

MINUTE ITEM

This Calendar Item No. ~~C48~~ was approved as Minute Item No. 48 by the California State Lands Commission by a vote of 3 to 0 at its 11/27/00 meeting.

**CALENDAR ITEM
C48**

A 30

11/27/00

S 16

AD 382

W 25664

C. Fossum

J. M. McKown

CONSIDER APPROVAL OF A TITLE SETTLEMENT AGREEMENT INVOLVING CERTAIN REAL PROPERTY IN AND ADJACENT TO THE SAN JOAQUIN RIVER, NEAR KERMAN, FRESNO COUNTY, PURSUANT TO PUBLIC RESOURCES CODE SECTION 6307 AND THE KAPILOFF LAND BANK ACT

PRIVATE PARTY:

Dr. Edward Trevino
5325 North Fresno Street, Suite 101
Fresno CA 93710

BACKGROUND:

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

In 1976 the CSLC began a comprehensive investigation of the historical factual evidence relating to the San Joaquin River in order to determine the location of the State's sovereign property interests between Friant Dam and Gravelly Ford. Based upon that study the land that is the subject of this proposed title settlement agreement involves lands: 1) within the bed of the San Joaquin River as shown on the original (1854) United States Government Township Plat for Township 13 South, Range 18 East, Mount Diablo Meridian; within the San Joaquin River as shown on the map of Sycamore Ranch Tract filed in Fresno County Book 8 Record of Surveys Page 7 (July 17, 1912); within a map of "accreted lands" recorded August 18, 1953 in Fresno County Book 19 Record of Surveys Page 1; and within the historic high and low water channels of the San Joaquin River as determined by the CSLC boundary study referenced above; and 2) lands above the ordinary high water mark, as they pass by Lot 6, T 13S, R18E, MDM through the Trevino record title lands and Lots 9, 10, 11 and 12 of Section

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8 of the Sycamore Ranch tract filed in Book 8 Record of Surveys Page 7 (July 17, 1912). The legal ownership and precise boundaries of the San Joaquin River involving public and private property interests can only be determined by agreement of the parties or litigation. Rather than go through the expensive, time consuming and unpredictable course of litigation Dr. Trevino has requested that as part of his acquisition of the subject property the CSLC enter into a mutually agreeable title settlement agreement.

Shown on Exhibits A-1 and A-2 are the areas involved in this proposed title settlement and exchange agreement: 1) the lands to be quitclaimed to the Commission (Parcel 3) as further described in Exhibit B and 2) the lands to be cleared of any sovereign title claims and quitclaimed by the State (Trust Termination Parcels 1 and 2) as further described in Exhibits C and D, respectively. The proposed title settlement agreement is contingent on and made part of the closure of escrow for purchase by Dr. Trevino of the Trust Termination Parcel 1 area described in Exhibit C.

In the area involved in the proposed settlement, the San Joaquin River has been affected by human activities which have had a direct impact upon, among other characteristics, the river's location, velocity and volume of flow, seasonal flow patterns, and sediment transport and deposition. An example of the direct artificial influences is the impoundment and diversion of water for agricultural, recreational, and flood control purposes by the construction and operation of Friant Dam. Consequently the pre-artificial conditions and location of the OHWM and OLWM in this area along or through the subject property no longer is reflected by current flow conditions. These changes have also had an impact on the location and extent of the riparian corridor along the river and the public trust values associated therewith.

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

Staff has conducted an evaluation of the state's easement and fee claims in the subject area, taking into account the factual uncertainties, the legal disputes, as well as the present and foreseeable future utility to the public in asserting, exercising, or preserving the claims in their mapped location, and recommends terminating any remaining title claims in the area described in Exhibits C and D. This termination would be in exchange for Dr. Trevino's claims within the area described in Exhibit B and the 20 foot easement described in Exhibit E that together with \$3200 to be placed in the Kapiloff

CALENDAR ITEM NO. C48 (CONT'D)

Land Bank have a greater value and utility to the Public Trust. The state's fee claims that it will be exchanging total 0.172 acres of fee in Trust Termination Parcel 1 (Exhibit C). The state will also be terminating its easement claims of 5.116 acres within Trust Termination Parcel 1 (Exhibit C) and 0.048 acres within Trust Termination Parcel 2 (Exhibit D). The state will be acquiring a quitclaim of 12+ acres of fee title lands from Dr. Trevino, already claimed in fee by the state, and fee title to 0.692 acre that are subject to the easement (Exhibit B). In addition Dr. Trevino will be deeding the state a 20 foot public access easement connecting San Jose Avenue to the lands to be cleared to the state (Exhibit E).

