

**CALIFORNIA WATER COMMISSION**

715 P STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 902-7328



**Matthew Swanson**  
Chair

October 25, 2022

**Fern Steiner**  
Vice-Chair

Darla Guenzler, Ph.D., Executive Director  
Wildlife Heritage Foundation

**Samantha Arthur**  
Member

563 Second Street, Suite 120  
Lincoln, CA 95648

**Daniel Curtin**  
Member

**Kimberly Gallagher**  
Member

Subject: DWR Parcel No. YBSH-119 Parcel 1, Parcel 2, Parcel 3, and Unit A, APNs  
057-020-006, 057-050-001, 057-060-002, 057-060-005, and 057-060-011  
DWR Parcel No. YBSH-168, APN 033-190-037

**Alexandre Makler**  
Member

DWR Parcel No. YBSH-149, APNs 033-190-036 and 033-190-038

**Sandra Matsumoto**  
Member

Notice of Intent to Consider Adopting Resolutions of Necessity to Acquire  
Certain Real Property or Interests in Real Property by Eminent Domain for the  
Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project

**Jose Solorio**  
Member

Dear Darla Guenzler:

This letter serves as notice that the California Water Commission (Commission) at its November 16, 2022 Commission Meeting will consider adopting a Resolution of Necessity (Resolution) to acquire an easement on the above – referenced property by eminent domain. You are being notified as the holder of the conservation easement on this property, pursuant to the California Code of Civil Procedure (CCP) Sections 1245.235 and 1240.055.

You have the right to appear and be heard on the matters referred to in CCP Sections 1240.030 and 1240.510. If you choose to attend and be heard at the Commission Meeting, CCP Section 1245.235(b)(3) requires that you submit your intention to be heard in writing to the Commission within 15 days from the date of this Notice.

Comments will be limited to five (5) minutes for holders of a property interest, consistent with the Commission's standard practices. The Commission will also consider any written comments you may wish to submit prior to the meeting, pursuant to this Notice. Please submit any written comments at least 3 three business days prior to the Meeting, to allow sufficient time to circulate to the Commissioners for their review.

Please send any written comments to:

Holly Geneva Stout, Esq.  
California Water Commission  
P.O. Box 942836  
Sacramento, CA 94236-0001  
Email: [cwc@water.ca.gov](mailto:cwc@water.ca.gov)

The CCP provides procedures for public agencies to acquire private property for public use. It requires that every agency, which intends to condemn property, notify the owners of its intention to condemn.

Section 1240.030 of the CCP provides that the power of eminent domain may be exercised to acquire property for a proposed project if the following conditions are established:

- (1) The public interest and necessity require the proposed project; and
- (2) The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and
- (3) This property is necessary for the project.

Section 1245.230 of the CCP further requires that the offer required by Government Code Section 7267.2 has been made to the owner of record. The written offers were sent to the address listed on the County's records on July 26, 2022 (YBSH-119), July 21, 2022 (YBSH-168), and July 22, 2022 (YBSH-149). DWR will be presenting on the above listed conditions.

Additionally, pursuant to CCP § 1240.055, notice was sent to the Wildlife Heritage Foundation at the addresses listed above as the holder of a conservation easements on July 21, 2022 (YBSH-119), July 21, 2022 (YBSH-168), and July 20, 2022 (YBSH-149). DWR will be presenting on the above listed conditions.

The Commission will consider if the above findings concerning this property have been met and, if so, decide whether to adopt a Resolution. Pursuant to CCP Section 1245.210(h), the Commission is the governing body for Resolutions of Necessity for the Department of Water Resources. The Commission Meeting is scheduled to take place as follows:

### **California Water Commission – November 16, 2022, Commission Meeting**

Date: November 16, 2022

Time: 9:30 am

Location: State of California, Resources Building  
715 P St., First Floor Auditorium  
Sacramento, CA 95814

Online: link below

<https://us02web.zoom.us/j/83553531730?pwd=VGw5UU8vWHFEM0laNVQwU1VrTTVTdz09>

A Resolution, if adopted, will constitute authorization for the Department of Water Resources (DWR) to acquire the property, or property interest therein, by commencing an eminent domain proceeding. All issues related to the just compensation for the

acquisition of the subject properties will be resolved either through continuing negotiations or through eminent domain proceedings.

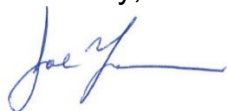
A description of the required property that is the subject of this Resolution is attached to this Notice. Also attached is a copy of the Commission's Procedures for Resolutions of Necessity and Eminent Domain, as of February 20, 2013.

DWR proposes to acquire property rights over the below listed parcels:

<b>DWR Parcel No.</b>	<b>Estate to purchase</b>	<b>Size</b>	<b>APN</b>
YBSH-119 Parcel 1 (portion of 4.77 acre parcel)	Fee	2.5 acre (approximate portion)	057-060-005
YBSH-119 Parcel 2	Fee	0.20 acres	057-050-001
YBSH-119 Parcel 3	Fee	2.52 acres	057-060-006
YBSH-119 Unit A	Flowage Easement	76.09 acres	057-020-006, 057-050-001, 057-060-002, ±057-060-005, & 057-060-011
YBSH-149	Flowage Easement	390.00 acres	033-190-036 & 033-190-038
YBSH-168	Flowage Easement	115.00 acres	033-190-037

If you have any questions regarding this eminent domain proceeding, please contact Linus A. Paulus, Manager, Acquisition and Appraisal Section, Division of Engineering, DWR, at (916) 902-7384, or at [linus.paulus@water.ca.gov](mailto:linus.paulus@water.ca.gov). If you have questions regarding the Commission meeting or its logistics, please contact Holly Stout, Attorney, California Water Commission, at (916) 902-7098, or [holly.stout@water.ca.gov](mailto:holly.stout@water.ca.gov).

