

**EXPLANATORY ATTACHMENT**  
**to the SWRCB's Online Form Entitled:**  
**“Informational Order Supporting Data”**  
**(Due March 6, 2015)**

**Use of Water:** If multiple Statement Numbers (i.e., “Points of Diversions”) are used to irrigate the same field or parcel, the acreage of that field or parcel is divided evenly among those Statement Numbers and each Statement Number is reported as serving its fractional share.

**Riparian Rights:** The riparian patent date is the date of the patent from the United States to the State or from the United States to a private party as derived from the referenced Bureau of Land Management records website provided in the online form. If available, the patent date from the State to the private party is used in lieu of the patent date provided by that site. The date of priority for riparian lands is expected to relate back to the time of settlement prior to patent.

The online form has been marked “no” as to severance of riparian rights. The question on the form is compound but in any event the term “severance” reflects a legal conclusion which must be determined in a court adjudication.

**Pre-1914 Rights:** The Pre-1914 priority date and year that water was first used are based on the estimated time of settlement and use of water on the land where the Point of Diversion is located and/or where the Place of Use served by that Point of Diversion is located. Where available, Certificates of Purchase dates are used to support the estimates. The reporting party reserves the right to support an even earlier date as more historical evidence is located.

The claim of continuous use is made until such time as a court adjudication has determined that such use was not continuous.

**Monthly Diversions:** The “Direct Diversion” amounts for 2014 are calculated from the Excel spreadsheets posted at sjwater.org and are based on consumptive use estimates multiplied by a multiple to account for additional water that is diverted but not consumed or evaporated. Additional water is also added to the foregoing to account for field flooding, if any. The consumptive use estimates are based on the following:

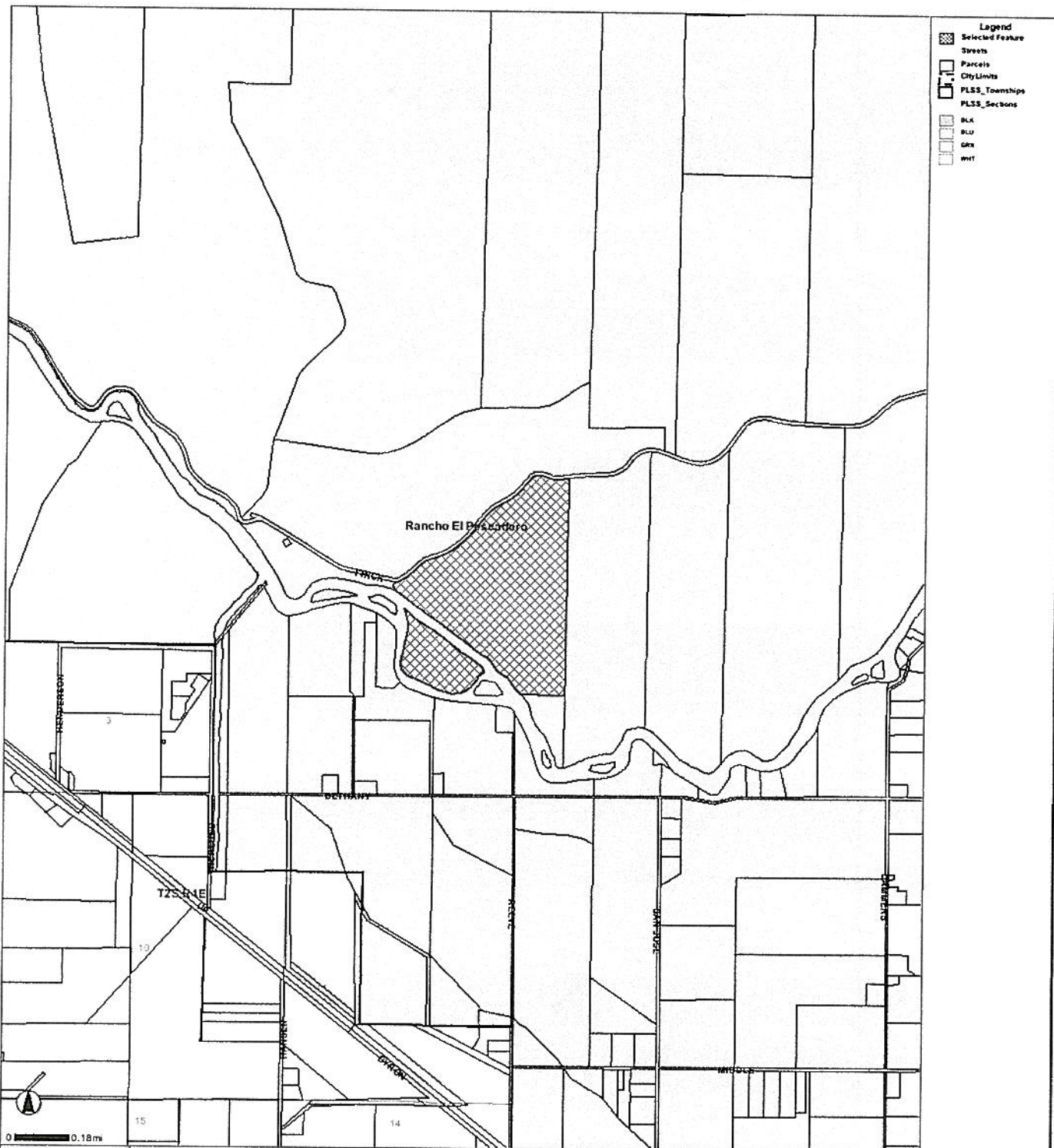
**Central and South Delta, Zone 12:** Used ITRC REPORT 03-001 ETc Table for Irrigation Scheduling and Design, Zone 12 for Surface Irrigation, Typical year adjusted for the reporting year using CIMIS monthly ETo for Manteca. For crops not covered by the ITRC report ETc was determined using ratios to alfalfa from Table A-5, DWR Bulletin 168, October 1978.

North or West Delta, Zone 14: Used ITRC REPORT 03-001 ETc Table for Irrigation Scheduling and Design, Zone 14 for Surface Irrigation, Typical year adjusted for the reporting year using CIMIS monthly ETo for Lodi West. For crops not covered by the ITRC report ETc was determined using ratios to alfalfa from Table A-5, DWR Bulletin 168, October 1978.

The “Projected Direct Diversion” amounts for 2015 are derived in the same manner, and based on the same 2014 Excel Spreadsheets, as the amounts for 2014 except that the amounts for 2015 take into consideration any anticipated changes in acreage or crops compared to 2014.

Because the online form instructs: “Do Not report the same value for Riparian and Pre-1914,” the amounts directly diverted are entered into the Pre-1914 boxes and the number one is inserted into the Riparian boxes. Until the Pre-1914 and Riparian rights are adjudicated they are overlapping rights that cannot be legally separated. Moreover, the claim of right for this Statement Number also includes overlying rights, statutory rights and rights derived from use for more than 120 years which can likewise overlap in various respects. (Note: these rights also overlap with any *post*-1914 and contract rights that may be applicable to the places of use at issue herein.)

**Maximum Rates of Diversion:** The maximum rates of diversion are determined by estimating head conditions and using the siphon and pump capacity graphs posted at sjwater.org. Fluctuation of water levels due to changes in river flows, tides and numerous other factors renders determination of maximum diversion rates somewhat inexact. The relevance of such a maximum rate determination is questionable in that in many cases the maximum rate is not used or only used for a limited period. To avoid double counting, the maximum rates are only entered into the Pre-1914 rights boxes (even though those rates likewise apply to the overlapping Riparian rights).



**SJC Surveyor Land Records**

**San Joaquin County Geographic Information Systems**

1810 East Hazelton Avenue, Stockton, California 95205

189 050 44 5016492

The information on this map is based on the most current information available to San Joaquin County Geographic Information Systems.



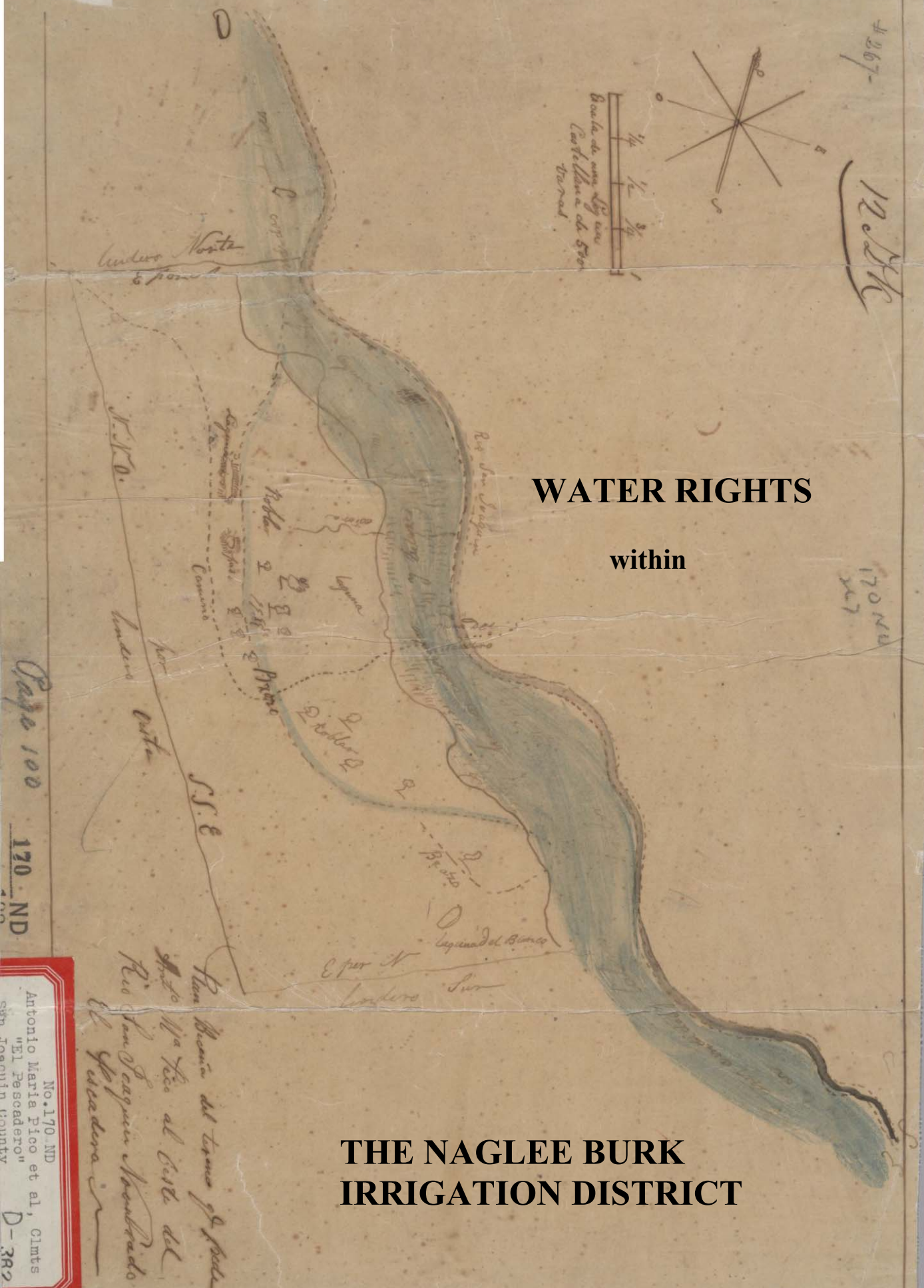
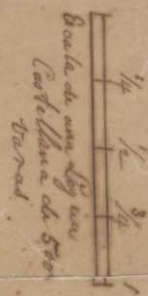
**PRE-1914 RIGHT ASSOCIATED WITH LANDS ORIGINALLY CONTAINED IN PESCADERO LAND GRANT**

Lands which were originally contained in the Rancho El Pescadero Land Grant did not go through the then normal procedure of acquiring property from the State or Federal government via the Certificate of Purchase and Patent. The Land Grant ownership, which was continually disputed by the government, was eventually found to be valid under the Treaty of Guadalupe Hildago and title confirmed via a patent from the US Government.

In support of the creation of a pre-1914 right (as well as the riparian right), included herewith is the historical and legal analysis of the Land Grant by the attorney for the Naglee Burk.

#267-

170 ND



# WATER RIGHTS

within

# THE NAGLEE BURK IRRIGATION DISTRICT

Page 100 170 ND

No. 170 ND  
Antonio Maria Pico et al, Clmts  
"El Pescadero"  
San Joaquin County  
D-382

Plan de las Aguas del terreno que se divide  
entre los Señores al Norte del  
Rio San Joaquin en los terrenos  
de los Señores

**WATER RIGHTS OF THE NAGLEE BURK IRRIGATION DISTRICT LANDS,  
INCLUDING THE LANDS FORMERLY WITHIN FREMONT IRRIGATION  
ASSOCIATION AND INDEPENDENT MUTUAL WATER COMPANY**

In 1850, when California was admitted to the Union, the legislature adopted the common law of England as a rule for judicial decisions. [Cal. Civil Code § 22.2] The common law as adopted included the English water rights doctrine of riparian ownership. [*Lux v. Haggin* (1886) 69 Cal. 255, 384-394; *In re Water of Hallet Creek Stream Sys.* (1988) 44 Cal.3d 448, 464]

The riparian rights of the lands contained within the original Naglee Burk Irrigation District (NBID), the former Independent Mutual Water Company (IMWC) and the former Fremont Irrigation Association (FIA) stem from the fact that those lands are, or once were, a part of a single parcel that was contiguous to Old River, and in the case of IMWC also to Tom Paine Slough.

The riparian right extends only to the *smallest* tract in the watershed of the water course held under one title in the chain of title leading to the present owner. [*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 528-529; *Phelps v. State Water Resources Control Board* (2007) 157 Cal.App.4th 79, 116] Generally, if a parcel that is not contiguous to the river or stream is conveyed by a deed that is silent as to water rights, the conveyed parcel is forever deprived of its riparian status. [*Rancho Santa Margarita v. Vail, supra*, at 538; *Phelps v. State Water Resources Control Board, supra*, at 116] Riparian rights, once severed, are not regained if parcels of a former riparian tract are subsequently conveyed into a single ownership. [*Anaheim Union Water Co. v. Fuller* (1907) 150 Cal. 327, 331] And, land adjoining riparian land cannot be acquired and given riparian status. [*Miller & Lux v. James* (1919) 180 Cal. 38, 51-52] Thus, the history of subdivision and transfer of lands once located along a water course in great measure defines the extent of the riparian right.

The task here is to trace title of the lands once abutting Old River and Tom Paine Slough and located within the original NBID, IMWC and FIA, to determine whether riparian rights were preserved in the transfers of those parcels that no longer abut the river or slough.

**The Single Original Riparian Tract: Rancho El Pescadero**

When the United States took possession of California and other former Mexican territories in 1848, it was bound by the Treaty of Guadalupe Hidalgo to honor the legitimate land claims of Mexican citizens residing in those captured territories. In order to investigate and confirm title to those lands in California, American officials acquired the provincial records of the Spanish and Mexican governments in Monterey. The Land Act

of 1851 established a Board of Land Commissioners to review those records and adjudicate those land claims, and charged the U.S. Surveyor General with surveying the confirmed claims.

On June 10, 1852, Antonio Maria Pico and Henry M. Naglee filed their claim to a tract of land called “El Pescadero”<sup>1</sup> containing eight square leagues<sup>2</sup> situate in San Joaquin County west of the San Joaquin River. Their claim was founded on a Mexican grant to Antonio Maria Pico made on November 28, 1843 by Manuel Micheltoarena, then the Mexican Governor of California.

