State Clearinghouse.

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STAFF ENGINEER TANG: Thank you for your attention today. I will take some questions.

PRESIDENT CARTER: Thank you.

Questions for Ms. Tang?

Thank you very much.

I'd like to invite the applicant, TRLIA, to come up and present additional evidence and testimony.

MR. SHAPIRO: Thank you, Board President Carter, members of the Board. Again, Scott Shapiro, general counsel Three Rivers Levee Improvement Authority.

We have very few comments. We commend your staff for a great presentation, and a very thorough Board





packet. I do want to speak briefly to two issues. One is there are four different concerns raised by adjacent landowners, the survey, prescriptive claims, compensation, and drainage.

As to those issues, I think we've gone exhaustively through the discussion of the survey over the last number of hours, and therefore, I would just request that any of that testimony relevant be incorporated by reference into this hearing.

On the issue of prescriptive claims, you've had testimony previously from Scott McElhern on that issue. If anyone has any remaining or lingering questions, he is here and available to answer those questions.

I think compensation has been addressed completely.

On the issue of drainage, we had a lengthy discussions about this at the Three Rivers Board meeting. And the Board reiterated its commitment to not making drainage worse, and hopefully making the drainage better.

We have an interest in making the drainage better. As you all know, it's not an ideal situation to have standing water at the of a levee. It presents challenges for access. It also presents challenges for observing the conditions at the toe of the levee, and whether there are pin boils or any other challenges. So

it is in our interest to do what we can to remove that problem.

And one of the first things we will do upon receiving this permit, should it be granted today, is to start working with our engineers to see how best we can solve that problem.

The only other comment that I wanted to share is that in addition to the reasons we talked about earlier, the need for O&M, the need to comply with the previous permit of the Board, I think the PL 84-99, the Public Law 84-99, issue of the public accessing the slope of the levee for off-road vehicles remains a challenge. And we do think that the construction of the K-rails at the base of the fence will address that.

So we're available to answer any questions that you have, and as always, appreciate your time and patience.

PRESIDENT CARTER: Thank you, Mr. Shapiro.

Any questions?

BOARD MEMBER SUAREZ: Mr. President?

PRESIDENT CARTER: Ms. Suarez

BOARD MEMBER SUAREZ: Thank you.

Mr. Shapiro, it's not a question so much as perhaps a commitment I seek at this point, if possible. We talked a little bit about resetting relationships and





getting everybody working together again, because these partnerships are important. I was hoping that if the Board granted the permit today, could I have your assurances and the assurances of TRLIA that this will open opportunity for further dialogue, and it will not be used as a hammer to go after these folks and their property. That hopefully you see this as the beginning of an opportunity for further dialogue on these property issues, and that you will approach it with that open mind, which is, I think, what this Board is hoping you will do with the permit, if it's granted?

MR. SHAPIRO: Let me try to give you as honest an answer as possible. The gut reaction is to say, of course. That's what you want to hear. That's what we want to say. I will acknowledge that we all get a little entrenched in our positions. We feel attacked. The landowners feel attacked. It's just natural.

I can say that in the internal meetings we have with staff, the goal has never been to beat up on the landowners. There is continuing frustration within my client at the fact that we don't believe the landowners have accepted what we think is fact. We do understand that they don't believe it's fact, and so there's a continuing dialogue about it.

But I have five Board members, including some





county supervisors that represent the people in this area, that are very concerned that we actually have a dialogue and that we're there to help. And I think that's demonstrated by the commitment of dollars from the budget. And I can tell you that I, and I know I speak for Kim in the back of the room and Paul who's not here, will do our best to continue to communicate about these issues.

And I think that will start with our commitment that once we develop a drainage plan, we'll meet with the landowners to talk about the drainage plan. I don't know whether it will be before we meet with our own staff to find out if it's acceptable to you, because it's silly to talk with them about something that won't be acceptable to you. But we'll meet with them, we'll talk about it, before we seek to implement it.

PRESIDENT CARTER: Any other questions for Mr. Shapiro?

Mr. Shapiro, I appreciate your acknowledgement that we all have an interest in improving the drainage along there for a number of reasons. I was hoping that we might be able to get something more from TRLIA in terms -- more than "hopefully" make it better. Is -- can we rely on TRLIA to ensure that it gets better?

MR. SHAPIRO: So I want to take us back to Permit Condition 28, which is the condition drafted by your





staff. And for what it's worth, it's not the provision we proposed. So it's more aggressive than what Three Rivers itself initially proposed.

And that condition states, "We shall ensure the product has adequate stormwater management, so that the maintenance road is passable during wet weather, and the project does not worsen existing drainage problems in the area".

And your staff has determined that stormwater conveyance standard can be achieved through minor grading, surface drainage features, within the slopes of less than 10 percent and/or pipes and culverts adjacent to or under the existing maintenance road. And anymore significant grading or pipes or culverts we're going to have to come back to you to get permission, because it would be a larger project not covered under the existing CEQA coverage.

I had a chance to talk with Larry Dacus the design manager right before I came up, and he was able to draw for me the way that the road is going to result in some slight fill -- or may result in some slight fill. We don't know. We'll now go back, in light of 20 feet, if we get the permit and figure it out.

And then we will calculate the extent to which that will add any additional water to the backyards. We

will, at a minimum, mitigate that. Now as we're doing that, if we're mitigating it by putting in a pipe, for example, at Island Avenue, to try to take some of the water out, it's in our interest to pipe the pipe a little bit larger and take more water out.

What I can't tell you is the -- I can't give you a quantitative answer. I can only give you a qualitative answer, which is we will do what we can. As long as we're trying to take water out, to take more water out. I don't know what the percentages are. There are some physical constraints in that area. There's a high pressure gas line, which runs through Island Avenue, so we're going to have to move around that. We don't know physically how deep we have to put that pipe to be able to drain this low spot.

So I can assure you, qualitatively, we will do what we can to try to make it better. At some point, the dollars or the physical reality will become a limit, and we're going to have to come back to you anyway at that point, if it requires additional CEQA coverage. I don't know if I've given you everything you hoped for, but I'm trying to give you a very honest answer that until we analyze, that it's hard to say more.

PRESIDENT CARTER: Okay. Thank you. With respect to the discussion we had earlier this morning on





the levee toe, and obviously the ramp that we're talking about that goes into those calculations, I would like to -- Board staff to pay particular attention to how the levee toe is defined. And I think the objective for us is to not impact the integrity of the levee and diminish public safety in any way, but not to move the toe any further than we have to landward of the levee.

And if it requires perhaps some resloping of the dirt that's out there that's on the slope of the levee, we do that. But we want to define that toe in a way that we protect the integrity of the prism of the levee and maintain appropriate public safety standards.

MR. SHAPIRO: We're happy to bring our geotechnical engineers in for a meeting with your staff and walk through how we placed the toe, where we placed it, and receive any constructive feedback on how we might do it differently.

PRESIDENT CARTER: Any other questions for Mr. Shapiro?

BOARD MEMBER SUAREZ: Just a clarification, if I may.

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: Is it then your understanding and staff's understanding that Permit Condition 28 is there to address the drainage issue?





MR. SHAPIRO: That's my understanding

BOARD MEMBER SUAREZ: Is that staff's understanding?

STAFF ENGINEER TANG: It's staff's understanding as well.

PRESIDENT CARTER: Okay. Any other questions?

Ms. Rie.

VICE-PRESIDENT RIE: Yes. Mr. Shapiro, back in January when we had this hearing, I had asked Mr. Brunner about the removal of some trees that appeared to conflict with the proposed location of the fence, and he said he was going to check on that and get back to us, but we never had the hearing on the permit, so he never really addressed that issue. Can you guys address that or somebody from your group address it?

MR. SHAPIRO: I was not here in January, and I was not aware of that issue. I can just turn around and see if anyone of my staff is aware of this.

People are walking this direction. That's a good sign.

MR. DACUS: This is Larry Dacus. I serve as the Three Rivers design manager. I think in January the question was asked would we have to mitigate for having to remove oak trees, as I recall. And I replied that I was not aware of any protection for oak trees within Yuba





County.

There is information in your staff report, which addresses how you Yuba County handles oak tree impacts. And as I recall -- if I new the staff report quicker, I can't put my hand on it without fumbling around here for awhile, but there is no specific county ordinance.

Obviously, when you come in with a -- if you come in with a development proposal, let's say, to the County and they send it to their planning department, they will look and see what sort of impacts you're having on Oak groves and oak trees, in particular, and they will make suggestions as to how you can minimize that impact, but there is no ordinance -- County ordinance that calls for a direct one-to-one type mitigation for removal of an oak tree for like maintenance purposes, which is what we would be doing.

VICE-PRESIDENT RIE: Now, is it clear that you need to remove an oak tree, because I think the last time we talked about it, I don't think you guys were entirely sure you needed to remove an oak tree in the first place.

MR. DACUS: I know of one that is growing up in the levee slope itself that definitely needs to be removed. That's not where we like to have large trees growing is in the slopes of our levee, so that one definitely needs to be removed, and it happens to be a

fairly large one.

There are several smaller oak trees within the fence line itself. And when we construct this new fence line, and take down the old fence line, hopefully sometime in the future, those will have to come out. I couldn't give you a direct number. I haven't counted them, but I'd say it's between one and five as a guess.

VICE-PRESIDENT RIE: Okay. So you're pretty sure that at least one oak tree needs to be removed.

MR. DACUS: At least one, and there will probably be others. At least one needs to be removed regardless of what happens with this fence because it's in the levee prism itself. It should have never been allowed to grow there.

VICE-PRESIDENT RIE: Well, there's nothing in the permit that says anything about our Board authorizing removal of trees, and there's nothing in the CEQA discussion that addresses that either.

MR. DACUS: That's correct. And I guess, I'm --

VICE-PRESIDENT RIE: You know, I don't know how we deal with that, but I just wanted to throw it out there that if you do need to remove an oak tree, then it needs to be addressed, because it's not in the permit, and I would assume that there needs to be some sort of CEQA analysis to do that.





MR. DACUS: Well, I'm not certain. I mean, we've done several projects throughout the county on this levee where we have removed oak trees in certain places and there's never been -- they've all been -- you know, I don't that they've received any special consideration within the CEQA process.

MR. SHAPIRO: Yeah. I would just add that coming in cold on this issue, it is quite normal for the local agencies to remove vegetation which is where it shouldn't be under normal operation and maintenance actions, which do not require a permit from you.

And the exception that I'm aware of is where it's some sort of protected species under the Federal Endangered Species Act, the State Endangered Species Act or some sort of county or city ordinance. But as your staff researched and determined in this case, there is no such ordinance. If you have concerns that it should be listed, we would ask that it be listed to the -- added to the project description.

From a CEQA perspective, the CEQA CatEXs that are being used are for minor alterations, and removing one to five non-protected trees would certainly fit within the definition of such a CatEX. Obviously, your own attorney would be the one to confirm that. But advising my clients, I would say that you wouldn't go through anymore





a complicated CEQA analysis to remove one to five non-protected trees.

VICE-PRESIDENT RIE: But there's no tree removal in the permit.

MR. SHAPIRO: And we have not typically received permits to remove a tree. That's done just under a normal O&M action. We would be doing that while we're out there constructing a new encroachment. I guess phrasing it differently, we're -- removing a tree is not an encroachment. Removing a tree is an O&M action. Encroachment is putting something within the area that you jurisdiction over. In this case, it's fill, it's K-rails and it's fences. There's no authorization to take out something that shouldn't be there in the first place.

VICE-PRESIDENT RIE: Okay.

BOARD MEMBER RAMIREZ: Mr. President?

PRESIDENT CARTER: Mr. Ramirez.

BOARD MEMBER RAMIREZ: I think just to clarify -- you might just clarified it maybe for the Board. But as I understand it, it's a little bit apples and oranges. The permit and what's in front of the Board is not the issue about the oak tree. I think you guys said it pretty clearly, that's going to happen independent of what we're considering right now.

So if it helps, I don't see this decision being





something that is proposed to be exempt categorically from CEQA for us. I'm not saying what the solution is for CEQA for the local agency. That's for them to work through.

MR. SHAPIRO: I appreciate the clarification. And I'll further clarify, if I may, after getting the facts from Larry. The one tree that is definitely being removed no question about it is in the levee slope, and it is apples and oranges. The other up to four more trees, are currently sitting within the fence line of landowners on land that you've determined is State property.

And so it only becomes an issue to remove those trees, if and when we move the fence back. And so it is apples and oranges, but there is a tangential relationship at least for those up to four trees.

BOARD MEMBER RAMIREZ: Understood.

PRESIDENT CARTER: Any other questions for the applicant?

Thank you very much.

MR. SHAPIRO: Thank you.

PRESIDENT CARTER: I'd like to invite -- are there any members of the public that wish to address the Board on this item?

Please approach and introduce yourself for the record.

MR. HECKER: Again, my name is Monty Hecker,

landowner at 5548 Feather River Boulevard.

I guess the five trees that he's talking about are probably some of them you can see here. There's one really huge one. There's more than five trees. And he's right, it's in the fence line.

Again, I'd like to go back to this picture, because of what they're briefing, and what Mr. Ben Carter brought up. If this changes back here, that takes those tags that you request --

PRESIDENT CARTER: Could you -- Mr. Hecker -- there we go. Thank you.

MR. HECKER: -- that are all in a straight line. Okay. Well, that little hand would follow back straight, like a bullet, all the way back to here, which is a big difference between there and the orange spot.

Now, all of this great work that they've done with the landowners, me, Susan, Carol you didn't get to see this picture. I brought this picture. They didn't show you the picture. And I would wish that the young lady would come back up here and see if they have a picture of the south end that our whole discussion today has been about, that we don't agree with.

Again, it's you guys that brought up the good items again. There is a toe. I have been told that. But when I talk to the very people that I want to change





relationships with, I want to sit down with them, but if they move that toe line back here, they're going to have lots of room. They're going to have wider than a 20 foot. They're going to have more of a 30 to 35 foot.

The other thing they're not telling you, where my little hand is here, that's a four-foot drop that has -- those are oak trees too, by the way. That's an oak tree right here, and they're steady all the way down. That's a huge one. And I agree with this one that he's talking about. If you look at my little hand, that's the one that needs to come out, okay? That's in the levee. That's even on the other side of the toe line.