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

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Code of Regs.: Title 2, Div. 3; Title 14, Div. 6.
- C. Pursuant to Government Code section 66412(e), provisions of the Subdivision Map Act do not apply to title settlement agreements to which the CSLC is a party.
- D. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 California Code Regulations 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines. Authority: Public Resources Code 21065 and 14 California Code Regulations 15378.
- E. The STATE, acting by and through the CSLC, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to sections 6307 of such code, to enter into property exchange agreements.

PERMIT STREAMLINING ACT DEADLINE

N/A.

EXHIBITS:

- A. - 1 and A -2 Maps of Agreement Area
- B. Description of River lands to be quitclaimed by TREVINO to STATE.

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- C. Description of Trust Termination Parcel 1 to be Quitclaimed by STATE to TREVINO
- D. Description of Trust Termination Parcel 2 to be Quitclaimed by STATE to TREVINO
- E. Description of 20 foot Access Easement

IT IS RECOMMENDED THAT THE COMMISSION:

- 1. FIND THAT THE TITLE SETTLEMENT AGREEMENT IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14 CALIFORNIA CODE OF REGULATIONS SECTION 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, AND PUBLIC RESOURCES CODE SECTION 8631, AN ACTION TAKEN PURSUANT TO THE KAPILOFF LAND BANK ACT, PUBLIC RESOURCES CODE SECTION 8600, ET SEQ.
- 2. FIND THAT, WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE AREA DESCRIBED IN EXHIBIT C AND D OF THIS CALENDAR ITEM FOR THE LANDS DESCRIBED IN EXHIBIT B AND E PLUS \$3200.00 IN FUNDS DEPOSITED IN THE LAND BANK WITH WHICH TO ACQUIRE OTHER INTERESTS IN REAL PROPERTY OF BENEFIT TO THE PUBLIC TRUST:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.
 - B. THAT THE PRIVATE PARTIES INTERESTS IN LANDS TO BE QUITCLAIMED TO THE STATE IN EXHIBIT B AND E PLUS THE \$3200 TO BE PLACED IN THE LAND BANK FUND IS EQUAL TO, OR GREATER THAN THE VALUE OF THE STATE'S INTEREST IN THE LANDS DESCRIBED IN EXHIBITS C AND D BEING RELINQUISHED BY THE STATE.
 - C. THE AREA OF INTERESTS IN LANDS CLAIMED BY THE STATE TO BE RELINQUISHED, WHICH IS A RELATIVELY SMALL AREA (APPROXIMATELY 0.172 ACRES OF FEE INTEREST AND 5.288 ACRES OF EASEMENT ONLY), WHICH PURSUANT TO A PROJECT FOR IMPROVEMENT OF NAVIGATION, RECREATION, AND FLOOD CONTROL, HAS BEEN EXCLUDED FROM THE

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PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND IS NO LONGER IN FACT SUBMERGED LANDS IN THE PRESENT BED OF THE SAN JOAQUIN RIVER.

- D. THE CONVEYANCES PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH BUT RATHER ENHANCE THE PUBLIC'S RIGHTS OF ACCESS TO THE WATERS OF THE SAN JOAQUIN RIVER.
 - E. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS AND CLAIMS WITHIN THE AGREEMENT AREA.
 - F. THE PROPOSED SETTLEMENT AGREEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - G. 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.
 - H. ON THE DATE PROVIDED FOR IN THE TITLE SETTLEMENT AGREEMENT AND CONSISTENT WITH ITS TERMS, THE TRUST TERMINATION PARCELS 1 AND 2, DESCRIBED IN EXHIBITS C AND D WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND ALL STATE SOVEREIGN PROPERTY INTERESTS INCLUDING THE PUBLIC TRUST EASEMENT WILL BE TERMINATED.
5. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION OF THE TREVINO TITLE SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY OF SUCH AGREEMENT ON FILE WITH THE COMMISSION.
6. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL: 1) TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION,