Sincerely,



Joe Yun

Executive Officer, California Water Commission

Attachments: Property Descriptions  
CWC Procedures for Resolutions of Necessity and Eminent Domain

EXHIBIT "A" LEGAL DESCRIPTION

All that real property being portions of Rancho Rio Jesus Maria, and also being portions of projected Sections 3 and 10 in Township 10 North, Range 3 East, and Sections 27 and 34 in Township 11 North, Range 3 East, Mount Diablo Base and Meridian, Yolo County, State of California, and also being a portion of PARCEL ONE described in the GRANT DEED recorded July 30, 2008 as DOC-2008-0023530-00, Official Records of said County, and also being a portion of PARCELS TWO B, TWO C, TWO D, TWO E and FIVE described in the GRANT DEED recorded December 28, 2012, in DOC-2012-0043756-00, Official Records of said County described as follows:

YBSH-119 PARCEL 1

BEGINNING at a found 2-1/2 inch iron pipe bent southerly on the south line of PARCEL B and being a 2 inch iron pipe as shown on the PARCEL MAP NO. 2644 for Faustine Silva Jr., filed May 26, 1978, in Book 4 of Parcel Maps, Page 24, said County Records, which bears South 00° 26' 07" East 2613.25 feet from a found 2 inch pipe at the northwest corner of said Section 3 as shown on said Parcel Map;

THENCE FROM SAID POINT OF BEGINNING, along said south line of Parcel B, North 88° 30' 15" East 413.21 feet to a found 2 inch iron pipe with driving head as shown on said Parcel Map;

thence continuing North 88° 30' 15" East 260.45 feet to the west sideline of the

ACCESS EASEMENT recorded January 5, 2018 in DOC-2018-0000419-00, said Official Records,

thence southerly along said west sideline South 03° 17' 14" East 424.23 feet;

thence leaving said west sideline North 90° West 319.11 feet;

thence North 10° 49' 36" West 217.45 feet;

thence North 90° West 337.80 feet to the west line of said Section 3;

thence northerly along said west section line North 0° West 192.37 feet to the POINT OF BEGINNING.

Containing 4.77 acres, more or less.

Excepting therefrom the hereinabove described Parcel 1 all those exceptions as described in said GRANT DEEDS 2008-0023530-00 and 2012-0043756-00.

A 2.xx acre portion of Parcel 1 is within WHF CE

EXHIBIT "A" LEGAL DESCRIPTION

YBSH-119 PARCEL 2

COMMENCING at a found 2 inch iron pipe with driving head tagged LS 3932 at the northwest corner of said Section 34 as shown on said Parcel Map, which bears North 00°01'53" East 5282.26 feet from a found 2 inch iron pipe as shown on said Parcel Map at the northwest corner of said section 3;  
thence along the north line of said section 34 North 88° 31' 44" East 26.75 feet to a found 5/8 inch rebar and the northwest corner of said Parcel Two D;  
thence southerly along the west line of said Parcel Two D South 02° 59' 13" East 1317.27 feet to the point of beginning;  
THENCE FROM SAID POINT OF BEGINNING, leaving said Parcel Two D west line North 87° 34' 46" East 130.30 feet;  
thence South 04° 03' 39" East 66.33 feet;  
thence South 87° 34' 46" West 131.55 feet to said Parcel Two D west line;  
thence northerly along said Parcel Two D west line North 02° 59' 13" West 66.31 feet to the POINT OF BEGINNING.

Containing 0.20 acres, more or less.

YBSH-119 PARCEL 3

COMMENCING at said 2 inch iron pipe with driving head tagged LS 3932 at said northwest corner of said Section 34, which bears North 00°01'53" East 5282.26 feet from said 2 inch iron pipe at said northwest corner of Section 3;  
thence North 32° 29' 42" East 477.03 feet to a point hereinafter referred to as Point "A" on the easterly edge of the east levee road of the Yolo Bypass as it exists presently and the point of beginning;  
THENCE FROM SAID POINT OF BEGINNING the following the following seven (7) courses:  

- 1) North 90° East 46.70 feet;
- 2) North 09° 41' 49" East 64.01 feet;
- 3) North 19° 23' 38" East 189.47 feet;
- 4) North 23° 03' 01" East 133.36 feet;
- 5) North 11° 30' 14" East 63.33 feet;
- 6) North 17° 48' 52" East 106.91 feet; and
- 7) North 60° 40' 57" West 169.91 feet to the westerly line of said Parcel Two E;

thence southwesterly along said westerly line of Parcel Two E the following seven (7) courses:

- 1) South 25° 57' 09" West 50.50 feet;
- 2) South 24° 03' 09" West 102.57 feet;
- 3) South 22° 09' 09" West 102.57 feet;
- 4) South 20° 15' 09" West 104.52 feet;
- 5) South 15° 33' 09" West 108.43 feet;

EXHIBIT "A" LEGAL DESCRIPTION

- 6) South 08° 03' 09" West 110.38 feet; and
- 7) South 00° 33' 09" West 65.69 feet to the intersection of the westerly prolongation of the hereinabove course North 90° East;

thence leaving said westerly line of Parcel Two E and along said prolongation North 90° East 114.12 feet to the POINT OF BEGINNING.

Containing 2.52 acres, more or less.

Excepting therefrom the hereinabove described Parcels 2 and 3 all those exceptions as described in said GRANT DEED 2012-0043756-00.

YBSH-119 UNIT A

All that land lying westerly of a line being said easterly edge of the east levee road of the Yolo Bypass as it exists presently and described as follows:

BEGINNING at a point on said easterly edge of the east levee road and being the aforementioned Point "A";

THENCE FROM SAID POINT OF BEGINNING along said easterly edge levee road the following eighteen (18) courses:

- 1) South 03° 01' 04" East 844.35 feet;
- 2) South 06° 23' 09" West 124.77 feet;
- 3) South 10° 12' 34" East 79.81 feet;
- 4) South 03° 32' 24" East 1007.17 feet;
- 5) South 03° 45' 50" East 1177.85 feet;
- 6) South 03° 45' 25" East 978.93 feet;
- 7) South 03° 10' 27" East 1185.35 feet;
- 8) South 01° 20' 48" East 283.15 feet to a point in the south line of said Parcel Two D also being the north line of said Parcel Two B, which bears North 88° 31' 44" East 15.00 feet from a found buttonhead in the centerline of levee as shown on the unrecorded map YOLO ENGINEERS & SURVEYORS SURVEY FOR SAC. RVR RCH., dated September 12, 1961, at the offices of Laugenour and Meikle, 608 Court Street, Woodland, 95695, California;