Now, they'll sit up here and schmooze you guys with saying stuff, but the actual issues that we want to talk about, and they tell you we're working with them. Guys, come to my office. They can come to my office any time. Now, you didn't get all the emails, because I did set up a meeting with Mr. Paul Brunner. And then the other people that have contacted me, which we've had several meetings at my office, asked if they could be involved with the Paul Brunner meeting. And I emailed back that we wanted to have it at my office. Why?

For these reasons, I had these pictures set up for the meeting. He wanted us to go to his office. I can take my laptop up there, and I can set it up, but the





other people couldn't coordinate everything, and they want to show what our problem is.

There's some other pictures I should have brought. I apologize. I brought them last time. The new members didn't get to see them of the water six-foot high in Susan's property.

It's really hard to sit back here. We finished 4A, but nowhere at the end did we say does the public have anything to remit to all of the people that got to get up after me and kick me tail on what I've said?

No. It didn't happen. And it needs to happen. We need to be conscious that anybody -- and I invite everyone of these guys back here, if I've talked bad about them and said something that is wrong, please come up and talk. I don't want nobody to be caught short. But I'm a homeowner and I'm really concerned. And I want this road. Trust me, I want the road. I want to feel safe. That house flooded. So it's not something that's new to me.

The part that's news to me is that I have a group of people that don't have the same compassion that the people standing before me have. Take some of your great feelings and the questions that you ask, why can't they ask them? They're the surveyors. They're TRLIA. They're supposed to know what you guys know. Why is it you come up with these questions, the levees, that it has a





triangle? Do they not know they're own job? Because I'll tell you as a homeowner, I don't.

And I've never studied so hard in my life. I've never read more of your Board meetings, and I'm just astonished about the stuff that you guys come up with. And you're fair. You're really fair. And I'm not trying to blow smoke up you. I need TRLIA to be fair. They can come and meet with me tomorrow. I'll meet with them on weekends. I'll meet with them on weekdays. Come to my place. Let's walk out here, look at this, and explain it.

I didn't mean to slam Larry. Sorry, I said he was a surveyor. Why would they send me somebody then down that wasn't a surveyor to take me out and show me where my line is. That didn't make any sense to me. I didn't realize he didn't know what he was talking about. No wonders he couldn't talk to our questions.

But the way it was portrayed was not that he couldn't talk to the questions that he wasn't a surveyor, it was portrayed that he couldn't answer anything, because my one word that I said to him, "Why didn't Paul Brunner come down here then, if you can't answer our questions? Are we just wasting our time?"

And I think we did. We wasted our time. And nobody's been to my place. And I say the same thing up here that I've always said, and even in the emails, the

ladies, if you ask both of them, Carol and Susan, we didn't not cancel the meeting. Paul Brunner cancelled the meeting. And it was all because they wanted to meet at their office. They didn't want to come down and look at what we want to show them. Get a physical and see it.

That's the other reason I was upset with Mary Jane. She's now the boss on TRLIA. I called her last week to have a meeting before you folks come up. My exact words was, "We want to get this cleared up". I do not want you to vote this permit through, point blank. Do not.

Why?

First of all, bring up the fence. I was assured by Paul Brunner the fence is going to be 10 foot. My fence is 10 foot, all the way. This whole section is 10 foot. I was even told by, what is that, the seven -- the guys that patrol the road, 784? I was even told by him, yeah, we gotta change that".

Put a six foot fence up folks. If you can bring that picture up, I'll show you. Put a two foot block on this side. They step up on it, that's four foot guys I'm going over. Why do I have a 10-foot fence?

I got a 10-foot fence because it used to be, I had a thoroughfare, motorcycles and people, every day going through there. You put a six-foot fence -- and I





was assured that ain't going to happen. Who do we have here from TRLIA?

Can I ask that?

Because I'd like somebody to comment on the six-foot, because Paul Brunner guaranteed me last -- two weeks ago that we were going, "Oh. It's a piece of cake. We can change that to 10-foot."

They'll take time to do a presentation in front of you folks and have six foot. They didn't think I'd be here, right?

MR. SHAPIRO: Actually, we did details before this issue was raised, but we've indicated that within the staff we're doing a 10-foot fence. If you want to put it in the permit condition that's fine, but we previously agreed to it and we were going to do it.

MR. HECKER: That's my point. They got up and talked -- thank you very much, sir.

BOARD MEMBER VILLINES: Maybe the point is if you guys talked more, you could resolve all of it.

MR. HECKER: Thank you. You know.

(Laughter.)

BOARD MEMBER VILLINES: I'm saying this one is a 50-50. I think it shows that there was --

MR. HECKER: But I think it's the same way here. Stop and listen to my reason for coming up here and





showing you this picture. If this line comes all the way down, and you bring that young lady back up here that put the map up of the other end, you get to see the yellow part, okay?

The yellow part that all the property owners that they get is utilized. Do I get to utilize any of it? No. Absolutely not. It's right up against my building, okay, because of what they've done here. I'm not in the same boat as the other ones.

Now, is it because I've upset everybody that they've decided the five of us are going to punish, and it jumps abruptly from right there - if you notice this one goes to the middle of the road, this one goes to the right.

PRESIDENT CARTER: We -- point made.

MR. HECKER: That's why I'm up here, because you're not being told that by the other people, only by me. And you're getting ready to vote on something that I think needs to be held until it's written up right. The man said it should have been 10 foot. It needs to be acknowledged here. And I'd love that thing, because it's all typed, and it's supposed to be 10 foot.

And I love -- I owe you guys the thanks for the water drainage. And I think you know that for me coming up here. It was never mentioned in any parts of it, until





I brought that to the Board.

So thank you.

PRESIDENT CARTER: Thank you.

Any other members of the public wish to address the Board on this item?

MS. MILLER: Yes. Could I say one thing? I brought this up before --

PRESIDENT CARTER: Please approach and introduce yourself for the record.

MS. MILLER: Yes. My name is Carol Miller. And the issue was the '58 deed says 150-foot parcel of land, and there was supposed to be an additional 20 foot with it, but it doesn't say it on parcel 5, which is in back of our house. It just says 150 foot in width, 90 foot on one side and 60 feet on the other.

PRESIDENT CARTER: Ms. Miller, did you introduce yourself for the record.

BOARD MEMBER VILLINES: She did.

PRESIDENT CARTER: Okay. I just missed it. I apologize.

MS. MILLER: Okay.

PRESIDENT CARTER: Okay. Thank you.

MS. MILLER: No, but this was what was said just prior to relinquishing the floor to the property owners or to the public.

PRESIDENT CARTER: Okay. Thank you.
Anyone else?
MS. HECKER: Thank you. Debra Hecker.
I realize that everybody wants to get this voted on and over with and move on, but I'm still asking let us see those reports. The -- any of the documents that the San Joaquin Water District or the DWR real estate association has, let us have a chance to see those. We were told in the very beginning that all the documents used on this survey were available to us. They were listed on the map, go get them, but nobody checked with you guys.
Do you have any of those documents?
You've never found the center of the levee. You could rest it all right there. If there's documents that show what the center of that levee exists, and then you've got so many feet on -- and nobody's ever gone over to the other side of the levee and say, well, there's 90 feet from this point to hear, it would work just as well that way.
The one surveyor we went and consulted with said, well, you might have an issue there, but you're going to have to go set surveys. He says there could be a no-man's land out there. Are you sure you're not dealing with a no-man's land?





We asked Susan LaGrand, after we -- you made the comments requests that your staff members go back to the real estate, and the -- and look for other documents and stuff that haven't happened, didn't see it. We haven't heard anything about it. She tried to reach out to those agencies, and ask if there was anything out there. She had been emailing them and asking them.
She got a response back. Her emails were all placed forward and a response back from you Mr. Punia to go through the Freedom of Information. I'm asking you please don't vote on it today. Take a little time and consider. Make sure that the fence hides, and all the stuff that has been agreed upon is in the permit itself before you go forward, because once you've gone forward, if it's not in writing, it's a dead deal. It's over and done with.
Thank you.
PRESIDENT CARTER: Thank you.
Ms. LaGrand.
MS. LaGRAND: Once again, I'm Susan LaGrand. As Mrs. Hecker just said, I did receive the email telling me to go through the Freedom of Information Act. I thought that we were supposed to be allowed access to this information. I thought this was public knowledge. I thought I lived in America. Evidently, I've live in the





Soviet Union.
I really feel that if you vote on this today, this will be a huge injustice to the residents here. I want to work with TRLIA. I don't hate those people. I know it seems like we do, but I don't. I don't like the half-truths that they tell. I don't like the fact that they twist words to make things sound different.
For this lawyer's information, State grants and funds and California Board of Water Resources money is taxpayer money. You know, until -- I'm sorry, I'm going to say it till the day I die. Until you find the center of that railway, you don't know where this property truly ends. And if you don't know beyond the shadow of a doubt where this property ends, you cannot just sit there and say you're encroaching, because like Mrs. Hecker said, that's a no-man's land. I think -- I agree with her 100 percent. Find that center of that railroad. That's the only way you can know truly where that land ends.
Thank you.
PRESIDENT CARTER: Thank you.
Does anybody else in the public wish to address the Board on this item?
Okay. Thank you very much. We'll close the public testimony portion of the hearing, go into discussion and deliberations.





Any thoughts, questions Board of staff, applicant, anyone who's presented evidence?
VICE-PRESIDENT RIE: President Carter, I'd like to follow up on my previous questions. I don't think Mr. Shapiro was here at our last hearing, so he didn't -- I don't think he really understood what my question was, so I'd like to pose the same question again to our staff, because they were here.
And my question is, if we need to remove oak trees to install the fence, how are we going to do that if we haven't authorized the removal of those trees? And I'm not talking about the tree that is on the slope of the levee that's TRLIA's O&M issue. I'm talking about the oak trees that are in the line of the fence.
STAFF ENVIRONMENTAL SCIENTIST HEROTA: Good afternoon, Board President, Board members. My name is James Herota, Staff Environmental Scientist.
In regards to the oak trees, they were going to remove those, and they were going to be cutting into that levee. That would be raising a permit issue they'd have to be coming in. That would be over and beyond what typical maintenance would be for this flood control structure.
Under Title 23, maintenance does include removing vegetation, but if it's substantial, if it's cutting into

the levee, they'd have to be coming back for a permit for that.

VICE-PRESIDENT RIE: Let me get a little bit more specific. The vegetation that needs to be removed was considered part of the enforcement hearing, and we haven't made a decision on the enforcement hearing, so maybe I should ask this question of Board counsel. How can we authorize them to install a fence that requires removal of oak trees, if we haven't made a decision on the enforcement? And I would think that these trees would be considered part of the enforcement action?

LEGAL COUNSEL ANDREWS: This gets to a larger and related question, which is the -- my understanding is that the sequencing of the enforcement actions that take place before the permit was done because the conclusion of the enforcement actually sets the property rights, that you have to actually complete the enforcement action before you can actually authorize TRLIA to do work that presupposes the outcome of the enforcement action.

So I could see moving ahead with the TRLIA permit, but adding a condition that, in essence, says you can't actually start any construction work pursuant to this permit until the associated enforcement actions are resolved in a manner that's consistent with the work authorized by the permit should the Board actually decide





to do that, because you still have enforcement actions open. And until you complete those enforcement actions, the property rights haven't been ultimately determined, otherwise you wouldn't have the enforcement actions still open. Because if you've already determined that, then there's no reason to even have the enforcement actions still open.

So I could see approving the TRLIA permit with the specification that they can't start work, and that any -- sorry, can't start construction work, and any design work they may undertake would be at their risk, pending completion of the enforcement action, but that you could put in the condition that the Executive Officer could ultimately make the determination that the enforcement actions, once complete, are actually consistent with the permit, so that TRLIA wouldn't actually have to come back. But I do think there is an issue with leaving the enforcement actions open.

VICE-PRESIDENT RIE: So do we need to resolve the enforcement actions before they can go out and physically remove the trees and anything else for that matter?

LEGAL COUNSEL ANDREWS: Well, I think there's a question is what -- do they need the authorization from the Board to remove the trees at all. It's not part of the permit. I don't know why it's not part of the permit.





Maybe staff can answer that question why it's not part of the permit now.

PRESIDENT CARTER: I think that's been asked and answered, and the response has been by our environmental scientist, as well as other staff, that the vegetation removal that is involved here is operation and maintenance. It's considered operation and maintenance. Am I correct, did I hear that correctly?

STAFF ENVIRONMENTAL SCIENTIST HEROTA: I agree. Under Title 23, that would be considered maintenance.

LEGAL COUNSEL ANDREWS: Okay. So it's not part of the permit. It doesn't need to be, is that what you're --

STAFF ENVIRONMENTAL SCIENTIST HEROTA: (Nods head.) The tree that's growing up out of the levee slope there, if they're going to be excavating that, that's beyond maintenance. They'd be coming in for a permit for that.

VICE-PRESIDENT RIE: But I'm not concerned about the tree on the slope. I'm concerned about the oak trees that are on the disputed property. Removal --

STAFF ENVIRONMENTAL SCIENTIST HEROTA: Oak trees are not a federally protected species. They're not a California protected species. It's mainly up to the local ordinances. In Yuba County, there's not a local ordinance





mandating mitigation for oak tree removal.

VICE-PRESIDENT RIE: But can TRLIA go and remove those trees now as maintenance on the disputed property or do we need to complete the enforcement action first?

PRESIDENT CARTER: I think what I heard our counsel say is that a better sequence would be to conclude the enforcement actions before any construction is begun. And so his recommendation was to add a condition to the permit that's before us now, 18690, to condition the permit based on the fact that there -- that no construction will begin until the enforcement actions of the adjacent properties are concluded. Did I hear that correctly?

LEGAL COUNSEL ANDREWS: Yeah, and I've actually drafted it and I can -- when the time comes, I can read it into the record directly. I have one draft that does that essentially, yes.

PRESIDENT CARTER: Okay.

BOARD MEMBER EDGAR: Ben.

PRESIDENT CARTER: Mr. Ramirez.

BOARD MEMBER RAMIREZ: It might be the same question. I've got a couple and I'll ask one and let Bill have a shot at it.

I think the question that we're asking, and there might be two questions here, is the timing, because the

way that the item is prepared, it's pretty clear that we're authorizing this work to be done within -- or from the toe of the levee, which we're not quite sure where that is necessarily, and we haven't acted on these other actions that preceded it.

So if we're going to go forward, which I think we'd like to in some way, shape, or form, we probably need to think about how we condition it to factor those things into our decision, so that they can be resolved, whether we delegate the authority or not to the Executive Officer. I think we can work through that hopefully.

