MINUTE ITEM

This Calendar Item No. C42 was approved as Minute Item No. 42 by the California State Lands Commission by a vote of 3 to 0 at its 04·05·04 meeting.

CALENDAR ITEM
C42

A 31

S 14

04/05/04
W 25977
BLA 273
C. Fossum
J. M. McKown

CONSIDER APPROVAL OF A BOUNDARY LINE AGREEMENT INVOLVING CERTAIN REAL PROPERTY IN AND ADJACENT TO THE SAN JOAQUIN RIVER, NEAR HERNDON, FRESNO COUNTY, PURSUANT TO PUBLIC RESOURCES CODE SECTION 6307

PRIVATE PARTY:
James A. and Kathleen A. Meisner,
Husband And Wife, As Community Property
8727 W. Herndon Avenue
Fresno CA 93722

BACKGROUND:
The private party applicants (Meisners) desire to resolve the issue of the location of the boundary separating their property from the State's ownership in the San Joaquin River.

The State of California owns the bed of the San Joaquin River between the ordinary low water marks (OLWMs) (Civil Code ' 830) on each bank. The entire river between the ordinary high water marks (OHWMs) is subject to a Public Trust Easement as described in State of California v. Superior Court (Fogerty) 29 Cal 3rd 210 (1980). This easement and the fee owned lands in the bed of the San Joaquin River are under the jurisdiction and control of the California State Lands Commission (CSLC) pursuant to Public Resources Code ' ' 6301 and 6216.

In 1976 the CSLC began a comprehensive investigation of the historical factual evidence relating to the San Joaquin River in order to determine the location of the State's sovereign property interests between Friant Dam and Gravelly Ford. Based upon that study the land that is the Subject Property (Exhibit A) and involved in this proposed boundary line agreement involves lands: 1) within the bed of the San Joaquin River and 2) lands above the ordinary high water mark of the San Joaquin River, in Section 6, T 13S, R19E, MDM.
In the area involved in the proposed agreement, the San Joaquin River has been affected by human activities which have had a direct impact upon, among other characteristics, the river's location, velocity and volume of flow, seasonal flow patterns, and sediment

transport and deposition. An example of the direct artificial influences is the impoundment and diversion of water for agricultural, recreational, and flood control purposes by the construction and operation of Friant Dam. Consequently the pre-artificial conditions and location of the OHWM and OLWM in this area along or through the subject property no longer is reflected by current flow conditions. These changes have also had an impact on the location and extent of the riparian corridor along the river and the public trust values associated therewith.

Uncertainty exists as to the precise factual and legal location of the OHWM and the OLWM of the San Joaquin riverbed before the flows were controlled and artificial influences impacted the river. There is a *bona fide* dispute between the State and the Meisners as to the existence, extent, nature and location of their respective rights, titles and interests in the subject property.

A judicial resolution of the parties' rights, titles and interests in the subject property could require costly, protracted, and vigorously disputed litigation with uncertain results if the controversy could not be resolved by agreement. The parties consider it expedient and necessary and in the best interests of the State, the public, and the Meisners to resolve this title dispute by an agreed common boundary line, thereby avoiding the anticipated substantial costs, time requirements, and uncertainties of such litigation.

Shown on Exhibit E is the area involved in this proposed boundary line agreement and depicts: 1) the Agreed Common Boundary Line described in Exhibit B; 2) the River Parcel lands to be quitclaimed to the CSLC as described in Exhibit C; and the Upland Parcel to be cleared of any sovereign title claims and quitclaimed by the State as described in Exhibit D.

The proposed boundary line agreement establishes the high water mark, as determined by the CSLC boundary study (and more particularly described in Exhibit B), as the Agreed Common Boundary Line separating the fee owned lands of the State from those of the Meisners. The Meisners are quitclaiming all their title interests riverward of the ordinary high water mark (Agreed Common Boundary Line). The State is clearing the Upland Parcel (Exhibit D) of any State sovereign title claims.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
B. Cal. Code of Regs.: Title 2, Div. 3; Title 14, Div. 6.
C. Pursuant to Government Code section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the CSLC is a party.
D. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 CCR 15061), the staff has determined that this activity is

exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines. Authority: P.R.C. 21065 and 14 CCR 15378.

E. The STATE, acting by and through the CSLC, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to sections 6357 of such code, to enter into boundary line agreements.

