

MINUTE ITEM

This Calendar Item No. 50
was approved as Minute Item
No. 50 by the State Lands
Commission, by a vote of 2
to 0 at its 8-23-79
meeting.

CALENDAR ITEM

50.

8/79
W 21276
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BOUNDARY SETTLEMENT AGREEMENT
BLA 190

INTRODUCTION: The State Lands Commission staff recommends Commission approval of a proposed boundary settlement agreement, in lieu of litigation, with Peter Kiewit Sons' Company, a Nebraska Corporation, with respect to title and boundary questions pertaining to land in the vicinity of Antioch, San Joaquin River, Contra Costa County. A copy of the Agreement is available in the Commission office.

BACKGROUND AND PRESENT SITUATION:

1. In June of 1976, Peter Kiewit Sons' Co. ("Kiewit") inquired whether the State Lands Commission ("Commission") claimed any interest in an approximate 38 acre parcel on the south bank of the San Joaquin River, just west of the Antioch Bridge. The staff and Kiewit have since exchanged information about the property, and it has been determined that there are serious problems to be overcome in establishing the precise historical location of the State's sovereign ownership and distinguishing such location from private ownership. These problems have arisen due to the loss of original monuments and because of physical changes to the property which have occurred over the years.
2. Kiewit asserts that it is the owner of or has an interest in portions of the lands, by virtue of being the successors in interest, of Swamp and Overflowed Land Patent No. 258, Contra Costa County, and Tideland Patent No. T.L.L. 236, Contra Costa County. Said Swamp and Overflowed Land Patent was issued by the State Lands Office. Said Lands are bounded on the south by the San Joaquin River at the ordinary high

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water mark. Said Tideland Patent was intended to convey an area between the ordinary high water mark and the ordinary low mark as they existed in their natural condition.

3. Kiewit and the staff agree that the resolution of the title and boundary dispute would require protracted and costly litigation based on uncertain legal issues if such dispute could not be resolved by settlement in lieu of litigation.
4. Kiewit and staff have elected to pursue a boundary settlement agreement, pursuant to 6357 of the P.R.C., which provides that the Commission... "may establish the ordinary high water mark or the ordinary low water mark of any of the swamp and overflowed, marsh, tide, or submerged lands of this State by agreement, arbitration, or action to quiet title, whenever it is deemed expedient or necessary."
5. Kiewit and the staff have agreed to the terms of a settlement subject to the Commission approval. Such settlement stipulates to the following accords:
 - (a) The ordinary low water mark is established and fixed by the description shown on Exhibit "A".
 - (b) The ordinary high water mark is established and fixed by the description shown on Exhibit "B". Said line separates the upland owned by Kiewit, which will be freed of the public trust, from those lands which Kiewit owns in fee as patented tidelands and over which the State has the public trust easement; the State's ownership of the trust, between high water and low water, is 0.4491 acres, more or less.

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- (c) Kiewit is to Quitclaim to the State all of Kiewit's right, title and interest in the property described in Exhibit "C". It is agreed, however, that Kiewit excepts and reserves the right to dredge the area described in said exhibit to a depth of minus 11 feet at low water at any time prior to January 1, 1982. At that time said right automatically terminates and accrues to the State. Thereafter Kiewit may perform maintenance dredging by complying with then current dredging permit procedures. The land area on Exhibit "C" approximately 0.9711 acres.
- (d) As part of the Agreement to locate the ordinary low water line and to confirm and effectuate said Agreement, the State will confirm Kiewit's right, title and interest in and remises, releases, and quitclaims to Kiewit all of the State's claim, right, title and interest by virtue of its sovereignty in the parcel of property particularly described in Exhibit "D", excepting and reserving therefrom the public trust easement in the area lying between the ordinary high water and ordinary low water lines, as described in Exhibit "E". Kiewit acknowledges said public trust easement for the purposes of commerce, navigation and fishery.
6. Upon the close of escrow the State shall be provided with a standard form of CLTA Title Insurance payable at the sole expense of Kiewit insuring the State's interest in the parcels conveyed to it in the sum of \$10,000. The provisions of said policy of title insurance shall be expressly approved by the State prior to the close of escrow.