The claim was initially rejected by the Board of Land Commissioners, and an appeal was taken to the United States District Court for the Northern District of California. That proceeding before the District Court was designated as Land Case No. 170. While that case was pending there, the United States Supreme Court decided the leading case of *Fremont v. United States* (1855) 58 U.S. 542, 15 L. Ed. 241, 17 How. 542 which set forth principles that would apply to other similar land cases, including Pico & Naglee’s. Following the Supreme Court’s decision in the *Fremont* case, the District Court issued its decision confirming the grant to Pico & Naglee. The report of that decision is found in *Pico et al. vs. United States* (1856) 19 F. Cas. 593, 1 Hoff. L. Cas. 142. However, the United States appealed that decision to the US Supreme Court as well. In 1859, in an unreported decision, the US Supreme Court issued its writ of mandate to the District Court ordering it to confirm the grant to Pico & Naglee.<sup>3</sup>

In June and July of 1861, the US Surveyor General prepared a map of the confirmed grant, which was approved on April 9, 1862 by Judge Hoffman of the District Court. That map is shown in Figure 1 below. Finally, on March 10, 1865, by order of Abraham Lincoln, the United States Land Office issued the “patent” which formally transferred title to Rancho El Pescadero, containing 35,546.39 acres, from the United States to Antonio M. Pico and Henry M. Naglee. The southern boundary running along the north line of Section 19 in Township 2 South, Range 4 East, of the Mount Diablo Base & Meridian (MDB&M), corresponds to the centerline of Grant Line Road today. The tract was riparian to the San Joaquin River on its east boundary, and Old River and Tom Paine

---

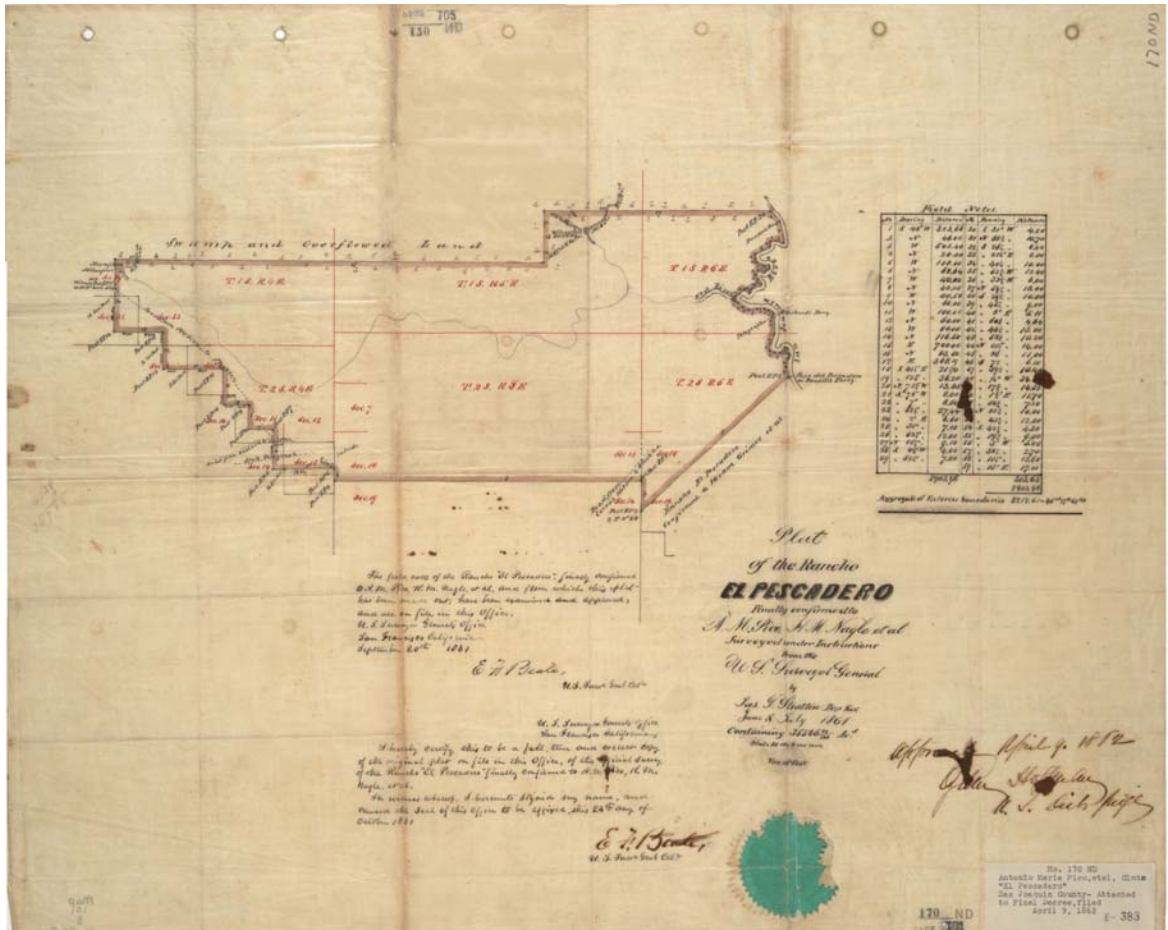
<sup>1</sup> There is another Mexican land grant that was confirmed to Hiram Grimes *adjoining* and southeast of the lands ultimately confirmed to A.M. Pico & H.M. Naglee that grant was also called “El Pescadero.” That grant was the subject of Land Case No. 137. The order confirming that grant is reported in *Grimes et al. vs. United States* (1855) 11 F. Cas. 49, 1 Hoff. L. Cas. 107.

<sup>2</sup> 1 square league is equivalent to 4,428.4 acres, thus this claim was to about 35,427 acres of land.

<sup>3</sup> The patent ultimately issued to Pico & Naglee (recorded in Vol. 1, Book P (patents), at page 126, on 5/6/1865 in the San Joaquin County Records) recited the facts of the appeal to the Supreme Court and the mandate that issued from that court.

Slough (not shown on the Surveyor's plat) which ran through it.

Figure 1



Even before his claim was filed with the Board of Land Commissioners, A.M. Pico, by deed dated 1/31/1852, conveyed his undivided  $\frac{1}{2}$  interest in the rancho to John C. Fremont (4 A 527, rec. 9/21/1853).<sup>4</sup> Fremont's undivided  $\frac{1}{2}$  interest was split into undivided  $\frac{1}{4}$  interests and those interests were further split and transferred several times in the intervening years until 1875. Each of those transfers involved an *undivided*<sup>5</sup> fraction of the whole rancho. By 1875 Fremont's undivided  $\frac{1}{2}$  interest was owned by Charles and

<sup>4</sup> This deed was recorded on 9/21/1853 at Vol. 4 of Book A of Deeds, at page 527, San Joaquin County Records, referenced as "(4 A 527, rec. 9/21/1853)." A similar shorthand notation will be used for the following official books of the County Recorder. "A" refers to Book A of Deeds, "B" to Book B of Mortgages, "G" Book G - Miscellaneous, "P" to Book P of Patents, and "OR" to "Official Records" (the later designation used when various documents were recorded sequentially in one combined set of books as opposed to differently lettered separate sets); "M&P" refers "Maps & Plats" which still remain separate.

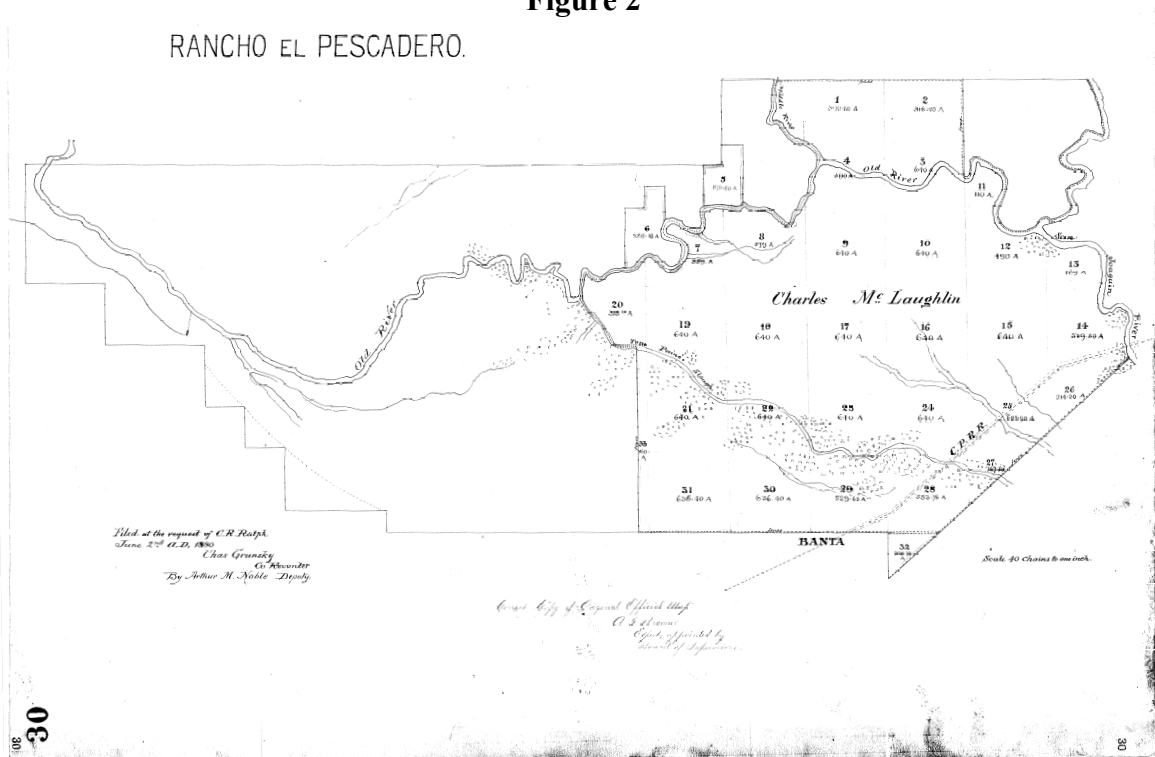
<sup>5</sup> A separate and distinct parcel was not created by any of these transactions, hence the word "undivided" is used. They are found at: 9 A 556, rec. 7/25/1859; 10 A 532, rec. 1/17/1860; 10 A 710, rec. 10/1/1860; 11 A 164, rec. 12/28/1860; 12 A 349, rec. 4/28/1862; 14 A 473, rec. 6/11/1864; 15 A 492, rec. 10/11/1865; 16 A 304, rec. 9/18/1866; 18 A 19, rec. 12/14/1867; 18 A 21, rec. 12/14/1867; 29 A 6, rec. 11/7/1874; 29 A 7, rec. 11/7/1874; and 29 A 242, rec. 1/8/1875.



Kate D. McLaughlin (undivided 7/16) and Horace W. Carpentier (undivided 1/16), and the remaining undivided ½ of the rancho was owned by Henry M. Naglee.

In November of 1875 Naglee, the McLaughlins and Carpentier partitioned the rancho into distinct parcels (31 A 96, rec. 11/17/1875). As a result of that partition, Naglee acquired sole ownership to about half of the acreage contained in the rancho, while the McLaughlins and Carpentier held joint title to the rest of the rancho. In 1877 Horace Carpentier conveyed his interest in the lands he jointly owned with the McLaughlins to Kate D. McLaughlin (35 A 534, rec. 9/20/1877). In 1880 Charles McLaughlin caused a survey to be made of the McLaughlin lands. Figure 2 below shows that survey (2 M&P 30). The portions of Rancho El Pescadero that were *not* identified by lot numbers on that plat were the remaining parts of the rancho owned by Henry M. Naglee alone.

**Figure 2**



The lands within the original NBID, IMWC and FIA were located west of the McLaughlin lands and south of Old River and Tom Paine Slough, i.e., within Henry M. Naglee’s part of Rancho El Pescadero.

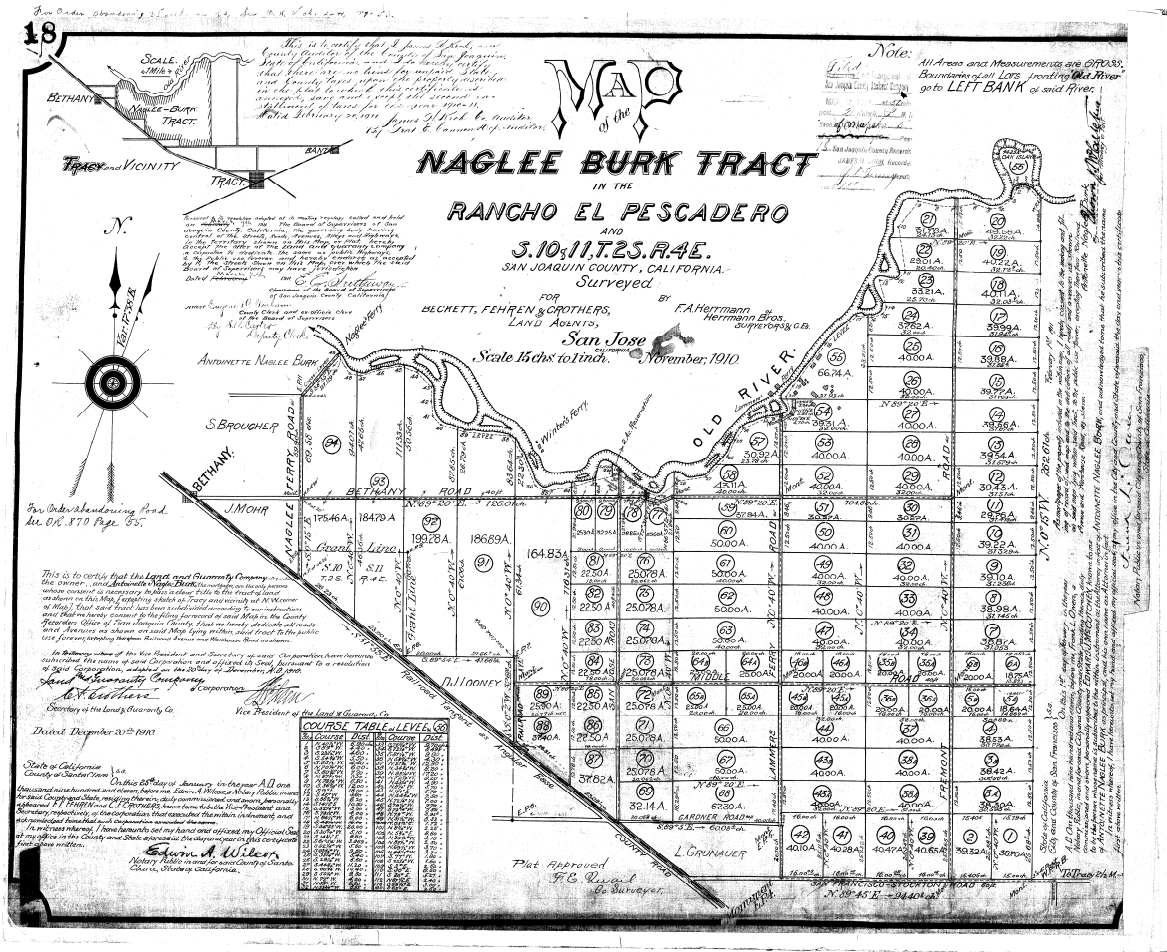
Henry M. Naglee died on March 5, 1886. His estate was settled and the Final Decree of Distribution entered on October 12, 1888, and thereafter recorded in San Joaquin County (67 A 1, rec. 11/10/1888). His real property was left to his two daughters, Marie and Antoinette Naglee jointly. On July 20, 1894 Antoinette (Naglee) Burk and Marie R. (Naglee) Robins partitioned their undivided joint interests in the lands they had inherited

from their father in Rancho El Pescadero. They accomplished this by first deeding all of their undivided joint interests to A.H. Winn (83 A 216, rec. 10/12/1894), who in turn on July 21, 1894 deeded approximately equal separate parcels back to Marie R. (Naglee) Robins (83 A. 207, rec. 10/12/1894) and to Antoinette Naglee Burk (83 A 253, rec. 11/13/1894).

### Water Rights Of The Original Naglee Burk Tract

On September 20, 1910 Antoinette Naglee Burk conveyed a portion of her lands to land agents Beckett, Fehren & Crothers (193 A 264, rec. 10/6/1910), who on November 4, 1910, conveyed it to the Land and Guaranty Co. (167 A 633, rec. 11/22/1910). Both of these deeds recited that the land conveyed included "all water rights appurtenant thereto." On March 7, 1911 the Land and Guaranty Co. recorded a subdivision map of that land, called the Naglee Burk Tract (5 M&P 18) shown in Figure 3 below.

Figure 3



An agreement dated September 21, 1912 between the Land and Guaranty Company and the Naglee Burk Irrigation Association (211 A 497, rec. 9/27/1912), the predecessor of NBID, contained the following pertinent provisions (which are numbered sequentially here

for reference purposes only):

1. "... the Land Co. has claimed and appropriated from Old River adjoining said Tract water for the irrigation of said Tract and has given the proper notice of said claim and appropriation by posting written notice thereof and recording a copy of such notice as required by law."<sup>6</sup>
2. "... the Land Co. has planned laid out, constructed and installed an irrigation system for the proper irrigation of all of the lands of said Tract and also certain other lands adjoining said Tract which can be practically irrigated through said system and a drainage system for the drainage of certain lands of said Tract."
3. "... the Land Co. has subdivided said Tract and has entered into and is continuing to enter into, contracts for the sale of lots, subdivisions or parcels of said Tract and that in and by said contracts the Land Co. agrees to cause to be organized an irrigation association to own, maintain and operate said system for the benefit of the owners of the lands in said Tract, one share of the capital stock of said association to be issued to the owner of each acre of the lands to be irrigated or drained by said system and the cost of the maintenance and operation of said system to be assessed against the lands to be irrigated or drained."

The agreement conveyed to the irrigation association the following rights:

4. "All necessary rights of way for, and the privilege of constructing, maintaining and using irrigation ditches and drainage ditches over and across the said Naglee Burk Tract or any subdivision thereof, for the purpose of, and of sufficient dimensions to supply water for and to irrigate and drain that portion of the property of the Land Co. that lies south of Old River, and known as the "Naglee Burk Tract"; also the same right of going upon said land or any subdivision thereof for the purpose of constructing, repairing, enlarging and altering the said ditches."
5. "All water and water rights in or adjoining said Naglee Burk Tract, or said Old River, owned or controlled by said Land Co. or in which said Land Co. is interested and particularly the right to take from Old River ten thousand miner's inches of water for irrigation purposes."
6. "All water and water rights for irrigation purposes appurtenant to said Naglee Burk Tract."

