

United States Department of the Interior



FISH AND WILDLIFE SERVICE

2800 Cottage Way, Ste 2606 Sacramento, CA 95825

In Reply Refer To: FWS/LR8/IR08/IR10

Holly Geneva Stout, Esq. California Water Commission P.O. Box 942836 Sacramento, CA 94236-0001 cwc@water.ca.gov

Subject: Notice of Intention of United States Fish and Wildlife Service to be Heard at May 17, 2023, Resolution of Necessity Hearing of the California Water Commission

APN 042-260-024 - DWR Parcel No. YBSH-130

Swanston Ranch/Huntington Family Trust - FWS Easement # 24C - 158 acres

Dear Ms. Stout:

Pursuant to California Code of Civil Procedure Section 1245.235(b)(3), the United States Fish and Wildlife Service submits this notice of intention to be heard concerning the above-referenced easement interest in DWR Parcel No. YBSH-130 during the May 17, 2023, Resolution of Necessity Hearing.

Please include in the administrative record for this proceeding the enclosed Fish and Wildlife Service comment letter concerning this parcel, which was submitted on October 6, 2022.

Sincerely,

CURTIS MCCASLAND Digitally signed by CURTIS MCCASLAND Date: 2023.05.10 13:27:43 -07'00'

Curtis McCasland Assistant Regional Director Refuges Program United States Fish and Wildlife Service California Great Basin Region 2800 Cottage Way, Suite W-2606 Sacramento, CA 95825

Enclosure



United States Department of the Interior



FISH AND WILDLIFE SERVICE

2800 Cottage Way, Ste 2606 Sacramento, CA 95825

In Reply Refer To: FWS/LR8/IR08/IR10

By Electronic Mail

Holly Geneva Stout, Esq. California Water Commission P.O. Box 942836 Sacramento, CA 94236-0001 cwc@water.ca.gov

Subject: United States Fish and Wildlife Service Submission of Comments for the October 19, 2022, Resolution of Necessity Hearing California Water Commission

APN 042-260-024 - DWR Parcel No. YBSH-130

Huntington Family Trust - FWS Easement # 24C - 158 acres

Dear Ms. Stout:

As provided in the September 26, 2022, Notice of the Resolution of Necessity hearing, the United States Fish and Wildlife Service ("FWS" or "Service") submits these written comments for consideration by the California Water Commission ("Commission") and inclusion in the record of this proceeding concerning the above-referenced casemont in which the United States holds an interest.

Federal Interest in DWR Parcel No. YBSH-130

First, the Commission must understand that the conservation easement held here is an interest in lands held by the United States. As such, absent a waiver of sovereign immunity, a federal interest in real property cannot be condemned. United States v. Navajo Nation, 556 U.S. 287, 289 (2009). ("A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text, and will not be implied. Moreover, a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign."); Minnesota v. United States, 305 U.S. 382, 386-87 (1939), superseded on other grounds by statute as stated in Morda v. Klein, 865 F.2d 782, 783 (6th Cir. 1989); Utah Power & Light Co. v. United States, 243 U.S. 389, 405 (1917). The sole extant statutory exception to this federal preemption relating to condemning real property owned by the United States is under the Quiet Title Act ("QTA"), 28 U.S.C. § 2410(a), and this is a limited waiver of sovereign immunity. Id. (the United States may be made a party" in a case "to condemn ... real or personal property on which the United States has or claims a mortgage or other lien."); Block v. North Dakota, 461

U.S. 273, 286 (1983) ("Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."). Moreover, this waiver as related to a mortgage or lien is narrowly construed. See, e.g., Hussain v. Boston Old Colony Ins. Co., 311 F.3d 623, 629 (5th Cir. 2002) (Section 2410 "was specifically passed to waive the sovereign immunity of the United States so that private parties could get the government into court when necessary to quiet title or resolve priority of liens or mortgages"); Village of Wheeling v. Fragassi, No. 09 C 3124, 2010 WL 3087462, at *4 (N.D. Ill. Aug. 2, 2010) (lease not a mortgage or lien under § 2410); Ansonia Nat'l Bank v. United States, 147 F. Supp. 864, 865 (D. Conn. 1956) (easement not a "lien" under § 2410).