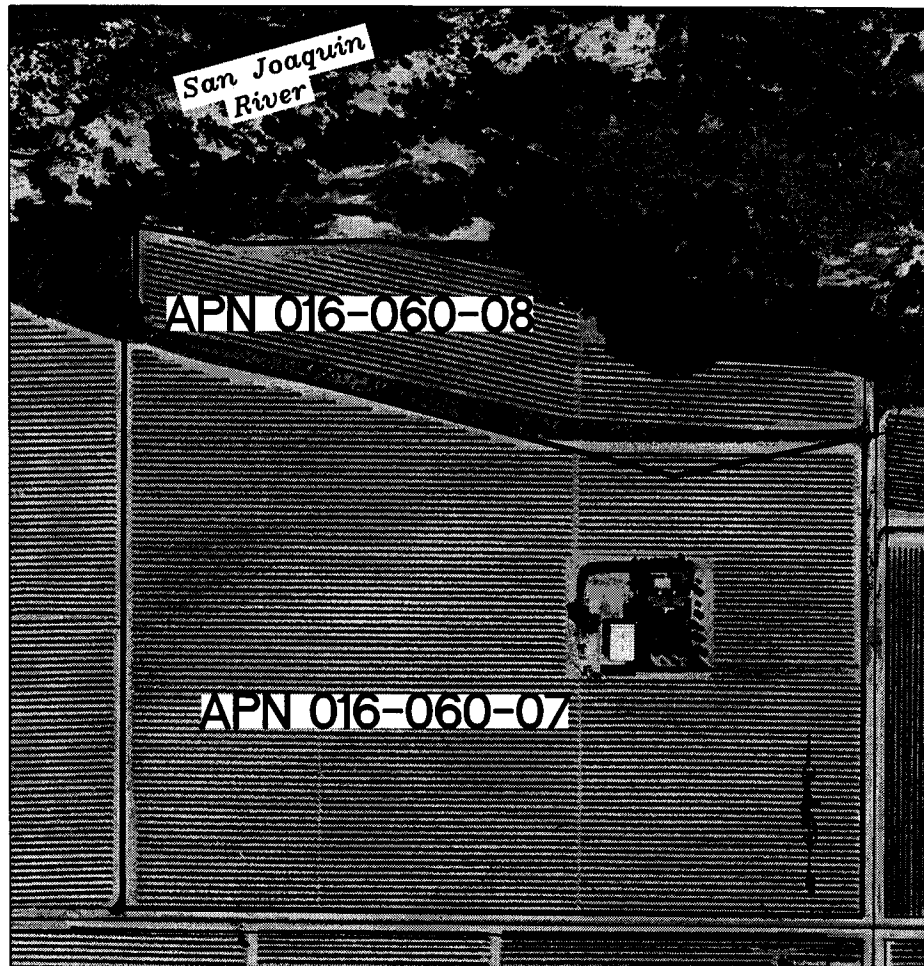
CALENDAR ITEM NO. **C48** (CONT'D)

INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TITLE SETTLEMENT AGREEMENT; AND 2) TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER OF THE AGREEMENT.

CALENDAR PAGE	<u>00378</u>
MINUTE PAGE	<u>00999</u>

NO SCALE

SITE MAP



5345 NORTH SYCAMORE AVE., KERMAN, CA

NO SCALE

LOCATION MAP

San Joaquin River

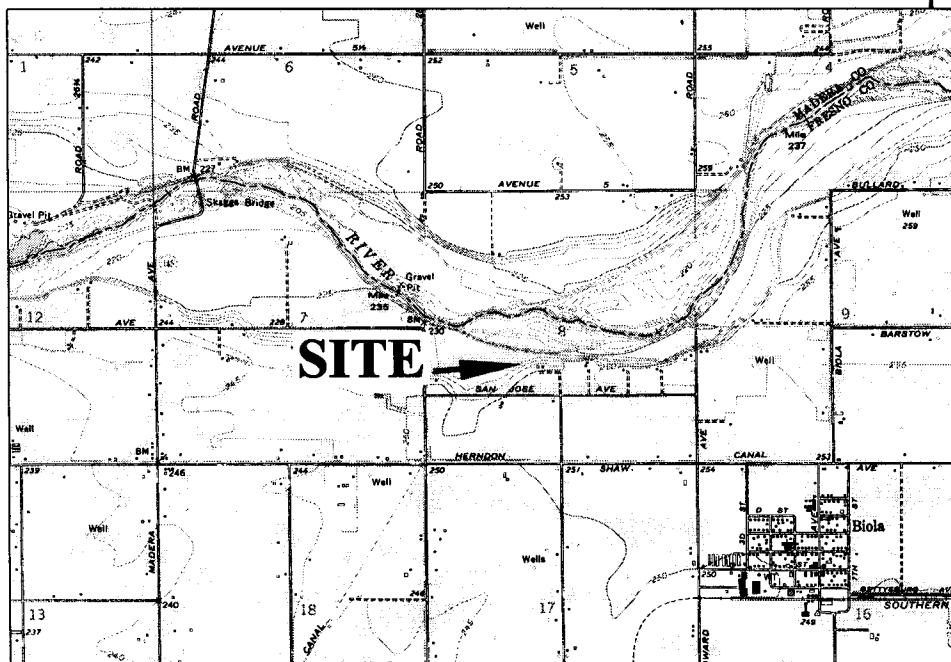
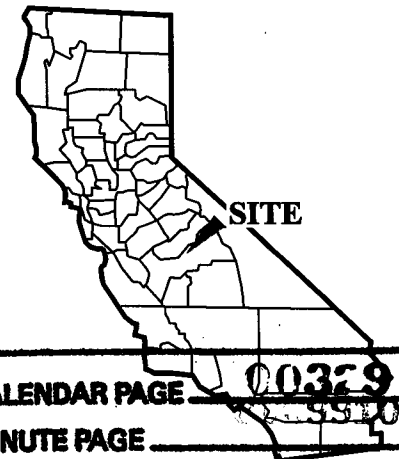


