

MINUTE ITEM

03

09/11/89
W 503.1519
W 23357
AD 100
A. Scott
Hadly
Kaufmann

APPROVAL OF PROPOSED SETTLEMENT OF LITIGATION
NOWELL ET AL V. STATE OF CALIFORNIA, ET AL
COVERING A PORTION OF THE HISTORIC BED
OF THE COLORADO RIVER
NEAR BLYTHE, RIVERSIDE COUNTY

Calendar Item 03, attached, was pulled from the agenda prior to the meeting.

Attachment: Calendar Item 03.

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APPROVAL OF PROPOSED SETTLEMENT OF LITIGATION
NOWELL, ET AL v. STATE OF CALIFORNIA, ET AL
COVERING A PORTION OF THE HISTORIC BED
OF THE COLORADO RIVER NEAR BLYTHE, RIVERSIDE COUNTY

APPLICANT: David C. Nowell
c/o John F. Daum, Esq.
O'Melvery and Myers
400 South Hope Street, Suite 1050
Los Angeles, California 90071-2899

BACKGROUND:

In the early 1920's efforts to control the Colorado River were made in the Palo Verde valley. These efforts involved the creation of a number of artificial cuts in attempts to cause the river to seek a more straightened course. The cuts were successful and some of the historic channel of the river were allowed to silt-up and became dry land. During the years after the rechannelization and even to the present day the historic bed of the river has been filled, leveled and used as farm land by many of the current and past owners of adjoining lands.

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The use over the years of the lands making up the cut off historic bed of the Colorado River through the Palo Verde Valley have led to bona fide disputes between private parties and the State over the ownership of those lands. The extent of time that has passed since the original rechannelizations has led to some uncertainty as to the physical location of the historic channel on the part of private parties although the State has recovered historic engineering data concerning the location of the river channel prior to the actual rechannelization activities.

CURRENT SITUATION:

David c. Nowell, Betty Ann Nowell, Joe Ann Morton, Levee Block Limited Partnership, an Arizona Limited Partnership; and Nowell Investment Company, and Arizona Limited Partnership herein after (Nowell) is the record owner of parcels of land located in the Palo Verde Valley both north and south of the City of Sylthe along the current channel of the Colorado River. The parcels of land contain a portion of a historic channel of the river which was artificially cut off during rechannelization of the river and is, based on staffs analysis of historic records, the last natural channel of the river and therefore owned as sovereign lands by the State. The entire parcel including the historic river channel has for many years been filled, leveled and used for farming purposes. Nowell contends that he is the owner of the parcel free and clear of any claims of the State. This parcel is the subject of a pending law suite between Norton and the State (Nowell, et al v. State of California, et al).

The staff and Nowell's representatives have negotiated a compromise title settlement agreement which will resolve the pending law suite. The staff of the Commission recommends approval of the compromise settlement agreement in substantially the form of the agreement which is on file in the offices of the Commission. The agreement contains specific terms and conditions of the settlement of the law suite. A brief summary of the settlement is as follows:

1. Nowell will deposit the sum of \$96,000 into the Kapiloff Land Bank Fund, established by Public Resources Code 8600 et seq., which is administered by the Commission as trustee.

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2. In exchange for the deposit of funds to the Land Bank Fund the State will quitclaim to the owners of record of the subject parcels all of its right, title and interest by virtue of its sovereignty and will terminate the public trust.
3. The agreement provides for an escrow and will become effective upon its recordation. A Stipulated Judgement, in accordance with the terms of this agreement, will be filed through the escrow as settlement of the pending litigation between Nowell and the State.

Staff has appraised the area to be cleared of sovereign interest and has evaluated the law and evidence bearing on the title dispute and litigation, and it is the opinion of the staff that the sum of \$96,000 is equal to or greater than the value of the State's sovereign interest.

AB 884

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

2. A part of the action taken by the Commission in adopting the recommendations of the staff will be in the commission's capacity as trustee of the Kapiloff Land Bank Fund.

EXHIBITS:

- A. Settlement Area.
- B. Location Map.

