

**Meeting of the Central Valley Flood Protection Board
January 25, 2013**

**Russell Ensslin, Yuba County
Enforcement Staff Reconsideration Petition Rebuttal**

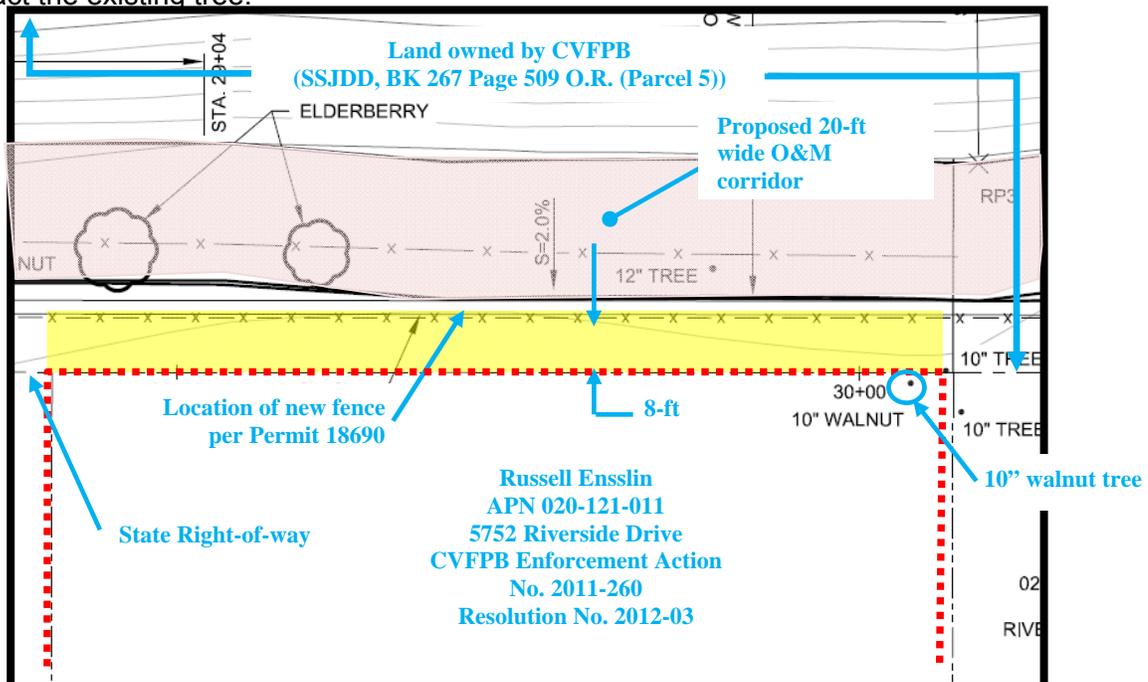
Board Enforcement Staff has prepared the following statements in response to the reconsideration petition submitted by Mr. Russell Ensslin on letter dated December 15, 2012 (See Attachment A). The petition is not written as a request for reconsideration, but is actually a demand for financial compensation based on misunderstood facts about TRLIA’s levee toe access corridor project. Mr. Ensslin owns a property located at 5752 Riverside Drive, Marysville California. Mr. Ensslin’s property was one of the 46 properties that were part of the hearings held on November 15, 2012. The Central Valley Flood Protection Board (CVFPB) voted unanimously to adopt staff’s recommendation which is memorialized in Resolution No. 2012-03 (See Attachment B).

Argument #1:

“...I purchased the property with the understanding that I was to enjoy the fruit of a large walnut tree that is now due to be removed as a result of the TRLIA project...I hereby appeal to the Board to compensate me the \$2,600.00 I am due as the result of the real property damage my property has sustained by the TRLIA project.”

CVFPB Enforcement staff Rebuttal:

At Mr. Ensslin’s property, the new fence and corridor will be constructed 8-feet away from the State right-of-way. The existing walnut tree is located on Mr. Ensslin’s property, outside of the 8-ft setback and is not planned to be removed as part of the TRLIA landside levee corridor construction. See Figure 1 below. The alignment of the 8-ft setback fence location is conditioned upon Mr. Ensslin’s acceptance of the conditional easement which would allow him continued use of the State property. In the event that Mr. Ensslin does not accept the conditional easement, the fence will be constructed at the State right-of-way, which may impact the existing tree.



Argument #2:

“Now our children are subject to navigate the streets of Olivehurst alone to get to wildlife that used to be just outside their backyard.”

CVFPB Enforcement staff Rebuttal:

The purpose of the levee toe access corridor is to provide a drivable surface for inspections during high water events and provide a work area for routine operation, maintenance and inspection activities. It will also minimize levee access of unauthorized vehicles that in the past have caused levee damage. The proposed project will provide a minimum of 2 access points for the public to continue access to the waterway.

Argument #3:

“My property has been clearly devalued by the building of this road.”