Exhibit A-1
 W 25664
 APN 016-060-07,08
 San Joaquin River
 FRESNO COUNTY



CALENDAR PAGE 0329
 MINUTE PAGE 5510

EXHIBIT A-2

SOVEREIGN FEE CLAIM
 WITHIN
 TRUST TERMINATION PARCEL 1
 0.172 acres

SOVEREIGN FEE CLAIM
 WITHIN
 RIVER LANDS PARCEL 3
 12 ± acres

Approximate Centerline San Joaquin River

PUBLIC TRUST EASEMENT CLAIM
 WITHIN
 RIVER LANDS PARCEL 3
 0.626 acres 0.066 acres

PUBLIC TRUST EASEMENT CLAIM
 WITHIN
 TRUST TERMINATION PARCEL 1
 5.116 acres

PUBLIC TRUST EASEMENT CLAIM
 WITHIN
 TRUST TERMINATION PARCEL 2
 0.048 acres

AREA ABOVE PUBLIC
 TRUST EASEMENT CLAIM
 TRUST TERMINATION PARCEL 1
 1.604 acres

MEANDER LINE AS SHOWN ON
 FRESNO COUNTY MAP "SYCMORE RANCH TRACT"
 FILED IN BOOK 08 RS PAGE 07
 RECORDED JULY 17, 1912 AND ON
 G.L.O. TOWNSHIP PLAT T13S, R18E, MDM
 SURVEYED 1854

PROPOSED
 20' WIDE PUBLIC
 ACCESS EASEMENT

SYCAMORE AVE.

TRUST TERMINATION PARCEL 2

LOTS 9,10,11 AND 12 SECTION 8 "SYCMORE RANCH TRACT"
 FILED IN BOOK 08 RS PAGE 07
 RECORDED JULY 17, 1912
 ALSO BEING A PORTION OF GLO LOT 6

NOTES

THE HIGH AND LOW WATER SHOWN HEREON IS BASED
 ON DWR CENTRAL VALLEY PROJECT MAP 1938 SHOWING
 THE LAST NATURAL RIVER CHANNEL AND CALCULATED
 RIVER FLOWS FOR HIGH AND LOW WATER

SAN JOSE AVE.

EXHIBIT A-2

*Land Area Plat Trevino
 Proposed Title Settlement
 San Joaquin River Fresno County*

CALIFORNIA STATE
 LANDS COMMISSION

DRAWN BY: SC MINUTE PAGE FILE NO.: W25664

DATE: 10/26/00

1" = 200'

PG. 2 of 2

Trevino
Title Settlement
November 1, 2000
W25664

**EXHIBIT B
RIVER LANDS (PARCEL 3)
LAND DESCRIPTION**

All of that portion of the San Joaquin River lying within fractional Section 8, T. 14 S., R. 18 E. MDM per the Official US Government Township Plat approved November 30, 1854, situate within the County of Fresno, State of California and lying northerly of the following described line:

COMMENCING at the intersection of the centerlines of W. San Jose Avenue and N. Sycamore Avenue as shown on that map filed in Book 27 of Record of Surveys at Page 15, Fresno County Records, said intersection having coordinates of N = 2,180,116.79 feet and E = 6,259,054.60 feet, thence along the centerline of the 40 foot Highway between Lots 8 and 9 of Section 8 as shown on that Plat of "Sycamore Ranch Tract" and its northerly prolongation, North 0° 23' 22" East, 969.22 feet; thence North 76° 23' 36" West, 89.27 feet; thence North 57° 22' 59" West, 252.19 feet; thence North 79° 01' 24" West, 345.28 feet; thence South 88° 43' 13" West, 246.02 feet; thence North 80° 13' 49" West, 184.44 feet; thence South 0° 18' 29" West, 195.07 feet to the north line of Lot 12 of said Section 8 as shown on said Plat of "Sycamore Ranch Tract"; thence along said North 79° 01' 24" West to the northwest corner of said Lot 12.