CALENDAR ITEM NO. 03 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTION AND RECORDATION OF BEHALF OF THE COMMISSION OF A SETTLEMENT AND EXCHANGE AGREEMENT BETWEEN NOWELL, ET AL. AND THE STATE IN SUBSTANTIALLY THE FORM OF THAT AGREEMENT ON FILE IN THE OFFICE OF THE COMMISSION.
3. FIND AND DECLARE UPON THE CLOSING OF ESCROW AS REQUIRED BY THE AGREEMENT THAT:
 - A. THE SETTLEMENT AGREEMENT IS IN THE BEST INTEREST OF THE STATE.
 - B. THE MONEY TO BE RECEIVED BY THE STATE, FOR THE KAPLOFF LAND BANK FUND, IS OF A VALUE EQUAL TO OR GREATER THAN THE VALUE OF THE INTEREST IN LAND BEING QUITCLAIMED BY THE STATE.
 - C. THE PARCEL TO BE QUITCLAIMED BY THE STATE HAS BEEN FILLED, RECLAIMED AND HAS BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE, USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, IS NO LONGER, IN FACT, SUBMERGED LANDS, AND SHALL THEREFORE BE FREED OF THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES.
4. AUTHORIZE THE STAFF OF THE COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THIS SETTLEMENT AND EXCHANGE AGREEMENT INCLUDING BUT NOT LIMITED TO THE EXECUTION, ACCEPTANCE AND RECORDATION OF ALL DOCUMENTS AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS CONCERNING THIS AGREEMENT.