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7. By separate instructions, Kiewit may make arrangements for the issuance of such title insurance as they may desire. If Kiewit makes such arrangements for the issuance of title insurance at the close of escrow, the escrow shall not close until the form of the title insurance policy is approved by Kiewit. the cost for such insurance shall be paid for by Kiewit.
 8. An escrow account will be opened by the parties to the Agreement for the depositing, processing, and recording of all documents to effectuate the Agreement. All costs of the escrow shall be paid Kiewit. The parties to the Agreement may provide the Escrow Officer with such further instructions and documents as are necessary for its accomplishment.
 9. Kiewit agrees to discharge all unpaid taxes on the parcel described in Exhibit "C" prior to closing of escrow.
 10. The Agreement shall become effective upon accomplishment of the following:
 - (a) Execution of the Agreement by:
 - (1) Kiewit Sons' Co., Inc.
 - (2) State of California.
 - (b) Recordation by the Escrow Officer of a copy of the Agreement and its exhibits with the Contra Costa County Recorder.
- The Agreement is designed to become effective on or before December 31, 1979.
11. The agreement is for the purpose of settling a boundary and title dispute and Kiewit remains subject to all lawful requirements of public agencies regarding permits, mitigation, use, or otherwise independent of this agreement.

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12. The agreement and exchange has been reviewed and approved by the Office of the Attorney General.

EXHIBITS:

- A. Low Water Mark Description.
- B. High Water Mark Description.
- C. Parcel of Submerged Land.
- D. Entire Parcel Upland of Low Water.
- E. Parcel Between Mean Low Water and Mean High Water.
- F. Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE PROPOSED AGREEMENT IS IN SETTLEMENT OF TITLE AND BOUNDARY LITIGATION AND THE PROVISIONS OF CEQA ARE INAPPLICABLE.
2. APPROVE BOUNDARY SETTLEMENT AGREEMENT BLA NO. 190, BETWEEN THE COMMISSION AND PETER KIEWIT SONS' CO., A NEBRASKA CORPORATION AND AUTHORIZE ITS EXECUTION, IN SUBSTANTIALLY THE FORM OF THE COPY OF THE AGREEMENT OF FILE WITH THE COMMISSION.
3. AUTHORIZE THE STATE LANDS COMMISSION STAFF AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO THE IMPLEMENT THE TRANSACTION DESCRIBED ABOVE, INCLUDING, BUT NOT LIMITED TO, EXECUTION OF DOCUMENTS OF TITLE AND ESCROW INSTRUCTIONS AND APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

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EXHIBIT "A"

W 21276

LOW WATER MARK DESCRIPTION.

A line located adjacent to the left bank of the San Joaquin River, Contra Costa County, California, more particularly described as follows:

COMMENCING at the Section corner common to Sections 15, 16, 21 and 22, T2N, R2E, MDM; thence along the section line between said Sections 15 and 16, N 89° 08' W 1,003 feet to the south-east corner of the parcel of land described in that Joint Tenancy Deed to C. A. Chaban and Ida S. Chaban, recorded December 23, 1958, in libre 3288 at page 142, Contra Costa County Records, thence the following three courses:

1. N 00° 38' 30" E 1,320.14 feet;
2. N 82° 55' 45" W 55.80 feet;
3. N 00° 38' 30" E 1,430.20 feet to the mean low water mark on the left bank of the San Joaquin River and the POINT OF BEGINNING; thence along the said mean low water mark the following ten courses:

4. S 68° 02' 27" W 23.41 feet;
5. S 77° 32' 16" W 17.09 feet;
6. S 89° 39' 57" W 26.75 feet;
7. N 79° 06' 55" W 34.58 feet;
8. N 78° 56' 48" W 39.52 feet;
9. S 80° 43' 33" W 29.78 feet;
10. S 78° 09' 30" W 35.77 feet;
11. S 84° 49' 25" W 20.83 feet;
12. N 79° 14' 00" W 21.74 feet;
13. N 66° 08' 47" W 31.55 feet to the westerly boundary of the above-mentioned parcel of land and the end of the herein described line.

Bearings and distances of this description are based on California Coordinate System, Zone III.

END OF DESCRIPTION

Prepared Frank T. Carey Checked Edward Zimmerman
 Reviewed _____ Date 4/11/79

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EXHIBIT "B"

HIGH WATER MARK DESCRIPTION

N 21276

A line located adjacent to the left bank of the San Joaquin River, Contra Costa County, California, more particularly described as follows:

COMMENCING at the section corner common to Sections 15, 16, 21 and 22, T2N, R2E, MDM; thence along the section line between said Sections 15 and 16, N 89° 08' W 1,003 feet to the south-east corner of the parcel of land described in that Joint Tenancy Deed to C. A. Chaban and Ida S. Chaban, recorded December 23, 1958, in libré 3288 at page 142, Contra Costa County Records, thence the following three courses:

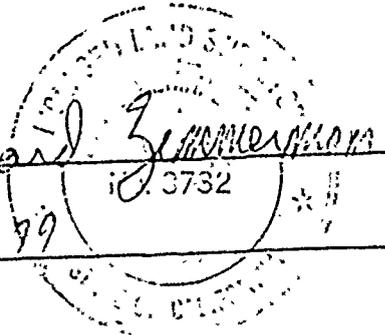
1. N 00° 38' 30" E 1,320.14 feet;
2. N 82° 55' 45" W 55.80 feet;
3. N 00° 38' 30" E 1,426.20 feet to the mean high water mark on the left bank of the San Joaquin River and the POINT OF BEGINNING; thence along the said mean high water mark the following twenty-four courses:

4. S 41° 55' 49" W 11.64 feet;
5. S 23° 58' 25" W 15.73 feet;
6. S 78° 51' 54" W 16.04 feet;
7. S 84° 18' 16" W 24.53 feet;
8. S 72° 00' 26" W 14.06 feet;
9. S 81° 04' 35" W 17.53 feet;
10. S 55° 22' 18" W 23.21 feet;
11. S 32° 44' 53" W 29.40 feet;
12. S 24° 21' 05" W 16.24 feet;
13. S 38° 18' 29" W 22.28 feet;
14. S 34° 38' 21" W 24.32 feet;
15. S 31° 28' 56" W 31.43 feet;
16. S 40° 42' 41" W 17.21 feet;
17. S 86° 56' 09" W 15.00 feet;
18. N 66° 32' 30" W 22.34 feet;
19. N 28° 13' 27" W 17.73 feet;
20. N 3° 25' 47" W 21.14 feet;
21. N 19° 59' 58" E 21.66 feet;
22. N 17° 15' 19" W 25.09 feet;
23. N 30° 51' 46" W 19.71 feet;
24. N 37° 23' 14" W 21.21 feet;
25. N 16° 46' 52" W 27.55 feet;
26. N 34° 14' 39" W 12.82 feet;
27. N 44° 37' 47" W 11.36 feet to the westerly boundary of the above-mentioned parcel of land and the end of the herein described line.

Bearings and distances of this description are based on California Coordinate System, Zone III.

END OF DESCRIPTION

Prepared Frank T. Carey Checked Edward Zimmerman
Reviewed _____ Date 4/11/99



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EXHIBIT "C"

PARCEL OF SUBMERGED LAND

W 21276

A parcel of tide and submerged land in the San Joaquin River, Contra Costa County, California, said parcel described as follows:

COMMENCING at the section corner common to Sections 15, 16, 21 and 22, T2N, R2E, MDM; thence along the section line between said Sections 15 and 16, N 89° 08' W 1,003 feet to the southeast corner of the parcel of land described in that Joint Tenancy Deed to C. A. Chaban and Ida S. Chaban, recorded December 23, 1958, in Libre 3288 at page 142, Contra Costa County Records, thence the following three courses:

1. N 00° 38' 30" E 1,320.14 feet;
2. N 82° 55' 45" W 55.80 feet;
3. N 00° 38' 30" E 1,430.20 feet to the mean low water mark on the left bank of the San Joaquin River and the POINT OF BEGINNING; thence along the said mean low water mark the following ten courses:

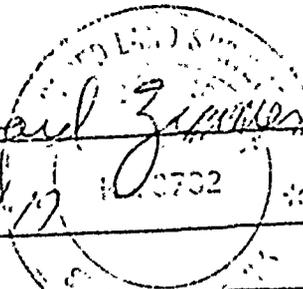
4. S 68° 02' 27" W 23.41 feet;
5. S 77° 32' 16" W 17.09 feet;
6. S 89° 39' 57" W 26.75 feet;
7. N 79° 06' 55" W 34.58 feet;
8. S 78° 56' 48" W 39.52 feet;
9. S 80° 43' 33" W 29.78 feet;
10. S 78° 09' 30" W 35.77 feet;
11. S 84° 49' 25" W 20.83 feet;
12. N 79° 14' 00" W 21.74 feet;
13. N 66° 08' 47" W 31.55 feet thence leaving said low water mark the following four courses:

14. N 00° 45' 00" E 148.00 feet;
15. N 86° 13' 53" E 21.37 feet;
16. S 87° 20' 13" E 251.85 feet;
17. S 00° 38' 30" W 142.00 feet to the point of beginning.

Bearings and distances of this description are based on California Coordinate System, Zone III.