CVFPB Enforcement staff Rebuttal:

Construction of the levee toe access corridor will occur within the limits of State property. Private properties such as Mr. Ensslin’s located adjacent to State property have not changed from their original size (132-ft wide by 280-ft deep) since created under the recorded subdivision (Tract No. 8 Books 3 of Maps 25). Mr. Ensslin’s parcel dimensions, referenced as APN 020-121-011, matches the records at the Yuba County Assessors’ Office and was further confirmed in the Record of Survey (2011-11) prepared by CTA recorded in Book 93 Page 37. Therefore, the construction of the access corridor on State property has no impact to Mr. Ensslin’s property value.

ENFORCEMENT STAFF RECOMMENDATION

After review of the record and the petition, Enforcement staff recommends the CVFPB deny the petition upon finding that the decision memorialized under Resolution No. 2012-03 was proper.

ATTACHMENTS

- A. Russell Ensslin Reconsideration Petition letter dated December 15, 2012
- B. CVFPB adopted Resolution No. 2012-03 signed November 16, 2012

Caliso, Angeles@DWR

From: Russell Ensslin [rjld@att.net]
Sent: Saturday, December 15, 2012 5:26 PM
To: Caliso, Angeles@DWR
Subject: River Access

Date: December 15, 2012, 5:02:32 PM PST

To:

Subject: River Access

Dear TRILA Board officials:

My name is Russell Ensslin. My wife Janine Ensslin and I own the property at 5752 Riverside Dr Olivehurst CA.

In as much as the TRILA is building a road along the base of the levee behind our property. As a result of this our property has been devalued by the loss of direct access to the wildlife and public waterway that we used to enjoy. Now our children are subject to navigating the streets of Olivehurst alone to get to wildlife that used to be just outside their backyard. My property has been clearly devalued by the building of this road. I would be willing to accept, as compensation for my loss, the amount of \$2,200.00

Moreover, I purchased the property with the understanding that I was to enjoy the fruit of a large walnut tree that is now due to be removed as a result of the TRILA project. The value of the walnuts is \$40.00 per year for the life of the tree for at least the next ten years totaling \$400. Plus the \$2,200.

I hereby appeal to the Board to compensate me the \$2,600.00 I am due as the result of the real damage my property has sustained by the TRILA project.

Russell Ensslin
5752 Riverside Dr
Olivehurst CA 95961

Sent from my iPhone

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2012-03

FINDINGS AND DECISION REGARDING ENFORCEMENT HEARING FOR
46 PROPERTY OWNERS IN WEST LINDA, 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-foot landside Operations and Maintenance (O&M) corridor in accordance with the Department of Water Resources (DWR) Urban levee Design criteria; and

WHEREAS, during the preparation of a survey, TRLIA discovered that in this area, the land covering the levee and required 20-ft wide O&M corridor was owned by the Central Valley Flood Protection Board (CVFPB) through the Sacramento San Joaquin Drainage District (SSJDD); 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 Code 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 were issued to property owners adjacent to the Feather River East levee in West Linda, CA. 3 of the 51 requested a hearing and on March 2, 2012, the CVFPB granted Ms. Vasquez a separate hearing. This resolution only addresses the remaining 46 notices; and

WHEREAS, on December 2, 2011, the CVFPB held a public hearing for Susan Lagrand 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-foot setback will be maintained where it is feasible with the proposed drainage features. There are no permanent structures located on State land that are affected by the proposed solution. 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 conditional easement to each Respondent to allow the use and maintenance of State lands outside and landward of the 20-foot O&M corridor until there is a need for a public purpose. The easements will be recorded at Yuba County Recorder's office, run with the title of the land, making them transferable. The easements will be prepared, executed and recorded by TRLIA at no cost to the Respondents; 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 CVFPB 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 Respondents the right to testify and present evidence on their behalf;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact

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

Approval of Resolution No. 2012-03

5. For the reasons stated on the staff report, staff recommends the CVFPB adopt Resolution No. 2012-03 to:
 - a. Order Respondents to remove all private fences and miscellaneous obstructions on State land within 60 days. If Respondents fail to do so, authorize removal of private fences and miscellaneous obstructions on State land in accordance with Permit No. 18690, including reasonable access to the State property to allow for the relocation of existing elderberries.
 - b. Authorize the CVFPB to, within 60 days, enter into conditional easements with the 46 adjacent private parcel owners identified in Attachment B of the Staff Report, for the use and maintenance of a portion of State land adjoining the Feather River East levee.
 - c. Rescind the notices of violation (Staff Report Attachment B) subject to voluntary compliance with this resolution.
 - d. In the event the Respondents refuse to sign the conditional easements, 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 conditional easements subject to review and concurrence from CVFPB President.

**ATTACHMENT B
AGENDA ITEM 7D**

PASSED AND ADOPTED by vote of the CVFPB on November 16, 2012.

William H. Edgar

Bill Edgar
President



Jane Dolan
Secretary