And, the irrigation association agreed to the following:

7. "... all water and water rights now or hereafter owned or controlled by said

---

<sup>6</sup> This pre-Water Commission Act notice of appropriation was recorded on September 13, 1912 (28 G 165). It appropriated 10,000 miners inches from Old River, which is the equivalent of 250 cubic feet per second (cfs), for the benefit of the entire Naglee Burk Tract. This appropriative right (sometimes called "pre-1914 appropriative" or "appropriated" right because the Water Commission Act became effective in 1914) is *in addition to* the riparian right of the owner of the Naglee Burk Tract held because that tract adjoined Old River: ("It is established in California that a person may be possessed of rights as to the use of the waters in a stream both because of the riparian character of the land owned by him and also as an appropriator." [*Rindge v. Crags Land Co.* (1922) 56 Cal.App. 247, 252; cited in *Pleasant Valley Canal Co. v. Borrer* (1998) 61 Cal.App.4th 742 at 774; see also: *Healy v. Woodruff* (1893) 97 Cal. 464, 466-467])

Irrigation Assn. and the right to receive and be furnished with water for irrigation purposes shall be and become appurtenant to, and shall pass by conveyance or transfer of, the lands of said Tract hereinafter described and such other lands as shall hereafter be brought under said system and shall be appurtenant to pass with each and every subdivision of said lands . . .”

8. “... the water herein agreed to be furnished shall not be used by the Land Co., its successors or assigns, upon any other lands than those hereinafter described nor shall said water be used to excess or to go to waste.”<sup>7</sup>
9. “... one share per acre of the capital stock of said Irrigation Assn., and no more, shall be issued to the owner of land to be irrigated or drained by said system, and said stock shall be appurtenant to the land; and the certificates for the stock so issued shall contain a description of the lands to which the stock is appurtenant as provided in Section 324 of the Civil Code of the State of California, and said stock shall pass as an appurtenance to the land described in the certificate.”

The effects of a plan like the foregoing plan, of subdivision of lands with the issuance of stock in a private water company organized to irrigate and drain the subdivided lands, on the riparian rights of the lands to an adjoining river were addressed by the California Supreme Court in the case of *Copeland v. Fairview Land and Water Co.* (1913) 165 Cal. 148 as follows:

“In the early part of the year 1887, that company, which we will hereafter designate the Fairview Company, was the owner of a tract of land containing 2897 acres of land known as the Fairview Tract, abutting upon the San Jacinto River and being a part of a larger tract comprising a Mexican grant known as the Rancho San Jacinto Viejo. This tract being riparian to the stream, the company had the right to use the water upon the land and to that extent it owned an interest in the waters of the river. ... The land and the water together were very valuable; separately, the land, at least, was comparatively worthless. The Fairview Company adopted the plan of selling the land in parcels together with a share of the water, charging a lump sum for each parcel of land combined with a proportionate share of the water. For this purpose it had the land surveyed and subdivided partly into town lots and partly into parcels of twenty acres each. Thereupon it announced that it had a water supply for the use of such land; that it would pipe such water to each parcel thereof so surveyed, and that it would sell the land with the right to receive a proportionate share of the water for use thereon at the prices fixed. In order to carry out this plan respecting the water, the Fairview Company, through its board of directors, organized a subsidiary company, called the Florida Water Company, with a capital stock of twenty thousand shares of the nominal par value of five dollars each. To the

---

<sup>7</sup> Had this clause *not* been added, the appropriated water could be used on other lands regardless of whether those lands were riparian or had appropriated water rights. One material difference between the riparian right and the appropriative right is that the riparian right to use the water from the adjoining river cannot be used or diverted for use on non-riparian lands [*Miller & Lux v. Enterprise Canal & Land Co.* (1915) 169 Cal. 415, 440-441], whereas *appropriative* water surplus to the reasonable needs of riparians along the watercourse *can* be diverted to other non-riparian lands. [*San Joaquin & Kings River Canal & Irrig. Co. v. Fresno Flume & Irrig. Co.*, (1910) 158 Cal. 626, 630; *Miller v. Bay Cities Water Co.* (1910) 157 Cal. 256, 280-281]

Florida Company it conveyed all of its rights in the water of the San Jacinto River and its tributaries aforesaid, receiving in exchange therefor all the said stock of the Florida Water Company, except fifty shares which were retained to be used to qualify persons to act as directors and which were accordingly issued to persons designated by the Fairview Company, who thereupon became directors of the Florida Company. The certificates issued by the Florida Company, as evidence of its shares of stock, each declared in substance that for each share of such stock the holder thereof was entitled to one-twenty-thousandth part of the water belonging to the Florida Company. Thus, in effect, the water-right attached to this land became the property of such stockholders. The purpose of the Fairview Company in organizing this auxiliary company, was to facilitate the sale of a proportional part of the water-right with each sale of a parcel of land. Accordingly each agreement of sale provided that five shares of said stock would be sold with each acre of land and one share with each town lot, and that the Fairview Company would pipe the water to each parcel. As the parcels were conveyed to the respective purchasers, the stock was transferred in accordance with the agreement. The agreement also provided that the stockholders of the Florida Company must thereafter bear the expense of keeping up the water system. ... Each purchaser of land in this manner bought and paid for his due proportion of the water-right. The money for the construction of dams and conduits necessary for the diversion and distribution of the water to the several parcels was furnished by the Fairview Company, partly before and partly after it deeded its water-rights to the Florida Company.”

\* \* \*

“The water-right in question was a riparian right arising from the fact that the lands abutted upon the river. It originally extended and attached to every part of the Fairview Tract. *The device of organizing the Florida Water Company, transferring to it the water-right, receiving immediately from it certificates of stock declaring the holder of each share entitled to a proportional part of the water-right, and thereupon selling the land in parcels together with a proportional number of the shares of stock, was a scheme for the apportionment of the water-right to the several parcels of land so that each could thereafter be conveniently sold with its proper share of the water-right. In effect it preserved the riparian right to the several parcels of land, regardless of their proximity to the stream, and vested in the owner of each parcel, as soon as it was sold to him, a proportional part of the riparian right originally held by the Fairview Company in the waters of the stream.* That such riparian right can be thus preserved in parcels which do not border upon the stream when, by the conveyance, they are severed from the original riparian tract, is fully settled by the decisions in this state. (*Strong v. Baldwin*, 154 Cal. 157, [129 Am. St. Rep. 149, 97 Pac. 178]; *Rose v. Mesmer*, 142 Cal. 328, [75 Pac. 905]; *Anaheim etc. Co. v. Fuller*, 150 Cal. 331, [11 L.R.A. (N.S.) 1062, 88 Pac. 978]; *Verdugo etc. Co. v. Verdugo*, 152 Cal. 663, [93 Pac. 1021]; *Hudson v. Dailey*, 156 Cal. 624, [105 Pac. 748].)”

[*Copeland v. Fairview Land and Water Co.*, *supra*, 165 Cal. 148, 157-158, 161 (italics, bold italics and underlining added); see also: *Locke v. Yorba Irrig. Co.* (1950) 35 Cal.2d 205, 209-210]

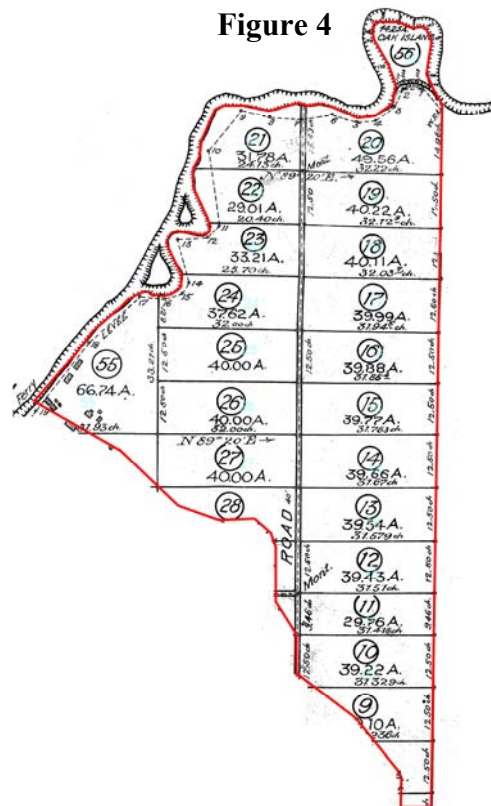
Thus, paraphrasing the *Copeland* case, given the “scheme of apportionment” of the water rights within the entire Naglee Burk Tract, each irrigable parcel within that tract which received shares of stock (representing its part of the water rights of the entire tract) was “vested with a proportional part of the riparian right originally held by” the Land and Guaranty Company in the waters of Old River “regardless of its proximity to the Old River,” as well as the proportionate part of the pre-1914 appropriative water.

NBID took over the property and operations of the Naglee Burk Irrigation Association in 1921 (491 A 197, rec. 12/5/1921). The individual parcels within the district that are served with irrigation water have at all times since 1912 been entitled to their proportionate part of the water rights owned by its predecessor, the Naglee Burk Irrigation Association. Under the rule of law announced in the *Copeland* case, *supra*, the owners of each of the irrigable parcels within the district, even those which are not now contiguous to Old River, continue to have the proportionate share of the riparian and appropriated water rights of the entire Naglee Burk Tract. [see also: *Miller & Lux v. James* (1919) 179 Cal. 689, 690-691]

### Water Rights Of Lands Within The Former Fremont Irrigation Association

#### 1) The Part Originally Within The Naglee Burk Tract

On September 23, 1912, the Land and Guaranty Company deeded to Louis Titus the 809.7-acre part of the Naglee Burk Tract lying northeast of the main canal in that tract (219 A 359, rec. 10/1/1912) shown outlined in red in Figure 4 below:



Old River abutted this land on the north and west, which meant that it would continue to be riparian to Old River. Despite the land remaining contiguous to the river, the deed from the Land Co. to Titus expressly granted to him:

“... all water and irrigation rights and all other rights and privileges running and inuring to the benefit of the owner of the above described land under that certain Deed and Agreement by and between Land Guaranty Company and the Naglee Burk Irrigation Association, dated the 21st day of September, 1912.

Also 757 shares<sup>8</sup> of the capital stock of Naglee Burk Irrigation Association.”

Thus, the irrigable part of the 809.7-acre portion of the Naglee Burk Tract conveyed to Louis Titus shown in Figure 5 included *both* the appurtenant riparian right *and* pre-1914 appropriative right (see footnote 6, *supra*).

The fact that water serving this 809.7-acre parcel was later diverted water from pumps to the east of it, and across the Marie Robins Tract then owned by Whitehall Estates, Inc., did not diminish the pre-1914 appropriative right and the riparian right of this part of the Naglee Burk Tract conveyed to Titus. Water need not be diverted at a place situated on the riparian land itself. The water can be diverted across other and intervening riparian or nonriparian lands. [*Turner v. James Canal Co.* (1909) 155 Cal. 82, 92; *Holmes v. Nay* (1921) 186 Cal. 231, 240; *Fall River Valley Irrig. Dist. v. Mt. Shasta Power Corp.* (1927) 202 Cal. 56, 71-72] A riparian and pre-1914 appropriative owner may change the point or the means of diversion so long as the water rights of others are not injured by the change. [Cal. Water Code § 1706; *Byers v. Colonial Irrig. Co.* (1901) 134 Cal. 553, 555; *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, 1367-1368]<sup>9</sup>

## **2) Disassociation Of The Titus Land From The Naglee Burk Association**

By the time NBID took over the property and operations of the Naglee Burk Irrigation Association in 1921, the 809.7-acre parcel was no longer a part of the association. As the report of W.D. Harrington, NBID’s engineer, dated March 4, 1921, and found at pp. 34 through 57 of the minutes of NBID, at p. 38, explains:

“... there were other means provided for irrigating that portion of the original tract

---

<sup>8</sup> Certain parts of the Naglee Burk Tract were not, and are not, irrigable. Those areas above the level of the irrigation ditches, including the levees and lands on the river side of the levees lying along the northern and western boundaries of Lots 20, 21, 22, 23, 24 and 55, and all of “Oak Island” (Lot 56) of the Naglee Burk Tract were excluded from the Naglee Burk Irrigation Association [see Exceptions 2 through 8 in the agreement dated September 21, 1912 between the Land and Guaranty Company and the Naglee Burk Irrigation Association (211 A 497, rec. 9/27/1912)]. Hence, the number of the shares of stock, representing the irrigable riparian land, is less than the total number of acres conveyed to Titus by this deed.

<sup>9</sup> Water Code § 1706 states: “The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe or aqueduct by which the diversion is made to places beyond that where the first use was made.”

lying north and easterly of the Lower Main Canal, it was released from the Naglee Burk Irrigation Association by proper resolution of its Board of Directors, February 26, 1914.”

The “other means provided” was an irrigation system built and put into operation in 1913 on the Titus Ranch encompassing the 809.7-acre tract *and* approximately 2000 acres of land to the east of it. That irrigation system is described in the affidavits of Martin Bronich and Nicholas P. Buskovich dated May, 21, 1942, the originals of which are found in the records of IMWC. Mr. Bronich’s affidavit states in relevant part:

“That ever since tye [*sic.*] year 1895 affiant has owned property and has lived upon the same across the river from the tract of land which has later been known as the Whitehall Estate, or Achsah J. Stimson Estate Company, of which the aforesaid described land <sup>10</sup> is a part; that during the year 1913 an irrigation system was installed and by means of pumps and ditches water was taken from Old River and distributed on the aforesaid land; that affiant, during the said year of 1913, rented horses and equipment for the purpose of digging the said ditches and installing the said system; that ever since the said year of 1913 the said irrigation system has been operated every year;”

and, Mr. Buskovich’s affidavit states in relevant part:

“That during the calendar year of 1913 affiant was working for Louis Titus, who was then connected with the farming of the aforesaid land, above-described <sup>10</sup>; that during the said year of 1913 irrigation water was taken from Old River for irrigation purposes by means of pumps and canals and distributed on the said land; that during the said year of 1913 affiant helped to dig the irrigation ditches for the purpose of irrigating the said land, and also helped to distribute the water from Old River on the said land; that ever since the year 1913 the said land has been under the same irrigation system that was then installed, and the said irrigation system has been operated every year; that as far as affiant knows irrigation water from Old River has been distributed upon the said land each year beginning with the year 1913.”

The fact that the 809.7-acre parcel was no longer a part of the Naglee Burk Irrigation Association and was served by a different irrigation system did *not* mean that it lost its water rights. <sup>11</sup>

### **3) The Part Originally Within The Robins Tract**

The lands south of Old River conveyed to Marie R. Robins when she and her sister

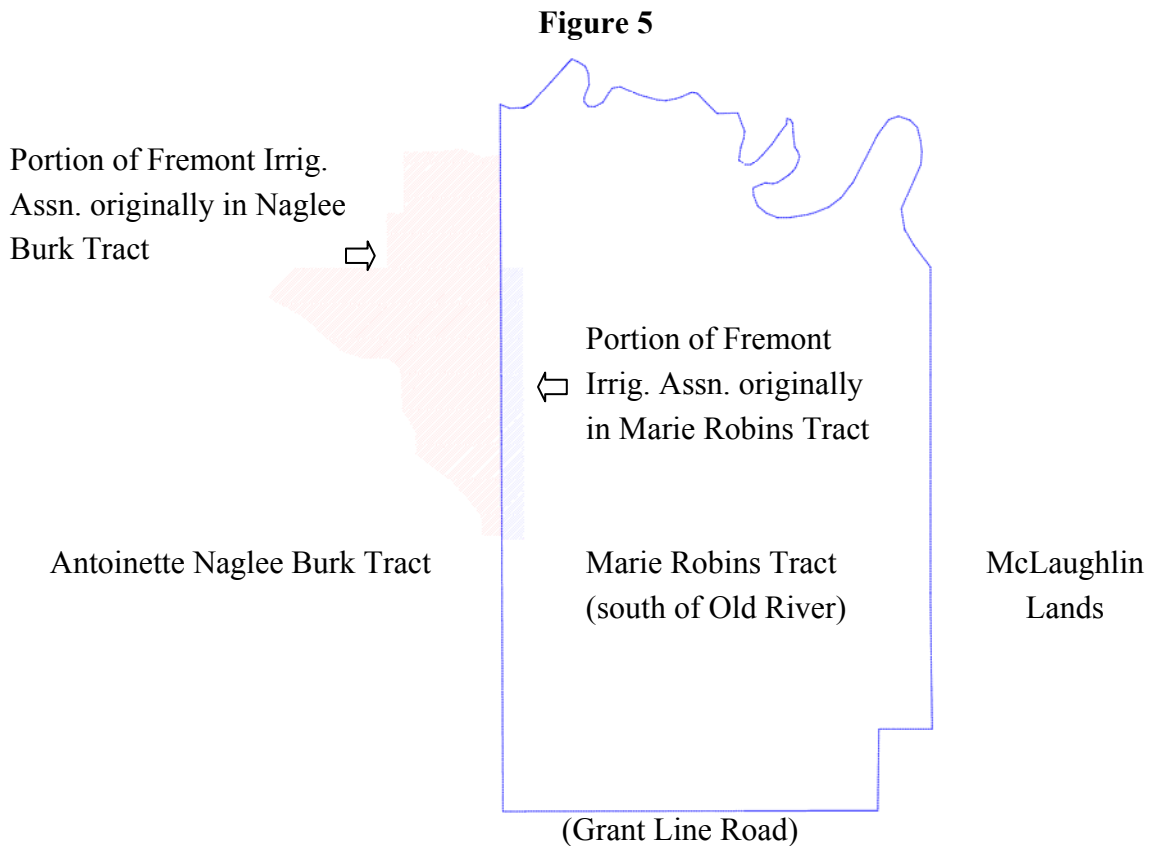
---

<sup>10</sup> The affidavits refer specifically to Lots 1, 5 and 6 in Block 22 of Tracy Garden Farms as shown on the map recorded as 8 M&P 1 (rec. 10/2/1913) which was a part of the land owned by Whitehall Estates, Inc.