END OF DESCRIPTION

Prepared Frank T. Conway Checked Edward Zimmerman
 Reviewed _____ Date 4/11/17



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EXHIBIT "D"

ENTIRE PARCEL UPLAND OF LOW WATER

W 21276

A parcel of land in Contra Costa County, California, said parcel being that portion of Swamp and Overflowed Lands No. 258, Contra Costa County, and Tideland Locations Nos. 236 and 237, described as follows:

COMMENCING at the section corner common to Sections 15, 16, 21 and 22, T2N, R2E, MDM; thence along the section line between said Sections 15 and 16, N 89° 08' W 1,003 feet to the southeast corner of the parcel of land described in that Joint Tenancy Deed to C. A. Chaban and Ida S. Chaban, recorded December 23, 1958, in libro 3288 at page 142, Contra Costa County Records, and the POINT OF BEGINNING; thence the following three courses:

1. N 00° 38' 30" E 1,320.14 feet;
2. N 82° 55' 45" W 55.80 feet;
3. N 00° 38' 30" E 1,430.20 feet to the mean low water mark on the left bank of the San Joaquin River; thence along the said mean low water mark the following ten courses:
 4. S 68° 02' 27" W 23.41 feet;
 5. S 77° 32' 16" W 17.09 feet;
 6. S 89° 39' 57" W 26.75 feet;
 7. N 79° 06' 55" W 34.58 feet;
 8. N 78° 56' 48" W 39.52 feet;
 9. S 80° 43' 33" W 29.78 feet;
 10. S 78° 09' 30" W 35.77 feet;
 11. S 84° 40' 25" W 20.83 feet;
 12. N 79° 14' 00" W 21.74 feet;
 13. N 66° 08' 47" W 31.55 feet thence leaving the said low water mark the following four courses:
 14. S 00° 45' 00" W 1,133.03 feet;
 15. N 89° 08' 00" W 495.00 feet;
 16. S 00° 45' 00" W 1,623.50 feet;
 17. S 89° 08' 00" E 828.94 feet to the point of beginning.

Bearings and distances of this description are based on California Coordinate System, Zone III.

END OF DESCRIPTION

Prepared

Frank T. Carey

Checked

Edward J. [Signature]

Reviewed

Date

8/10/79

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EXHIBIT "E"

PARCEL BETWEEN MEAN LOW WATER AND MEAN HIGH WATER

W 21276

A parcel of tide and submerged land in the San Joaquin River, Contra Costa County, California, said parcel being that portion of Tideland Locations Nos. 236 and 237 described as follows:

COMMENCING at the section corner common to Sections 15, 16, 21 and 22, T2N, R2E, MDM; thence along the section line between said Sections 15 and 16, N 89° 08' W 1,003 feet to the south-east corner of the parcel of land described in that Joint Tenancy Deed to C. A. Chaban and Ida S. Chaban, recorded December 23, 1958, in libre 3288 at page 142, Contra Costa County Records, thence the following three courses:

1. N 00° 38' 30" E 1,320.14 feet;
2. N 82° 55' 45" W 55.80 feet;
3. N 00° 38' 30" E 1,430.20 feet to the mean low water mark on the left bank of the San Joaquin River and the POINT OF BEGINNING; thence along the said mean low water mark the following ten courses:

4. S 68° 02' 27" W 23.41 feet;
5. S 77° 32' 16" W 17.09 feet;
6. S 89° 39' 57" W 26.75 feet;
7. N 79° 06' 55" W 34.58 feet;
8. N 78° 56' 48" W 39.52 feet;
9. S 80° 43' 33" W 29.78 feet;
10. S 78° 09' 30" W 35.77 feet;
11. S 84° 49' 25" W 20.83 feet;
12. N 79° 14' 00" W 21.74 feet;
13. N 66° 08' 47" W 31.55 feet; thence leaving said low water mark S 00° 45' 00" W 6.00 feet to the mean high water mark of the San Joaquin River; thence along said mean high water mark the following twenty-four courses:

14. S 44° 37' 47" E 11.36 feet;
15. S 34° 14' 39" E 12.82 feet;
16. S 16° 46' 52" E 27.55 feet;
17. S 37° 23' 14" E 21.21 feet;
18. S 30° 51' 46" E 19.71 feet;
19. S 17° 15' 19" E 25.09 feet;
20. S 19° 59' 58" W 21.66 feet;
21. S 03° 25' 47" E 21.14 feet;
22. S 28° 13' 27" E 17.73 feet;
23. S 66° 32' 30" E 22.34 feet;
24. N 86° 56' 09" E 15.00 feet;
25. N 40° 42' 41" E 17.21 feet;
26. N 31° 28' 56" E 31.43 feet;

27. N 34° 38' 21" E 24.32 feet;
 28. N 38° 18' 29" E 22.28 feet;
 29. N 24° 21' 05" E 16.24 feet;
 30. N 32° 44' 53" E 29.40 feet;
 31. N 55° 22' 18" E 23.21 feet;
 32. N 81° 04' 35" E 17.53 feet;
 33. N 72° 00' 26" E 14.06 feet;
 34. N 84° 18' 16" E 24.53 feet;
 35. N 78° 51' 54" E 16.04 feet;
 36. N 23° 58' 25" E 15.73 feet;
 37. N 41° 55' 40" E 11.64 feet thence leaving said mean high
 water mark N 00° 38' 30" E 4.00 feet to the point of beginning.