EXHIBIT "A" LEGAL DESCRIPTION

- 9) thence continuing along said easterly edge levee road,  
South 02° 48' 33" East 639.70 feet;
- 10) South 03° 10' 52" East 1245.16 feet;
- 11) South 02° 49' 31" East 1053.07 feet;
- 12) South 03° 29' 34" East 1078.10 feet;
- 13) South 03° 04' 21" East 1050.47 feet;
- 14) South 03° 13' 55" East 216.31 feet;
- 15) South 02° 25' 51" East 523.19 feet;
- 16) South 01° 30' 25" East 160.58 feet;
- 17) South 02° 15' 19" West 436.18 feet; and
- 18) South 02° 06' 15" East 57.90 feet to a point on the South line of said  
Parcel FIVE and said easterly edge levee road, bearing  
South 41° 06' 26" West 119.43 feet from a found 3-1/4 inch aluminum  
disk in a monument well marked "SM NO. 15 YOLO COUNTY  
SURVEYOR'S OFFICE".

EXCEPTING THEREFROM the hereinabove described UNIT A said PARCEL ONE in  
DOC 2008-0023530-00.

Containing 76.09 acres, more or less.

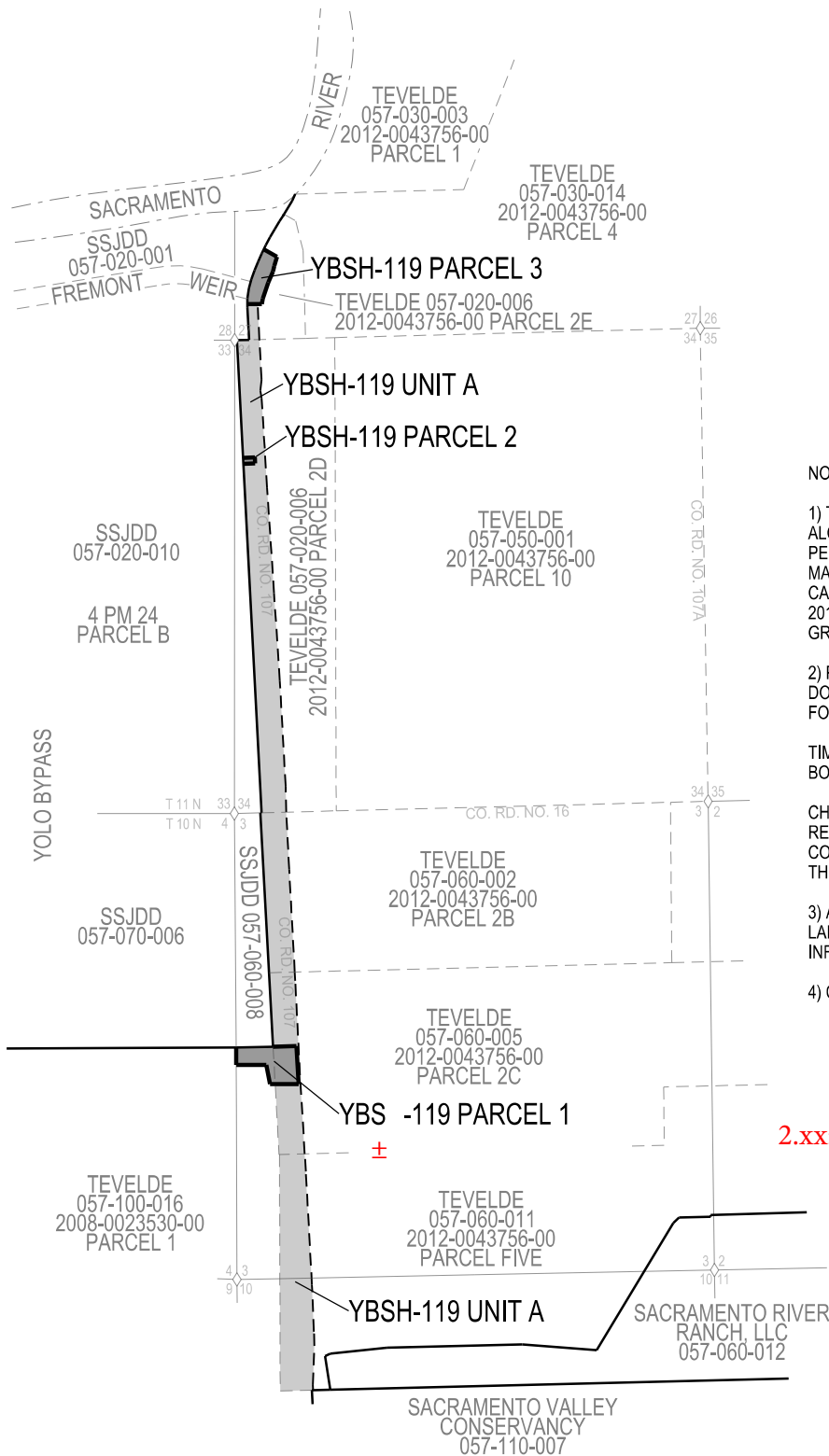
Bearings and distances used in the above description are based on the  
California Coordinate System, CCS83(2011) Epoch 2010.00, Zone 2, US Survey feet.  
The above distances are grid, to convert to ground multiply by 1.00006197.

As shown on Exhibit B, attached hereto and by this reference made a part hereof.

End of Description

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Charles Neuman, PLS 9510



VICINITY MAP

## NOTES:

1) THIS EXHIBIT MAP REPRESENTS RECORD AND UNRECORDED DATA ALONG WITH INFORMATION FROM A LAND SURVEY "GEO20-0030" PERFORMED BY DWR, OCTOBER 2020, TO PREPARE DWR APPRAISAL MAP "X-9A-30". BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM 1983, CCS83 2011 EPOCH 2010.00, ZONE 2, U.S. SURVEY FT. DISTANCES SHOWN HEREON ARE GRID, TO CONVERT TO GROUND MULTIPLY BY 1.00006197 (PROJECT CSF).

