

MINUTE ITEM

This Calendar Item No. C30 was approved as Minute Item No. 30 by the State Lands Commission by a vote of 2 to 0 at its 12/21/94 meeting.

CALENDAR ITEM

C30

A 29

S 14

12/21/94
W 23744
AD 136
Fossum
Kiley
McKown
Grimmett

CONSIDER AMENDMENT TO PRIOR AUTHORIZATION TO ENTER INTO A TITLE SETTLEMENT AGREEMENT ALONG THE SAN JOAQUIN RIVER, FRESNO COUNTY

APPLICANT:

The Ball Family Trust
c/o James A. McKelvey
Motsheidler, Michaelides & Wishon
1690 West Shaw Avenue, Suite 200
Fresno, California 93711

The Commission authorized entering into a title settlement agreement with The Sienna Corporation by approval of Minute Item No. 44 at its December 12, 1990 meeting (Exhibit B). The agreement approved at that meeting was never consummated. Since 1990, several changes have taken place which require amendment of the proposed agreement and the Commission's prior approval.

The information at the time was that Sienna Corporation had acquired the property involved from the Ball Family Trust. The Ball Family Trust, in fact, still owns the property. Furthermore, certain property involved in the previously approved transaction has since been acquired by the Wildlife Conservation Board, thereby changing the consideration found necessary in the previously approved agreement to that now required.

Specifically, the State Wildlife Conservation Board (WCB) has spent over \$3 million dollars acquiring 235 acres in the area of the agreement from the Ball Family. By WCB's acquisition, much of the land covered by the State's public trust easement claims (8.8 acres) has become State owned lands for which no termination of trust interests is necessary. This obviates the necessity for the \$30,000 Kapiloff deposit provided for in the transaction approved by the Commission on December 12, 1990. Likewise, the necessity for public access through the Ball lands has been resolved by WCB's acquisition as shown on Exhibit A. The Access Easement to be provided will be for emergency use only. Finally, the private parties have requested express reservation language be added for riparian rights, an existing water diversion structure and canal and that escrow fees be borne by the state.

CALENDAR ITEM NO. C30 (CONT'D)

The proposed settlement agreement provides for:

A. The State obtaining:

- 1) fee title to 31.67 acres it claims in fee.
- 2) fee title to 8.7 acres it claims an easement on.
- 3) fee title to 2.25 acres that it does not claim any interest in.
- 4) an emergency access easement bordering the north property line.

B. The Ball Family Trust obtaining:

- 1) clear title to 3.5 acres of land subject to the easement claims of the state.
- 2) clear title to 0.689 acres of area the State claims in fee.

AB 884:
N/A

OTHER PERTINENT INFORMATION:

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

Authority; P.R.C. 21080.11

EXHIBITS:

- A. Site Map
- B. Minute Item No. 44, December 12, 1990

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.

2. FIND THAT WITH RESPECT TO THE PROPOSED AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST IN APPROXIMATELY 4.2 ACRES WITHIN THE SUBJECT PROPERTY FOR CERTAIN LANDS (11 ACRES, MORE OR LESS) OWNED BY THE BALL FAMILY TRUST:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE.
 - B. THE INTERESTS IN LANDS ACQUIRED BY THE STATE ARE OF EQUAL OR GREATER VALUE THAN THOSE RELINQUISHED.
 - C. THAT UPON CLOSE OF ESCROW, ANY SOVEREIGN PROPERTY INTEREST WITHIN THE AREA OF LANDS TO BE QUITCLAIMED BY THE STATE TO THE BALL FAMILY TRUST ARE DETERMINED TO BE RECLAIMED OR FILLED OR OTHERWISE REMOVED FROM THE PUBLIC CHANNELS, AND ARE NO LONGER AVAILABLE, NECESSARY OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND ARE NO LONGER IN FACT SUBMERGED LANDS AND ARE FREE FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES.
 - D. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS WITHIN THE SETTLEMENT PROPERTY.
 - E. THE PROPOSED AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - F. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
3. AMEND THE AUTHORIZATION MADE BY APPROVAL OF MINUTE ITEM NO. 44 OF THE COMMISSION'S DECEMBER 12, 1990 MEETING TO REFLECT THE CHANGED PARTIES AND CIRCUMSTANCES AS PROVIDED FOR IN THIS CALENDAR ITEM AND THE PROPOSED AGREEMENT.
4. AUTHORIZE THE EXECUTION AND RECORDATION OF THAT CERTAIN AGREEMENT ENTITLED "AN AGREEMENT BETWEEN THE STATE LANDS COMMISSION AND THE BALL FAMILY TRUST 1988 TO ESTABLISH A BOUNDARY LINE BETWEEN PRIVATE PROPERTY ALONG AND PUBLIC SOVEREIGN PROPERTY IN THE SAN JOAQUIN RIVER; AN EXCHANGE OF SOVEREIGN LAND INTERESTS."