If I hear the other concern, it's probably separate and distinct, which is the issue of any vegetation removal, whether it's an oak tree or something else, that's not federally listed in CEQA. And I just don't know to the extent that we play that role versus the local agencies play that role. And I would leave it to our staff to try to flesh that out for us, if it needs to be fleshed out, but it's not clear to me that what we're doing is authorizing them to do their local maintenance or if they have their own obligation to comply with CEQA independent of our permit conditions.

I understand the permit conditions as they apply to the levee and public safety. I get that. But if there's other things that need to be factored in, I don't





know if those things are for us to factor in or for the local agencies to factor in.

VICE-PRESIDENT RIE: I'm satisfied with staff's response to the CEQA question. So the only question that I had was to make sure that we needed to resolve the enforcement items before we move forward, and counsel addressed that. So I'm satisfied.

PRESIDENT CARTER: Mr. Edgar.

BOARD MEMBER EDGAR: One question here. It seems to me there are two classes of properties. Ones that are contested, and will probably go to enforcement hearing, and then a majority of them that are uncontested.

Now, Jim, is your opinion that, you know, assuming that we go ahead with the permit allowing TRLIA to proceed with design plans and specs for the entire project, not to proceed on construction on any of them, or can we proceed on construction on the uncontested properties?

LEGAL COUNSEL ANDREWS: I don't think they can proceed on any of them until the enforcement actions on the properties abutting where they're going to do work are resolved. So whether it's contested or not, the Board hasn't closed the loop on any of the 51. So the fact that they're contested or uncontested is sort of irrelevant to crossing that final finish line.





BOARD MEMBER EDGAR: Okay.

PRESIDENT CARTER: Any other questions, discussion?

I'd like to suggest that we -- as Mr. Ramirez pointed out, we resolve or add a condition in the permit, if we get there, that resolves the issue in particular of the levee toe, the location of that, such that the levee toe is defined to essentially protect the existing levee prism and not diminish public safety in any way.

So with that, any other comments, suggestions, questions, motions?

BOARD MEMBER EDGAR: Could we have your amendment read into -- we're assuming we're talking about Resolution number 2011-31. And, Jim, you had some proposed amendments to that?

LEGAL COUNSEL ANDREWS: I have a proposed condition that deals with the sequencing issue. It doesn't deal with the levee toe issue, but we can probably add a separate condition. So why don't I start with the one that deals with the sequencing, and then maybe we can either add to it or amend it or add a separate condition that deals with the levee slope. And maybe I'd ask Board Member Ramirez to think in his mind how he might formulate the levee toe conditions as I read mine slowly, so he can have time to think.





So I would propose adding Condition 37 -- I think 37 will be the next one. I'm looking at Alison. She's nodding her head yes.

"Permittee may not undertake any work authorized by this permit until the Board resolves the associated enforcement actions, Notices of Violation 2011-43 to 2011-49 and 2011-53 to 2011-296 consistent with the work authorized by this permit. Approval of this permit is no guarantee that the Board will resolve these enforcement actions consistent with this permit.

"Prior to such time, any design work permittee may undertake is done at permittee's risk. After Board resolution of the above-referenced enforcement actions, the Executive Officer shall determine whether such resolution is consistent with this permit. If it is not, the permit shall require an amendment."

BOARD MEMBER SUAREZ: Can I just -- Mr. President?

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: I just want to clarify -- a clarification that when we say any work, I would like the permittee to have an opportunity to work on the design and

work with staff and work with the landowners. So if I can put a limitation that any construction work certainly should be limited until the enforcement issues are resolved, but any planning work, you know, again assuming the risk is permissible.

LEGAL COUNSEL ANDREWS: Did I leave that out, that's a nice little addition. Yes, I meant construction work.

BOARD MEMBER SUAREZ: Construction work.

PRESIDENT CARTER: Okay. Very good.

SECRETARY DOLAN: Mr. Chairman.

PRESIDENT CARTER: Ms. Dolan.

SECRETARY DOLAN: Question for our attorney, please. On this resolution, the attached conditions, would you like at number 26, which reads --

LEGAL COUNSEL ANDREWS: Is that the --

SECRETARY DOLAN: -- I believe, the fence parallel with the levee shall be located 20 feet from the levee toe as indicated on plan submitted by CTA Engineering and Surveying. If we leave that in this resolution, are we making a finding of where the levee toe is, when we really haven't?

BOARD MEMBER SUAREZ: You mean, on the permit condition, not the resolution.

SECRETARY DOLAN: Yes, the resolution -- the





resolution speaks to the permit conditions.

LEGAL COUNSEL ANDREWS: That's probably --

SECRETARY DOLAN: Is there another version. Well it's the one that came with my agenda.

I'm sorry, you have only 25 conditions?

BOARD MEMBER RAMIREZ: No. I have -- the one you're reading is 25, on mine.

LEGAL COUNSEL ANDREWS: That would be the right condition to modify, because what it says is 20 feet from the levee as determined by the survey, but sounds like the Board is wanting further work on where the levee toe actually is, so you could propose modifying that condition to provide some further mechanism for determination of the levee toe. Twenty feet from the levee toe as shall be determined in consultation with Board staff, in order to maintain the prism as set forth in Board regulations, something along those lines.

SECRETARY DOLAN: I apparently have a different number than what I downloaded than what you all here, but the condition, whether it's Condition 25 or 26, reads the same for all of you, you just have a different number, is that correct?

I'm just reading what I printed.

But my question remains if that condition is there, even though we add this 37, aren't they in





conflict? And aren't we adopting something that we haven't yet determined?

PRESIDENT CARTER: Well, I think --

BOARD MEMBER SUAREZ: I think we have.

PRESIDENT CARTER: We can modify that condition, as suggested by counsel, to ensure that -- I mean, the whole point of double checking where we define the levee toe is to be sure that we are not utilizing more land than we have to to accomplish our purpose of public safety and appropriate O&M of the facilities. So that's the intent of that. So how -- I'm not great with words, so --

BOARD MEMBER RAMIREZ: Can I just ask a clarifying question. I think we understand -- at least I understand the discussion we had about the survey and the map and our role and review of the survey. Was it similar for the toe of the levee and the attachment and the reference to the permit condition? Do we feel like we've done this work already?

I heard the local district volunteer walk us through the rationale. And I don't want to send this back to do something that's been done already necessarily. So have we already done that homework?

No. I saw the head shake no.

Did I misread your nod, Scott?

SECRETARY DOLAN: Did you look at our staff?





BOARD MEMBER RAMIREZ: No, I saw nobody else except Scott.

STAFF ENGINEER TANG: I'm having trouble hearing you.

MR. SHAPIRO: I'm going to have to learn to keep my bobblehead still.

(Laughter.)

MR. SHAPIRO: I think they are different. One issue is, where is the property line? The second issue is, did an engineer use engineering judgment to determine where the toe of the levee is? They're unrelated. They both were done in accordance with the standard of the industry. We hired a geotechnical engineer to analyze and determine where the toe should be. We are open to President Carter's proposed modification that we work with your staff to analyze it. My only request would be that it not be limited just to the factor of the trapezoidal levee, because other engineering considerations may have gone into the toe, and we'd like the ability to have your staff consider the entire range. And once they do, then we'll work with them to set the actual line.

BOARD MEMBER RAMIREZ: And I think the only thing I've got left is did we have that discussion, like we did already on the survey, about the levee prism and the toe of the levee?

If not, then I think -- you know, thank you for the offer. I think that makes sense to go ahead and do it that way, if it's okay with the rest of the Board.

MR. SHAPIRO: I don't believe we have ever had a dialogue with your staff beyond presenting here's what our geotechnical engineer said. And we are absolutely willing to do it, and receive impact from -- input from your staff and use that to set the final line.

PRESIDENT CARTER: And, Mr. Ramirez, is your question to go ahead and do that right now with the full Board or to delegate to the staff to do that and exercise their judgment in terms of determining and confirming where the levee toe is?

BOARD MEMBER RAMIREZ: That's a good question. I don't want to presume what the rest of you might think. I'm -- as curious as I am intellectually, I think this is like the survey, I think the State has an interest to protect here, but I think our staff are capable and I would ask them to do that work, but I would welcome other perspectives.

BOARD MEMBER EDGAR: No, I would agree with that. It seems to me that as TRLIA is empowered to go ahead with the design, this is one of the factors that they'll look at, and I think they should do that, but I don't think we need to take up the Board's time doing that.





PRESIDENT CARTER: Okay. And, Ms. Dolan, you're -- I am not finding the permit condition that you brought up, which number was it?

EXECUTIVE OFFICER PUNIA: Twenty-five

BOARD MEMBER RAMIREZ: It's 25 on mine and 26 on Jane's.

BOARD MEMBER SUAREZ: Page three of four of the permit.

SECRETARY DOLAN: I actually don't know how mine is 26, and yours is 25. This is what I've got.

BOARD MEMBER RAMIREZ: It's 25. It says, "The fence parallel with the levee shall be located 20 feet from the levee toe as indicated on submitted plans prepared by CTA Engineering and Surveying.

BOARD MEMBER EDGAR: Yeah. It seems to me that what Mr. Shapiro said was right. This just says 20 feet from the toe. It doesn't define the toe. So whatever the toe is, and it'll come back to us, it's 20 feet from that. So I think we're okay with that condition.

BOARD MEMBER RAMIREZ: Right.

PRESIDENT CARTER: I have to confess, the permit I'm looking at for Item 4E, those condition numbers don't say that.

BOARD MEMBER SUAREZ: The permit that I'm looking at is the one that's posted on line.





PRESIDENT CARTER: I apologize.

BOARD MEMBER RAMIREZ: The permit or the resolution?

PRESIDENT CARTER: I'm talking about the permit.

BOARD MEMBER RAMIREZ: Okay.

BOARD MEMBER SUAREZ: You're talking about Permit Condition 25. And the one I'm looking at which says 25 is the one that's on our website, that's been downloaded to our website.

PRESIDENT CARTER: And just so the record is clear, my 25 says, "The fence parallel with the levee shall be located 20 feet from the levee toe as indicated by the submitted plans".

BOARD MEMBER SUAREZ: Yeah. That's it.

EXECUTIVE OFFICER PUNIA: That's what they're discussing.

BOARD MEMBER SUAREZ: You're cool.

PRESIDENT CARTER: I got the right one. Thank you.

Okay. Does that -- and those -- does that condition then need to be changed?

LEGAL COUNSEL ANDREWS: I have a proposed change to deal with --

PRESIDENT CARTER: Okay.

LEGAL COUNSEL ANDREWS: -- Board member Ramirez's





and Dolan's -- well, done.

Here it goes. As revised it would read Condition 25, "The fence parallel with the levee shall be located 20 feet from the levee toe. The levee toe location shall be determined by permittee in consultation with and with the approval of the Board Executive Officer. Thereafter, permittee shall resubmit project plans for Board Executive Officer Approval".

PRESIDENT CARTER: Okay. Did everybody understand that?

BOARD MEMBER SUAREZ: Sure do.

PRESIDENT CARTER: Okay. Very good.

Any other questions, comments, motion?

BOARD MEMBER SUAREZ: I would like to suggest that the language in the resolution, specifically language on page two of the resolution, that second whereas and the third whereas that deals with the enforcement actions be deleted.

PRESIDENT CARTER: So the second whereas and the third whereas on this page of Attachment E to Item 4E of the permit be deleted?

BOARD MEMBER SUAREZ: Correct.

PRESIDENT CARTER: Okay. So we still don't have a motion, ladies and gentlemen. Is there a motion before us?

BOARD MEMBER EDGAR: Just one clarification. Jim, is it necessary for those whereases that Emma alluded to, to be revised to reflect our current -- the action of the Board this morning?

LEGAL COUNSEL ANDREWS: Please remind me, reiterate which whereas clauses those are.

BOARD MEMBER EDGAR: On page two of the resolution on the second and third whereas it refers to the enforcement hearings, which was done before the Board's action this morning. She suggested just deleting those. And my thought is maybe we ought to just put a little whereas indicating what we did this morning in there.

LEGAL COUNSEL ANDREWS: Well, I mean, the second whereas happened. It's a statement of fact. You didn't make a -- you made a decision and you vacated it.

I don't think it's critical one way or the other, but I don't think it needs to be deleted, but I think it could be deleted.

BOARD MEMBER EDGAR: Okay.

LEGAL COUNSEL ANDREWS: And the third one, you know, should be deleted, I think.

PRESIDENT CARTER: Okay. So any other questions, comments, motions, please?

Go ahead, Ms. Suarez.





BOARD MEMBER SUAREZ: Oh, no, I was going to ask Mr. Edgar if he wanted.

BOARD MEMBER EDGAR: No, go ahead.

BOARD MEMBER SUAREZ: No, I don't want to.

BOARD MEMBER EDGAR: Okay. I'll move the resolution as amended.

BOARD MEMBER SUAREZ: And I second the motion to adopt the changes to the permit and the changes to the resolution. Is that what you needed, Mr. President?

PRESIDENT CARTER: Yes. So, Mr. Edgar, your motion is to adopt the Resolution number 2011-31 as amended, which includes the deletion of the second and third whereas on the second page of the resolution and make the changes to Condition number 25 on the permit, and add Condition number 37 to the permit as presented by Mr. Andrews, our counsel?

BOARD MEMBER EDGAR: That's correct.

PRESIDENT CARTER: And, Ms. Suarez, that -- and you second that motion.

BOARD MEMBER SUAREZ: Yes, sir.

PRESIDENT CARTER: Okay. We have a motion and a second.

Any discussion?

Any questions about the motion?

BOARD MEMBER RAMIREZ: One more question. It was





mentioned earlier to change the six to 10 feet. Did we do that or was that just a note that has not been captured yet? Does it need to be captured?

SECRETARY DOLAN: Oh, the fence height?

PRESIDENT CARTER: I think the permit said at least six feet.

BOARD MEMBER VILLINES: They said they would do 10 feet, but we should probably put that in.

BOARD MEMBER EDGAR: Why don't we add the substitute language of approximately 10 feet.

PRESIDENT CARTER: Can somebody help me find that?

BOARD MEMBER EDGAR: Yeah, that's on -- that's on -- let's see. That's on the third page of the resolution number 10.

PRESIDENT CARTER: Of the resolution. Third page number 10, it says 1.1 miles of chain link fence at least six feet high adjacent to the levee. That's what it says now.

BOARD MEMBER EDGAR: Yeah. And I would say let's change that to approximately 10 feet.

PRESIDENT CARTER: To approximately 10 feet.

BOARD MEMBER SUAREZ: I second that amendment.