Bearings and distances of this description are based on California Coordinate System, Zone III.

END OF DESCRIPTION

Prepared Frank T. Carey Checked Edward Zimmerman
 Reviewed _____ Date 4/11/79

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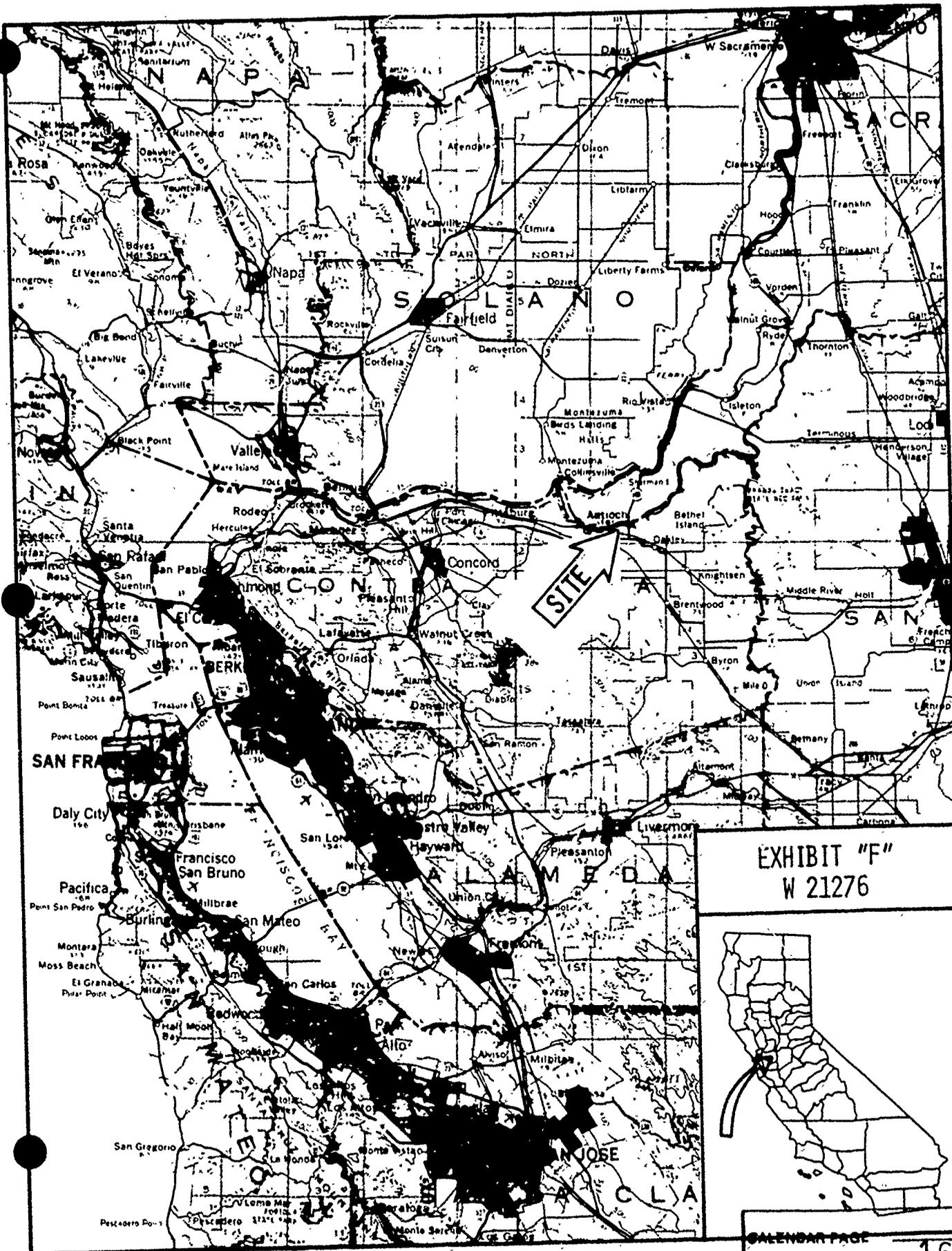


EXHIBIT "F"
W 21276



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