2) PURSUANT TO CCR RULE 411(g)(3), DESCRIPTIONS OF THE WORK DONE UNDER EACH LICENSEE'S RESPONSIBLE CHARGE ARE AS FOLLOWS:

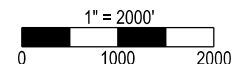
TIMOTHY CASE - FIELD SURVEY WORK INCLUDING SETTING CONTROL, BOUNDARY RECOVERY, TOPOGRAPHY, PROCESSING AND ADJUSTMENT

CHARLES NEUMAN - SUBSEQUENT OFFICE DRAFTING, RECORDS RESEARCH, PREPARATION OF LEGAL DESCRIPTIONS FOR CORRESPONDING LAND TRANSFER DOCUMENTS AND FINALIZATION OF THIS MAP.

3) ADDITIONAL APN INFORMATION HEREIN WAS OBTAINED FROM LANDVISION DIGITAL MAP PRODUCTS. APN LINEWORK FOR INFORMATIONAL PURPOSES-NOT SURVEYED.

4) CL INDICATES CENTERLINE EXISTING LEVEE ROAD.

2.xx± acre portion of Parcel 1 is within CE



PORTIONS OF RANCHO RIO JESUS MARIA  
AND ALSO BEING PORTIONS OF PROJECTED  
SECTIONS 3, 10 - T. 10 N., R. 3 E.,  
AND SECTIONS 27, 34 - T. 11 N., R. 3 E.,  
M.D.B.M., YOLO COUNTY, CALIFORNIA