CALENDAR ITEM NO. C30 (CONT'D)

5. AUTHORIZE AND DIRECT THE STAFF TO TAKE ALL ACTIONS NECESSARY IN ORDER TO FINALIZE THIS AGREEMENT, INCLUDING EXECUTION, ACKNOWLEDGEMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TERMS OF THE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

CALENDAR PAGE	100
MINUTE PAGE	4827

This Calendar Item No. 44
was approved as Minute Item
No. 44 by the State Lands
Commission by a vote of 3
at its 12-12-90
meeting.

CALENDAR ITEM

A 32

44

12/12/90
AD 136
W 23744
Grimmett
McKown
Stevenson

S 15

REQUEST FOR AUTHORIZATION TO ENTER
A TITLE SETTLEMENT WITH THE SIENNA CORPORATION
CONCERNING PROPERTY ALONG A ONE AND ONE-HALF MILE STRETCH
OF THE SAN JOAQUIN RIVER IN RURAL FRESNO COUNTY;
INCLUDING A \$30,000 CONTRIBUTION TO THE KAPILOFF LAND BANK FUND

PARTY: The Sienna Corporation
 c/o James A. McKelvey
 Motschneider, Michaelides & Wishon
 1690 West Shaw Avenue, Suite 200
 Fresno, California 93711

In September of this year, staff of the State Lands Commission (Commission) met with the record owner of property along the San Joaquin River in rural Fresno County. The subject property, known as Ball Ranch, contains 592 acres of land. Its location is shown for reference on Exhibit "A" to this calendar item. At the time of the meeting in September, the property was in the record ownership of the Ball family. It has since been purchased by the Sienna Corporation (Sienna), a property developer based in Minnesota.

The Ball Ranch is one of the single largest ownerships of property along the San Joaquin River near Fresno and includes ponds left from gravel mining and significant areas of riparian foliage, and open woodland. It lies approximately three miles downstream of Friant Dam. Sienna Corporation has requested Fresno County to

EXHIBIT "B"

CALENDAR PAGE	102
MINUTE PAGE	4829

amend its General Plan to allow this property to be developed with residences and a golf course.

The State Lands Commission has been active in protecting sovereign rights in the San Joaquin River, both upstream and downstream of the city of Fresno. There has been substantial controversy with local landowners, many of whom have established paper title to the bed of the River since the construction of Friant Dam and the reduction of water levels. In the case of the Ball Ranch, a settlement agreement has been drafted by the staff and has been approved by Sienna which determines the landward extent of State title interests within the subject property. The agreement is on file at the Commission's Sacramento office and is incorporated by reference as a part of this calendar item.

The most important terms of the settlement provide that:

1. The parties will set a boundary line between their ownerships through the length of the Ball Ranch. Under the agreement, there will be private fee ownership on one side of the line and State sovereign fee ownership on the other.
2. The State will terminate any possible sovereign land title in an area of the Ball Ranch where there is title uncertainty. In exchange for this termination, Sienna will contribute \$30,000 to the Kapiloff Land Bank Fund. The area in which the public trust is to be terminated is open woodland separated from the active channel of the San Joaquin River by land to be settled in the State under the agreement. This area is subject to substantial title uncertainty because it is shown on available maps as an island above the high water flows of the San Joaquin River just prior to the construction of Friant Dam.
3. Sienna will deed an access easement to the State between the nearest public road and land quieted in the State in the San Joaquin River. This easement shall be for non-motorized public use and motorized use by State vehicles.

The Staff of the State Lands Commission and the Office of the Attorney General have evaluated the proposed settlement in

consideration of environmental, legal, boundary and appraisal factors. The settlement is recommended for several reasons: (1) It will settle sovereign title in a significant reach on the San Joaquin River; (2) it will also permanently protect riparian land along the river in sovereign ownership; (3) access to the River will also be assured and may be increased under the Subdivision Map Act should Fresno County permit a new subdivision of the upland at this site; and (4) it will provide the first Kapiloff funds for expenditure in the San Joaquin River region.

AB 884: N/A

OTHER PERTINENT INFORMATION:

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

Authority; P.R.C. 21080.11

EXHIBIT: A. Site Map for Reference Only.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS;
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE FRESNO COUNTY RECORDER A BOUNDARY LINE AND EXCHANGE AGREEMENT WITH SUBSTANTIALLY THE TERMS DESCRIBED IN THIS CALENDAR ITEM;
3. FIND THAT THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE RESPECTING THE BOUNDARY BETWEEN STATE AND PRIVATE TITLE INVOLVING LAND WITHIN THE BALL RANCH; THAT THE PROPOSED BOUNDARY LINE AND EXCHANGE AGREEMENT ARE A COMPROMISE CONSISTENT WITH AND AUTHORIZED BY THE REQUIREMENTS OF LAW