PRESIDENT CARTER: So you accept that amendment to the motion.





Okay. Any other questions?

Very good. Discussion?

Staff, do you have any comments with respect to the Board's proposed action?

STAFF ENGINEER TANG: Staff is fine with the proposed action.

PRESIDENT CARTER: Does the applicant have any comments with respect to the Board's proposed action?

MR. SHAPIRO: We thank you for your consideration. We are good with this permit. We look forward to working with your staff and the landowners on fence and drainage and related issues.

PRESIDENT CARTER: Okay. Any other questions or comments?

BOARD MEMBER SUAREZ: Mr. President?

PRESIDENT CARTER: Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you. We would like -- some of us would like for the rest of the Board members to consider, not as part of a official resolution or permit condition, but for this Board to consider appointing a member liaison to work with TRLIA and the community to help resolve outstanding issues. I'm not volunteering, but some of us feel that that might help continue the dialogue and discussions. So maybe perhaps as we talk about further task assignments for Board

members, maybe we have a Board member interested in serving in that liaison role.

PRESIDENT CARTER: Okay. Very good.

Any other questions or comments?

SECRETARY DOLAN: Are you volunteering?

BOARD MEMBER SUAREZ: No, we're volunteering you.

PRESIDENT CARTER: Okay. No questions or comments, Mr. Punia, would you call the roll.

EXECUTIVE OFFICER PUNIA: Board Member Mike Villines?

BOARD MEMBER VILLINES: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Emma Suarez?

BOARD MEMBER SUAREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Bill Edgar?

BOARD MEMBER EDGAR: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Tim Ramirez?

BOARD MEMBER RAMIREZ: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Jane Dolan?

SECRETARY DOLAN: Aye.

EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

VICE-PRESIDENT RIE: Abstain.





EXECUTIVE OFFICER PUNIA: Board President Ben Carter?

PRESIDENT CARTER: Aye

The motion carries, six ayes and one abstention.

Thank you very much. And we will adjourn this hearing.

So ladies and gentlemen, we will move on to -- actually, ladies and gentlemen, let's take a 10-minute recess and then we'll continue with our agenda, Item 6, an informational briefing on introduction of the maintenance and use agreements for 784.

Thank you.

(Thereupon a recess was taken at 2:57 p.m.)

(On the record at 3:15 p.m.)

PRESIDENT CARTER: Ladies and gentlemen, if I could ask you to take your seats please, let's continue with our meeting, so we can get out of here at a reasonable time.

We are on our Item number 6, which is informational briefing, please. This is an introduction to the maintenance and use agreements for RD 784 levee access corridor, and easement policy to avoid landlocked properties. This is an informational item. No action intended here.

So with that, I will turn it over to TRLIA staff.





Thank you very much. Good afternoon.

(Thereupon an overhead presentation was presented as follows.)

MR. McELHERN: Good afternoon. Thank you very much, President Carter and Board members. My name is Scott McElhern. I'm an attorney with Downey Brand. I represent Three Rivers Levee Improvement Authority as special counsel. I represent them in right of way acquisitions, as well as eminent domain.

And the purpose of this informational briefing is to discuss two items, and two instruments that TRLIA intends to proceed with with respect to property owners in their district as ways to, in essence, work with property owners to allow in situations where property owners have landlocked properties because of acquisitions by TRLIA. For instance, if you acquire fee along a levee, and you split a property, that you allow access to continue their farming operations.

And then the other item is license agreements that would allow for use of the toe access corridor area for continuing farming operations. In various times, TRLIA has been asked if we would allow the use of the toe access corridor for farming operations. And this is one instrument that we would like to use to allow that.

So prior to going into the details, I'd like to





just give you a brief background, and I'll be very brief, because I presume many of you already know this. But TRLIA is a joint powers authority made up of Yuba County and RD 784. And the program levees for TRLIA -- the program levees for TRLIA are named in the map that you see in front of you.

You see where Linda, Olivehurst, Plumas Lakes, and the program levees go along the Yuba River looking from north to south. The Yuba River going in a westerly direction and then the levees along the Feather River and then along the Bear River, and then up on the Western Pacific Interceptor Canal.

So over the last many years, TRLIA has embarked on a substantial levee improvement project of about $400 million. And they've worked on all of those levees to improve public safety in the Yuba County area.

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MR. McELHERN: So cross-levee access easements. What is the issue with cross-levee access easements?

TRLIA is acquiring fee title to the property comprising the upper Yuba River levee, as well as operation and maintenance corridors in the water and land side. Some of TRLIA's acquisitions will result in the severing of single farms into two smaller farms or causing the owner of the waterside parcel to lose access.

Severing farms in its cutting off access may result in adverse economic impacts, which in turn would substantially increase TRLIA's real estate acquisition costs, which, in turn, would result in increased acquisition costs for the State under the EIP program. The State taken a majority of the cost of that program. And so this is a way to both work with the landowners as well as decrease -- potentially decrease real estate acquisition costs.

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MR. McELHERN: And here's a map of the upper Yuba project to give you some context as to what -- as to how these instruments would be used. As you can see in yellow, or kind of orange-ish yellow, is the acquisition boundary line of the upper Yuba project. And it generally tracks the upper Yuba levee other than the square or rectangle that you see there. That's the borrow site.

And so TRLIA has acquired all of that property in fee. And as you can see by doing so, there's some areas that would -- that access to their property would either be made more difficult or eliminate it in its entirety.

And so the solution to that would be the cross-levee easements that I've discussed.

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MR. McELHERN: And so here on this -- the next





slide talks about what that solution is. It says, "Where TRLIA acquires fee title to an existing levee crossing a large farm under unified ownership, or where an owner of a waterside parcel would lose access by the fee acquisition, TRLIA will grant a permanent access easement across the levee to the owner".

So the benefits of this policy would be that it preserves economies of scale and existing agricultural operations, meaning that you have a large farm and you're not splitting up into smaller parcels.

Minimizes the potential adverse impact of TRLIA's levee improvement program on individual farming operations.

And decreases TRLIA's, and ultimately the State's real estate acquisition costs and therefore lowers overall cost to the public of the levee improvements.

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MR. McELHERN: And so with that concept, the question is well what protections are there for the State, because the State or TRLIA, and then ultimately when the property is deeded over to the Sacramento-San Joaquin Drainage District, that will be State property.

So TRLIA would grant qualifying property owners non-exclusive easements for the purpose of providing access in order to facilitate the owner's farming





operations. And it would be just for that, farming operations. There would not be any other uses that would be allowed for that, and it would be an access only.

The easement agreements will restrict the property owners from interfering with the operation and maintenance of the levee. You would not allow the levee to be damaged in any way. It would only be for purposes of access for farming.

The property owners will be responsible for the cost of repairing any damages associated with the use of the easement area across the levee. And the property owners would be required to indemnify TRLIA, RD 784, and the State and federal government for any liability arising out of their use of these easements. And the State and RD 784 are third-party beneficiaries of the easements and are able to enforce its terms, meaning that the TRLIA -- that both RD 784 and the State would be able to enforce the terms if the -- for instance, if there's some damage being done, and 784 sees it, 784 can actually enforce the terms of the easement, much like the State through the Central Valley Flood Protection Board could do that as well.

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MR. McELHERN: And so that's the easement for cross-levee access. Now, the other tool or other instrument that TRLIA would -- intends to use is the





license agreement. And this is different than the cross-levee access agreement. The license agreement would just be for the use of the toe access corridor.

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MR. McELHERN: And so the purpose of this -- of the license agreement is, as part of the levee improvement project, TRLIA is acquiring fee title, and that the property owners with large agricultural operations have requested the ability to access the toe access corridor area for their farming operations.

And in certain instances, TRLIA has determined that by granting this license to use the toe access area, it would not impact the operation and maintenance of the levee.

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MR. McELHERN: And these agreements would be offered by TRLIA, during the time that TRLIA owns the property -- owns the levee property, and the licenses that are in existence at the time of the transfer of the property to the State would then be assigned by TRLIA to the State.

And once the property is owned by the State, it would be the State would be the ones, through the Central Valley Flood Protection Board, to issue any licenses, if they saw fit to do that in consultation with RD 784.

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MR. McELHERN: And so the rights that are granted by the non-exclusive license agreements, they would allow the owners to access their contiguous properties, meaning if they have two farms next to each other, they could use the toe access corridor to visit their neighboring property. They would be able to move equipment and crops in the toe access corridor area. And in areas that were not fenced, where the toe access corridor is not fenced, they would be able to use the toe access corridor for turn rows, and so that they could actually farm up to the property line, use the toe access corridor area to turn their farming equipment to go back.

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MR. McELHERN: And so much like the easements, there are significant limitations on the non-exclusive license agreements for the protection of TRLIA and ultimately the protection of the State. The rights may be temporarily suspended during any period of time that TRLIA is constructing, maintaining, rebuilding, enlarging, enhancing or modifying levee improvements.

The property owners are restricted from interfering with the operation and maintenance of the levee. Property owners are responsible for repairing any damages. The licenses are revocable for cause, meaning





that if the property owners is not conducting operations that are consistent with the license, that the license can be revoked.

It's also -- there's expressed limitations on the assignment. They won't -- can't be assigned from property owner to property owner. If a property owner sells his or her property, they'll need to -- they couldn't just assign it without the consent of either TRLIA or when the property's with the Board with -- consent to the State.

And then again, the State and RD 784 have the authority to monitor and enforce the licenses. And that the same indemnity obligations from the landowners to TRLIA, the State, RD 784 and the federal government exist in the licenses as they do in the proposed easement.

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MR. McELHERN: And so the advantages of the non-exclusive license agreements to TRLIA, and ultimately the State, is that it minimizes the adverse impacts of TRLIA's levee improvement program on individual farming operations. So it's -- you're acting as a good neighbor, and it's like allowing farming all the way up to the property line and allowing the use of the toe access corridor for farming operations.

And along those same lines, it maximize the amount of usable farm land. And then it also preserves





the State and RD ability to revoke licenses if they're abused by the property owners.

And I'd like to note that TRLIA has been in consultation with DWR with these licenses. And, in a general sense, DWR staff is in support of them conceptually. And we're just working out the individual language of the licenses and easements to ultimately go forward with the program.

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MR. McELHERN: And so with that, I'm open to any questions that Board members have with respect to this proposed policy?

PRESIDENT CARTER: Any questions?

Mr. Villines.

BOARD MEMBER VILLINES: Have you had -- thank you for the presentation. Have you actually gone through and started to talk to some of the farmers when you talk about potentially splitting their land in two? Has that already occurred?

MR. McELHERN: We have. Yes, we actually -- there are some currently pending eminent domain actions where this is an issue, and that there have been discussions with those individual property owners about this is one way to potentially resolve that litigation.

BOARD MEMBER VILLINES: And has that helped?





MR. McELHERN: It has. It has. And it's -- you know, one of the issues that we want to go back to them after we've made this presentation, and proceed forward with that, and hopefully able to resolve the litigation.

BOARD MEMBER VILLINES: And then just real quick, last question, have -- when you talked about basically bifurcating their land, have they said if you can just make sure you can move water from one side to the other, we're okay or have they come back to you with suggestions, or is it more that they really, you know, and I understand this, just don't want to have anything on there, I'm curious?

MR. McELHERN: Is the question as to what -- as to how broad the scope that they want or --

BOARD MEMBER VILLINES: Well, in some of these you mentioned you would be splitting land in two, which is usually the worst thing, you know, carving off a dead piece. Have they said that, you know, mitigate us for the dead piece or have they said just make sure we can move water to both sides, or -- I'm just kind of curious?

MR. McELHERN: Yeah, in situations where there is a -- you know, in a situation where there is a actual cutoff of property, it's to get access to continue their farming on the other side, you know, with -- you know, and if -- you know, the argument being is if you don't allow

us access, then you're going to be buying the entire piece of property. I mean, that's the argument. We have arguments back, but it would be nice if we could say, well, then you can have access over the levee. We're buying it in fee, but here's your easement to have access over the levee to continue what you did prior to the acquisition.

PRESIDENT CARTER: Any questions?

Ms. Suarez.

BOARD MEMBER SUAREZ: Thank you, Mr. President. I have two questions. How many property owners are we talking about?

MR. McELHERN: On the Upper Yuba project, we would contemplate doing it in four different situations.

BOARD MEMBER SUAREZ: But the number -- four individual property --

MR. McELHERN: Four -- yeah. Well, the are several related property -- there are three matters that are currently in eminent domain litigation. And the one that's not, they're related that -- so there are four different property owners, but they have a number of their families. So there are a number of different property owners, but four different situations where we would use the ease -- the cross-levee easement.

BOARD MEMBER SUAREZ: And just because sometimes





I'm clueless -- many times I'm clueless, exactly what it is that you hope this Board can do for you today, just informational, but do you need a general okay that this sounds like something we'd be interested in accepting, once you completed the project?

MR. McELHERN: Yeah. It's informational, and it's to really gauge if this is an issue with the Board or if it's something that the Board would want to do and that ultimately would be accepted, because the property is going to be transferred by TRLIA to the Board. And so I guess it's testing the waters to see if there's any issue with this. We feel that it's a good policy, and it's something that we want to proceed forward with, and we're seeing is there any objections in that regard.

BOARD MEMBER SUAREZ: Thank you.

BOARD MEMBER EDGAR: Mr. Carter. Through the Chair. Scott, how does this work in the real world? Are those corridored off, fenced with gates and you hand the property owner keys, and they use them or how does that work?

MR. McELHERN: Yes. On the Upper Yuba project, the landside property will have a fence. And so that is part of the -- in the easement document that they would have the ability to have a key for the fence, and also have to lock it. And so that's one of the things if they





don't, then you'll have to enforce the terms of the easement, but that's -- real world, they would have a key to the gate in order to allow them to go over the levee.

PRESIDENT CARTER: And these gates are -- and you said fenced. There's going to be a fence as well?

MR. McELHERN: No, it's just -- they're gates. And, I mean, Larry --

PRESIDENT CARTER: Gates on the access roads.

MR. McELHERN: -- speak more towards the specifics.

PRESIDENT CARTER: It's the classical pipe gate.

MR. McELHERN: Pipe fence, yeah exactly.

PRESIDENT CARTER: Pipe gate that blocks the access road.

MR. DACUS: Larry Dacus, Three Rivers Design Manager. On the Upper Yuba there will be -- at the upper end there will be fence between the O&M corridor and the agricultural operations, but there will be at regular intervals where ramps have existed in the past and continue to exist, there will be pipe gates that will allow the farmers to come into that corridor there.