14FEB2022

SHEET 1 OF 6

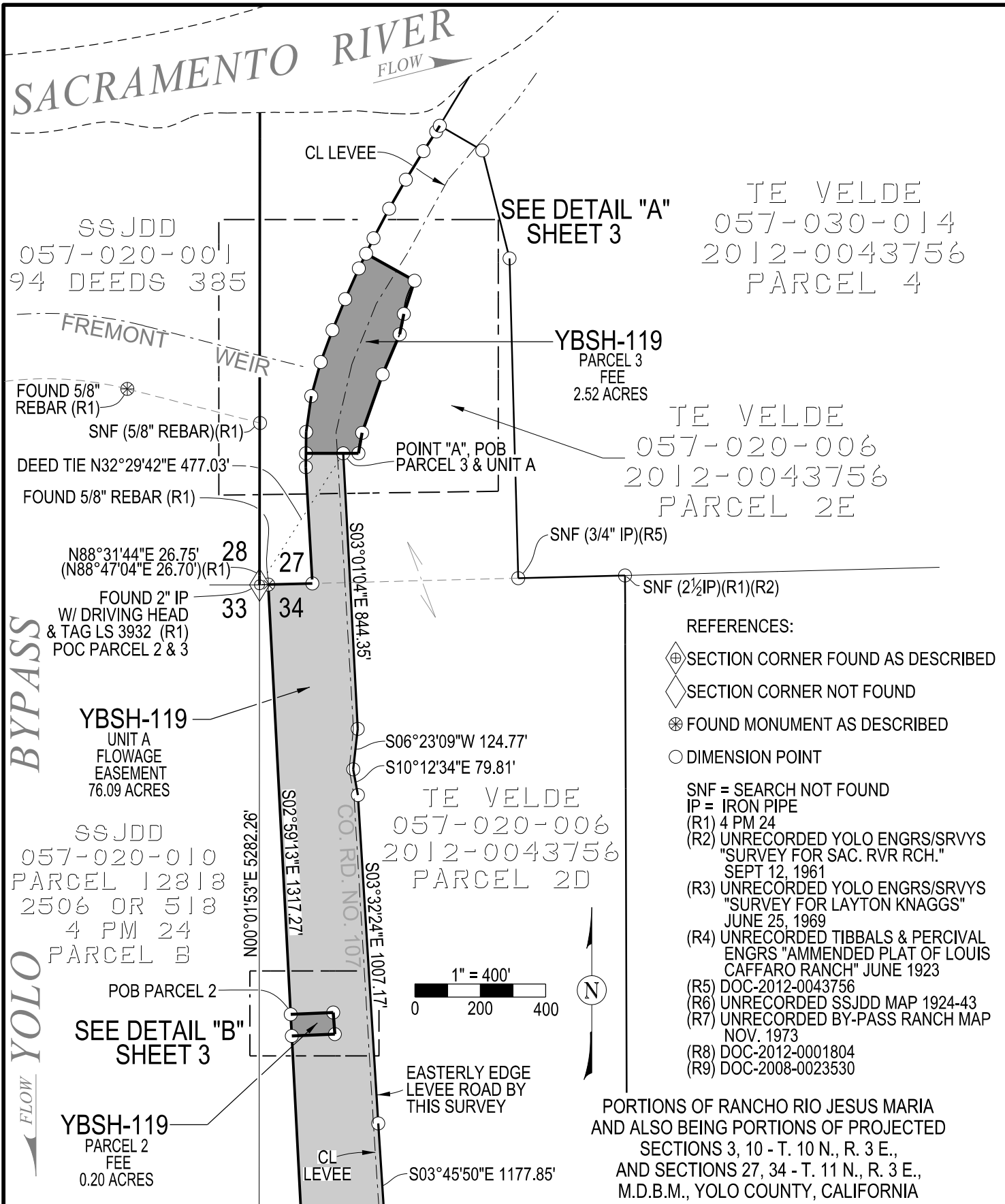
**EXHIBIT B**

YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDE

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY

**DEPARTMENT OF WATER RESOURCES**  
DIVISION OF ENGINEERING - GEOMATICS BRANCH





14FEB2022

**EXHIBIT B**

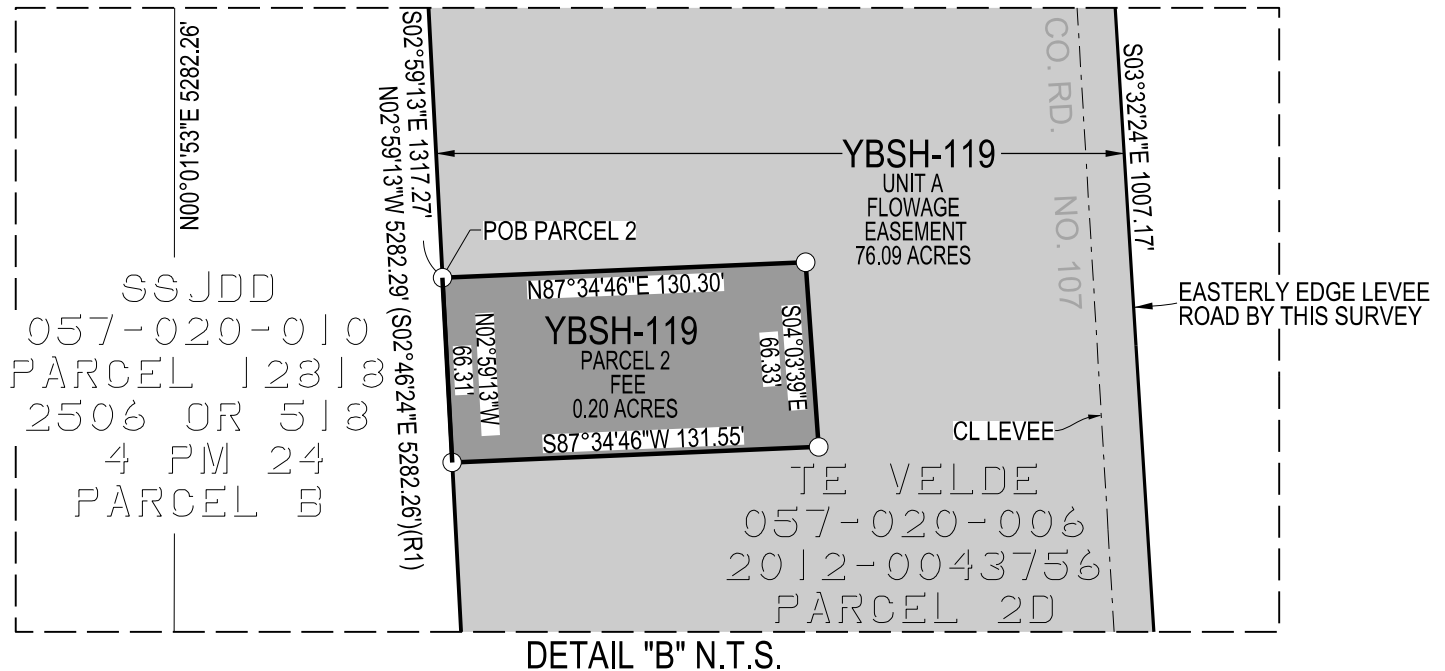
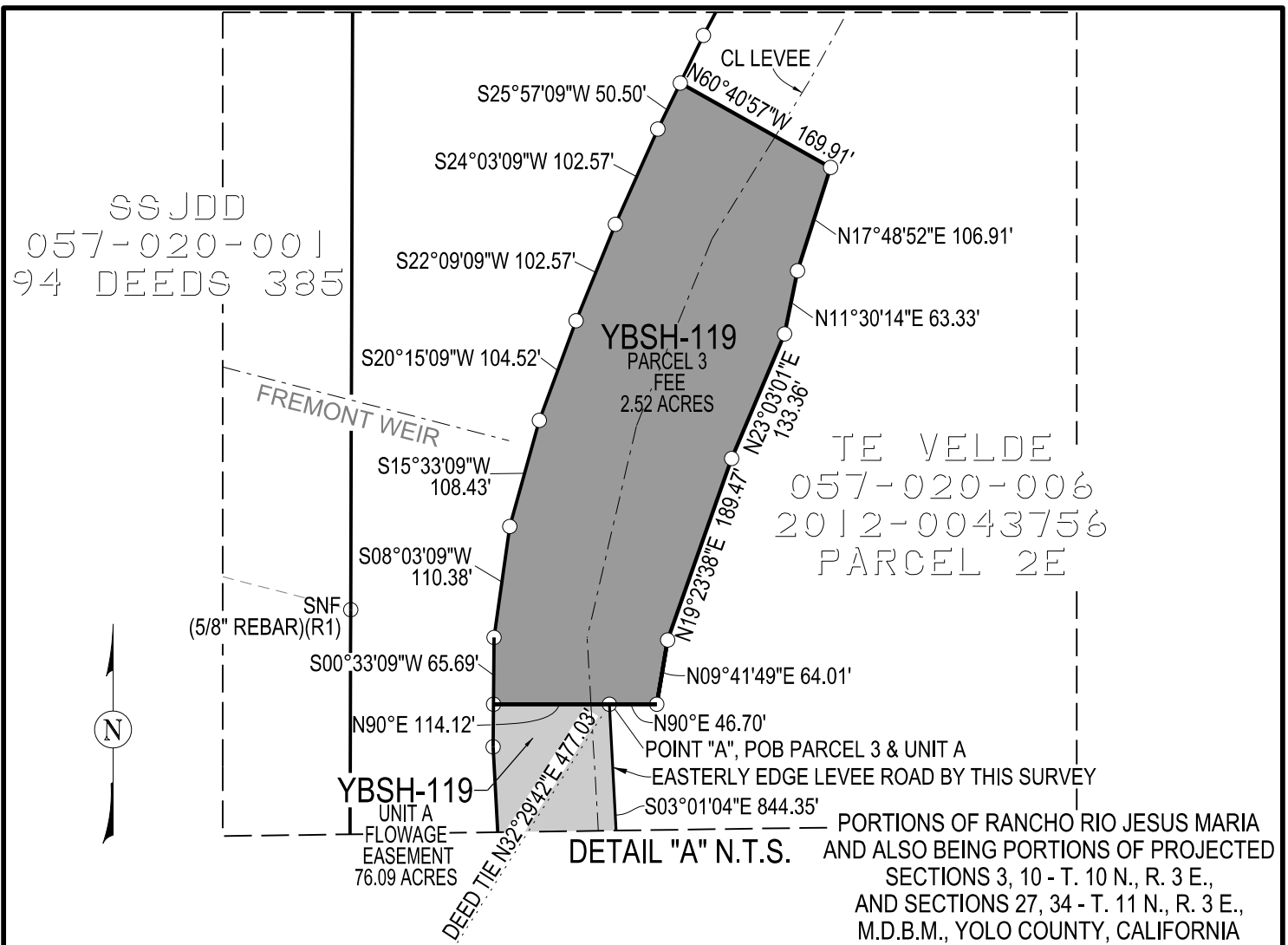
SHEET 2 OF 6

**YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDE**

**STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY**

**DEPARTMENT OF WATER RESOURCES**

**DIVISION OF ENGINEERING - GEOMATICS BRANCH**



14FEB2022

**EXHIBIT B**

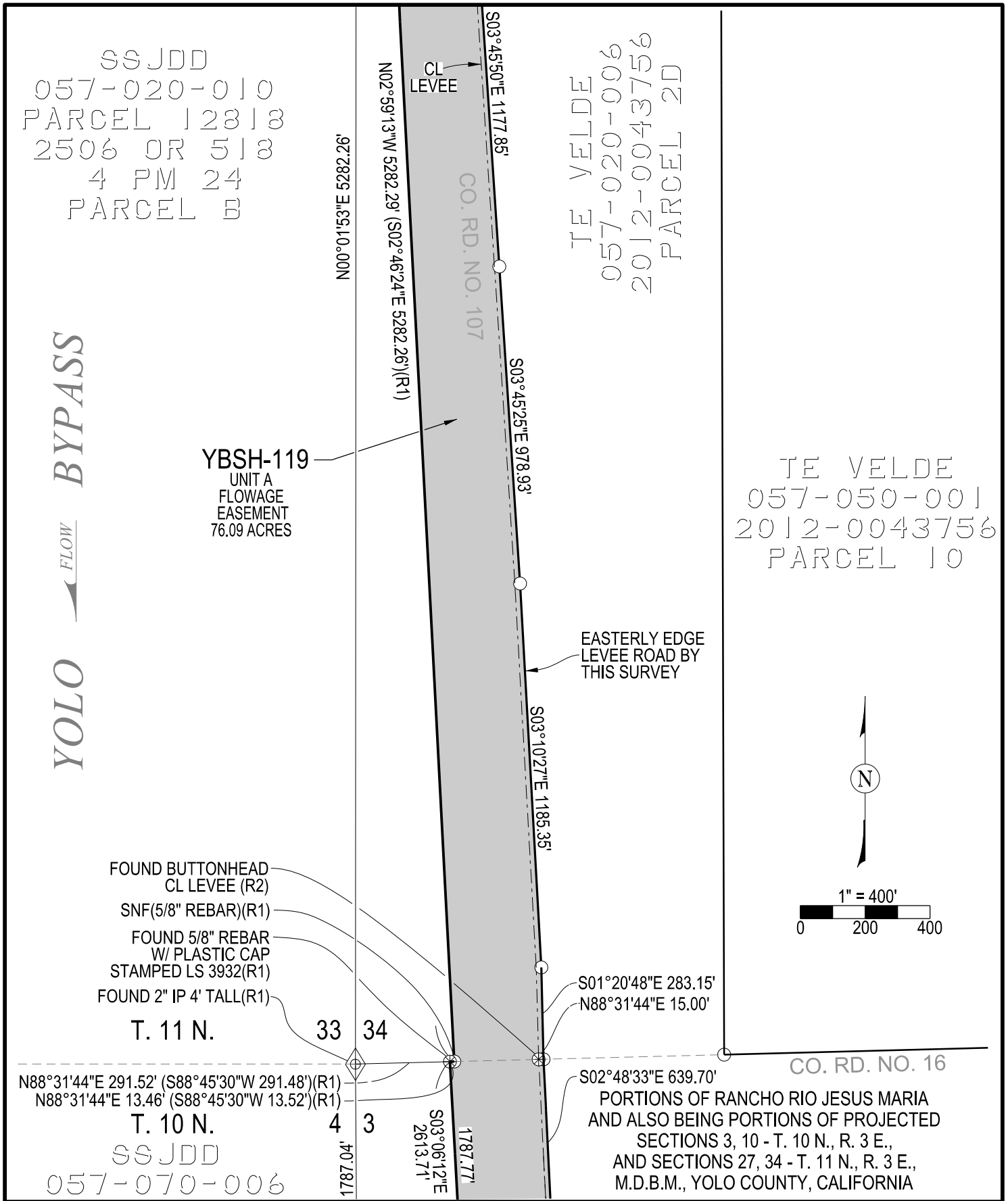
SHEET 3 OF 6

YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDE

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY

**DEPARTMENT OF WATER RESOURCES**

DIVISION OF ENGINEERING - GEOMATICS BRANCH

**EXHIBIT B**

YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDE

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY

**DEPARTMENT OF WATER RESOURCES**

DIVISION OF ENGINEERING - GEOMATICS BRANCH

SHEET 5 OF 6

YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDE

STATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES  
DIVISION OF ENGINEERING - GEOMATICS BRANCH

BYPASS

YOLO

FLOW

(NORTH 1205.8')(R5)

S88°37'58"W 5.34'

S03°06'12"E  
1205.69'

S03°29'34"E 1078.10'

(S88°48'30"W 4292.3')(R5)

S03°04'21"E 1050.47'

EASTERLY EDGE  
LEVEE ROAD BY  
THIS SURVEY

S03°13'55"E 216.31'

S00°10'32"E 2639.87'  
S00°10'31"E 2640.00'(R5)YBSH-119  
UNIT A  
FLOWAGE  
EASEMENT  
76.09 ACRESCL  
LEVEE

S01°30'25"E 160.58'

S02°15'19"W 436.18'

DEED TIE  
S41°06'26"W 119.43'S02°06'15"E  
57.90'N88°35'28"E 559.51'  
(559.54')(R5)"SM NO. 15 YOLO COUNTY  
SURVEYOR'S OFFICE"  
3.25" ALUMINUM DISK IN  
MONUMENT WELL, PID-AI5070 (R8)TE VELDE  
057-060-011  
2012-0043756  
PARCEL FIVESACRAMENTO RIVER  
RANCH, LLC  
057-060-012SACRAMENTO VALLEY  
CONSERVANCY  
057-110-007PORTIONS OF RANCHO RIO JESUS MARIA  
AND ALSO BEING PORTIONS OF PROJECTED  
SECTIONS 3, 10 - T. 10 N., R. 3 E.,  
AND SECTIONS 27, 34 - T. 11 N., R. 3 E.,  
M.D.B.M., YOLO COUNTY, CALIFORNIA