MAP of THE
NOWELL SETTLEMENT AREA

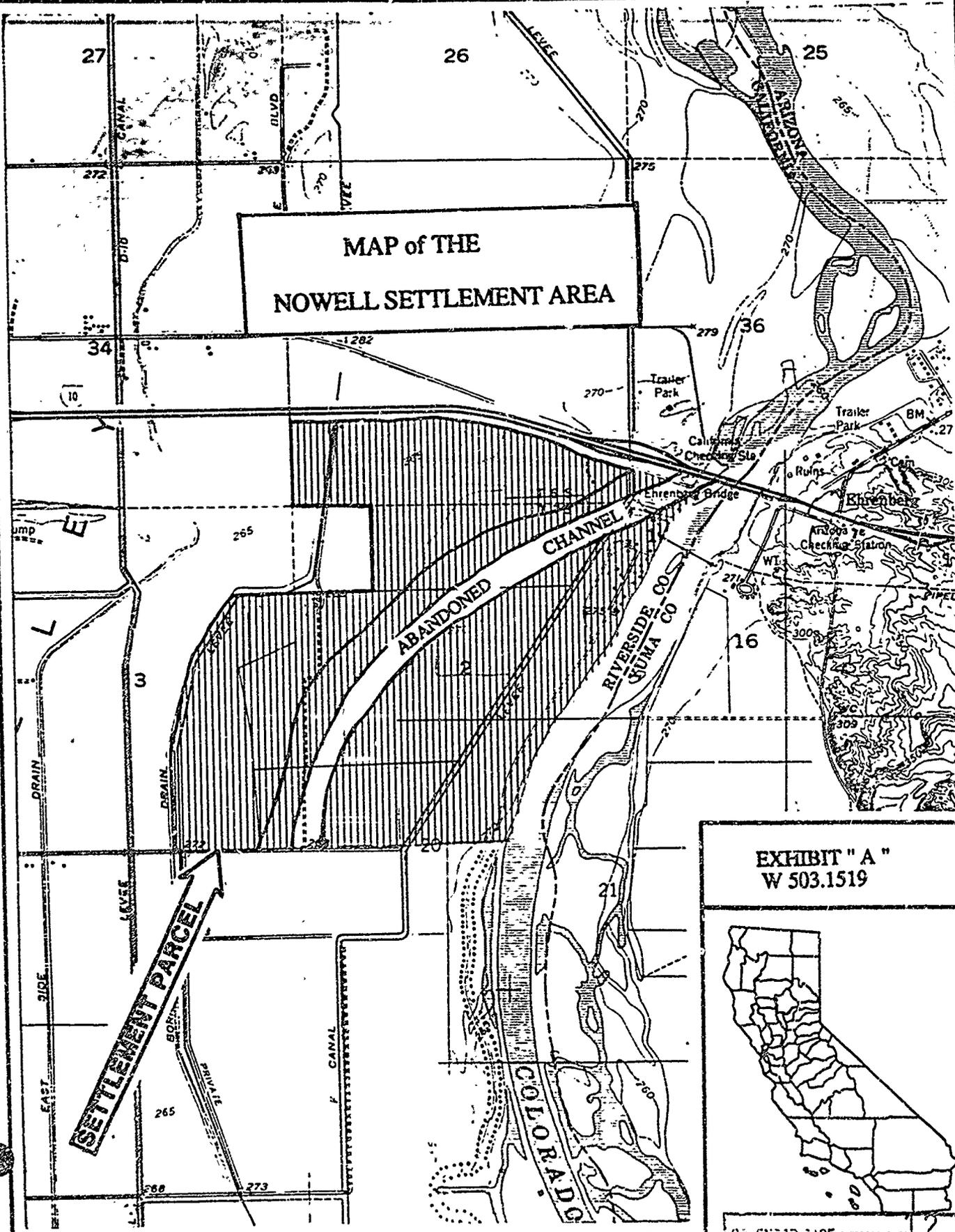


EXHIBIT "A"
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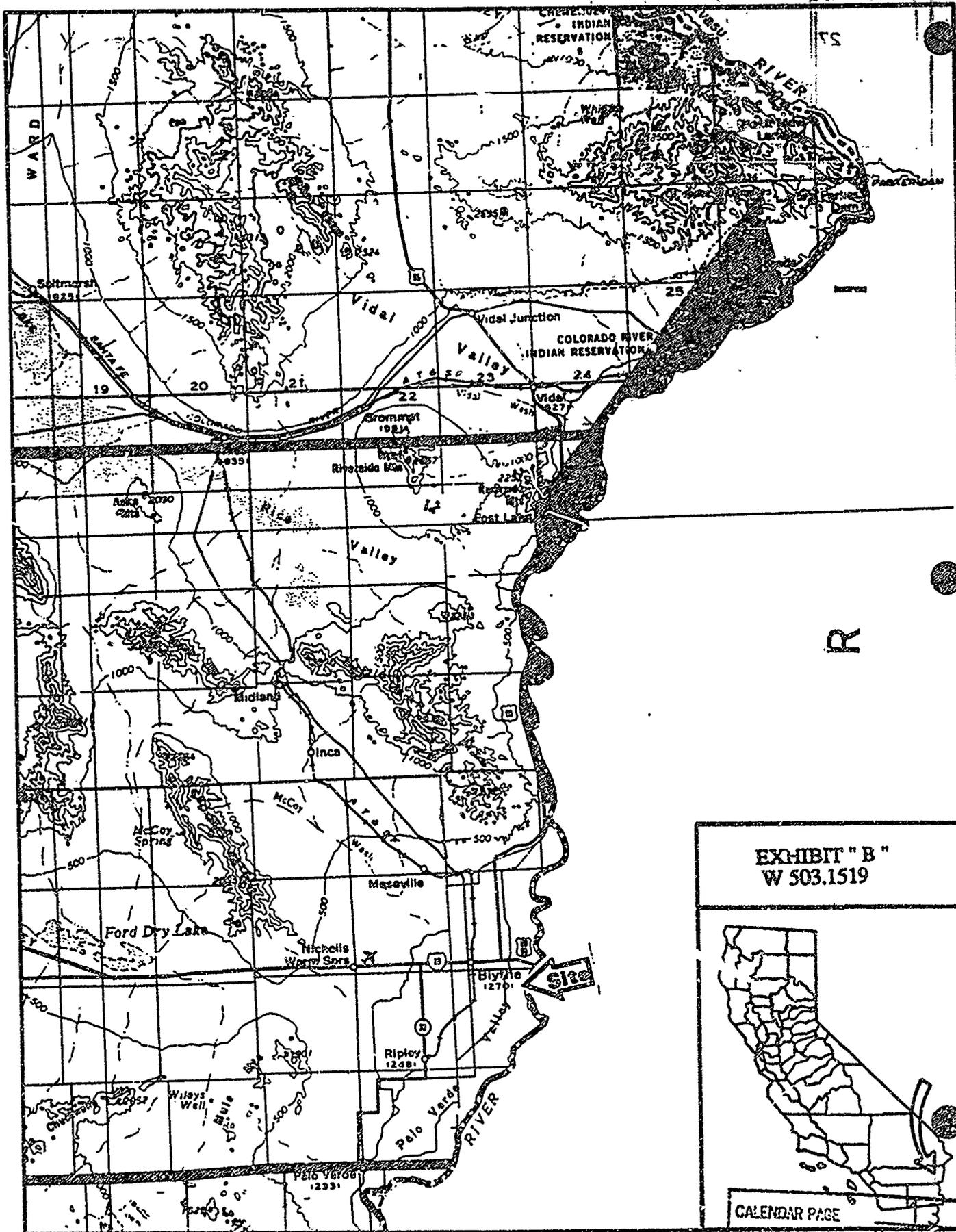


EXHIBIT "B"
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