INCLUDING P.R.C. SECTION 6307; THAT ANY SOVEREIGN INTERESTS CONVEYED TO A PRIVATE PARTY BY THIS TRANSACTION HAVE BEEN RECLAIMED AND REMOVED FROM THE SAN JOAQUIN RIVER AND ARE NO LONGER USEFUL OR SUSCEPTIBLE TO USE FOR NAVIGATION AND FISHING, AND THAT, UPON RECORDATION OF THIS TITLE SETTLEMENT AGREEMENT, ARE NO LONGER LAND OF THE LEGAL CHARACTER OF TIDE AND SUBMERGED LANDS; AND FURTHER, THAT THIS SETTLEMENT ENHANCES THE CONFIGURATION OF THE SHORELINE AND HELPS TO PROTECT ITS USE FOR RECREATION, VEGETATION, AND PRESERVATION OF RIPARIAN HABITAT; AND

4. AUTHORIZE THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL NECESSARY ACTION, INCLUDING THE FILING OF QUIET TITLE LITIGATION, TO ESTABLISH THE LEGAL VALIDITY OF THIS AGREEMENT.

CALENDAR PAGE	105
MINUTE PAGE	4832

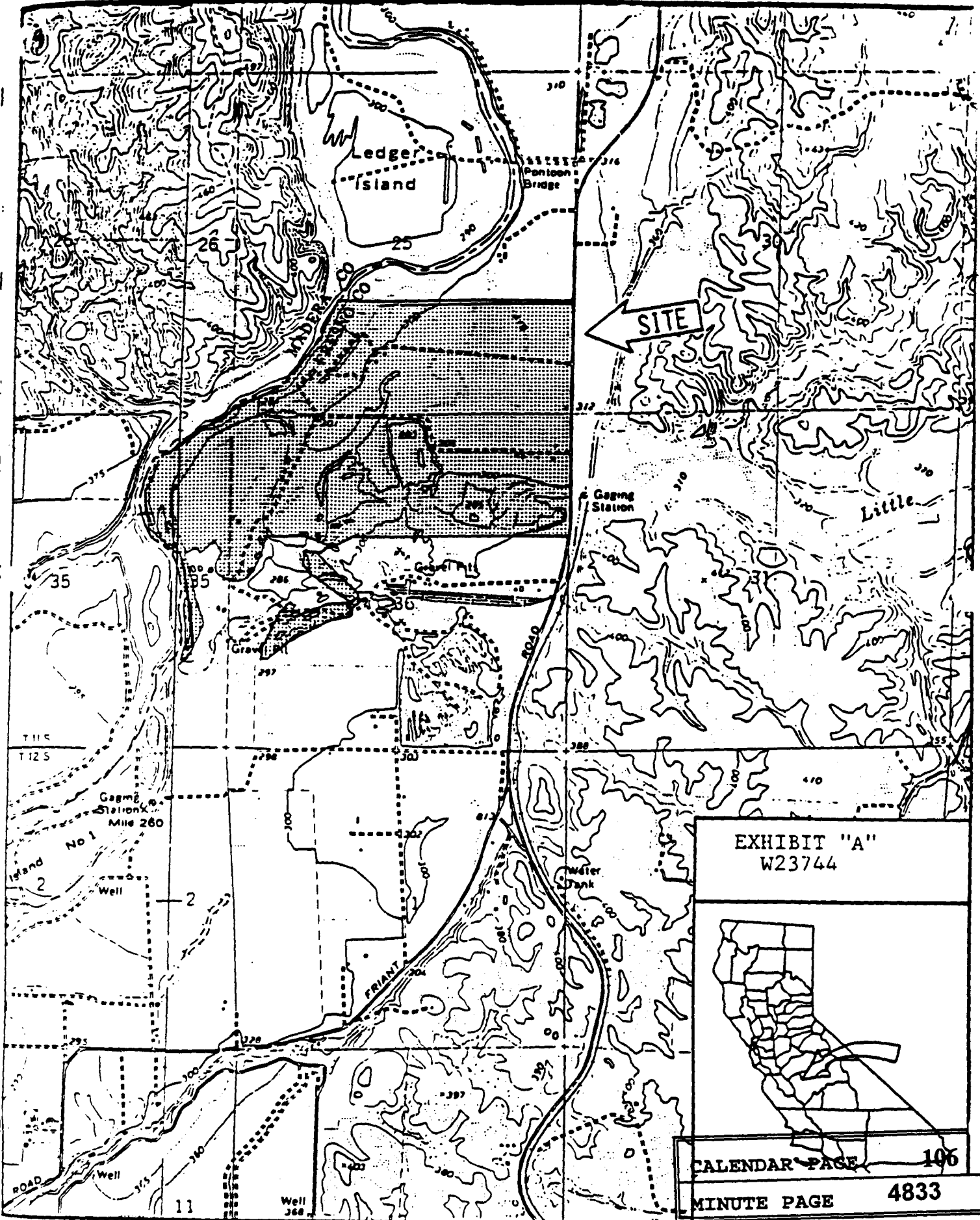


EXHIBIT "A"
W23744



CALENDAR PAGE 106

MINUTE PAGE 4833