N

1" = 400'

0 200 400

4 3  
9 10

14FEB2022

**EXHIBIT B**

SHEET 6 OF 6

YOLO BYPASS SALMONID HABITAT  
RESTORATION AND FISH PASSAGE PROGRAM  
YBSH-119 PARCELS 1, 2 & 3 FEE,  
UNIT A FLOWAGE EASEMENT-TE VELDESTATE OF CALIFORNIA  
THE NATURAL RESOURCES AGENCY**DEPARTMENT OF WATER RESOURCES**

DIVISION OF ENGINEERING - GEOMATICS BRANCH

EXHIBIT "A"

**YBSH-149**

All that real property situated in portions of Sections 32 and 33, Township 7 North, Range 3 East, MDM, in the unincorporated area of the County of Yolo, State of California, described as follows:

All of that portion of land as described in Exhibit "A", Legal Description for Pope Ranch Conservation Bank, in that Grant Deed 2011-0012219, recorded May 3, 2011, Official Records of Said County.

As shown on EXHIBIT "B" attached hereto.

Containing 390.0 acres, more or less.

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KRISTOPHER KLIMA, PLS

# YBSH-149 FLOWAGE EASEMENT RUNNING W LAND LLC

ALL THAT PORTION OF LAND  
AS DESCRIBED IN EXHIBIT "A,"  
LEGAL DESCRIPTION FOR POPE RANCH  
CONSERVATION BANK IN THAT GRANT DEED  
2011-0012219, RECORDED MAY 3, 2011 OFFICAL RECORDS  
380 AC. +/-

MIDWAY ROAD

COUNTY ROAD 104

UNIT A  
033-190-036

UNIT B  
033-190-038

COUNTY ROAD 107

TOE DRAIN

GAFFNEY ROAD

SAC RIVER DEEP WATER CHANNEL



NO SCALE

CENTRAL AVE

*Note: Information shown on this map is compiled from numerous sources and may not be complete or accurate. This includes Assessor parcel lines and numbers provided by Yolo county. DWR makes no claims, representations, or warranties (express or implied) concerning the validity, reliability, or accuracy of the GIS data contained herein. All areas shown are approximations based on GIS calculations. Each user is responsible for determining its suitability for his or her intended use or purpose. This exhibit does not represent a survey and is for informational purposes only.*

PORTIONS OF SECTIONS 32 & 33,  
T.7 N, R.3 E., M.D.M.,  
COUNTY OF YOLO

YOLO BYPASS SALMONID HABITAT AND FISH RESTORATION PROGRAM  
BIG NOTCH PROJECT - PHASE 3 PARCELS

## FLOWAGE EASEMENT EXHIBIT "B"

This exhibit does not represent a survey and is for informational purposes only.

STATE OF CALIFORNIA  
THE RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES

DIVISION OF ENGINEERING - GEOMATICS BRANCH

5/24/2022

EXHIBIT "A"

**YBSH-168**

All that real property situated in portions of Sections 32 and 33, Township 7 North, Range 3 East, MDM, in the unincorporated area of the County of Yolo, State of California, described as follows:

All of that portion of land as described in Exhibit "A" in that Grant Deed 2021-0015139, recorded April 15, 2021, Official Records of Said County.

Containing 115.0 acres, more or less.

As shown on EXHIBIT "B" attached hereto.

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KRISTOPHER KLIMA, PLS



# YBSH-168

## FLOWAGE EASEMENT

### FRANK WEBB PROPERTIES LLC

**EXHIBIT "A" OF GRANT DEED**

**2021-0015139**

**REC APRIL 15, 2021, O.R.**

**115 AC. +/-**

COUNTY ROAD 152

033-190-037

COUNTY ROAD 107

TOE DRAIN



NO SCALE

PORTION OF SECTIONS 32, 33  
T.7 N, R.3 E., M.D.M.,  
COUNTY OF YOLO

SAC RIVER DEEP WATER CHANNEL

*Note: Information shown on this map is compiled from numerous sources and may not be complete or accurate. This includes Assessor parcel lines and numbers provided by Yolo county. DWR makes no claims, representations, or warranties (express or implied) concerning the validity, reliability, or accuracy of the GIS data contained herein. All areas shown are approximations based on GIS calculations. Each user is responsible for determining its suitability for his or her intended use or purpose. This exhibit does not represent a survey and is for informational purposes only.*

YOLO BYPASS SALMONID HABITAT AND FISH RESTORATION PROGRAM  
BIG NOTCH PROJECT - PHASE 3 PARCELS

## FLOWAGE EASEMENT EXHIBIT "B"

This exhibit does not represent a survey and is for informational purposes only.

STATE OF CALIFORNIA  
THE RESOURCES AGENCY

**DEPARTMENT OF WATER RESOURCES**

DIVISION OF ENGINEERING - GEOMATICS BRANCH

07/21/2022



## Procedures for Resolutions of Necessity and Eminent Domain

### Overview

The Department of Water Resources (DWR) may acquire property for constructing, maintaining, or operating State Water Project facilities but it may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity. The governing body is the California Water Commission. Code of Civil Procedure Section 1245.210.

California Water Code Section 11575 gives DWR the authority to acquire land for the purpose of constructing, maintaining or operating the State Water Project.

*CWC §11575. For the purpose of constructing, maintaining, and operating the project and for the purpose of providing and substituting new facilities for facilities to be taken or destroyed, the department may acquire for and in the name of the state, by gift, exchange, purchase, or eminent domain proceedings, within or without the state, any and all water, water rights, rights-of-way, easements, land, electric power, power resources and facilities, and property or appurtenances thereto of every kind and description and any appurtenances to any such property as the department determines to be required and necessary for the proper construction, maintenance, and operation of the project and for effectuating the purposes and objects to be accomplished by the construction, maintenance, and operation of the project, and for providing and substituting new facilities for facilities taken or destroyed.*

Water Code Section 11580 gives DWR the ability to exercise the power of eminent domain if DWR cannot acquire the necessary property through an agreement with the owner and if the project for which the property is being acquired has been authorized and funds are available.