PRESIDENT CARTER: Thank you.

Ms. Rie.

VICE-PRESIDENT RIE: I have several questions. You mentioned some easement documents, and some revocable





licenses, but yet you mentioned you're working with DWR on the language of those agreements. Can we, as a Board, get some examples of these documents that you're negotiating. And has our staff reviewed any of these documents, Board staff, or is it just DWR staff?

MR. McELHERN: My communication has been with DWR. I don't believe -- Jeremy, do you know if Board staff has seen that?

So Board staff has seen drafts of the license and easement documents.

VICE-PRESIDENT RIE: Okay. I'd like to see a copy, because it's hard to understand what exactly you're -- what you're proposing here.

You had mentioned easement documents and revocable license agreements, but then yet you mention you're in the middle of an eminent domain proceeding, and there's litigation.

MR. McELHERN: Correct.

VICE-PRESIDENT RIE: So, you know, it doesn't sound like the property owners are agreeable to what you're proposing, otherwise, you know -- you know, the litigation -- or maybe that's a separate issue.

So if you propose a revocable license agreement, but yet you're cutting off access to someone's property, how does that compensate them for the loss of access if

the license agreement is revocable?
MR. McELHERN: The license agreement would be used only in the toe access corridor, and that's not the -- the main document is the access agreement, the easement document, which would be a recorded document.
And to answer your initial question about the property owners, the property owners who TRLIA has acquired fee title to the levee, have -- can't come to TRLIA and say give us easements for access across the levee. So, yes, they are very much want those -- want to have that and continue to have that access.
At this point, we're working -- you know, we're working out the terms of what that access would be. And we've talked about some of the terms in the presentation.
So, right, an example would be this property right here, where you're on -- this is the Yuba River, and this is the -- so this is the water side, and so here is one farm, and that would be -- that would be -- it would be contemplating having an access over the levee in that area, so that they could continue to farm their property as one unified farm. That's just one example.
VICE-PRESIDENT RIE: So would that be a ramp up the levee and a ramp back?
MR. McELHERN: Yes. And those ramps existed prior to the project. And the same ramps were put in





after the project is complete.
VICE-PRESIDENT RIE: Okay. So the access would be a permanent easement --
MR. McELHERN: That's correct.
VICE-PRESIDENT RIE: -- that's non-revocable. And then it's just the toe area that you're proposing a revocable license?
MR. McELHERN: A revocable license. Yeah, the access would be a recorded easement that would run with the property. The toe access would be a revocable license. They're really two separate concepts.
VICE-PRESIDENT RIE: So are the access easements -- are those part of the litigation?
MR. McELHERN: They would be used as a way to resolve the litigation. They would be used as part of the settlement to resolve the litigation, that -- so we will provide this type of access. And so, you know, claims that they have -- claims that the property owner may have to eliminate -- you know, splitting the property would go away, given the existence of that easement.
VICE-PRESIDENT RIE: Okay. All right. Gotcha. Thank you.
PRESIDENT CARTER: Questions?
Okay.
Thank you very much.





MR. McELHERN: Thank you very much.
PRESIDENT CARTER: All right, ladies and gentlemen, we'll move on to our Item 7 on the agenda. This is Board comments and task leader reports. What I'd like to do -- and staff has asked us to try and clarify for them the -- some of the new regulation language, with respect to hearing notice.
And, Mr. Punia, you have copies of the new language.
EXECUTIVE OFFICER PUNIA: Yes.
PRESIDENT CARTER: Under Section 25, Cease and Desist Order, Board Hearing Procedures, Item (b)(4), it says -- it states, "The Executive Officer shall provide the respondent with a copy of the staff report along with any proposed resolution or proposed order...", et cetera.
The question staff has is what does "shall provide" mean? Does that mean, as in the prior regulations, mail it? It's just unclear. We need -- they're just asking for some clarity on this, so that they know what our expectations are.
Any thoughts on that, what constitutes the staff providing the materials for the hearings?
Anybody have any thoughts?
SECRETARY DOLAN: Mr. Chairman, I think it means providing a hard copy by U.S. mail.





PRESIDENT CARTER: And does that mean -- and does the clock start when they put it in the mail?
BOARD MEMBER SUAREZ: It's what the law is.
PRESIDENT CARTER: When the mail --
BOARD MEMBER SUAREZ: It's the mailbox drop rule.
PRESIDENT CARTER: Okay.
BOARD MEMBER SUAREZ: When mailed.
SECRETARY DOLAN: These are instances where an enforcement action is begun. I just think that's the appropriate way to do it, not to send them an email.
PRESIDENT CARTER: Okay. So it's --
SECRETARY DOLAN: I know it's old school, but it's the way --
PRESIDENT CARTER: So "shall provide" means that the Executive Officer provide the respondents by means of posting the materials in the U.S. mail?
BOARD MEMBER SUAREZ: If I can add to that. I think we live in a -- we're all very lucky and live a very comfortable life, and have access to the Internet and resources, printers at home that can download 200 pages without any problem, at least some of us do.
But we cannot assume that the public we deal with have those privileges and opportunities. And the safe rule, and the prudent thing to do, since again these deal with due process, like Ms. Dolan suggests, is mail, hard

copy.
PRESIDENT CARTER: So the -- and it goes on to say at least 20 days -- 20 calendar days prior to the hearing. The clock starts on the day the materials are posted by staff.
SECRETARY DOLAN: Or placed in the mail, yes.
PRESIDENT CARTER: Okay.
BOARD MEMBER VILLINES: Assuming the U.S. Postal Service around. We'll make that amendment later if we need to.
(Laughter.)
VICE-PRESIDENT RIE: President Carter, my view is a little bit different. When it says "provide", they need to receive it. When I mail things to our Board, it takes a week for my mail to get to Board staff. And my understanding is that the mail processing centers are being closed down, and, you know, some of the mail is going to L.A. from San Francisco and then back up to Sacramento. So there's a huge delay in the U.S. mail now. And I would say that when you say provide a copy, it needs to be delivered.
PRESIDENT CARTER: So you're interpreting that as received by the respondent.
VICE-PRESIDENT RIE: Received, yeah.
PRESIDENT CARTER: Okay. Thoughts?





BOARD MEMBER VILLINES: Yeah, I'mn trying to get my button got work. I think that creates some problems though, because -- is it working now? Did somebody do that?
I think that creates some problems, in that take the instance that we've -- even using this, one of our constituents in this situation lives in San Pedro, but we didn't know that, so -- and, of course, we're working all that, and she's been great, and we've had that. That's not to dredge up the hearing we just had earlier today.
But my point is, we don't know where everybody is that might be receiving something if we do a large, you know, to 70 property owners. Somebody may not want to receive the packet. I mean, there's all kind of different ways to maybe not receive it. I think that we're extending the deadline, which is important. I think that gives a little bit of a -- you know, what am I trying to say -- grace to the situation, where we're making sure they have time to receive it and get it. There's nothing that stops us from shooting out an email that says, "Hey, this is in the mail to you to look for it".
But if we said they have to receive it, I could see situations regularly where people just said, you know, I didn't get it, even though we'd have some kind of, you know, return form. We've all done that.





But I don't know, I just -- I guess my gut tells me to stick with what we had talked about, and extending the time to meet what we say our regulations, but saying when we put it into the mail. That's my own thought.
BOARD MEMBER SUAREZ: That's the law.
STAFF ENGINEER CALISO: President Carter, if I may. In line with what Mr. Villines has just stated, with these particular properties, we did run into the trouble, when we initiated the enforcement actions and sent out the Notice of Violations via certified mail, one of the issues that we were encountering was many of the residents were the property owners were reluctant to receive certified mail. So, in many cases, we were not receiving the certification or the mail deliveries receipts for, a good, you know, two to three weeks, because the mail kept trying to deliver the packages and we're unsuccessful. And if there's some time, then they would be returned to us.
So when we realized that we were having trouble with some of the residents, either reluctancy to go and pick up the certified mails, we were sending an extra copy via regular mail, to ensure that they were receiving a copy of the packet or the letters that were being sent out.
So I want to clarify, that if it is -- in the past, for the staff reports, what we have been doing is





sending via overnight service. And so this would require that we would coordinate to ensure that all 51 properties receive -- if it's an overnight service, that we would be providing -- we would be providing the same service to all 51. But if a mailing service, a regular via mail, package is acceptable, then we can do that and I think that would be more feasible.
But just be aware that we have made the distinction in the past where staff reports are sent via overnight, but they were done -- they were being done when we have one respondent, two respondents, and -- you know, maybe two, three packages, not to the extent where we have 51 packages going out to all different locations at this point. So we just need to account for that as well.
PRESIDENT CARTER: Well, I think what we're saying here is that they shall be mailed in the U.S. mail, notwithstanding Ms. Rie's concern about receipt. We haven't yet talked about what -- well, I guess, Ms. Dolan brought up the point is email doesn't work. So all staff reports have to be mailed out in hard copy via U.S. mail, at a minimum.
And if you're up against a deadline, then perhaps overnight is the way to go as well, and the Board will have to incur that additional expense.
STAFF ENGINEER CALISO: Okay. And just for

clarification, we have done that in the past. The email notification was a secondary method of notification to the landowners. It wasn't the only method which we notify them.

PRESIDENT CARTER: Well, where we have one or 51, everybody gets the same kind of notice.

STAFF ENGINEER CALISO: Okay.

PRESIDENT CARTER: Okay. Is staff clear on that now?

SUPERVISING ENGINEER BUTLER: Eric Butler. I think saying U.S. mail is way to restraining, constraining. I would like to propose that you allow us to deliver them a hard copy by U.S. mail or whatever alternative mail means is necessary to ensure delivery.

SECRETARY DOLAN: Mr. Chairman, I don't have any problem with that. I didn't realize we needed to be that micro-managing, to be -- saying that with a smile, by the way.

SUPERVISING ENGINEER BUTLER: Thank you.

SECRETARY DOLAN: I just don't think sending by email saying here it is, you can download it and print it is meeting our due process requirements for such notice.

SUPERVISING ENGINEER BUTLER: Yeah. Thank you for that clarification.

SECRETARY DOLAN: I recognize that U.S. mail





might be limiting. You might want to chose FedEx --

SUPERVISING ENGINEER BUTLER: I didn't want that focus to be that narrow.

SECRETARY DOLAN: -- or something else or whatever service you deliver something to me, okay. A hard copy, something that they can receive and read.

SUPERVISING ENGINEER BUTLER: Yeah, because I think Angeles has pretty well articulated sometimes our challenges in just getting a piece of hard copy to somebody. So we'll do our best, and I'd like to be able to exhaust any opportunity we can to get those things out to people.

PRESIDENT CARTER: Right, but it has to be a hard copy.

SUPERVISING ENGINEER BUTLER: Correct. I agree.

PRESIDENT CARTER: Okay.

VICE-PRESIDENT RIE: President Carter, the certified mail -- you know, if you receive certified mail, you have to actually be home to sign those. And I think it's a challenge to get people to sign those because the Post Office will put a note that you've received a certified mail. You have to come to the Post Office. But if you're like most people and you have a 9 to 5 job, you can't get to the Post Office to sign a certified mail.

If I receive a certified mail, I'd be lucky if I





got there two weeks later. So, you know, I think certified mail is not the appropriate way to go. But you guys have a great overnight service that you used to send Board packages, and still do. I think it's called California Overnight. You pay a flat rate, and it doesn't matter how big the package is. And when it goes out, there's an email that goes out saying that you have been sent a package. And when they deliver that on your doorstep, there's another email that says we delivered at 10:23 a.m. and it's on your doorstep.

So, you know, I think that's a perfectly reasonable way to go. You know, it's cheap, and you have it documented. I don't think U.S. mail -- I don't want to be critical, but I've sent many things U.S. mail, and, you know, these days with the federal government situation, it's taking weeks to mail packages, especially big packages.

PRESIDENT CARTER: Okay. So just to clarify, the clock starts when your agent, whoever that is, whether it's U.S. mail or some other delivery service takes possession of this, and that's when the clock starts, and it has to be a hard copy delivered or -- to arrive in the respondent's hands.

PRESIDENT CARTER: Okay. Any other questions on that?





LEGAL COUNSEL ANDREWS: President Carter, if I may, sorry, one -- I want to point out that Provision -- where are we, (b)(4), set to follow on Step 4 respondents to reply within 15 days for consistency, that should be interpreted to be they would be postmarked 15 days prior to hearing, because otherwise they'll get it five days after the 20th day, and then they're supposed to turn around and respond that very day. So that should be interpreted the same way.

PRESIDENT CARTER: The respondent may submit a written statement of defense to the Executive Officer postmarked at least 15 calendar days prior to the hearing?

LEGAL COUNSEL ANDREWS: Yeah, but I don't think that works now that I'm thinking about that, because the U.S. mail -- under California Civil Procedure law for when you're doing litigation, it presumes that when something gets mailed, it is deemed to arrive five days later. So, in this case, if you're saying if you drop it in the mail on day 20, the law generally provides assumes five days. That means the party would actually have to turn around, get it, and submit something in the mail the same day they receive it.