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

END OF DESCRIPTION



CALENDAR PAGE	00331
MINUTE PAGE	003312

Trevino
Title Settlement
November 1, 2000
W25664

EXHIBIT C
TRUST TERMINATION PARCEL 1
LAND DESCRIPTION

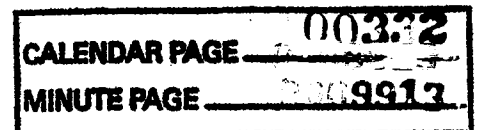
A parcel of land, adjacent to government Lot 6 of Section 8, T 14 S, R 18 E, MDM, according to the Official Township plat approved November 30, 1854, situate within the County of Fresno, State of California and described as follows:

COMMENCING at the intersection of the centerlines of San Jose Avenue and Sycamore Avenue as shown on that map filed in Book 27 Record of Surveys at Page 15, Fresno County Records, recorded on March 20, 1975, having a California Coordinate System of 1983, Zone 4 value of North = 2,180,116.79 feet and East = 6,259,054.60 feet, thence North 00°23'22" East 870.31 feet along the centerline of the 40 foot highway right of way between lots 8 and 9 of Section 8 as shown on that map entitled "Sycamore Ranch Tract" filed in Book 08 Record of Surveys Page 07, recorded on July 17, 1912, Fresno County Records, to a point on the North boundary line "Sycamore Ranch Tract" as shown on said map and the TRUE POINT OF BEGINNING thence along said boundary line South 78°15'50" West 362.16 feet; thence North 75°44'10" West 980.38 feet; thence leaving said boundary line North 00°18'29" East 195.07 feet; thence South 80°13'49" East 184.44 feet; thence North 88°43'13 East 246.02 feet; thence South 79°01'24" East 345.28 feet; thence South 57°22'59" East 252.19 feet; thence South 86°15'53" East 239.06 feet; thence South 76°23'36" East 89.27 feet; thence South 00°23'22" West 98.91 feet to the point of beginning.

Containing 6.89 acres of land more or less.

The basis of bearings for this description is California Coordinate System of 1983, Zone 4. All bearings and distances are grid. The centerline bearing of San Jose Avenue is taken to be North 89°24'10" West.

END OF DESCRIPTION



Trevino
Title Settlement
November 1, 2000
W25664

**EXHIBIT D
TRUST TERMINATION PARCEL 2
LAND DESCRIPTION**

All of government Lot 6 of Section 8, T 14 S, R 18 E, MDM, according to the Official Township plat approved November 30, 1854, situate within the County of Fresno, State of California and also being lots 9,10,11 and 12 of Section 8 as shown on that certain map entitled "Sycamore Ranch Tract" filed in Book 08 Record of Surveys Page 07, recorded July 17, 1912 in the official records of Fresno County, State of California.

END OF DESCRIPTION



CALENDAR PAGE	00333
MINUTE PAGE	0009914

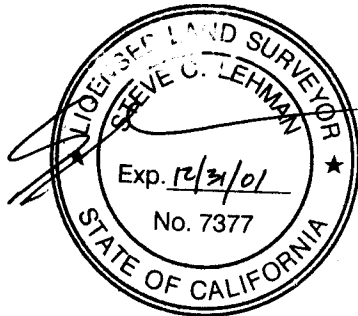
Trevino
Title Settlement
November 1, 2000
W25664

**EXHIBIT E
20 FOOT ACCESS EASEMENT
LAND DESCRIPTION**

A parcel of land, being a portion of and adjacent to government Lot 6 of Section 8, T 14 S, R 18 E, MDM, according to the Official Township plat approved November 30, 1854, situate within the County of Fresno, State of California and described as follows:

Being the East 20 feet of lot 9 Section 8 as shown on that certain map entitled "Sycamore Ranch Tract" filed in Book 08 Record of Surveys Page 07, recorded July 17, 1912 in the official records of Fresno County, State of California, together with the East 20 foot of Trust Termination Parcel 1 as described in Exhibit C of this Agreement.

END OF DESCRIPTION



CALENDAR PAGE	00334
MINUTE PAGE	0009915