PERMIT STREAMLINING ACT DEADLINE:

N/A

EXHIBITS

A. Subject Property
B. Agreed Common Boundary Line
C. River Parcel to be quitclaimed by MEISNERS to STATE
D. Upland Parcel to be quitclaimed by STATE to MEISNERS
E. Site Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE BOUNDARY LINE AGREEMENT IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14 CALIFORNIA CODE OF REGULATIONS SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION OF THE MEISNER BOUNDARY LINE AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.

3. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL: 1) TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE BOUNDARY LINE AGREEMENT; AND 2) TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

EXHIBIT "A"

BLA 273
W 25977

SUBJECT PROPERTY

A parcel of land situated in the County of Fresno, State of California being in and adjacent to the San Joaquin River and also lying within and adjacent to the NW 1/4 of Fractional Section 6, T13S, R19S, MDB&M as shown on the Official United States Government Township Plat and as more particularly described as Parcels 1, 2 and 3 of Exhibit A in that certain document recorded on October 2, 1992 as Instrument #92151411 Official Records of Fresno County.

BLA 273
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EXHIBIT "B"

AGREED COMMON BOUNDARY LINE

BEGINNING at a point on the High Water Line of the left bank of the San Joaquin River as said line is shown on sheet 18 of the Administrative Map of the San Joaquin River dated April 1992, on file in the Office of the California State Lands Commission, said point being the intersection of said high water line with the east line of the Northwest 1/4 of Section 6, T. 13 S., R. 19 E., M.D.B.& M. as said east line is shown on that certain "MAP OF RE-SURVEY" filed for record in Book 19 of Record of Surveys at Page 64, Fresno County Records, said point being distant along said 1/4 Section Line N0°25'02"E, 106.31 feet from a 1" IP set at the intersection of said east 1/4 Section Line with the centerline of W. Herndon Avenue as shown on said record of survey, said point also having coordinates of North = 2188060.68 feet and East = 6285486.15 feet; thence along said high water line the following six courses: (1) N 85°10'47"W, 80.58 feet; (2) N 89°42'07" W, 104.41 feet; (3) N 80°11'49" W, 119.94 feet; (4) N 78°00'15" W, 106.08 feet; (5) N 77°19'43" W, 103.17 feet; and (6) N 84°44'22" W, 34.27 feet to the end of the herein described line.

Coordinates, bearings and distances used in the above description are based on the California Coordinate System, Zone 4 (NAD 83).

END OF DESCRIPTION

EXHIBIT "C"

LAND DESCRIPTION

RIVER PARCEL

All that portion of a parcel of land situated in the County of Fresno, State of California being in and adjacent to the San Joaquin River and also lying within and adjacent to the NE 1/4 of the NW 1/4 of Fractional Section 6, T13S, R19E, MDB&M as shown on the Official United States Government Township Plat and as more particularly described as Parcel 2 of Exhibit A in that certain document recorded on October 2, 1992 as Instrument #92151411 Official Records of Fresno County and as shown as a 4.10± acre parcel on that certain "Map of Resurvey of Section 6, T.13.S. R.19. E., M.D.B. & M.", prepared by W. O. Gentry and J. A. Ross for E. E. Boyers and E. R. Stanley filed in Fresno County Record of Surveys Book 19, Page 64 lying northerly of the following described line:
BEGINNING at a point on the High Water Line of the left bank of the San Joaquin River as said line is shown on sheet 18 of the Administrative Map of the San Joaquin River dated April 1992, on file in the Office of the California State Lands Commission, said point being the intersection of said high water line with the east line of the Northwest 1/4 of Section 6, T. 13 S., R. 19 E., M.D.B.& M. as said east line is shown on that certain "MAP OF RE-SURVEY" filed for record in Book 19 of Record of Surveys at Page 64, Fresno County Records, said point being distant along said 1/4 Section Line N0°25'02"E, 106.31 feet from a 1" IP set at the intersection of said east 1/4 Section Line with the centerline of W. Herndon Avenue as shown on said record of survey, said point also having coordinates of North = 2188060.68 feet and East = 6285486.15 feet; thence along said high water line the following six courses: (1) N 85°10'47"W, 80.58 feet; (2) N 89°42'07" W, 104.41 feet; (3) N 80°11'49" W, 119.94 feet; (4) N 78°00'15" W, 106.08 feet; (5) N 77°19'43" W, 103.17 feet; and (6) N 84°44'22" W, 34.27 feet to the end of the herein described line.