So it seems to me that the way the code is drafted here in this before is that it implies that somebody will have five days to get something, understand

what it is, and respond.
PRESIDENT CARTER: What you're saying is we've set our respondents up for failure?
LEGAL COUNSEL ANDREWS: Unless they actually receive it -- I think -- yeah -- sorry. I'm slow on the draw here at four o'clock, but I think that provide has got to be in their hands, because otherwise they'll have no opportunity to deal with it.
PRESIDENT CARTER: Right. So this is an issue that needs to be resolved, and that will tie into our next discussion about subcommittee and task leader efforts.
I think this is something that we need to pass on to the regs folks to try and get this fixed. In the meantime then, it appears that the Board has to be generous in terms of its application of the return responses from our respondents and lenient with that regard.
Does anybody have any problems with that?
VICE-PRESIDENT RIE: Or you can just interpret it as they must receive it 20 days prior to the hearing.
STAFF ENGINEER CALISO: President Carter, if I may. The way I'm reading that is that second clause or the second sentence that is referring to the written statement from the respondent to the Executive Officer 15 days prior to the hearing, I think it's referring to the





enforcement action itself. I don't think it's in response to the staff report or the documents that are being presented 20 days prior to the hearing.
I initially thought that, but my thinking is that the staff report will be provided 20 days prior to the hearing. However, the respondent has up until 15 days before the hearing to submit any written documentation or documents to the Executive Officer.
PRESIDENT CARTER: I hear that, but by the same token, we're saying that they've got essentially five days from the time we post the staff report to develop their written response in defense of that staff report. So I think that's a little tight.
BOARD MEMBER VILLINES: And that's assuming that it gets to them within the five days, and it can take --
PRESIDENT CARTER: Well, I said it's five days from the time we post it and that doesn't assume anything about when they receive it.
BOARD MEMBER VILLINES: That's right.
PRESIDENT CARTER: So. Okay. So, in any case, the Board -- we need to take that into consideration. I think our 20 day notice is hard and fast. The 15-day response time we need to take the situation in under consideration.
Okay. We've got to work with what we've got,





guys, and if it doesn't work, we need to change it.
LEGAL COUNSEL ANDREWS: May I offer a suggestion for purposes of the pending TRLIA enforcement actions. So staff has clarity that the 20 days be interpreted, because you can always give more notice. So for the pending TRLIA enforcement actions so that there's no doubt, which doesn't necessarily set a binding precedent, because you can always give more notice, that staff ensure that they receive the staff report at least 20 days prior, which would -- overnight mail by -- you know, so that it arrives the 20th day, so that there's no doubt, which doesn't necessarily bind you to that in the future, so there's no doubt when it comes back again.
PRESIDENT CARTER: Mr. Andrews, I would -- if I were staff, given the history of this proceeding since December 2nd, I would make sure that these people receive this thing well -- a month or more in advance of whatever hearing whenever we schedule it.
I would err on the very, very conservative side, so that we don't -- we aren't here for a fourth time because of notice issues. So I'm not going to micromanage staff, and I don't think the Board wants to micromanage staff, but the notice -- you know what notice constitutes. You know what timing you have. I would be conservative.
Any other questions or comments?





BOARD MEMBER SUAREZ: Just one more comment. And the Board can always waive its regulations regarding when a respondent needs to submit their evidence to us. We can always accept it, even if it's 10 days before the hearing, five days before the hearing. And I would encourage staff to keep that in mind.
PRESIDENT CARTER: Okay. All right. There's nothing more there. Mrs. Hofman, did you -- you want to address the Board on -- there was an issue with 784. And I neglected to recognize you under our last item. I don't know if it was in relation to that. Could you please.
MS. HOFMAN: Thank you very much. My name is Frances Hofman. One of the things I wanted to clarify, I hear the term Western Interceptor Canal, and they're referring in the map showed Hofman Ranch. RD chose that that is not the Western Interceptor Canal. It is Reeds and Hutchison Creek Lateral. And I just wanted to make that clear.
But what I don't understand is why TRLIA is taking everything in fee, instead of an easement. When they take it in fee, it comes off the Yuba County tax role. When they take an easement, you don't have to have all of these agreements back and forth. The deed spells it all out.
And I feel that these documents shouldn't be

floating back and forth to 784, TRLIA. They should be, I think, in the name of the agency that actually handles most of the State's agreements, Sacramento-San Joaquin Drainage District.

If 784 wants the right to control something, let them stand on their own two feet. This Board has the responsibility of the State and to see that everybody in the State is treated equally. When you give 784 the right to have things that they control, and can do what they want for operation and maintenance, as I understand the procedure, our easement went on in 1936, if it's there. And the State, Sacramento-San Joaquin Drainage District, controls the easement.

When you get and you listen to the transcript, it isn't Sacramento-San Joaquin. They made it very clear that 784 was going to be a party to this. TRLIA is a party to it. I say the State should be the only party, Sacramento-San Joaquin Drainage District.

And look at the thousands of acres that TRLIA has taken off of the Yuba County tax role in the form of fee. Easement simplifies it. And they're talking about turn rows. That means the farmer is actually going to be using that in order to produce a row crop. Being a farmer, I understand turn rows are with row crops, not with wheat fields, pasture ground, hay ground.





And that was my only comment.

Thank you.

PRESIDENT CARTER: Thank you.

Okay. Moving on with -- continuing with Item 7. I believe last time staff passed out a list of committees and subcommittees. I don't know if you all had a chance to review that. If you have any burning desires to participate in any of those, but I'd be happy to entertain any of those volunteer efforts. And I've -- I got a chance to talk with Mr. Ramirez. He expressed an interest in participating in the San Joaquin River Restoration Committees. That, as noted on the list, is listed as one committee. It's actually two committees, a technical committee and a Executive Committee. And the way the Board has organized around that is that Mr. Brown and Mr. Hodgkins were participating on the technical committee, and myself and Mr. Hodgkins were participating on the Executive Committee. And Mr. Ramirez has agreed to essentially take Mr. Hodgkins role and participate in both.

Mr. Ramirez also expressed an interest in taking Mr. Hodgkins place on the Yolo Bypass Fishery Enhancement Conservation Measure. And I was wondering if, Mr. Ramirez, you might want to consider -- there's a -- the FloodSAFE Conservation Strategy that's part of the Central





Valley Flood Protection Plan, but it's an ongoing effort through 2017. I sit on the Interagency Steering Committee. Perhaps you want to participate in that as well.

BOARD MEMBER RAMIREZ: Sure.

PRESIDENT CARTER: Okay. Ms. Dolan, I didn't get a chance to get your thoughts. Do you have any?

SECRETARY DOLAN: Oh, I always have thoughts.

PRESIDENT CARTER: Well, not thoughts, but any preferences in terms of volunteering for committees or interests in any of these committees?

SECRETARY DOLAN: I apologize. I did not bring that, so --

PRESIDENT CARTER: Well, then why don't we talk between now and the next meeting.

SECRETARY DOLAN: All right.

PRESIDENT CARTER: And, Mr. Edgar, I didn't get a chance to touch bases with you and find out if you had any particular interests.

BOARD MEMBER EDGAR: I'd like to participate, if I could, on the 408 -- the -- and the Interagency Flood Management Collaborative, and Tier 2 on the update regulations, and anyone of those or a couple of them, if you want, depending on what the others think.

PRESIDENT CARTER: Okay. So 408, and -- so you





can work with Ms. Rie in terms of coming up to speed on what's going on there. My understanding is that that's, at this point, kind of on hold. There's not a lot of activity, but Teri can bring you up to speed there.

The Interagency Collaborative --

BOARD MEMBER EDGAR: Just on that at that point. Is there any work being done on the 104 process that's been put on hold by the Corps? Are we doing any work on that?

PRESIDENT CARTER: Yeah. There's -- go ahead, Mr. Punia.

EXECUTIVE OFFICER PUNIA: Yes. There is a coalition of various agencies. They are working together. In fact, Scott Shapiro is in the lead on that effort, so he can give you a quick brief where we are. So there's a once-a-month meeting to coordinate the effort to push back the Corps on Section 104 credit.

BOARD MEMBER EDGAR: Yeah, I was -- it wasn't on this list, so is there a Board member involved in that, or is it just staff?

EXECUTIVE OFFICER PUNIA: I think it's just the staff, DWR, and -- but we'll welcome participation from the Board members.

BOARD MEMBER EDGAR: Thank you.

PRESIDENT CARTER: Yeah. To the extent -- I

mean, Board member involvement on 408 has been myself and Ms. Rie at the Executive Committee level, in terms of -- and reviewing the proposals coming through, so -- but that doesn't mean there's not room for more direct participation on your part.

And then just double checking with existing Board members, Ms. Rie, did you want to make any changes to your participation on any of those?

VICE-PRESIDENT RIE: Oh. Well, one thing that is not on there is the urban level of flood protection.

PRESIDENT CARTER: Urban Levee Design Criteria?

VICE-PRESIDENT RIE: No. It's a different group. It's Urban Level of Flood Protection. It's a work group that Mr. Hodgkins was on, and they suspended their work for the past year. And Rod Mayer is getting that work group together again, and there's a meeting next week.

SECRETARY DOLAN: Who else? What other agencies?

VICE-PRESIDENT RIE: I know West Sacramento is attending that meeting and various cities and counties. I haven't attended any of the meetings, because Mr. Hodgkins was participating, so I'm not sure who went to the last meeting, which was over a year ago.

PRESIDENT CARTER: And did you want to volunteer to participate in that?

VICE-PRESIDENT RIE: Yeah.





PRESIDENT CARTER: Okay. So what I would do is contact Rod and perhaps follow up with Butch and get plugged in.

Anything else?

VICE-PRESIDENT RIE: No changes, other than that.

And, Mr. Punia, I think we sent comments on the Sacramento District's 408 guidance not that long ago?

EXECUTIVE OFFICER PUNIA: That's correct, we have.

VICE-PRESIDENT RIE: Maybe that was last month or two months?

EXECUTIVE OFFICER PUNIA: Yeah, a couple of months, and we haven't heard back from the Corps yet.

PRESIDENT CARTER: You should forward those materials to Mr. Edgar then.

EXECUTIVE OFFICER PUNIA: I will.

PRESIDENT CARTER: Okay. Ms. Suarez.

BOARD MEMBER SUAREZ: Nothing.

PRESIDENT CARTER: No changes?

Mr. Villines

BOARD MEMBER VILLINES: Very happy with my current assignments.

PRESIDENT CARTER: Okay. Very good.

So with respect to the regs, would Ms. Suarez and Mr. Edgar consider taking under consideration the





discussion we just had with respect to notice for hearings and try and make that workable?

BOARD MEMBER SUAREZ: Short of revising the regulations, the first step is to get a legal opinion on what those things mean, because those -- you know, this is a legal document we're describing. So based on what -- that would be my first suggestion. Let's get some legal opinion. There is background information on why the regulations were developed the way they were.

There's background, data, reasoning behind supporting the decision to do it the way we did -- the Board adopted. If, after we get a legal opinion regarding that, the Board feels like we need to revise the regulations, then we can embark on that when we do Tier 2.

PRESIDENT CARTER: Okay. So can we go ahead and get the legal opinion on the background behind that?

BOARD MEMBER SUAREZ: Yes.

PRESIDENT CARTER: Mr. Andrews?

LEGAL COUNSEL ANDREWS: Sorry. I guess I'm a little lost. Were you contemplating -- I thought you were talking about subcommittees and dealing with how the regulations were going to be interpreted on the noticing. Is this what's on the table?

PRESIDENT CARTER: Specifically what's on the table is the issue of Section 25(b)(4), the issue that's





raised with respect to the Board providing 20 calendar days notice, which means posting, and then the respondent having -- let's see, what does it say, "...shall submit a written statement at least 15 calendar days prior to the hearing".

So there's just the five-day window from the time the Board staff posts the staff report and the respondent has to submit a -- has to postmark a -- or post a defense in respect to the staff report. And there's a general feeling that that timing was a little bit too tight.

LEGAL COUNSEL ANDREWS: Well, what I would suggest, at this point, given the history in the drafting of these documents, in that it was not me. It was Ms. Smith who did it. And so I don't want to attempt to step into her head, and I'm not sure that's necessary today. And I --

PRESIDENT CARTER: And I don't expect you to do it today. But we want to get an opinion from our legal counsel as to the rationale behind why these regulations were drafted the way they were, why we have 20 and 15.

LEGAL COUNSEL ANDREWS: Sorry, I was confused. Yes, I will make sure that that happens.

PRESIDENT CARTER: Okay. Thank you.

VICE-PRESIDENT RIE: Are those the final copy of what was released or that went into effect on February

15th, or is this a old draft?
EXECUTIVE OFFICER PUNIA: I want to confirm it before saying yes, but my -- it's the final language what's adopted by the AOL.
VICE-PRESIDENT RIE: Okay.
PRESIDENT CARTER: And we will confirm that.
Okay. So Future Agenda.
BOARD MEMBER SUAREZ: Mr. President, can I jump in here --
PRESIDENT CARTER: Yes, you may
BOARD MEMBER SUAREZ: -- on the Future Agenda?
PRESIDENT CARTER: Yes.
BOARD MEMBER SUAREZ: Because we do have an item, Mr. Butler and Mr. Villines and I, would like to present to the Board, which is a draft agenda for the March 22nd technical briefings that DWR is going to provide regarding the flood plan. So I wanted you to know that we were prepared to share with you a draft agenda for the March 22nd technical briefing.
PRESIDENT CARTER: Okay.
BOARD MEMBER SUAREZ: And I also have some additions to the March 23rd agenda.
PRESIDENT CARTER: So are you --
SUPERVISING ENGINEER BUTLER: Which one do you want to do first?





PRESIDENT CARTER: Let's do the March 21st technical briefing.
EXECUTIVE OFFICER PUNIA: 22nd.
PRESIDENT CARTER: Is it the 22nd.
EXECUTIVE OFFICER PUNIA: Yes, it's coming. He's going to present it.
Basically we are seeking the Board's input on the March 22nd, March 23rd, and the April hearings. We just want to confirm the dates so that everybody is up to speed on the time and the dates, yeah.
PRESIDENT CARTER: Okay. So we can do -- while they're passing out, for the April hearings, just to confirm the dates, Mr. Punia, would you like to review those?
EXECUTIVE OFFICER PUNIA: Yes.
PRESIDENT CARTER: Everybody has got their pens out?
EXECUTIVE OFFICER PUNIA: Yes, I have -- so the April hearings are scheduled as following: Thursday, April 5th, we will meet in the Resources Building from 9 a.m. to 5 p.m. Friday, April 6th, Yuba County Government Center, right here, Board of Supervisors in Marysville from 9 a.m. to 5 p.m. Monday, April 9th, we will meet in Stockton Agriculture Center from 1 p.m. to 9 p.m. And then Wednesday, April 11th, Yolo County Board of





Supervisors Chambers, Woodland, from 1 p.m. to 9 p.m.
So we are having four hearings April 5th, April 6th, April 9th and April 11th.
BOARD MEMBER SUAREZ: May I clarify?
PRESIDENT CARTER: Yes, please do.
BOARD MEMBER SUAREZ: The afternoon, the one from 1 to 3 o'clock will be a time where DWR is going to have an open house type of setup, where they're going to have CEQA boards and they're going to have somebody available to discuss the technical documents. Our actual public hearings run from 3 to 9.
EXECUTIVE OFFICER PUNIA: That's correct. Thank you for the clarification.
PRESIDENT CARTER: And for the 9 to 5?
BOARD MEMBER SUAREZ: The 9 to 5, our hearings begin at 9. During the noon hour, DWR is going to setup the CEQA Boards and the technical table during the lunch break. And then we come back in the afternoon.
PRESIDENT CARTER: Okay. So for the 9 to 5s, we have our hearings in the morning and the CEQA in the afternoon, for the 1 to 9 p.m., the CEQA goes first and then the hearings follow.
BOARD MEMBER SUAREZ: No. Clarification. Our hearings on the afternoon do not begin till 3 in the afternoon. We have a 1 o'clock to 3 o'clock time set





aside for DWR to hold an open house on CEQA and on the technical documents.
So our hearings in the afternoon are not from 1 to 9. Our hearing in the afternoon are from 3 to 9. The 1 o'clock timing that Mr. Punia is referring to, is just that we've reserved the rooms from 1 o'clock to 3 o'clock, so that DWR wants to setup their CEQA poster boards and have technical staff available for people. They can come in and have separate discussions.
EXECUTIVE OFFICER PUNIA: That's absolutely correct. Our meeting will start at 3 p.m., 1 to 3 is open house as Board Member Emma Suarez --
BOARD MEMBER SUAREZ: The official CEQA hearing in the afternoon is scheduled to open at 4:30 in the afternoon.
VICE-PRESIDENT RIE: Ms. Suarez, do we need to be here for the open house or can we come at 3?
BOARD MEMBER SUAREZ: Board -- it is not a Board event. The 1 to 3 is a DWR information meet and great, answer questions one on one.
BOARD MEMBER VILLINES: It's in response to some of our colleagues who wanted to have more in-depth briefings, so it's whatever you want.
BOARD MEMBER SUAREZ: If you want to be there, go for it.