<sup>11</sup> The deed to Titus transferred the land *with* the shares of stock representing the proportionate part of the “water rights” (riparian and appropriative) in the association. This is sufficient evidence of intent to convey those water rights *with* the land even if it was “remote” from the stream. [*Copeland v. Fairview Land and Water Co.*, *supra*, 165 Cal. 148, 157-158, 161; *Miller & Lux v. James*, *supra*, 179 Cal. 689, 690-691; *Locke v. Yorba Irrig. Co.*, *supra*, 35 Cal. 2d 205, 209-210] And, as already discussed the water could be diverted from a place apart from that land and brought across intervening land.



Antoinette Naglee Burk partitioned the land they had inherited from their father (83 A. 207, rec. 10/12/1894), were situated between the McLaughlin lands to the east and what became the Naglee Burk Tract to the west. A plat of the Robins lands south of Old River is shown outlined in blue lines in Figure 5 below. The portion of those Robins lands which were later included in FIA is hatched in blue on this plat. That blue strip was a part of parcel “Second” conveyed by Marie R. Robins to Louis Titus in the deed dated August 23, 1917 (317 A 83, rec. 8/31/1917) and was included, along with the 809.7-acre parcel originally part of the Naglee Burk Tract, in the deed dated February 28, 1916 from Whitehall Estates, Inc. back to Alice Titus (261 A 565, rec. 3/14/1916).<sup>12</sup>



This deed to Alice Titus (261 A 565, rec. 3/14/1916) provided in part:

“In connection with the grant of said land, there is hereby granted to said Alice Titus and her successor a permanent right to use the water from the irrigation

<sup>12</sup> Prior to actually acquiring title to the relevant part of the Marie Robins Tract, Louis Titus and his wife Alice Titus, by deed dated December 14, 1914 (250 A 380, rec. 12/31/1914) had already conveyed that part of the tract to Whitehall Estates Inc., a New York corporation, and subsequently, by deed dated February 28, 1916 (261 A 565, rec. 3/14/1916) Whitehall Estates, Inc. conveyed the lands to Alice Titus. First Whitehall Estates, Inc., and later Alice Titus, thus acquired title by the doctrine of “after-acquired title” codified in California Civil Code § 1106, which states: “Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.” [see: *Cecil v. Gray* (1915) 170 Cal. 137, 139-140; *Noronha v. Stewart* (1988) 199 Cal.App.3d 485, 489-490]

system belonging to Whitehall Estates, Inc. situated on the land of said Whitehall Estates, Inc. as shown on the said map of Tracy Garden Farms to the full proportion of said water produced by said system in the proportion that the number of acres hereby conveyed bears to the entire number of acres irrigated by said system. This right includes the right to the use of the pump and machinery and the main ditches leading to the land hereby conveyed. The land hereby conveyed shall be annually charged with its full proportion of the cost of operating said system, not exceeding the sum of one and one-half dollars \$1.50) [*sic.*] per acre foot of water delivered to said land, and WHITEHALL ESTATES, INC. agrees to operate said irrigation system and deliver water permanently to the said land hereby conveyed as the same is reasonably required.”

On August 23, 1917 (315 A 97, rec. 9/13/1917) Alice and Louis Titus deeded the same land to Edith Simpson Pike. This deed recited that it included:

“... all the rights and privileges granted unto the said Alice Titus, one of the parties of the first part herein, by that certain deed executed by Whitehall Estates, Inc., a corporation duly organized and existing under the laws of the State of New York, to said Alice Titus dated February 28, 1916, and recorded March 14, 1916 in Book “A” Vol. 261 of Deeds page 565, San Joaquin County Records.”

The Marie Robins Tract abutted Old River and Tom Paine Slough and therefore had riparian rights when Marie and her sister Antoinette partitioned their lands. The deed from Whitehall Estates, Inc. to Alice Titus specifically granted the rights to use the irrigation system on the Whitehall Estates land (part of the original Marie Robins Tract), and the deed from Titus to Edith Simpson Pike specifically referred to those rights granted Alice Titus in the deed from Whitehall Estates, Inc. This explicit reference to those water rights in those deeds indicated the parties’ intent to transfer them *with* the land and was sufficient to convey the riparian rights and prevent “severance” of those riparian rights because the hatched blue strip on Figure 5 was no longer “contiguous” to Old River. [see cases in footnote 11, *supra*] Whatsoever, the rule that a riparian owner may change the point or the means of diversion so long as the water rights of others are not injured meant that this strip of land *and* the 809.7-acre parcel could receive water diverted at any other point along the river and flowing across the intervening Marie Robins Tract.

#### **4) The Water Rights Expressly Granted To Edith Simpson Pike**

Title to the parts of the Marie Robins Tract located east of the blue hatched strip on Figure 5 was conveyed by Robins and her husband to J.H. and Dolly DeVine by deed dated August 23, 1917 (302 A 461, rec. 8/30/1917), and then conveyed by the DeVines to the Pacific Sugar Corporation by deed dated August 30, 1917 (302 A 486, rec. 9/8/1917). While the DeVines briefly owned that land, they made two conveyances, both dated August 23, 1917, pertaining to water rights and the irrigation system on their land. The first was a grant to Louis Titus (317 A 82, rec. 8/31/1917) for a pipeline across Blocks 1

and 2 as shown on the map of Tracy Garden Farms (8 M&P 1) and a right to take water across :

“... from the Pumping Plant at the end of the Dredger-cut on Lot Seven (7) Block One (1), and the permanent right to maintain said pumping machinery and the building containing the same, and the electric power line leading thereto across ... [*the Devines' land*] ... also a permanent right to maintain the dredger-cut leading to the pumphouse, and the permanent right to take water from said dredger-cut for the irrigation of the lands served by said pipe-line ... being the lands described in that certain deed dated February 28, 1916, from Whitehall Estates, Inc. to Alice Titus ...”

And, the second was a grant to Edith Simpson Pike (317 A 86, rec. 8/31/1917) which provided in part as follows:

“That the first parties [*the DeVines*] ... have granted and do hereby grant unto said second party [*Pike*], her heirs, administrators, successors and assigns, forever a permanent right to use the water from the irrigation system formerly operated by Whitehall Estates, Inc. ... to the full proportion of said water produced by said system in the proportion that the number of acres owned by said second party [*Pike*] in “Tracy Garden Farms” bears to the entire number of acres irrigated by said system. Said second party’s land has an area of approximately nine hundred (900) acres ...

This right includes the right to use the pump and machinery and the main ditches leading to the land above described. The land irrigated under this right shall be annually charges [*sic.*] with its full proportion of the cost of operating said system, including depreciation, not exceeding one and one-half dollars (\$1.50) per acre foot of water delivered to said land; and first parties [*the DeVines*] agree to operate said irrigation system and deliver water permanently to said land as the same is reasonably required. ...”

By 1919 the land conveyed by the DeVines to Pacific Sugar Corporation land was owned by the Valley Land and Sugar Company <sup>13</sup> which was operating the irrigation system formerly owned by Whitehall Estates and supplying water to the Edith Simpson Pike lands.

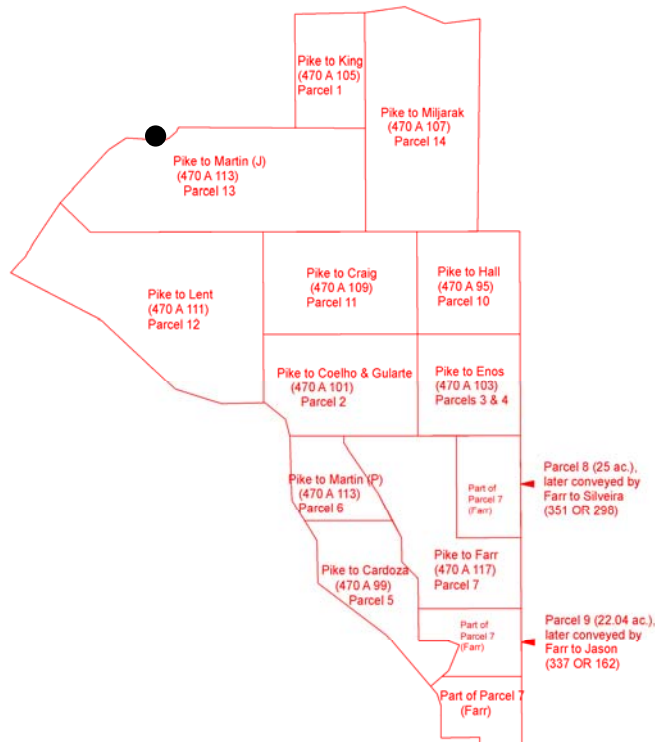
---

<sup>13</sup> Pacific Sugar Corporation defaulted on its “mortgage and deed of trust” dated 11/18/1916 (133 B 324, rec. 9/8/1917), and the trustee (Savings Union Bank and Trust Co.) sold the land at trustee’s sale on 9/29/1919 to H.R. Macmillan and Oscar Sutro, who assigned their claim to the property to Valley Land and Sugar Co. to which the trustee then deeded the land on October 9, 1919 (395 A 116, rec. 10/17/1919). This deed expressly stated that title was subject to the permanent right of Louis Titus, his heirs and assigns, forever, to maintain a pipe line across Blocks 1 and 2, of Tracy Garden Farms, from the pumping plant at the end of the dredger cut on Lot 7 in Block 1; and the permanent right to maintain the pumping plant, the machinery, the building, and the electric power line leading to it; and the a permanent right to maintain the dredger cut along the eastern line of the property and the siphon supplying the dredger cut with water from Tom Paine Slough; and the permanent right to take water from the dredger cut for irrigation purposes, and to use the water of the irrigation system situated on the property; all “as set forth in the deed dated August 23d, 1917, from the DeVines to Titus, recorded on 8/30/1917 [*sic.*]” The trustee’s deed was also subject to the permanent right of Edith Simpson Pike, her heirs and assigns forever, to use the water from that irrigation system in proportion that the 900 acres she owned bore to the entire number of acres irrigated by the system.

## 5) Organization Of FIA And Its Assumption Of Irrigation Responsibilities

Edith Simpson Pike and her husband conveyed the lands within what would later become the FIA by the following deeds to the following grantees: to J.D. and Sadie Hall (470 A 95, rec. 2/28/1920); to Albert Cardoza (470 A 99, rec. 2/28/1920); to John M. Coelho and Frank Gularte (470 A 101, rec. 2/28/1920); to Joe and Frank Enos (470 A 103, rec. 2/28/1920); to Wm. J. King (470 A 105, rec. 2/28/1920); to Martin Miljarak (470 A 107, rec. 2/28/1920); to W.P. Craig (470 A 109, rec. 2/28/1920); to V.H. Lent (470 A 111, rec. 2/28/1920); to James A. Martin (470 A 113, rec. 2/28/1920); to Philip Martin (470 A 115, rec. 2/28/1920); and to Edwin and Henry Farr (470 A 117, rec. 2/28/1920). A plat of the parcels conveyed by these deeds is shown on Figure 6 below: <sup>14</sup>

**Figure 6**



Each of the deeds from the Pikes to these grantees referred to the agreement between the DeVines and Edith Simpson Pike, dated August 23, 1917, and recorded on 8/31/1917 at 317 A 86, and contained the following clause:

“The Grantors hereby grant to the Grantees a pro-rata right for the benefit of the aforesaid premises for the purchase of water for irrigation purposes and to the use of pumps and machinery and main ditches leading thereto as provided in said agreement. ...”

FIA was incorporated in July of 1920, presumably to collect the annual fees from

<sup>14</sup> The parcel numbers on this plat show the parcels that were contained within the Fremont Irrigation Association as reflected in the bylaws of the association as revised in 1936.

these landowners and pay them to the Valley Land and Sugar Company for providing irrigation and drainage of their lands.

By August of 1927 the Valley Land and Sugar Company sought to be relieved of its obligation to operate the irrigation system for the lands within FIA. It sought from the landowners their relinquishment of all rights to use the water from its irrigation system whereby "... the adoption of a plan will be made possible wherein and whereby the lands ... may be more effectively irrigated." (see: 239 OR 92 at p. 93, dated 9/24/1927, rec. 3/26/1928) That plan was apparently to construct a pumping plant on Old River on the lands then owned by James and Lottie Martin who owned "Parcel 13" shown in Figure 6 above. Thus, by deed dated August 2, 1927 James and Lottie Martin conveyed to FIA a 30 x 260 ft. rectangular parcel of property (239 OR 94, rec. 3/26/1928) located on Old River<sup>15</sup> and described as follows:

"Commencing at a point 530 feet North and 90 feet East of the Southwest corner of Lot 13 in Block 24, as shown upon Map entitled "Tracy Garden Farms" filed for record October 2, 1913, in Vol 8 of Maps and Plats, Page 1, San Joaquin County Records; thence North 54°30' East 15 feet; thence South 35°30' East 260 feet; thence South 54°30' West 30 feet; thence North 35°30' West 260 feet; thence North 54°30' East 15 feet to the place of beginning."

By another deed of from the Martins, also dated August 2, 1927 (239 OR 95, rec. 3/26/1928), they conveyed to FIA a right of way across their land:

"... for the construction of the necessary poles for an electric transmission line leading from the existing power line *to the site of the proposed pumping plant* to be constructed by Valley Land and Sugar Company, a corporation, for and on behalf of second party [*i.e., FIA*] ..." (italics added)

And by yet another deed dated August 2, 1927 (211 OR 332, rec. 3/26/1928) they conveyed to FIA a right of way "... for the purpose of building, maintaining and operating ditches, pipe line and canals for drainage and irrigation ..." Cynthia Lent (who owned "Parcel 12" in Figure 6 above) conveyed a right of way to FIA for the same purposes. (223 OR 379, rec. 3/26/1928)

When the pumping plant was completed, Valley Land and Sugar Company by instrument dated March 26, 1928 (228 OR 279, rec. 3/26/1928) conveyed the pumping plant, situated on the 30 x 260 ft. rectangular FIA site described above, and "the pipe line, with intake and outlet structures" to FIA. To this day this location is the site of the intake pump serving the lands within the former Fremont Irrigation Association.

At the same time, by deeds dated August 1, 1927 and recorded 3/26/1928, some of the landowners within FIA relinquished their rights to receive irrigation from the lands

---

<sup>15</sup> The approximate location of this 30 x 260 ft. rectangular parcel is shown by the black dot in Figure 6.

owned and operated by Valley Land and Sugar Company.<sup>16</sup>

It is obvious from the foregoing sequence of events that the landowners within FIA did not intend to relinquish their riparian or appropriative rights to the water flowing in Old River, and as to the blue strip on Fig. 5 their rights in Tom Paine Slough. The only relinquishment was the right to take the water through the system which had once been Whitehall Estates' to the east. A substitute point of diversion<sup>17</sup> was created on Old River at the site deeded to FIA by the Martins by which the shareholders of FIA would continue to exercise their riparian and appropriative rights.

The bylaws of FIA, as amended in 1936, provide in pertinent parts as follows:

“Article 1.

\* \* \*

Stock to be Appurtenant to Land

Sec. 2. All water belonging to, or appropriated by, this Association shall be distributed, supplied and delivered only to the owners of its capital stock. ... such stock and water shall thereupon become and be appurtenant to the land ... and be transferred only with said land and shall pass as an appurtenance to said land.

\* \* \*

Sec. 5. Each share of stock of this Association shall entitle the owner thereof to the irrigation or drainage of one acre of land and no more ...”