Coordinates, bearings and distances used in the above description are based on the California Coordinate System, Zone 4 (NAD 83).

END OF DESCRIPTION

EXHIBIT "D"
LAND DESCRIPTION
UPLAND PARCEL

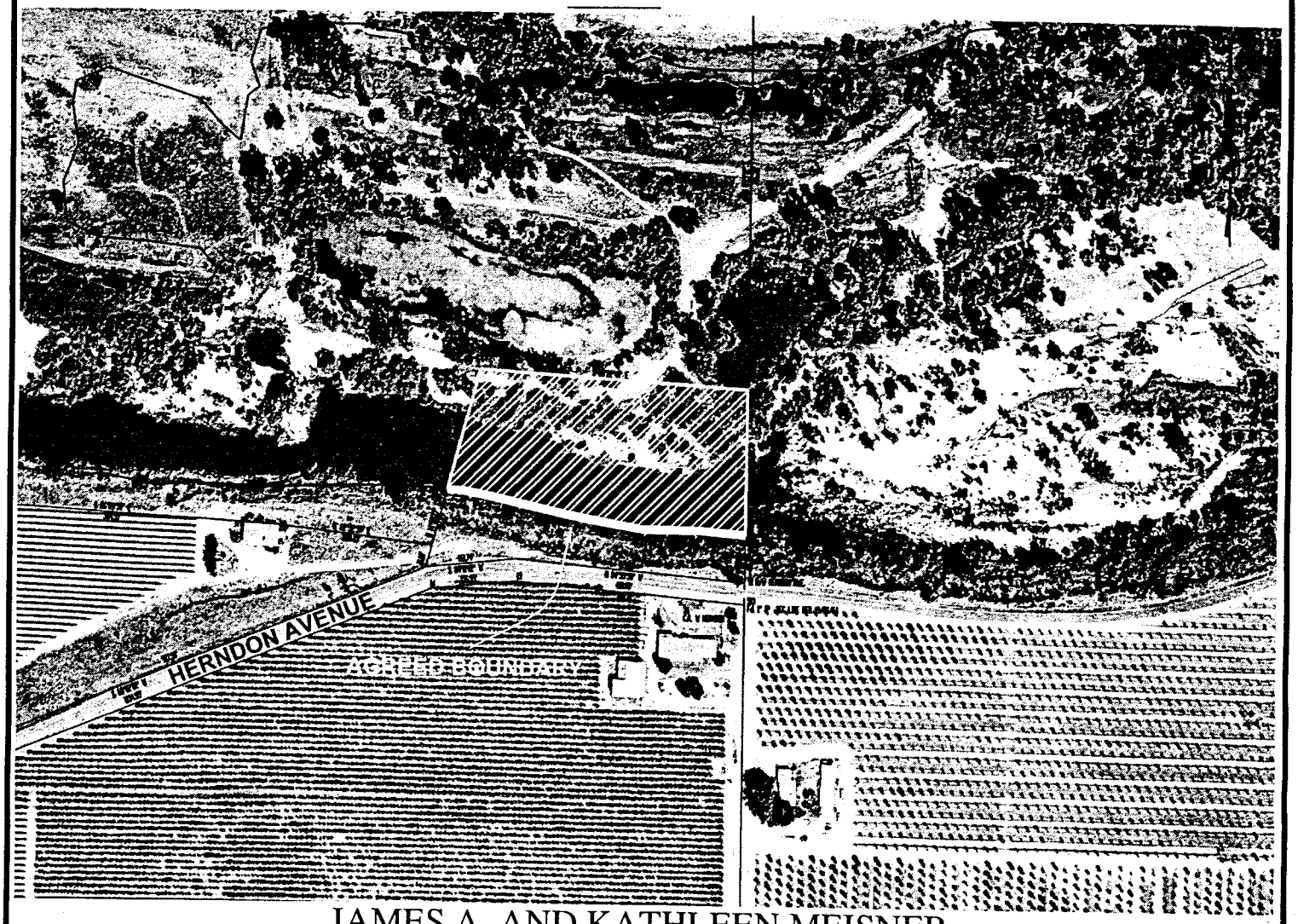
All that portion of a parcel of land situated in the County of Fresno, State of California being in and adjacent to the San Joaquin River and also lying within and adjacent to the NE 1/4 of the NW 1/4 of Fractional Section 6, T13S, R19E, MDB&M as shown on the Official United States Government Township Plat and as more particularly described as Parcel 2 of Exhibit A in that certain document recorded on October 2, 1992 as Instrument #92151411 Official Records of Fresno County and as shown as a 4.10± acre parcel on that certain "Map of Resurvey of Section 6, T.13.S. R.19. E., M.D.B. & M.", prepared by W. O. Gentry and J. A. Ross for E. E. Boyers and E. R. Stanley filed in Fresno County Record of Surveys Book 19, Page 64 lying southerly of a line BEGINNING at a point on the High Water Line of the left bank of the San Joaquin River as said line is shown on sheet 18 of the Administrative Map of the San Joaquin River dated April 1992, on file in the Office of the California State Lands Commission, said point being the intersection of said high water line with the east line of the Northwest 1/4 of Section 6, T. 13 S., R. 19 E., M.D.B.& M. as said east line is shown on that certain "MAP OF RE-SURVEY" filed for record in Book 19 of Record of Surveys at Page 64, Fresno County Records, said point being distant along said 1/4 Section Line N0°25'02"E, 106.31 feet from a 1" IP set at the intersection of said east 1/4 Section Line with the centerline of W. Herndon Avenue as shown on said record of survey, said point also having coordinates of North = 2188060.68 feet and East = 6285486.15 feet; thence along said high water line the following six courses: (1) N 85°10'47"W, 80.58 feet; (2) N 89°42'07" W, 104.41 feet; (3) N 80°11'49" W, 119.94 feet; (4) N 78°00'15" W, 106.08 feet; (5) N 77°19'43" W, 103.17 feet; and (6) N 84°44'22" W, 34.27 feet to the end of the herein described line.