PRESIDENT CARTER: And the open house will be focused on CEQA only?

BOARD MEMBER SUAREZ: No. Also, there will be somebody available to discuss the technical documents.

EXECUTIVE OFFICER PUNIA: Yeah. DWR is planning to have some posters associated with the plan, and a subject matter expert to answer the public's question on the process or the technical aspect of the plan.

VICE-PRESIDENT RIE: So the public can come and ask questions?

EXECUTIVE OFFICER PUNIA: Yes.

BOARD MEMBER SUAREZ: That's the sole audience for the 1 to 3, is the general public.

SECRETARY DOLAN: But that's intended to be an open-house format, so it's more like a one-on-one conversation. It's not someone going there and hearing --

BOARD MEMBER SUAREZ: Correct.

EXECUTIVE OFFICER PUNIA: That's correct.

SECRETARY DOLAN: -- and everyone hearing what the question is?

BOARD MEMBER SUAREZ: Then, of course, in the afternoon, we'll have our hearing. There will be a technical presentation and everybody will be able to ask questions, and everybody will be able to hear the answers. It's not to preempt any of that. It's to give additional





opportunity, one-on-one opportunity.

PRESIDENT CARTER: Are you saying that there's going to be a formal portion of the session that they are going to keep track of the one-on-one questions, and then they're going to reiterate those in open session?

BOARD MEMBER SUAREZ: No. No. I'm just responding to Ms. Dolan's comment that, yeah, the open houses are one-on-one, but there's also going to be a broad public forum where these things are going to be -- all these issues are going to be discussed. My expectations are that people that go on the one on one will probably also testify during our hearings.

PRESIDENT CARTER: Mr. Ramirez.

BOARD MEMBER RAMIREZ: This just might be for me. I'm a little slow. Either it's going to take more where I need it or it's going to make me worse after I take it. I don't know which one is going to happen yet.

So 1 to 3, DWR not a board setting, workshop. Then what? Isn't there a moment where it's officially a CEQA?

BOARD MEMBER SUAREZ: Yes. So what happens at 3 o'clock we convene the public hearing.

BOARD MEMBER RAMIREZ: We do.

BOARD MEMBER SUAREZ: Right. From 3 to 4:30 staff does their presentation regarding --





BOARD MEMBER RAMIREZ: Got it, on CEQA.

BOARD MEMBER SUAREZ: No, the technical documents.

BOARD MEMBER RAMIREZ: Okay.

BOARD MEMBER SUAREZ: At 4:30, we officially open the CEQA hearing.

BOARD MEMBER RAMIREZ: Okay.

BOARD MEMBER SUAREZ: And we proceed to have public input regarding CEQA comments and/or comments related to the plan.

BOARD MEMBER RAMIREZ: And those will be recorded as part of scoping, very official.

BOARD MEMBER SUAREZ: Correct.

BOARD MEMBER RAMIREZ: Got it. Thank you.

BOARD MEMBER SUAREZ: That's all part. It's just that the agenda for CEQA purposes required time specific time where we were going to open the CEQA hearing.

BOARD MEMBER RAMIREZ: Okay.

BOARD MEMBER SUAREZ: For further clarifications, our day meetings, the ones that are from 9 to 5, the CEQA hearing opens at 2 in the afternoon, because it was feeling that people didn't want to be -- there's some folks that just want to talk about CEQA, and don't want to be here all day listening to the others.

VICE-PRESIDENT RIE: Sounds good.





PRESIDENT CARTER: On the --

BOARD MEMBER SUAREZ: I just didn't want to think -- Board Members to think that they need to sit from 1 to 9 o'clock on a public hearing. That's not the case. It's from 3 to 9.

PRESIDENT CARTER: And on the 9 to 5s, that 9 to 5 is a Board meeting the entire time. There's no DWR open house scheduled for those?

BOARD MEMBER SUAREZ: At noon.

PRESIDENT CARTER: Noon to 1.

BOARD MEMBER SUAREZ: Noon to 1. Noon to whenever we reconvene from lunch.

PRESIDENT CARTER: Okay. Very good.

BOARD MEMBER SUAREZ: They're not meeting any type of statutory requirement. They're just doing a courtesy.

PRESIDENT CARTER: Thank you. Thanks for that clarification.

VICE-PRESIDENT RIE: Ms. Suarez, are any of these meetings, all the various hearings on the plan, are any of them going to be webcast?

BOARD MEMBER SUAREZ: We don't know that yet, simply because we are -- we have people specifically delegated who are sponsoring the webcasts. They have been kind to this -- up to this point to pay for the cost of

the webcasting. Depending on where we are with the facility, then -- so to be determined. There's a possibility certainly that the Resources Agency one is going to be webcast, and some of the other ones, but I don't know that yet. I don't have an answer to that yet.

VICE-PRESIDENT RIE: Okay.

PRESIDENT CARTER: Any questions on the April hearings?

There will be more clarification, I'm sure, pending.

Okay. So let's start with Thursday the 22nd.

SUPERVISING ENGINEER BUTLER: Okay. So if I could call -- Eric Butler, Branch Chief, Board staff.

If I could call your attention, I passed out two documents. They are still somewhat in draft. The one document in the form of our typical agenda is what I am currently proposing that we would notify the public, post on our Board -- on our website, et cetera.

I am working with Jeremy Arrich at DWR who's in charge of the overall delivery of the plan and some of his staff, who as you heard a week ago, briefed us for three days a couple of weeks back.

So what they -- basically, through conversations back and forth, they said well let us put together a proposal and then we can kick it around back and forth.





So the other document, the two-page document, as you can see, is much more detailed, but it's a detailed proposal of how they propose to give you a technical briefing.

I listened to all of our discussion many times, via the webcasting to make sure I captured just what it was that you were asking for. And it was very clear to me that you were asking for a technical briefing, but that you did want to focus on -- you wanted that technical briefing to capture the essence of all the technical attachments that you're now aware we are reviewing as well as the main planning documents.

So the two-pager that Jeremy provided to me is an overview of how they got to the State Systemwide Investment Approach. And what I took off of it, to make our agenda much more simple, is five -- sort of the five bold headings under agenda labeled C, D, E, et cetera.

So I basically said okay, they're going to provide a scope -- a planning scope and development. They're going to go over the preliminary approach -- the three preliminary approaches, achieve State Plan of Flood Control design capacity, which they show as Item D on about the middle third of the first page. They're going to go over protect high risk communities. That was another preliminary approach. And then also enhanced flood system capacity.





And then, I apologize, the last item, the selected statewide -- the State Systemwide Investment Approach scrolled to the back page of my agenda.

So essentially what they're doing is similar to what they gave us in three days. They laid out, first of all, how they used -- how they performed their analysis, how they considered these three different preliminary approaches, and how they took pieces out of each of these approaches, and developed, what they are calling, the State Systemwide Investment Approach.

And I asked myself, well, is this what the Board wants? Would it give you the necessary background from a technical perspective?

And in some further discussions I've had with Jeremy, I think it will, because it's Jeremy's intention that they'll provide you a technical briefing. They will not have time to go through each and every one of the technical attachments one at a time, because we're limited to -- I'm proposing four hours, and he's got like 140 minutes and some other discussion, et cetera.

But what they do want to do is show you how the materials that are in the technical documents support the initial analysis that went into developing the three preliminary approaches, and for ultimately them to select the SSIA, the State Systemwide Investment Approach.





So what I'm asking you to tell me or think about is, are we going in the direction that you want us to go? Do you have any further questions of me that I can help you understand the content of what Jeremy intends to provide you? And then carry any messages back to Jeremy if you would like to ask him to make alterations to what he's proposing?

PRESIDENT CARTER: I guess my question is, how is this technical briefing, given the timing that you've allocated, going to differ from the briefing that we had in December and January?

SUPERVISING ENGINEER BUTLER: The briefing that you was sort of the 50,000 foot fly-over approach of the plan, a lot of the background that went into it, but I don't see that it got heavy into the details technically. It didn't really talk a lot about the various alternatives that were considered in the hydraulic analyses. And I know, Ms. Rie, you had several comments last week about looking for more detailed input on how the hydraulic analysis was performed.

That certainly is one of the keystones to all the technical analysis, but there's many other technical considerations that were made, even -- basically, there's the sort of the wet hydrology, there's economics, and then there's environmental conservation.

So the way they performed their three days to us, is they gave us kind of an overview at the beginning, that is very similar to what they're looking at here. Here's how we came up with -- you know, here's how we did our technical analyses, and we have these three approaches. And, you know, one of them is just -- what would it cost and how would we restore the system to its original design capacity? What are the pros and cons of that? This is how the technical work that we did supported that analysis.

And then their other bookend approach was, well, what if we just were to protect high-risk communities, the urban level of flood protection? How does the technical analysis support that?

And thirdly, enhance flood system capacity. This is sort of the if-money-were-no-object approach, including some major reservoir reoperations. How does the technical analysis support that?

And then they said -- so we took this out of this, this out of this, this out of this, and we came up with the SSIA as sort of the most reasonable and prudent of all the alternatives, given a 25-year time frame, and the best guess that they could make at the time as to, you know, how we would fund this program.

And then we went into a detailed review of each





of the technical documents, focusing on how they drove the results that went into these preliminary approaches, and ultimately in selecting the SSIA. So I guess my message Jeremy wanted to give to you is, to do this in a half day, they can't go through each and every one of the technical documents in detail. But by providing you an overview of the methodology that they used and how the technical documents supported that methodology, you'll have a better understanding, I think, of the key technical issues.

I'm sure they'll -- I know for sure hydraulics will be very well addressed. Some of the other economic areas and maybe environmental we may not have time to discuss completely. But I think this is sort of the best trade-off given the limited time available. And, you know, we're asking them to have this ready to go in about three weeks.

So that's the feedback that I'm asked to give you. And I'm happy to carry feedback back the other way.

PRESIDENT CARTER: Well, and -- I mean, has there been any thought to targeting these technical analyses to the comments that we received in our February meeting, tying these back? I see that you've got session goals addressed, and you've got a list of seven session goals.

I mean, I guess I'm wondering how we can get where we want to be in two hours and twenty minutes worth





of presentation, when it took them four days -- four hours plus to do the original presentation in January. So are we targeting the issues that were raised by the public in these technical briefings or is that going to happen at a later date?

BOARD MEMBER SUAREZ: I can answer that.

PRESIDENT CARTER: I mean, I don't see some of the ones that I --

BOARD MEMBER SUAREZ: I can answer that, Mr. President.

PRESIDENT CARTER: I don't see some of the ones that I heard here on this -- on this -- what do you call this -- expanded agenda.

SUPERVISING ENGINEER BUTLER: Yeah.

BOARD MEMBER SUAREZ: Mr. President, when it comes to comments that we receive and we will continue to receive between now and the public hearings that deal with the technical documents, part of our staff's presentation during the public hearings, when they do the technical discussion, will include addressing issues raised from the public.

PRESIDENT CARTER: And so the answer to the question is now, these are not --

BOARD MEMBER SUAREZ: We're not expecting DWR to address the comments that we -- we've received so few





comments -- they're important, but we're just starting the process. What we do expect, and the direction that staff has received, is that part of their presentation during the public hearings will include looking at the comments received that are technical in nature and giving their opinion regarding how do best interpret or address those comments.

PRESIDENT CARTER: Do you envision a follow-on technical briefing to this one?

BOARD MEMBER SUAREZ: It's up to the Board.

SECRETARY DOLAN: Hard to know -- for me, it will be hard to know until we have this one. Certainly, at our February session, we've got some themes of the public's concerns, so I don't expect a full technical -- but anybody polling what those things are and then this -- I know DWR wants two hours and twenty minutes, and we think it's four. And you did, what, three and a half days?

SUPERVISING ENGINEER BUTLER: It started on Wednesday at noon and went till about 2:30 Friday afternoon.

SECRETARY DOLAN: All right. So you got a little more than we're going to get, but I would like some sense of what the technical documents are, how they were developed. I mean, I guess it's in here.

SUPERVISING ENGINEER BUTLER: Well, you're going

to get that from us.
SECRETARY DOLAN: We're going to get it from you during the hearings?
SUPERVISING ENGINEER BUTLER: You're going to hear it -- you're going to have the opportunity to hear it four times, because we're going to present the same presentation at each of the four public hearings in April, on the 5th, 6th, 9th, and 11th.
Are those dates right?
PRESIDENT CARTER: Yes.
SECRETARY DOLAN: Okay. Well, maybe those will work. Tell me, are they bringing in a facilitator for this?
SUPERVISING ENGINEER BUTLER: I do not know.
BOARD MEMBER SUAREZ: No.
PRESIDENT CARTER: I think it's more of a presentation and some question and answer.
SUPERVISING ENGINEER BUTLER: Let me help -- let me tell you how I responded to their briefings that I received, and maybe that answers what -- some of what you're looking for.
When you first start looking at the plan, you focus on what are they proposing? You know, what's -- what projects are they proposing on the ground? And they have some ideas about widening bypasses. I mean, those





are the things that stand out the most. And those, I think, are the things that we hear the most comments about so far.
Many of the comments are about what's happening in my land, how big are these bypasses, how did you come up with it, et cetera, et cetera. When I went to this briefing, it was very helpful to me to see -- to get a detailed explanation of how these preliminary approaches were considered, and from the context of both the technical feasibility, are these things we could do, and also the financial ability to fund these projects.
As we know, we're talking, you know, $10 billion on the low end, and probably closer to $50 million on the high end. And as they went through their background of the various bookend approaches that they used, you know, just look at urban, if money is no object. Well, everybody in the past has told us we should just -- if we only could restore the system to its design capacity, everything will be fixed.
So they looked at those various sort of bookend approaches. They came up with some cost estimates. They came up with some very preliminary proposals for further consideration, and then they ran out of time. We heard comments Phases 3 and 4 were dropped, right, you guys remember that. A lot of people saying that.