The landowners within FIA have at all times since 1920 been entitled to shares of stock which are appurtenant to their irrigable lands representing their proportionate part of the water rights of the Association. As in the case of the Naglee Burk Tract, based on the rule of law stated in the *Copeland* case, given the “scheme of apportionment” by issuance of appurtenant shares of stock (representing the proportional part of the water right of the entire riparian tract) each parcel granted by Edith Simpson Pike to these landowners within FIA was “vested with a proportional part of the riparian right originally held by” the lands conveyed to Edith Simpson Pike in the waters of Old River “regardless of its proximity to the Old River.” The same was true of the pre-1914 appropriative right allocated to the 809.7-acre parcel that was once a part of the Naglee Burk Tract.

---

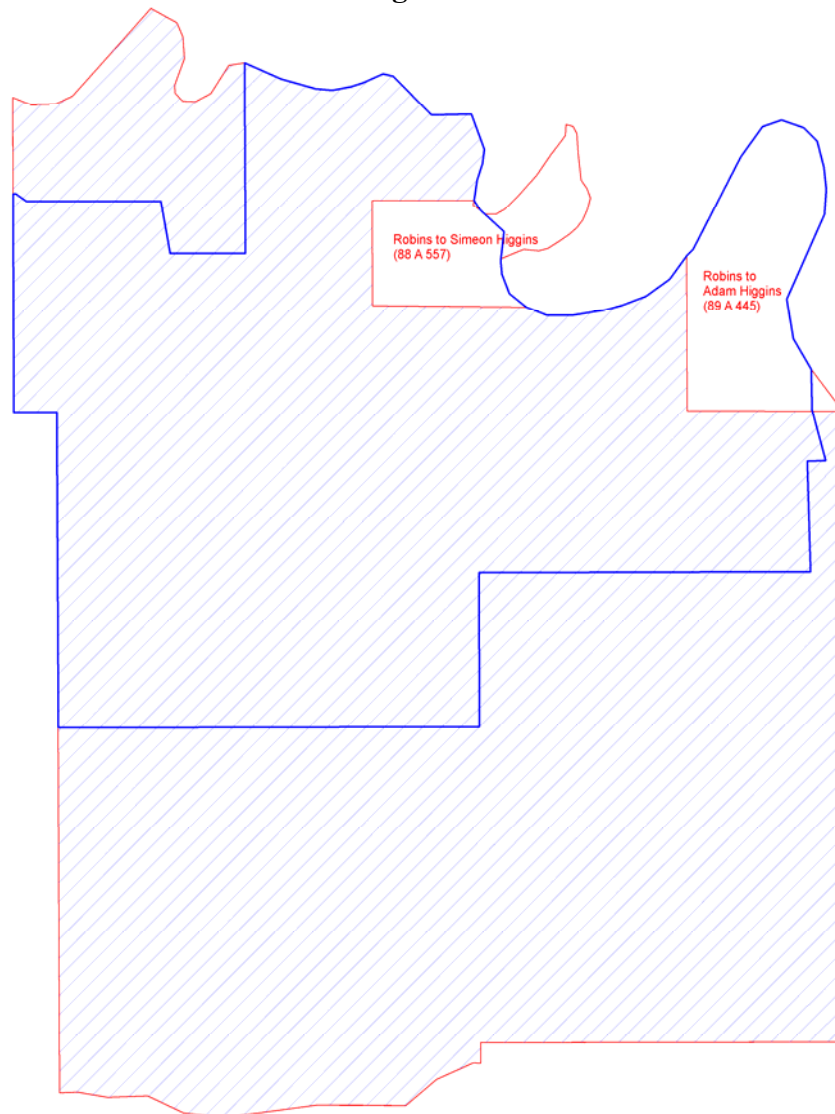
<sup>16</sup> These deeds are found at the following places: 239 OR 84 (P. Martin – Parcel 6 on Fig. 6); 239 OR 86 (Farr – Parcel 7 on Fig. 6); 239 OR 88 (Enos – Parcel 4 on Fig. 6); 239 OR 89 (Enos – Parcel 3 on Fig. 6); 239 OR 91 (Coelho & Gularte – Parcel 2 on Fig. 6); 239 OR 92 (dated Sep. 24, 1927 – Bank of Italy – beneficiary of the trust deed on Parcel 2, Coelho & Gularte).

<sup>17</sup> Again, a riparian and pre-1914 appropriative owner may change the point or the means of diversion so long as the water rights of others are not injured by the change. [Cal. Water Code § 1706; *Byers v. Colonial Irrig. Co.* (1901) 134 Cal. 553, 555; *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, 1367-1368]

## Water Rights Of Lands Within The Former Independent Mutual Water Company

After Marie R. (Naglee) Robins and Antoinette Naglee Burk partitioned the land they had inherited from their father, Marie Robins conveyed away two riparian parcels of her land in 1896. The first was conveyed to Simeon H. Higgins by deed dated March 31, 1896 (88 A 557, rec. 4/28/1896) and abutted Old River and Tom Paine Slough. The second was conveyed to Adam S. Higgins by deed dated June 1, 1896 (89 A 445, rec. 8/1/1896) and abutted Tom Paine Slough alone. Then, by deed dated August 23, 1917 (302 A 461, rec. 8/30/1917) Marie Robins conveyed to J.H. Devine the remaining part of her land located south of Old River and which abutted both Old River and Tom Paine Slough. These three conveyances are shown on Figure 7 below – the conveyance to J.H. DeVine is shown hatched in blue. These three parcels contain all of the lands that subsequently became the Independent Mutual Water Company, the boundaries of which are shown outlined in blue.

**Figure 7**



Both of the Higgins parcels were subsequently acquired by Louis Titus by deed dated April 9, 1912 (207 A 480, rec. 4/9/1912) from Lydia and Albert Cross. Titus conveyed these two parcels to Whitehall Estates, Inc. by deed dated December 19, 1914 (250 A 380, rec. 12/31/1914), and Whitehall Estates, Inc. conveyed them by deed dated August 28, 1917 (317 A 100, rec. 9/8/1917) to J.H. DeVine. DeVine and his wife then conveyed all three of these parcels, with certain exceptions<sup>18</sup> and together with other lands, to Pacific Sugar Corporation by deed dated August 30, 1917 (302 A 486, rec. 9/8/1917). And, as indicated in footnote 13 above, Valley Land and Sugar Company acquired the interest of Pacific Sugar Corporation by foreclosure on October 9, 1919 (395 A 110, rec. 10/17/1919).

When Valley Land and Sugar Company acquired this land in 1919, it was served by the irrigation and drainage system first created by Louis Titus on the Titus Ranch in 1913, and later operated by Whitehall Estates, Inc. As indicated hereinabove, when the Edith Simpson Pike subdivided and sold to the owners who formed the Fremont Irrigation Association, the right to take waters from that irrigation system was preserved in those transfers. The same is true of the subsequent transfers of portions of the lands owned by the DeVines (or later by the Valley Land and Sugar Company or the Achsah J. Stimson Estate Company) to individual landowners who later formed IMWC.

Thus, when the parcel comprised of Lots 2, 3 and 4 in Block 22 of Tracy Garden Farms, which the DeVines had “excepted” from the property they conveyed to Pacific Sugar Corporation, was conveyed to Mariano De Frias (425 A 213, rec. 5/24/1920) that deed, dated April 24, 1919, contained the following express clause:

“... the said parties of the first part [*the DeVines*] herein agree to sell to the said party of the second part [*DeFrias*] a pro rata proportion of all water owned by them and available for the irrigation of all the lands ... and also the obligation to furnish such water shall constitute and be a covenant running with the land.”

And, when DeFrias and his wife agreed to sell this land to Frank and Annie Mello, they entered into an agreement with Valley Land and Sugar Co. (228 OR 270, rec. 3/26/1928) which recited in part:

“... second party [*Valley Land and Sugar Company*] hereby grants, conveys and transfers unto first parties [*the DeFriases and the Mellos*] a right to such proportion of said water available for irrigation as the said lands of first parties hereinabove particularly described bears to the lands now owned by second party and lands previously owned by it or its predecessors and thereafter sold, all of which lands are irrigated from the same pump from which the said lands of first parties are

---

<sup>18</sup> Of these exceptions, the one that was within the lands ultimately included in IMWC was the exception of Lots 2, 3 and 4 in Block 22 of Tracy Garden Farms (later conveyed by the DeVines to Mariano DeFrias and even later by DeFrias and his wife to Frank and Annie Mello).



being irrigated, and second party further grants, conveys and transfers to first parties the same proportionate right in and to the drainage and irrigation systems now owned and operated and to be owned and operated by second party for the use and benefit of all said lands.”

Likewise, when Valley Land and Sugar Co., by deed dated September 18, 1920 (465 A 28, rec. 9/22/1920) conveyed a portion of the land shown on Figure 7 to W.W. Low, that deed contained the following language:

“The party of the first part [*Valley Land and Sugar Co.*], as an appurtenance to said land above described, does hereby sell, assign and transfer unto the said party of the second part [*W.W. Low*], a pro rata interest in and to the irrigation and drainage system now owned and operated for the use and benefit of the land now and hereto owned by the said party of the first part, in proportion that the acreage hereby conveyed bears to the total acreage of said land of the seller, to-wit: two thousand nine hundred (2900) acres which said land is more particularly described in that certain deed from H.R. McMillan et als., to the party of the first part herein, recorded October 31st, 1919, in Book “A” of Deeds, Vol.402, page 45, et seq., San Joaquin County Records, and party of the second part hereby assumes and agrees to pay such proportionate share of any and all costs and expenses paid or to be paid, incurred or resulting from operating, maintaining or caring for said irrigation and drainage system or either thereof, from and after the date hereof, as the acreage herein conveyed bears to said two thousand nine hundred (2900) acres.”

And, when W.W. Low and his wife conveyed the northwest 20 acres, more or less, of the foregoing parcel to John S. Goulart by deed dated November 30, 1920 (470 A 75, rec. 12/2/1920), that deed contained essentially the same clause.<sup>19</sup>

In the same fashion the deeds from Valley Land and Sugar Company to the following grantees all contained express language which conveyed a proportionate part of the entire irrigation and drainage system then owned and operated by Valley Land and Sugar Company. These landowners, along with others, were the original founders of the Independent Mutual Water Company: Petersen (90 OR 105, rec. 5/6/1925); Valadao (109 OR 427, rec. 12/29/1925); Affonso (146 OR 358, rec. 5/26/1926); and Bethel (151 OR 61, rec. 5/13/1926).<sup>20</sup>

In 1928 Valley Land and Sugar Company conveyed its remaining lands to the

---

<sup>19</sup> “The parties of the first part [*the Lows*], as an appurtenance to said land above described, do hereby sell, assign and transfer unto the said party of the second part [*Goulart*], a pro rata interest in and to the irrigation and drainage system now and hereafter owned by the Valley Land and Sugar Company, a corporation, in the proportion that the acreage conveyed bears to the total acreage of the lands formerly owned by Valley Land and Sugar Company, to-wit: Two thousand nine hundred (2900) acres, which said land is more particularly described in that certain deed from H.R. McMillan to Valley Land and Sugar Company, recorded October 31st, 1919, in Book “A” of Deeds, Vol 402, page 45 et seq., San Joaquin County Records ...”

<sup>20</sup> I.C. Bethel and Genevieve Bethel, his wife, conveyed this parcel to Delbert M. Ruth by deed dated May 10, 1926 (146 OR 282, rec. 5/13/1926). The deed recites “TOGETHER with a pro-rata water right in the Valley Land & Sugar Company for the irrigation of the above-described land which water right is hereby declared to be appurtenant to the land.”

Achsah J. Stimson Estate Company, a California corporation (247 OR 286, rec. 10/22/1928).

In 1941, prior to the formation of the IMWC, the Achsah J. Stimson Estate Company conveyed its remaining lands to Stockton Abstract and Title Company (760 OR 28, rec. 10/31/1941), which then deeded several more parcels of this land to the following landowners who would also participate in the formation of the IMWC: Silveira (742 OR 373, rec. 10/31/1941); Mancuso (742 OR 374, rec. 10/31/1941); Sinnott (748 OR 482, rec. 10/31/1941); Gaia (748 OR 484, rec. 10/31/1941); Giannini & Dell'Aringa (748 OR 480, rec. 10/31/1941); Bacchetti (753 OR 358, rec. 10/31/1941); and Arnaudo (757 OR 322, rec. 10/31/1941).

All of the deeds from Stockton Abstract and Title Company to the above-named grantees contained the following express grant of water rights:

“The grantor further grants to the grantees, their successors, heirs and assigns, all existing water rights now appurtenant to the land herein conveyed, including a proportionate share of the riparian water rights of the land formerly owned by the Achsah J. Stimson Estate Company, which land is more particularly described in Deed to Grantor dated August 24, 1941; it being understood by and between the grantor herein, its successors and assigns, that the grantees herein, their successors, heirs and assigns, are hereby granted the right, as a right appurtenant to the land hereinabove conveyed, to the use and benefit of the waters flowing in the Old River and Tom Paine Slough for irrigation and other purposes, according to the respective interests in point of quantity between the land herein conveyed and the balance of the said land riparian to Old River and Tom Paine Slough formerly owned by Achsah J. Stimson Estate Company, and it is definitely agreed that all riparian rights shall continue and remain appurtenant to the land conveyed hereby to the extent that they are now appurtenant to said land.

Also a prorata interest in and to the irrigation and drainage system now operated for the use and benefit of the land heretofore owned by the Achsah J. Stimson Estate Company hereinbefore referred to, in the proportion that the acreage conveyed bears to the total acreage served by said irrigation and drainage system.”

The *only* parcel that became a part of IMWC, which was remote from Old River and Tom Paine Slough, whose chain of title did *not* expressly mention the riparian right, or failed to mention some kind of water right as an appurtenance to the grant, was the parcel conveyed by the Achsah J. Stimson Estate Company to Max B. Arnold and Grace C. Arnold by deed dated July 22, 1929 (601 A 337, rec. 4/22/1930), who later conveyed it to Alfred Mora and Egidia Mora by deed dated December 20, 1930 (340 OR 349, rec. 1/5/1931). This parcel was included in IMWC as “Parcel 13.” It was this parcel that the affidavits of Martin Bronitch and Nicholas P. Buskovich dated May, 21, 1942 (see p. 11 *supra*) specifically addressed. As those affidavits state this parcel was served by the irrigation and drainage system that was first installed by Louis Titus in 1913, and had been

served by that system at all times subsequent to its creation. The obvious purpose of those affidavits was to come within the following rule of law:

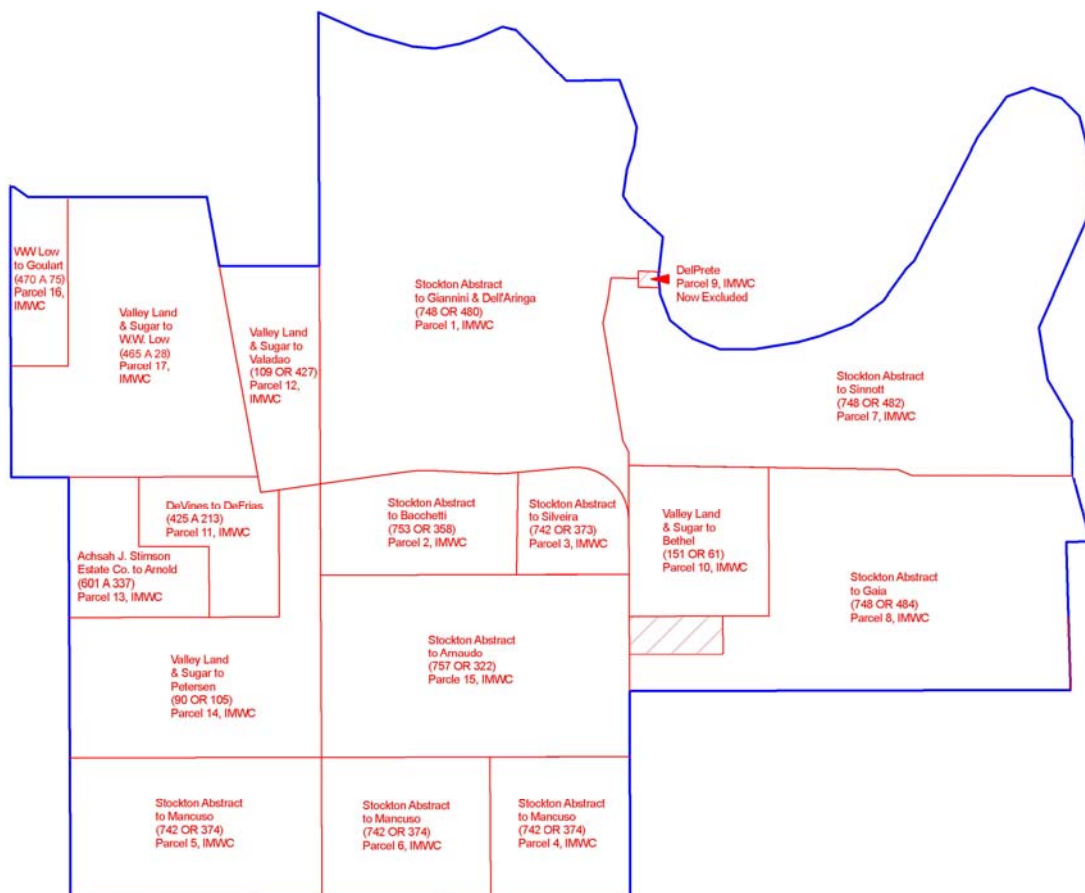
“We recognize that ***a riparian right***, rather than being merely incident to or appurtenant to the land, has been said to be a vested right inherent in and a part of the land (*Gould v. Stafford* (1891) 91 Cal. 146, 155 [27 P. 543]; *Herminghaus v. South. California Edison Co.* (1926) 200 Cal. 81 [252 P. 607]) and ***passes by a grant of land to the grantee even though the instrument is silent concerning the riparian right*** (*San Francisco v. County of Alameda* (1936) 5 Cal.2d 243, 246 [54 P.2d 462]; *Miller & Lux Inc. v. J. G. James Co.* (1919) 179 Cal. 689, 691 [178 P. 716]; *Smith v. Corbit* (1897) 116 Cal. 587, 591 [48 P. 725]; *Hargrave v. Cook* (1895) 108 Cal. 72, 77 [41 P. 18]). ... As stated in *Hudson v. Dailey* (1909) 156 Cal. 617, at pages 624-625 [105 P. 748]: "A subsequent conveyance by one of the original owners, of a part of the tract not abutting upon the creek, would not carry any riparian or other right in the creek, unless it was so provided in the conveyance, ***or unless the circumstances were such as to show that parties so intended, or were such as to raise an estoppel.*** If the tract conveyed was not contiguous, had never received water from the creek, and there were no ditches leading from the creek to it at the time of the conveyance, nor other conditions indicating an intention that it should continue to have the riparian right, notwithstanding its want of access to the stream, the mere fact that it was a part of the rancho to which the riparian right had extended while the ownership was continuous from it to the banks of the stream, would not preserve that right to the severed tract. The severance under such circumstances would cut off such tract from the riparian right. (*Anaheim W. W. Co. v. Fuller*, 150 Cal. 331. . . .)" (Italics added.) (See also *Holmes v. Nay* (1921) 186 Cal. 231, 237 [199 P. 325].)"