*CWC §11580. When the department cannot acquire any necessary property by agreement with the owner, the department may exercise the power of eminent domain to acquire the property in the name of the state if the project for which the property is being acquired has been authorized and funds are available therefore.*

Before DWR may commence any eminent domain proceeding, it must obtain a resolution of necessity from the California Water Commission:

*CCP 1245.220. A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of this article.*

*CCP 1245.210. As used in this article, "governing body" means: (h) In the case of a taking by the Department of Water Resources, the California Water Commission.*

**Procedures for Consideration of Resolution of Necessity**

This document describes the California Water Commission's procedures for considering a resolution of necessity. It is the intent of the Commission to provide a transparent and well-defined process in order to ensure all legal requirements have been met, and affected and interested parties are provided due process.

**1. Notification of Commission Consideration of a Resolution of Necessity**

DWR shall inform the Commission it intends to request a resolution of necessity. The Commission will notice the item on its meeting agenda and send a notice to the landowner of the property for which the resolution of necessity is being considered at least 21 days prior to the meeting. The notification to the landowner will include the date, time, and location of the Commission meeting, information about the proposed resolution of necessity, a copy of the Commission's procedures, and an explanation of opportunities to provide written and oral public comments.

In addition, DWR will notify the Commission if additional interests in any of the properties for which it intends to seek a resolution of necessity have already been appropriated for another public use. The Commission will inform these additional interest holders of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting.

**2. Consideration of Evidence in support of Resolution of Necessity**

At a public meeting, the Commission will consider evidence in support of the specific findings required for a resolution of necessity pursuant to Section 1245.230, which states:

*In addition to other requirements imposed by law, the resolution of necessity shall contain all of the following:*

*(a) A general statement of the public use for which the property is to be taken and a reference to the statute that authorizes the public entity to acquire the property by eminent domain.*

*(b) A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification.*

*(c) A declaration that the governing body of the public entity has found and determined each of the following:*

*(1) The public interest and necessity require the proposed project.*

*(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.*

*(3) The property described in the resolution is necessary for the proposed project.*

*(4) That either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.*

In addition, in the event a property (or recorded interest in a property) that is the subject of a resolution of necessity has already been appropriated for public use, the Commission must follow the procedures outlined in this document to make determinations that the new use is either compatible with or more necessary than the existing use as required under CCP 1240.510 and 1240.610:

*CCP 1240.510. Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. Where property is sought and the resolution of necessity if one is required, shall refer specifically to this section.*

*CCP 1240.610 Any person authorized to acquire property for a particular use by eminent domain may exercise the power appropriated to public use if the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated. Where property is sought to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.*

DWR will prepare and provide a Staff Report to the Commission for the agenda that includes the information necessary in order to ensure that all applicable requirements for a resolution of necessity have been met (CCP 1245.230 and 1240.510 and 1240.610). The report shall include the following:

- A description of the project.
- An explanation of why the project is necessary and in the public interest.
- An explanation of the legal authority for the project and the availability of funds for the project.
- A description of any findings required under CCP 1240.510 and 1240.610.
- The status of other parcels required for the project: Total parcels; number of parcels acquired; number or parcels under right of entry; number of other owners expected to request appearance before the Commission.
- Detailed Parcel Description.

- Maps (index map, project title sheet, appropriate plan sheets and parcel maps) covering the project and its relationship to the full parcel must be provided.
  - A listing of the owner's primary concerns (compensation, design features, timing of the acquisition, lack of replacement housing, etc.).
  - A description of any design or right of way modifications suggested by the owner, including DWR's opinion on the feasibility of these suggestions and the basis for DWR's opinion (why they are or are not feasible).
  - A description of alternatives to the proposed taking that have been considered by DWR.
  - A description of official contacts or attempted contacts with the property owner (or representative) involving acquisition and formal offers, as well as a summary of each of the owner's concerns.
  - Identification of the appropriate contact persons within DWR that can provide additional detailed information.
- Copy of Notice to Landowner
  - Copy of CEQA Compliance
  - Copy of correspondence between the Department of Water Resources and the landowner only if provided by the landowner to the Commission

All affected landowners and any other members of the public may appear and speak to the Commission. Written comments may also be submitted to the Commission prior to the meeting or at the meeting.

The Commission will consider all information and comment provided. The Commission will not take action on the proposed resolution of necessity at this meeting, but will schedule potential action for a subsequent meeting as described in No. 5 below. The Commission may also request additional evidence or information from DWR for consideration.

### **3. Consideration of Authority**

As part of its deliberations, the Commission shall consider the authority of DWR to exercise eminent domain for the project, as specified in California Water Code Section 11580. If the Commission determines that DWR has not provided sufficient information to make a finding of the facts, it may request further evidence or legal analysis.

### **4. Site Visit**

Commission staff may contact the landowner to request a site visit for one or more members of the Commission to view the property in question. This visit will only take place if agreed to by the landowner. However, a site visit is not required prior to Commission consideration of the matter or prior to action on the resolution of necessity.

### **5. Consideration of Action on Resolution of Necessity**

The Commission will schedule action on the proposed resolution of necessity for a subsequent Commission meeting and will notify the affected landowner at least 21 calendar days prior to

the meeting. Code of Civil Procedure §1245.235. In addition, the Commission will inform any holder of a recorded interest in the property that has been appropriated for public use, as identified in part one of this document, of the Commission's intent to consider a resolution of necessity at least 21 days prior to the meeting. The Commission will consider additional information, if any, and determine if there is enough evidence to satisfy CCP 1245.230 and 1240.510 and 1240.610.

At this Commission meeting, DWR staff will provide responses to questions and review the Staff Report. Staff will provide the following additional materials in the agenda packet:

- Copy of Proposed Resolution
- Deed
- Proposed Commission Notice of Determination
- Relevant CEQA Document

The Commission will accept public testimony from the landowner and any other member of the public who appears at the hearing.

The Commission may choose to take action at this meeting. To adopt a resolution of necessity requires a two-thirds vote of all members, which is a minimum of six votes in favor of the resolution of necessity regardless of the number of Commission members present at the meeting.