SECRETARY DOLAN: I do remember that quite a bit, and some frustration from folks that thought there was going to be that. What I don't understand is what was Phase 3 and 4 supposed to be.
SUPERVISING ENGINEER BUTLER: Well, I looked into that. So Phase 3 was basically all the regional analysis. They were going to go into these very, more focused in detail regional analysis. And then Phase 4 was going to be actual on-the-ground projects.
Things that I, as an engineer, when this -- when I learned about this plan three years ago hoped to see now. And you find out that it took a lot of time to put this plan together. They probably need another 18 months or so to get through Phases 3 and 4. So what you got to meet the legislative deadlines is something that's part way there. It's a very general conceptual planning document.
These proposals to -- these are not prescriptive proposals to widen bypasses and such. They're merely the things that stand out to DWR right now as the things they want to look at in more detail as we move forward. And they anticipate, on any on-the-ground project there will be feasibility studies. There will be CEQAs. There will be, you know, a much more detailed overview.
And I think the challenge we have right now with





our public, is the public also is not well briefed as to the specificity and the level of detail of these proposals.
So I think my opinion is many people think these are prescriptive recommendation in nature at this time, and they're not. They're a proposal for what we've identified so far as having merit for further review. And then DWR right now is already starting to work on their regional outreach process and move on with Phases 3 and 4 as we adopt the plan that's before us.
So, in that framework, in that context, when I got done at the end of the week, there was a lot of Aha moments. Okay, I get this. You know, it makes more sense now. Unfortunately, you have to dig into it to get to that point.
And so I think the way that Jeremy is proposing to present to you is a much shorter version, but in parallel to what I heard a few weeks back. And I know it helped me. I think it will help you. I suspect that you will still have some unresolved issues. And hopefully on the very specific details of a specific technical attachment that our report will help you understand those.
So we're -- again, we're being asked to do something in a very small time frame. People are responding in the best ways that they believe they can to

give you the best -- the most succinct and useful information in a short time frame.

PRESIDENT CARTER: I think -- thank you very much, Mr. Butler. My perspective, just to share with you, is that this is going to be like drinking from a fire hose, and you're going to have a tough time absorbing it all. And I think we -- I'm preparing myself for additional briefings following this and perhaps following the April hearings as well.

Mr. Ramirez.

BOARD MEMBER RAMIREZ: If it helps, I'm trying to just think through what is said on the 22nd of March and in the 23rd. And it's just a comment, I think, for us to think about, and in particular for the staff to try to digest, so that it's clear to the public on both those days who's providing comments on what, and how those comments are going to be addressed and by whom.

So if we get this technical briefing, know it's for us, and it's going to help people that are there, I think, who didn't have the benefit of having sat through a day and a half, two and a half days. And that's great. That will be a start. It will be a lot, but you've got to start someplace.

But I don't view that as our response to people's comments they've given us to date. This is just





background for all of us to understand it better, and that sounds fine.

The next day, DWR presents the EIR to us. And in the hearings, we're going to have a little bit of both. We're going to have DWR CEQA something, and we're going to have our Board something. And hopefully it will be clear to people at those hearings, when they provide comments, what the difference is between providing them to us in our role and what it is for DWR and CEQA.

There's a pretty formal CEQA process that DWR will work through, and that's their job. And we'll -- I'm sure they'll do it well. And I just want to make sure that we think about how we describe, for the people that have commented to us already and will continue to do so, what we do with those? We've catalogued them on the website. We know what they are. But I don't think we plan to write responses to each of them like DWR will on CEQA, and incorporate that as the documents.

So, hopefully, those things will be fleshed out, and it will be clear to people when they came on the 22nd, the 23rd and in April what the difference is for them when they make these comments. They might make the same comment. They might make the same comment to us as they would during a CEQA scoping meeting. And that's fine, they can do whatever they want.





But I think what I'm trying to think about is, well, most importantly for, at least from my perspective, is in June when we adopt something, what are we adopting, especially given the fact that we short-circuited, you know, Phase 3 and 4.

SECRETARY DOLAN: We didn't.

BOARD MEMBER RAMIREZ: Well, it was. I'm not trying to point fingers, but obviously if we had more time, more work would be done, and that would help answer a lot of questions. But if we had more time, we would do that, and there'd still be questions.

So that said, we have this clock that is ticking and we'll do the best we can, and so will DWR. And I don't think I have an answer yet, you guys probably don't either, in June what it is will be in front of the Board and how that story will unfold.

But I think it's important for us to think about at least how we lay out the process for the public in particular in April, so that they understand, as best as we can describe it then, for them. It's a very short time frame to do what has been, you know, laid out in front us. But nonetheless, I'm sure we'll do our best to deliver as much information with as much clarity and detail as we can.

But in the end, it will be insufficient for some





people. They'll want more and we won't have it. Hopefully that's okay. It will come up with time, but not before July 1st.

SUPERVISING ENGINEER BUTLER: Right.

PRESIDENT CARTER: Okay.

BOARD MEMBER EDGAR: I think just one comment. Eric, I think in every presentation we make, we've got to say what you just said, because what I heard at the last public hearing on this was that some people are opting out right now. We already heard comments that I can't support this plan. This is nothing in it for us, and so on.

And what we've got to emphasize is this is our start. We did avoid two of the -- two phases that we intended to do. We're starting the regional approaches. The stakeholders will be involved. Nobody has made a final decision that the Sutter bypass will be widened. That's still an option that we're going to look at and we're going to involve everybody.

But you've got to stay at the table or you can't go out of the room. And what I'm afraid of is if we don't keep saying that, some people are going to knee-jerk and just leave. And we can't have that, we've got to have everybody at the table.

SUPERVISING ENGINEER BUTLER: And that's -- again -- and thanks. That message I intend to be a part

of the lead off on the technical review, because, you know, my opinion is a lot of people are drawing the wrong conclusion from maybe an insufficient amount of information that they've had time to digest. And they're thinking that there are specific projects of a prescriptive nature proposed in what DWR has put out there, and so they're responding that way.

PRESIDENT CARTER: Okay. Ms. Rie.

VICE-PRESIDENT RIE: Mr. Butler, when Jeremy comes and he does a presentation, is it going to be interactive or is it going to be a four-hour long PowerPoint presentation that goes really fast? I mean, are we going to be able to ask questions after each slide, because I think the opportunity to have some back and forth will probably be more helpful than in sitting through hours of PowerPoint presentations.

SUPERVISING ENGINEER BUTLER: Yeah, Ms. Rie, if you -- when you get a chance to breathe and read this four-pager that Jeremy has given us, you'll note at the end of each section, beginning with C, there's a Board Q&A session.

So the way they've set this up is go over the scope and development, Board Q&A; Preliminary Approach 1, Board Q&A; 2, Q&A; 3, Q&A; selected approach, Systemwide Investment Approach, Q&A; and then final Q&A.





So the way I look at this, it's -- it isn't -- it does intend to be interactive. I will convey to them that you do want it to be interactive, and -- so, yeah, it looks to me to be very interactive as opposed to just you sitting here listening to someone talk for two and a half hours.

VICE-PRESIDENT RIE: Thank you.

BOARD MEMBER SUAREZ: And, Ms. Rie, my conversations with Mr. Arrich has been -- have been very clear. It is to his benefit to take every opportunity to make sure that this Board understands what they did.

VICE-PRESIDENT RIE: Okay.

BOARD MEMBER SUAREZ: So he's been -- and he agrees that that needs to be his frame of reference. I think another message, perhaps Mr. Butler, that we can take back to Mr. Arrich is the possibility that there might be additional technical briefings that the Board desires on particular segments, depending on the level of interest.

PRESIDENT CARTER: Okay. March 23rd.

BOARD MEMBER SUAREZ: Mr. Butler, what is the deadline for us to mail the draft agenda -- the agenda out?

SUPERVISING ENGINEER BUTLER: I'm sorry, what is the deadline for?





BOARD MEMBER SUAREZ: Getting the agenda out.

SUPERVISING ENGINEER BUTLER: I think I did 10 -- I drafted up a schedule that was 10 days prior -- I checked our regs, and it says 10 days prior to a Board meeting by Bagley-Keene you have to notice the public agenda. So that would be about March 12th.

BOARD MEMBER SUAREZ: So I would encourage Board members, if we have some time here to think through, if you want changes or focus on -- if you want half of the items dropped and just focus on one half, and then with an understanding that they will come back on the other half, it's your briefing.

SUPERVISING ENGINEER BUTLER: Yeah, and we are --

PRESIDENT CARTER: What we have typically -- as far as the notice for public meetings, what we have tried to do is also err on the side of conservatism, and we try and mail that out and publish it 10 working days prior to the meeting. And I know that's not necessarily what the regulations say, but that's what we have been trying to do, because we have been bit by this notice issue even on regularly scheduled Board meetings.

So with that in mind then, I would say that you need to have this thing out on the 7th, which is essentially two working days from today.

EXECUTIVE OFFICER PUNIA: I think 9th will work,





Ben. We have -- if we send it 9th.

PRESIDENT CARTER: No. Again, let's plan on having it finalized by next Wednesday. So if you have any comments or questions, let's get them answered by then.

BOARD MEMBER SUAREZ: By close of Monday, if possible, or early Tuesday, so we have enough time to loop back with DWR and all that.

SUPERVISING ENGINEER BUTLER: Yeah. And I've already run my revision. And I'm sorry for the red, that was Jeremy suggesting a revision to the title today. But he's basically had a chance to look at what I would propose the public will see as an agenda, and he's comfortable with it.

So we've had enough back and forth to we're comfortable with each other's proposals. So it's just a matter of if the seven of you wish to direct us to make some changes, we'll need that pretty quickly. But I don't think there will be a problem of getting it done by the 7th.

PRESIDENT CARTER: So between now and when the final agenda goes out, that will be something that I'll pull the trigger on. I'll finalize and approve the agenda, since we will not have a public meeting between now and then.

BOARD MEMBER RAMIREZ: Mr. President, so if we

have thoughts to share, we share them with --
PRESIDENT CARTER: With staff.
BOARD MEMBER RAMIREZ: -- you and/or -- staff, okay.
PRESIDENT CARTER: Okay. Thank you.
The 23rd.
SUPERVISING ENGINEER BUTLER: Okay. Thank you.
PRESIDENT CARTER: So the 23rd is more along the lines of our typical business meeting. We have the normal things in terms of Items 1 through 7. And then on Item 8 we have the Draft Program Environmental Impact Report for the Flood Protection Plan. We have a requested action on a comment letter for the Draft PGL for the Corps, the Policy Guidance Letter on vegetation variances.
A couple Board-sponsored projects and study agreements, the American River Watershed Natomas Features, and the American Common Features. We have three -- or two informational briefings. It sounds like a very full agenda.
EXECUTIVE OFFICER PUNIA: Yeah, I think it's more than what we can absorb, so I may recommend to move one informational briefing to the next month.
PRESIDENT CARTER: Yeah. And we don't have enough notice time to do enforcement hearings on the March meeting, so that will probably occur in April -- so April





or May depending on how the agenda falls out.
So are there anything missing from the March 23rd agenda that you would like to ask us to work in?
BOARD MEMBER SUAREZ: Mr. President, I have two items.
PRESIDENT CARTER: Yes.
BOARD MEMBER SUAREZ: Under the Central Valley Flood Protection Plan item -- what is the number, I'm sorry -- number 8, could we add a number B and just name it public process as a placeholder, just in case there is outstanding issues that we need to discuss?
PRESIDENT CARTER: Tell me again what B would be?
BOARD MEMBER SUAREZ: Public process.
EXECUTIVE OFFICER PUNIA: For adoption of the Central Valley Flood Protection Plan.
BOARD MEMBER SUAREZ: Right, just in case there's some outstanding issue that we need to discuss as a Board to have it in place.
PRESIDENT CARTER: Okay.
BOARD MEMBER SUAREZ: And I would like to request that a closed session of personnel matters be added.
PRESIDENT CARTER: Anything else missing?
None?
Okay. We will endeavor to make that happen, and work that in.





Are there any other items that any of the Board members wish to share?
Staff?
Ms. Caliso.
STAFF ENGINEER CALISO: Yes. Just one last thing. Regarding the enforcement hearings, during the hearings earlier this morning, Ms. Vasquez was asked whether or not she requested -- or she would like a separate hearing, I would like to clarify that it is your intention that when we bring these hearings back to you, in a month or so, that we would have five hearings, one of them would be separate for Ms. Vasquez property? Would that be correct?
PRESIDENT CARTER: That is correct.
STAFF ENGINEER CALISO: Okay. Thank you.
PRESIDENT CARTER: And we will have to have interpretation services for that as well.
STAFF ENGINEER CALISO: We will coordinate.
PRESIDENT CARTER: Okay. Any other comments or questions?
Mr. Shapiro.
MR. SHAPIRO: Thank you for your patience.
PRESIDENT CARTER: You're standing between us and that door.
(Laughter.)





MR. SHAPIRO: I know. I know. I'm just the guy pointing out that if your regs require at least 20 days, and now it sounds like it's probably 25 for mailing, and you're saying be really conservative, then it's probably at least 30 days, and it takes staff, let's say, 10 days to put a packet together, you're looking at an enforcement action you need at least 40 days of notice.
And if you don't today start talking about when it is, then by definition, it won't be until June or July. And our construction is being held up at this point absent getting that resolved.
So while you might not make a definitive decision today, I'd at least request that you start the conversation of whether it's a late April or maybe a May or early June hearing, or else it will just keep getting pushed down the line.
And with that, I'm going to go bar the doors.
PRESIDENT CARTER: Okay. Very good.
We're adjourned.
Thank you.
(Thereupon the Central Valley Flood Protection Board meeting adjourned at 4:52 p.m.)

CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of March, 2012.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063

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