[*Murphy Slough Assn. v. Avila* (1972) 27 Cal.App.3d 649, 655-657 (bold italics added here)]

Thus, even though the deeds from the Achsah J. Stimson Estate Company to Arnold, and from Arnold to the Moras, did not mention an appurtenant water right, the “circumstances were such as to show that the parties intended” that this parcel was to continue to receive, and did continue to receive, water from the irrigation system on the Stimson Estate Company land, and thereby retain its riparian right even though it was then remote from the river or slough.

Thus, when IMWC was formed in 1942, it contained 17 parcels of land as shown on Figure 8 below, *all* of which had appurtenant riparian rights to the use of the waters in Old River and Tom Paine Slough. Each parcel is identified by the number given it in the bylaws of IMWC recorded at 786 OR 217, and by the landowners’ names and recording information of the deed:

Figure 8



By separate “grants and assignments” that were recorded in the San Joaquin County Records,<sup>21</sup> each of the founding landowners of IMWC expressly granted and assigned to IMWC the following:

“1. All riparian water rights of the land hereinafter described, together with all existing water rights now appurtenant thereto;”

At the same time, the IMWC bylaws provided:

“Article 1.

\* \* \*

Sec. 2. The shares of stock of said corporation shall be appurtenant to the land ... and shall represent rights to the use of the corporation’s water supply and drainage facilities, and each and every share shall represent such rights for one acre or fraction thereof.

<sup>21</sup> These documents are found at: 786 OR 211, rec. 8/17/1942 (Mancuso); 786 OR 209, rec. 8/17/1942 (Giannini & Dell’Aringa); 794 OR 114, rec. 8/17/1942 (Gaia); 769 OR 359, rec. 8/17/1942 (Sinnott); 769 OR 357, rec. 8/17/1942 (Silveira); 794 OR 112, rec. 8/17/1942 (Bacchetti); 793 OR 64, rec. 8/17/1942 (Arnaudo); 794 OR 117, rec. 8/17/1942 (Ruth – formerly Bethel); 794 OR 114, rec. 8/17/1942 (DeFrias); 793 OR 66, rec. 8/17/1942 (Petersen); 793 OR 65, rec. 8/17/1942 (Goulart); and 794 OR 116, rec. 8/17/1942 (Mora – formerly Arnold).

\* \* \*

Sec. 5. Each share of stock of this Corporation shall entitle the owner thereof to the irrigation and/or drainage of one acre of land and no more, and then only when the land to which it is appurtenant is described in the certificate issued for said stock”

The landowners within IMWC have at all times since 1942 been entitled to shares of stock which are appurtenant to their irrigable lands representing their proportionate part of the water rights of the IMWC, each parcel within it had received its proportionate part of the irrigation and drainage system that was installed on the Louis Titus Ranch in 1913, and later operated by Whitehall Estates, Inc., then by Pacific Sugar Corporation, then by Valley Land and Sugar Company, and finally by the Achsah J. Stimson Estate Company, Inc. This irrigation and drainage system has been used continuously since 1913. As in the case of the Naglee Burk Tract and FIA above, based on the rule of law stated in the *Copeland* case, given the transfer of the riparian rights by the original incorporators of IMWC and the “scheme of apportionment” by issuance of appurtenant shares of stock (representing the proportional part of the water right of the entire riparian tract) each parcel within IMWC was “vested with a proportional part of the riparian right originally held by” the Louis Titus and the DeVines in the waters of Old River and Tom Paine Slough “regardless of its proximity” those water courses. [see also: *Miller & Lux v. James* (1919) 179 Cal. 689, 690-691; *Locke v. Yorba Irrig. Co.* (1950) 35 Cal.2d 205, 209-210]

### CONCLUSION

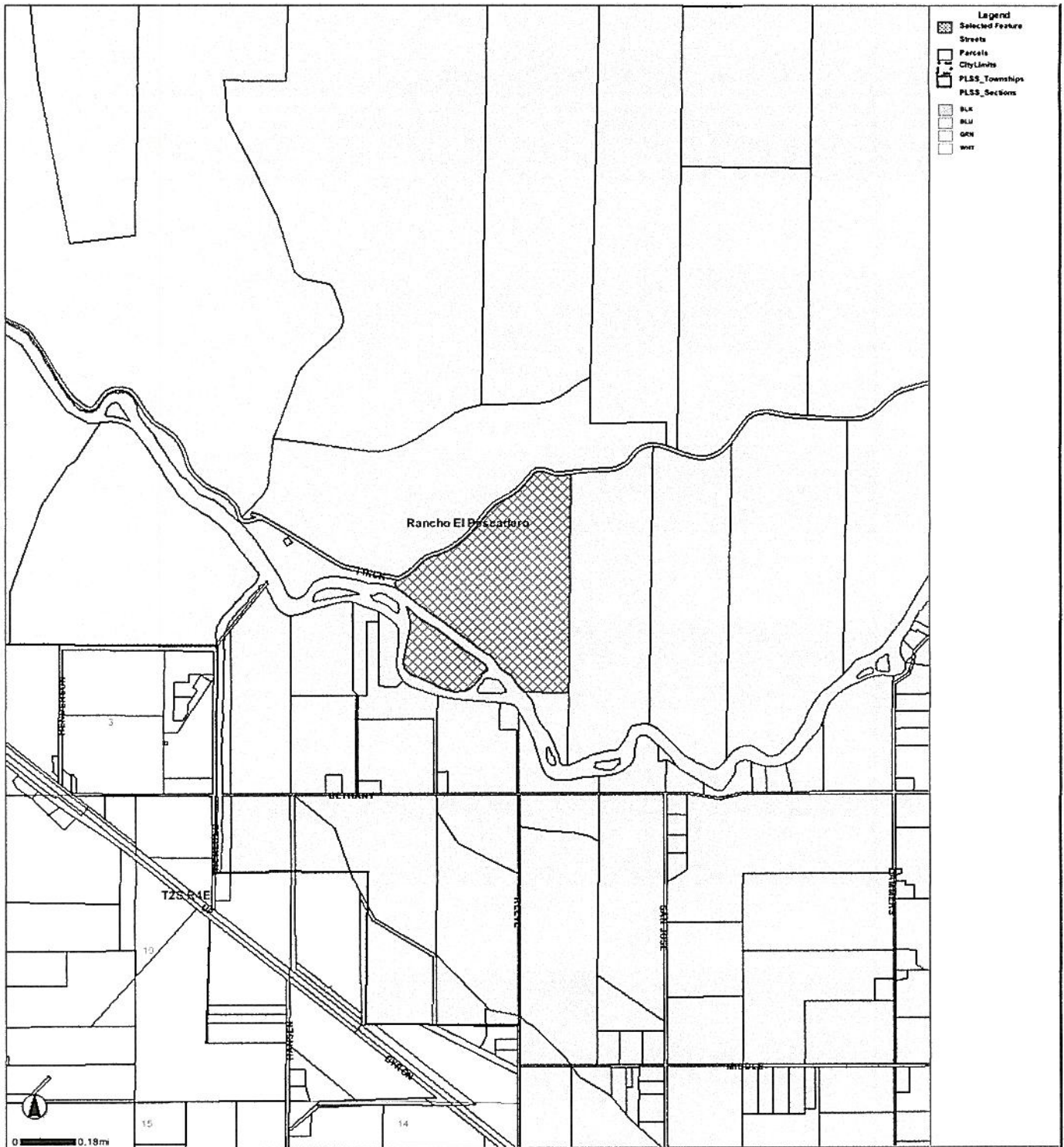
Each parcel of land within the Naglee Burk Irrigation District that is situated within what was originally the Naglee Burk Tract (5 M&P 18) has an appurtenant right to the proportionate share of the 10,000 miners inches (250 cfs) of water from Old River appropriated in 1912 for the entire tract, as well as a riparian right to the reasonable use of the water from Old River that is a part of the land itself.

Each parcel of land within the Naglee Burk Irrigation District that is situated within what was originally the Marie R. Robins Tract (located south of Old River and Tom Paine Slough and between the Naglee Burk Tract (5 M&P 18) on the west and the McLaughlin land (2 M&P 30) to the east has a riparian right to the reasonable use of the water from Old River and Tom Paine slough.

Dated: August 5, 2009



Robert Mehlhaff, Secretary and District Counsel, Naglee Burk Irrigation District



### SJC Surveyor Land Records

### San Joaquin County Geographic Information Systems

1810 East Hazelton Avenue, Stockton, California 95205

189 050 44



The information on this map is based on the most current information available to San Joaquin County Geographic Information Systems.

The United States of America.

To all whom these Presents shall come, Greeting;

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States, that pursuant to the provisions of the Act of Congress approved the third day of March, one thousand eight hundred and fifty one, entitled "An act to ascertain and settle the Private Land Claims in the State of California;" Antonio Maria Pico and Henry M. Nagler as claimants filed their petition on the 10<sup>th</sup> day of June 1852, with the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco in which petition they claimed the confirmation of their title to a tract of land called "El Pescadero" containing eight square leagues situate in the County of San Joaquin and State aforesaid, said claim being founded on a Mexican grant to one of the petitioners Antonio Maria Pico made by Manuel Micheltorena then Governor of California on the 28<sup>th</sup> day of November 1842. And whereas the Board of Land Commissioners aforesaid by a decree rendered on the 4<sup>th</sup> day of September 1854, rejected the said claim; and whereas it appears from a certified transcript on file in the General Land Office of the United States at the December Term 1859 that the District Court of the United States for the Northern District of California rendered a decision in this cause as follows: "It is now here ordered, adjudged and decreed by this Court that the said decision of the said Board of Commissioners be and the same is by this Court reversed, set aside, and annulled, and it is further ordered, adjudged and decreed by this Court that the claim of the said Appellants Antonio Maria Pico and Henry M. Nagler as set forth in the said record, and proceedings is a good and valid claim, and that the same be and is now by this Court confirmed, to the said Appellants to the extent of eight square leagues of land within the boundaries described in the plan annexed to the Expediente, and referred to in the original grant, copies whereof are on file in this cause. Provided that the said quantity of eight square leagues so confirmed be contained within the said boundaries, but if the quantity therein contained be less than eight square leagues, then the said claim is by this Court confirmed to the extent of such less quantity and no more, and that the said Supreme Court at said December Term 1859. Ordered, adjudged, and decreed that the decree of the said District Court in this cause be and the same is hereby affirmed." And thereafter to wit on the 20<sup>th</sup> day of Dec

ting  
 it. app  
 certain  
 and  
 stay  
 expected  
 to be. fr  
 of. Th  
 surety. th  
 has been  
 A quar  
 both last  
 a. North  
 and. H  
 at. St  
 ed.  
 the said  
 the Survey  
 ment. by  
 in. in wh  
 by the Unit  
 signed as  
 above desc  
 of land.  
 and. sh  
 and  
 in Lincoln  
 me caused  
 that of the  
 each. low  
 in. Lord  
 and of  
 shly. Smith  
 sole  
 Esq.  
 and Office  
 13 with No

under 1860 the said District Court Ordered that the said  
 mandate be filed and made a part of the record of  
 this Court in this case and that the said claimant be  
 proceed under the said mandate and under the decree of  
 this Court as thereby affirmed as under final decree" And  
 whereas it further appears from duly certified transcripts on  
 file in the General Land Office from the records of the  
 said District Court that said Court at a stated term  
 on the 9<sup>th</sup> day of April 1862. Ordered adjudged and de-  
 creed that the survey of the land heretofore confirmed  
 to the said Antonio Maria Pico and Henry M Naglee  
 approved by the Surveyor General of the United States for  
 California September 20<sup>th</sup> 1861. and a certified copy of  
 the original plat whereof was filed in the cause October 25<sup>th</sup>  
 1861. is a good and valid survey and the same is hereby  
 approved and confirmed to the extent of Thirty five thousand  
 five hundred and forty six 1/100 Acres. And whereas it fur-  
 ther appears from a certified transcript on file in the Gen-  
 eral Land Office that the said District Court at said  
 stated term on the 9<sup>th</sup> day of April 1862. in the cause  
 entitled "The United States v Antonio Maria Pico and  
 Henry M Naglee" made the following order on reading and  
 filing a stipulation by the attorneys of the respective parties  
 to the above entitled cause to the effect that no appeal will  
 be taken from the final decree of this Court made and con-  
 firmed on this 9<sup>th</sup> day of April 1862. on application of Messrs  
 Sloss and Patterson Attorneys for claimants it is ordered that  
 the survey and location of the lands as confirmed, as a-  
 forsaide stand as finally approved and determined within  
 the meaning of the 5<sup>th</sup> section of the Act of June 14<sup>th</sup>  
 1860. And it is further ordered that a certified copy of  
 this order may be served by the U S Marshall upon the  
 Surveyor General of the United States for California. And  
 whereas under the 13<sup>th</sup> section of the said Act of 3<sup>rd</sup> March  
 1851. there have been presented to the Commissioner of  
 the General Land Office a plat and certificate of the  
 survey of the tract of land, confirmed as aforesaid and the  
 located on the 20<sup>th</sup> day of September 1861. by the sig-  
 nature of the Surveyor General of the Public Lands in  
 California. the requirements of the Act of Congress, ap-  
 proved June 14<sup>th</sup> 1860 in regard to the publication of sur-  
 veys having been complied with in this case, which plat  
 and certificate are in the words and figures following to-  
 wit:

United States Surveyor General's Office  
 San Francisco California

Under and by virtue of the provisions of the 13<sup>th</sup> section  
 of the Act of Congress of the 3<sup>rd</sup> of March 1851. entitled  
 "An act to ascertain and settle private land claims in the  
 State of California" and of the 13<sup>th</sup> section of the Act



the said  
 cord of  
 amount  
 decree  
 in  
 script  
 of the  
 two  
 and  
 confirmed  
 Hoagie  
 States  
 copy  
 October  
 is hereby  
 in  
 as it  
 then  
 A  
 he  
 and  
 ting  
 two  
 refusal  
 and  
 of  
 as  
 within  
 14<sup>th</sup>  
 copy  
 from  
 the  
 of  
 since  
 of  
 the  
 and  
 the  
 sig  
 and  
 is  
 of  
 plat  
 to  
 office  
 7<sup>th</sup>  
 section  
 5<sup>th</sup>  
 in  
 the  
 Act

of Congress approved on the 31<sup>st</sup> of August 1852, entitled  
 "An act making appropriation for the civil and Diplomatic  
 expenses of the Government for the year ending the thirtieth  
 of June Eighteen hundred and fifty three and for other  
 purposes" and in consequence of the annexed copy of a certifi-  
 cate of the United States District Court for the Northern  
 District of California having been filed in this office whereby  
 it appears that the Attorney General of the United States  
 having given notice that it was not the intention of the  
 United States to prosecute the appeal from the decision of  
 the said District Court, said decision having confirmed  
 the title and claim of Antonio Herra Pico and Henry  
 Hoagie to the tract of land designated as El Pescador  
 the said appeal has been vacated and thereby the  
 said decision in favor of the said Antonio Herra Pico  
 and Henry Hoagie has become final. The said tract  
 has been surveyed in conformity with the grant thereof and  
 the said decision and I do hereby certify the annexed map  
 to be a true and accurate plat of the said tract of land  
 as appears by the field notes of the survey thereof made  
 by James S. Shalton Deputy Surveyor in the months of  
 June and July 1861 under the directions of this office which  
 having been examined and approved are now on file therein.  
 And I do further certify that a final decree confirming said  
 survey has been filed in this Office a copy of which is  
 hereto annexed. And I do further certify that under and  
 by virtue of the said confirmation, Survey and final decree  
 the said Antonio Herra Pico and Henry Hoagie are  
 entitled to a patent from the United States upon the pre-  
 sentation hereof to the General Land Office for the said  
 tract of land the same being bounded and described  
 as follows, to wit:

Beginning at a point on the left bank of the  
 San Joaquin River at the old Rancho El Pescador now called  
 Rancho Henry Hoagie at the most Northern point of the  
 point of the "El Pescador Rancho" contiguous to Juan Luis de  
 the said according to the true meridian the variation of the  
 magnetic needle being sixteen degrees East, following the bound-  
 ary of said Juan Luis de Rancho South Forty eight degrees  
 West, three hundred and twenty three chains and sixty six  
 links to a post marked E. P. 3. and E. No 60 on the  
 between ranges Five and Six East in Township Ten  
 South of the Mount Diablo Base Line Station.  
 Thence following said Range line North forty  
 chains to section post marked E. P. 3 in a corner  
 at corner to sections thirteen, eighteen, nineteen and twenty  
 four in the T. 10. S. R. 5. E. S. 1. R.  
 Five and Six East Station  
 Thence West at thirty two chains and twenty links

a road from Corral Hollow to Stockton corner South West  
Five hundred and one chains and forty links to a post  
marked "E. P. 4." in a mound on line between Ranges  
Four and Five East in Township Two South at corner to  
sections eighteen and nineteen. Station:

Thence along said Range line North twenty chains to a post  
marked "E. P. 5." in a mound at the quarter section corner  
on the East boundary of section thirteen. Station:

Thence West seventy nine chains and eighty two links to the  
quarter section post in a mound between sections thirteen  
and fourteen. One hundred chains to a post in a mound  
marked "E. P. 6." Station:

Thence North At thirteen chains and ninety links crosses the  
State Telegraph line course North eighty three degrees thirty  
two minutes East. At forty two chains and sixty four links  
intersects line between sections eleven and fourteen. Twenty  
chains west of corner to sections eleven twelve thirteen and  
fourteen. At forty seven chains crosses a road from Oakland  
to Stockton course East. At fifty chains crosses a road from  
Martinez to Stockton course South East. Sixty two chains and  
sixty four links to a post marked "E. P. 7." in a mound. Station:  
Thence West at ten chains crosses the road from Martinez  
to Stockton course South East. Forty chains to a post  
marked "E. P. 8." in a mound. Station:

Thence North forty chains to a post marked "E. P. 9." in a  
mound. One chain South West of the Martinez and Stockton  
road. Station:

Thence West. At twenty chains and fifty links intersects line  
between sections ten and eleven. Twenty chains South of corner to  
sections ten, eleven, twelve and thirteen. Forty chains and fifty links  
to a post marked "E. P. 10." in a mound. Station:

Thence North. At twenty chains intersects line between sections  
thirteen and fourteen. Twenty chains West of corner to sections  
thirteen, fourteen, fifteen and sixteen. At fifty eight chains crosses the road  
from Martinez to Stockton course South. Thirty degrees East  
sixty chains to a post marked "E. P. 11." in a mound. Station:

Thence West. At one chain and fifty links crosses the  
road from Martinez to Stockton course South. Thirty degrees  
East. Sixty chains to quarter section post in mound between  
sections three and four. One hundred chains to a post mark-  
ed "E. P. 12." in a mound. Station:

Thence North. At forty chains intersects line between Town-  
ships One and Two South in Range Four East at the  
quarter section corner between sections four and thirty three.  
Sixty chains to a post marked "E. P. 13." in a mound  
Station:

Thence West. At forty chains intersects line between sections  
thirty two and thirty three. Twenty chains North of the Town-  
ship line. Station:

th  
post  
Caugie  
over to  
to a post  
in corner  
to the  
fourteen  
miles  
over the  
groes the  
in links  
Twenty  
and  
kland  
get from  
ans and  
d Station  
Bartney  
a post  
? in a  
Stockton  
wols line  
corner to  
fifty links  
in Station  
ions line  
the road  
egus East  
stations  
is the  
by degrees  
& between  
not a mile  
in Town  
at the  
fifty th  
mound  
in ending  
the Town  
with Station

Thence North Sixty chains to the quarter section post in  
mound on line between sections twenty nine and thirty two;  
at sixty eight chains crosses the Stockton and Hartney  
Road course South East, seventy six chains to a corner  
post marked "N. P. E. P. 15" in a mound, being on the near  
side of Overflowed Lands. From this post the Saughlin house  
on the West side of the Old River, bears North Twenty  
three degrees forty five minutes East, distant about twenty  
by five chains; and Walters house bears North Twenty  
degrees thirty minutes East, distant thirty three chains, thence  
over overflowed lands one hundred and sixteen chains and  
fifty links to Station. Thence East through Swamp and  
overflowed Lands, at thirty four chains crosses the Old  
River one hundred and fifty links wide course North Seven  
Hundred chains to Station. From which a swamp oak tree  
twenty four inches in diameter marked "S. E. P. 18 & 19" one  
chain and fifty links West from the bank of the Middle  
river, bears North Fifty five degrees five minutes East  
distant eighty four chains.  
Thence North eighty three chains and fifty links to Station  
from which the Oak Tree last mentioned marked "S. E. P.  
18 & 19" bears South Sixty two degrees, forty five minutes  
East distant seventy seven chains and forty seven links;  
Thence East. At one hundred and four chains crosses the middle  
the river three chains wide course North. Three hundred and  
sixty eight chains and twenty links to a post marked "E. P. 10"  
on the left bank of the San Joaquin river station. From  
which Deacons house bears South Forty degrees East, dis-  
tant about twenty one chains and fifty links. And a live  
Oak thirty inches in diameter bears North sixty four degrees  
West. Distant one hundred links.  
Thence along the left bank of the San Joaquin river up the  
stream as follows: one hundred and thirty one degrees thirty minutes East  
twenty one chains to Station.  
Thence South Seventy degrees fifteen minutes East, thirty-  
six chains and twenty links to Station.  
Thence North seventy three degrees forty five minutes West  
thirteen chains and eighty five links to Station.  
Thence South Seventy eight degrees West, eight chains to Station.  
Thence South seven degrees West, eight chains and sixty links  
to Station.  
Thence South Sixty three degrees fifteen minutes West, twenty  
seven chains and forty four links to Station.  
Thence South Two degrees East, six chains and sixty links to Station.  
Thence South Thirty one degrees East, seven chains and ten links to Station.  
Thence South Sixty three degrees fifteen minutes East, ten  
chains to Station.  
Thence North Eighty six degrees forty

Thence South Four degrees thirty minutes West, four chains to Station  
 Thence South Fifty two degrees fifteen minutes West, seven chains to Station  
 Thence South, Thirty one degrees West, four chains and twenty  
 links to Station;

Thence North sixty eight degrees thirty minutes West, ten chains  
 and twenty links to Station;

Thence South Twenty six degrees thirty minutes West, eight  
 chains and forty four links to Station;

Thence South, Twenty one degrees fifteen minutes East, eight  
 chains to Station;

Thence South Forty degrees fifteen minutes East, ten chains to Station;

Thence South sixty three degrees forty five minutes West, eight  
 ten chains and forty links to Station;

Thence South Thirty three degrees thirty minutes West, six chains  
 to Station;

Thence North Fifty nine degrees thirty minutes West, thirteen  
 chains to Station;

Thence South, Twenty nine degrees thirty minutes West, ten  
 chains to Station;

Thence South, Forty five degrees thirty minutes West, nine  
 chains to Station at the junction of the "Old river" with  
 the main river;

Thence across "old river" South eight degrees East, five chains  
 and eleven links to Station; on the opposite bank;

Thence continuing up the left bank of the San Joaquin River  
 South sixty degrees forty five minutes East, four chains and  
 sixty four links to Station;

Thence South Forty six degrees thirty minutes East, thirteen  
 chains to Station;

Thence South Fifty eight degrees forty five minutes East, ten  
 chains and twenty links to Station;

Thence South, Sixty one degrees thirty minutes East, four  
 ten chains to Station;

Thence North, Eighty one degrees East, eleven chains to Station;

Thence South, Twenty two degrees East, six chains to Station;

Thence South Fifty nine degrees thirty minutes East, ten  
 chains and forty links to Station;

Thence South fifteen minutes West, one chain and sixty links  
 to Packards or Telegraphy. Here, at two chains across Tele-  
 graphy line, course South West thirty four chains and sixty  
 four links to Station;

Thence South, Sixty one degrees forty five minutes West, ten chains  
 and thirty two links to Station;

Thence South one degree forty five minutes East, eleven  
 chains and twenty links to Station;

Thence South Fifty four degrees forty five minutes East  
 eleven chains and twenty links to Station;

Thence South, Sixty one degrees forty five minutes East  
 eleven chains and twenty links to Station;

land

T.1.S. R. V.E

T.1.S. R. V.E

Lot N° 31

T.1.S. R. V.I.E

Lot N° 30  
Old River

T.1.S. R. V.I.E

Lot N° 39

**RANCHO EL PESCADERO**  
Confirmed to Heron Owners of old

**DEED**  
of the  
**RANCHO EL PESCADERO**  
finally confirmed to  
A. M. Pico and H. M. Naglee  
Surveyed under instructions from the  
**U.S. SURVEYOR GENERAL**  
by  
**James T. Straker, Dep. Sur.**  
Jura and July, 1861.  
Containing **25546** <sup>1/2</sup> Acres  
Scale of 62 1/2 Feet.

Record of this Plat and its contents is kept in the office of the Surveyor General at the City of San Francisco, California, on the 21st day of August, 1861.

*[Signature]*

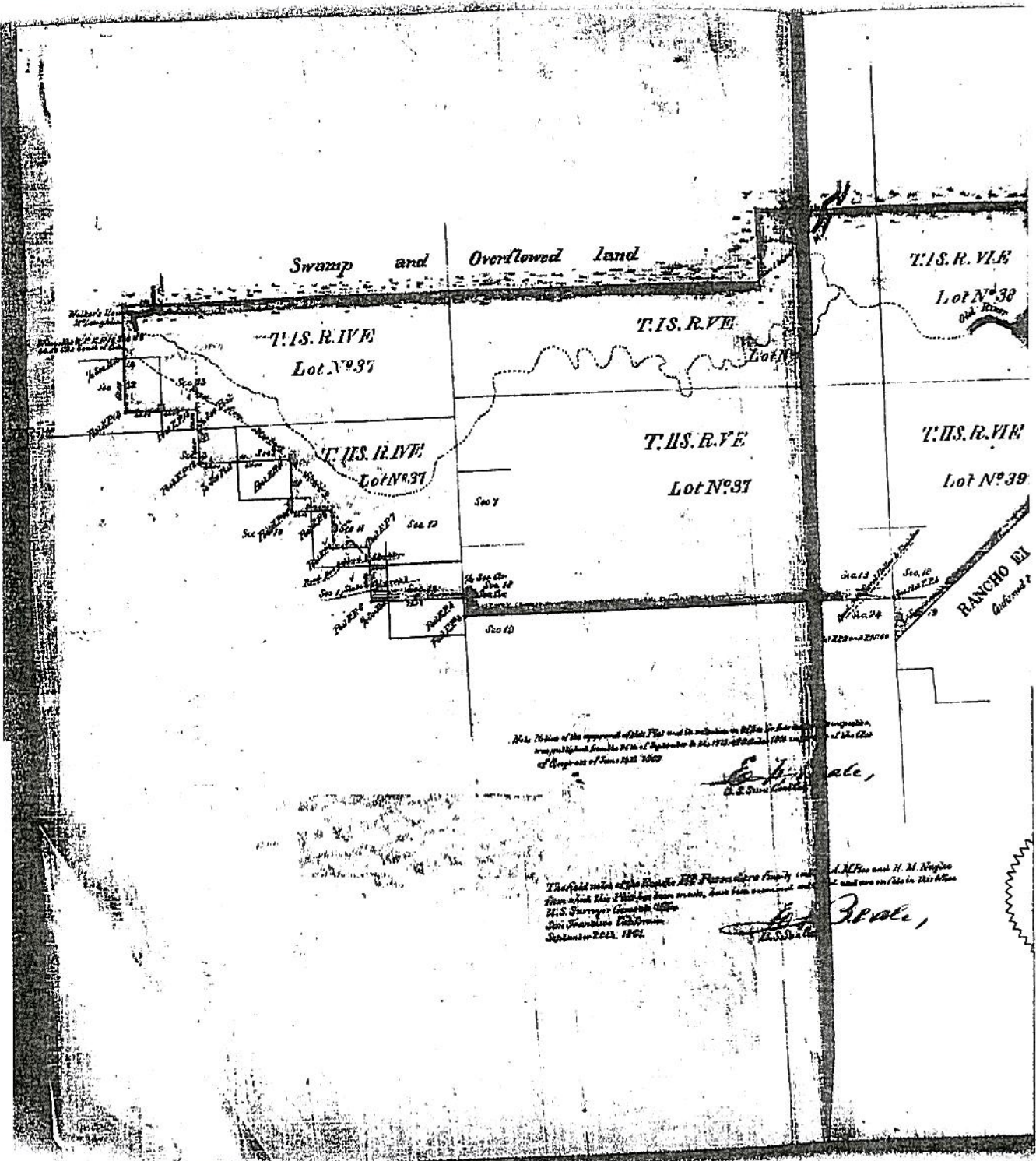
Witness my hand and the seal of the Surveyor General at the City of San Francisco, California, on the 21st day of August, 1861.

*[Signature]*



**Boundaries**

No	Course	Distance	No	Course	Distance
1	S 45° W	325.00	21	N 65° E	10.00
2	N 65° E	200.00	22	S 25° W	8.00
3	West	200.00	23	S 25° E	8.00
4	N 65° W	200.00	24	N 65° W	10.00
5	N 65° E	200.00	25	N 65° W	10.00
6	N 65° W	200.00	26	N 65° E	8.00
7	West	200.00	27	N 65° E	10.00
8	N 65° E	200.00	28	N 65° W	8.00
9	West	200.00	29	S 25° E	8.00
10	N 65° W	200.00	30	N 65° E	8.00
11	N 65° E	200.00	31	N 65° W	8.00
12	N 65° W	200.00	32	N 65° E	8.00
13	N 65° E	200.00	33	N 65° W	8.00
14	N 65° W	200.00	34	N 65° E	8.00
15	East	200.00	35	N 65° W	8.00
16	N 65° E	200.00	36	N 65° E	8.00
17	East	200.00	37	N 65° W	8.00
18	N 65° W	200.00	38	N 65° E	8.00
19	N 65° E	200.00	39	N 65° W	8.00
20	N 65° W	200.00	40	N 65° E	8.00
21	N 65° E	200.00	41	N 65° W	8.00
22	N 65° W	200.00	42	N 65° E	8.00
23	N 65° E	200.00	43	N 65° W	8.00
24	N 65° W	200.00	44	N 65° E	8.00
25	N 65° E	200.00	45	N 65° W	8.00
26	N 65° W	200.00	46	N 65° E	8.00
27	N 65° E	200.00	47	N 65° W	8.00
28	N 65° W	200.00	48	N 65° E	8.00
29	N 65° E	200.00	49	N 65° W	8.00
30	N 65° W	200.00	50	N 65° E	8.00
31	N 65° E	200.00	51	N 65° W	8.00
32	N 65° W	200.00	52	N 65° E	8.00
33	N 65° E	200.00	53	N 65° W	8.00
34	N 65° W	200.00	54	N 65° E	8.00
35	N 65° E	200.00	55	N 65° W	8.00
36	N 65° W	200.00	56	N 65° E	8.00
37	N 65° E	200.00	57	N 65° W	8.00
38	N 65° W	200.00	58	N 65° E	8.00
39	N 65° E	200.00	59	N 65° W	8.00
40	N 65° W	200.00	60	N 65° E	8.00
41	N 65° E	200.00	61	N 65° W	8.00
42	N 65° W	200.00	62	N 65° E	8.00
43	N 65° E	200.00	63	N 65° W	8.00
44	N 65° W	200.00	64	N 65° E	8.00
45	N 65° E	200.00	65	N 65° W	8.00
46	N 65° W	200.00	66	N 65° E	8.00
47	N 65° E	200.00	67	N 65° W	8.00
48	N 65° W	200.00	68	N 65° E	8.00
49	N 65° E	200.00	69	N 65° W	8.00
50	N 65° W	200.00	70	N 65° E	8.00
51	N 65° E	200.00	71	N 65° W	8.00
52	N 65° W	200.00	72	N 65° E	8.00
53	N 65° E	200.00	73	N 65° W	8.00
54	N 65° W	200.00	74	N 65° E	8.00
55	N 65° E	200.00	75	N 65° W	8.00
56	N 65° W	200.00	76	N 65° E	8.00
57	N 65° E	200.00	77	N 65° W	8.00
58	N 65° W	200.00	78	N 65° E	8.00
59	N 65° E	200.00	79	N 65° W	8.00
60	N 65° W	200.00	80	N 65° E	8.00
61	N 65° E	200.00	81	N 65° W	8.00
62	N 65° W	200.00	82	N 65° E	8.00
63	N 65° E	200.00	83	N 65° W	8.00
64	N 65° W	200.00	84	N 65° E	8.00
65	N 65° E	200.00	85	N 65° W	8.00
66	N 65° W	200.00	86	N 65° E	8.00
67	N 65° E	200.00	87	N 65° W	8.00
68	N 65° W	200.00	88	N 65° E	8.00
69	N 65° E	200.00	89	N 65° W	8.00
70	N 65° W	200.00	90	N 65° E	8.00
71	N 65° E	200.00	91	N 65° W	8.00
72	N 65° W	200.00	92	N 65° E	8.00
73	N 65° E	200.00	93	N 65° W	8.00
74	N 65° W	200.00	94	N 65° E	8.00
75	N 65° E	200.00	95	N 65° W	8.00
76	N 65° W	200.00	96	N 65° E	8.00
77	N 65° E	200.00	97	N 65° W	8.00
78	N 65° W	200.00	98	N 65° E	8.00
79	N 65° E	200.00	99	N 65° W	8.00
80	N 65° W	200.00	100	N 65° E	8.00



Swamp and Overflowed land

T.1S. R. VI

Lot No. 38

T.1S. R. IV

Lot No. 37

T.1S. R. V

Lot No. 37

T.1S. R. IV

Lot No. 37

T.1S. R. V

Lot No. 37

T.1S. R. VII

Lot No. 39

RANCHO EL Antirio

Note: Notice of the approval of this map and its publication in 1852 for the purpose of the sale of the land was published from the 24th of September to the 24th of October 1852 in the 10th volume of the California State Gazette of the 24th of September of 1852.