Coordinates, bearings and distances used in the above description are based on the California Coordinate System, Zone 4 (NAD 83).

END OF DESCRIPTION

NO SCALE

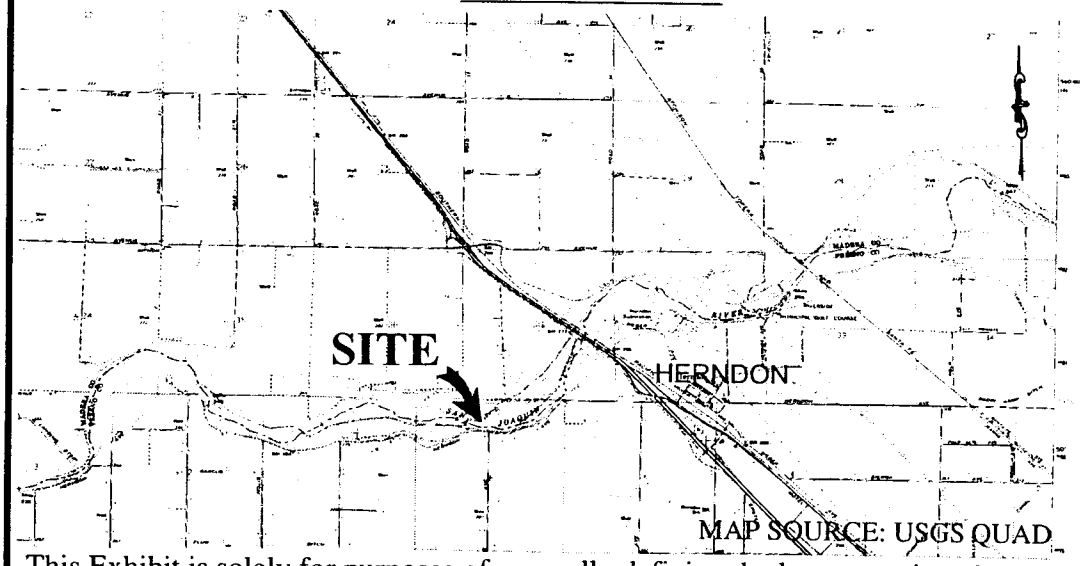
SITE



JAMES A. AND KATHLEEN MEISNER
APN 504-02-46

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit E

W 25977/BLA 273
BOUNDARY LINE
AGREEMENT
SAN JOAQUIN RIVER
FRESNO COUNTY

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

JAK 03/04