*E. J. Gale,*  
U. S. Surveyor

The field notes of the Range 1st Precinct were simply copied from a book that had been in my possession, and were not examined by me. U. S. Surveyor General's Office, San Francisco California, September 23rd, 1852.

*J. M. Fox and H. M. Noyes,*  
U. S. Surveyors

Thence North Forty three degrees forty five minutes East  
 Twelve chains to station;  
 Thence South Forty two degrees forty five minutes East  
 four chains and thirty links to station;  
 Thence South Ninety degrees forty five minutes East  
 nine chains to station;  
 Thence South Three degrees West five chains to station;  
 Thence South Thirty eight degrees thirty minutes West, two  
 chains and twenty links to station;  
 Thence South Eleven degrees fifteen minutes West thirteen chain  
 and sixty links to station; And;  
 Thence South Thirteen degrees East seventeen chains to the  
 point of beginning; containing Thirty Five thousand five hun-  
 dred and forty six acres and thirty nine one hundredths of  
 an acre, and being designated upon the plat of the Pub-  
 lic surveys as Lot Number Thirty seven Township One  
 South Range Four East; Lot Number Thirty seven Town-  
 ship One South Range Five East; Lot Number Thirty  
 eight Township One South Range Six East; Lot Number  
 Thirty seven Township Two South Range Four East; Lot  
 Number Thirty seven Township Two South Range Five  
 East; and Lot Number Thirty nine Township Two South  
 Range Six, East; all of the Mount Diablo Meridian.  
 In Witness Whereof, I have hereunto signed my name  
 and officially and caused the seal of my office to be  
 attached at the City of San Francisco this twenty  
 fifth day of September A. D. one thousand and  
 six hundred and sixty one.

E. J. Beals

U. S. Surveyor General

And whereas there has been deposited in the General Land  
 office a certificate of the Clerk of the United States  
 District Court for the Southern District of California  
 showing that he appointed a writ of certiorari from the said court  
 of January 8<sup>th</sup> 1862, confirming said Survey, and  
 time for taking such appeal has expired, whereby said  
 survey has become final.

Now Know ye, That the United  
 States of America, in consideration of the presents, and  
 pursuant to the provisions of the Act of Congress afore-  
 said of 3d March 1851. Have given and granted, and  
 by these presents do give and grant, unto the said  
 Antonio Maria, Pedro and Henry Mc Nagler and  
 to their heirs, the tract of land embraced and described  
 in the foregoing survey; but with the stipulation, that  
 in virtue of the 15th section of the said Act, the con-  
 firmation of this said claim and this patent, shall not  
 affect the interests of third persons, who have and to hold  
 the said tract, and the appurtenances unto the said

María Pico and Henry M. Nagler and to their heirs  
and assigns forever, with the stipulation aforesaid.  
In testimony whereof, I Abraham Lincoln President  
of the United States, have caused these Letters to be  
made Patent, and the seal of the General Land Office  
to be hereunto affixed.

Given under my hand at the City  
of Washington the tenth day of March in  
the year of our Lord one thousand eight hun-  
dred and sixty five, and of the Independence  
of the United States the Eighty ninth.

By The President Abraham Lincoln

By Edwin D. Kelly Secretary  
of the General Land Office

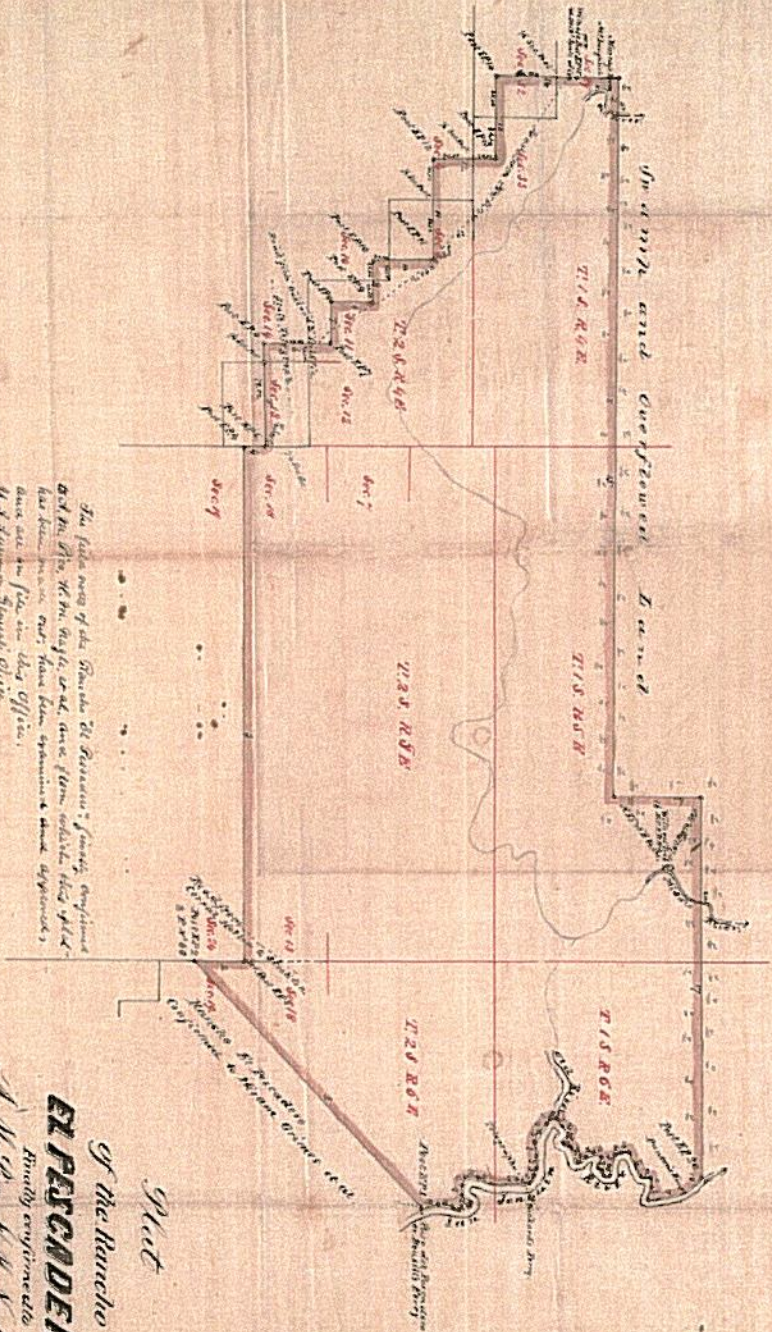
Recorded, Vol 4 Pages 516 to 527 inclusive

Recorded at request of H. M. Nagler May 6<sup>th</sup> A.D.  
1865 at 30 min past 1 o'clock P.M.

### United States of America - State of California

So all, whom these Presents shall come. Knowing  
Whereas under the provisions of an Act of Congress  
of the United States, approved the twenty eighth day  
of September A.D. one thousand eight hundred and  
fifty, entitled "An Act to enable the State of Arkansas  
and other States, to reclaim Swamp Lands within their  
limits," in which act the manner of selecting and  
selling against overflowed lands, she fully  
act for the State of California, in accordance with the provision  
of the Act of Congress, the title of which is above  
recited, the Legislature of the State of California  
on the twenty eighth day of April A.D. one thousand  
eight hundred and fifty five passed an Act  
entitled "An Act to provide for the sale of the  
Swamp and Overflowed Lands belonging to this State  
which Act authorizes the location and disposal of a  
portion of the Swamp and Overflowed Lands donated  
to the State of California by the Act of Congress,  
the title of which is above recited: And Whereas, it  
appears by the Certificate of the Secretary of State  
bearing date of April Eighth A.D. one thousand  
eight hundred and fifty six that he has been duly  
notified by the Treasurer of State of the State of  
California that William Rowland Esq. Rowland has  
paid One Hundred and sixty dollars to the  
Treasurer of California County State of California





AGREEMENT of Survey boundaries 1874-6-17-81

PL	AMOUNT	AMOUNT	AMOUNT
1	3,187.78	27,187.78	42,320
2	3,187.78	27,187.78	42,320
3	3,187.78	27,187.78	42,320
4	3,187.78	27,187.78	42,320
5	3,187.78	27,187.78	42,320
6	3,187.78	27,187.78	42,320
7	3,187.78	27,187.78	42,320
8	3,187.78	27,187.78	42,320
9	3,187.78	27,187.78	42,320
10	3,187.78	27,187.78	42,320
11	3,187.78	27,187.78	42,320
12	3,187.78	27,187.78	42,320
13	3,187.78	27,187.78	42,320
14	3,187.78	27,187.78	42,320
15	3,187.78	27,187.78	42,320
16	3,187.78	27,187.78	42,320
17	3,187.78	27,187.78	42,320
18	3,187.78	27,187.78	42,320
19	3,187.78	27,187.78	42,320
20	3,187.78	27,187.78	42,320
21	3,187.78	27,187.78	42,320
22	3,187.78	27,187.78	42,320
23	3,187.78	27,187.78	42,320
24	3,187.78	27,187.78	42,320
25	3,187.78	27,187.78	42,320
26	3,187.78	27,187.78	42,320
27	3,187.78	27,187.78	42,320
28	3,187.78	27,187.78	42,320
29	3,187.78	27,187.78	42,320
30	3,187.78	27,187.78	42,320
TOTAL	3,187.78	27,187.78	42,320

The following were of the Rancho de San Mateo, formerly employed by the office of the Survey, to wit: some from outside the plot - some from within; some from the Rancho de San Mateo, some from the Rancho de Guadalupe. Some from the Rancho de Guadalupe, some from the Rancho de San Mateo, some from the Rancho de San Mateo, some from the Rancho de San Mateo. (1881)

E. J. B. [Signature]  
W. J. Stuart, Surveyor

Having a survey of this Rancho de San Mateo, formerly employed by the office of the Survey, to wit: some from outside the plot - some from within; some from the Rancho de San Mateo, some from the Rancho de Guadalupe. Some from the Rancho de Guadalupe, some from the Rancho de San Mateo, some from the Rancho de San Mateo. (1881)

of the Rancho  
**EL RANCHO DE**  
San Mateo

J. W. Stearns, W. J. Stuart  
Surveyors under Instructions  
From the  
Honorable Secretary of the Interior

J. W. Stearns, Surveyor  
June 18, 1862  
Containing 100,000 Ac.  
For Sale

[Handwritten signature]  
J. W. Stearns, Surveyor



E. J. B. [Signature]  
W. J. Stuart, Surveyor

No. 170 ND  
Antonio Maria Pino, et al., Claimants  
San Joaquin County - Attached  
to Final Decree, filed  
April 9, 1862 F. 383

**EXPLANATORY ATTACHMENT**  
**to the SWRCB's Online Form Entitled:**  
**“Informational Order Supporting Data”**  
**(Due March 6, 2015)**

**Use of Water:** If multiple Statement Numbers (i.e., “Points of Diversions”) are used to irrigate the same field or parcel, the acreage of that field or parcel is divided evenly among those Statement Numbers and each Statement Number is reported as serving its fractional share.

**Riparian Rights:** The riparian patent date is the date of the patent from the United States to the State or from the United States to a private party as derived from the referenced Bureau of Land Management records website provided in the online form. If available, the patent date from the State to the private party is used in lieu of the patent date provided by that site. The date of priority for riparian lands is expected to relate back to the time of settlement prior to patent.

The online form has been marked “no” as to severance of riparian rights. The question on the form is compound but in any event the term “severance” reflects a legal conclusion which must be determined in a court adjudication.

**Pre-1914 Rights:** The Pre-1914 priority date and year that water was first used are based on the estimated time of settlement and use of water on the land where the Point of Diversion is located and/or where the Place of Use served by that Point of Diversion is located. Where available, Certificates of Purchase dates are used to support the estimates. In California, this requirement appears to have been satisfied only after the person had cultivated the land for three years. [Cal. Stats. Of 1886, Ch. 415, Section 42.] It is assumed therefore that the subject land did receive diverted water since the time of the Certificate of Purchase (or Patent). The reporting party reserves the right to support an even earlier date as more historical evidence is located.

The claim of continuous use is made until such time as a court adjudication has determined that such use was not continuous.

**Monthly Diversions:** The “Direct Diversion” amounts for 2014 are calculated from the Excel spreadsheets posted at sjwater.org and are based on consumptive use estimates multiplied by a multiple to account for additional water that is diverted but not consumed or evaporated. Additional water is also added to the foregoing to account for field flooding, if any. The consumptive use estimates are based on the following:

**Central and South Delta, Zone 12:** Used ITRC REPORT 03-001 ETc Table for Irrigation Scheduling and Design, Zone 12 for Surface Irrigation, Typical year adjusted

for the reporting year using CIMIS monthly ETo for Manteca. For crops not covered by the ITRC report ETc was determined using ratios to alfalfa from Table A-5, DWR Bulletin 168, October 1978.

North or West Delta, Zone 14: Used ITRC REPORT 03-001 ETc Table for Irrigation Scheduling and Design, Zone 14 for Surface Irrigation, Typical year adjusted for the reporting year using CIMIS monthly ETo for Lodi West. For crops not covered by the ITRC report ETc was determined using ratios to alfalfa from Table A-5, DWR Bulletin 168, October 1978.

The “Projected Direct Diversion” amounts for 2015 are derived in the same manner, and based on the same 2014 Excel Spreadsheets, as the amounts for 2014 except that the amounts for 2015 take into consideration any anticipated changes in acreage or crops compared to 2014.

Because the online form instructs: “Do Not report the same value for Riparian and Pre-1914,” the amounts directly diverted are entered into the Pre-1914 boxes and the number one is inserted into the Riparian boxes. Until the Pre-1914 and Riparian rights are adjudicated they are overlapping rights that cannot be legally separated. Moreover, the claim of right for this Statement Number also includes overlying rights, statutory rights and rights derived from use for more than 120 years which can likewise overlap in various respects. (Note: these rights also overlap with any *post*-1914 and contract rights that may be applicable to the places of use at issue herein.)

**Maximum Rates of Diversion:** The maximum rates of diversion are determined by estimating head conditions and using the siphon and pump capacity graphs posted at sjwater.org. Fluctuation of water levels due to changes in river flows, tides and numerous other factors renders determination of maximum diversion rates somewhat inexact. The relevance of such a maximum rate determination is questionable in that in many cases the maximum rate is not used or only used for a limited period. To avoid double counting, the maximum rates are only entered into the Pre-1914 rights boxes (even though those rates likewise apply to the overlapping Riparian rights).