Likewise, the doctrine of prior public use ensures that the United States' interest, absent a contrary statutory provision enacted by Congress, triumphs over a state or local government's effort to condemn federal lands or real property interests. The doctrine is designed to prevent courts from becoming embroiled in competing claims by governmental entities to the same property. See United States v. Acquisition of 0.3114 Cuerdas of Condemnation Land More or Less, Located on Calle, 753 F. Supp. 50, 54 (D.P.R. 1990) ("Without the prior use doctrine, there could be a free for all of battling entities all equipped with eminent domain power, passing title back and forth."). Simply stated, even ignoring that the public interest of the United States may be supreme, our prior public interest reflected in the United States' ownership of the property suffices to block any condemnation by state or local governments.

Procedural Background

Our Realty Section, Refuge Staff, and the Department of Water Resources ("DWR") participated in a meeting concerning this Project and exchanged a few communications in February-April of 2021. FWS heard nothing further until our Realty Section began receiving letters in late 2021, concerning easement parcels that were included in DWR's Batch A Resolution of Necessity hearing process. In connection with this particular parcel, our Realty Section received a letter dated June 15, 2022, from DWR Right-of-Way Agent Nathan Myhre, Indicating that DWR intended to acquire a flowage easement on this conservation easement parcel. In response, the FWS submitted a letter to Catherine McCalvin of DWR dated July 7, 2022, which supplemented an earlier letter submitted by the Service to DWR on February 14, 2022, both of which set forth the federal interest in the conservation easement. The Service requests that both of these letters be included in the record of this proceeding. DWR responded to the Service's February letter on April 6, 2022. DWR provided notice of intent to be heard at that hearing on September 13, 2022, the Service provided oral comments at the September 21, 2022, informational hearing. On September 26, 2022, DWR issued notice of the Resolution of Necessity hearing for this parcel, to which the Service has submitted a notice of intent to be heard.

Upper Swanston Ranch, Inc. Easement

Enclosed herein as Exhibit A is the Easement by which Upper Swanston Ranch, Inc., Swanston Properties, and G. Erling Linggi, Trustee of the Marilyn J. Linggi Testamentary Trust, granted to the United States by Grant of Easement recorded on April 16, 1999, a perpetual conservation easement over a total of 2,494.67 acres under authority of the Migratory Bird Conservation Act of February 18, 1929 (16 U.S.C. 715, et seq. as amended), which authorizes the Secretary of the Interior to acquire certain lands or interests therein for waterfowl habitat. The purpose of this easement is to maintain habitat for waterfowl. The United States expended four million dollars (\$4,000,000.00) for the easement, which is a component part of the National Wildlife Refuge System and subject to pertinent National Wildlife Refuge system laws and regulations. The parcel now in ownership to the Huntington Family Trust is a portion of this larger Upper Swanston Ranch easement, consisting of 158 acres. Notably, the easement in Paragraph 6 specifically provides that the Grantor "shall not grant any additional easements, rights-of-way, or other interests in the Easement Lands, other than a fee or leasehold interest, or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Waters for the Easement Lands." Paragraph 3 of the Easement prohibits the Grantor from altering the existing topography, or from otherwise altering or using or permitting the use by third parties of the Easement Lands for any purpose without the prior written authorization of the Service. Such authorization will only be given if the Secretary of the Interior or her designated representative determines that the proposed activity will not change the character of the Easement Lands or adversely affect the use of the Easement Lands as waterfowl habitat suitable for migratory birds.

Similarly, 50 CFR 25.44 requires permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. This includes instances where the third applicant is a governmental entity which has acquired a partial interest in the servient estate by subsequent condemnation. Regulations regarding rights-of-way in easement areas are found in 50 CFR part 29.21.

As required by the National Wildlife Refuge System Improvement Act of 1997, before authorizing a use that affects our easement interest, the Service must first make a compatibility determination (16 U.S. C. § 668dd(d)(3)(A)(i)). A compatibility determination is a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge (50 CFR 25.12(a)). In making the determination, the Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use (603 FW 2.11B(3)). This federal compatibility determination is markedly different from the representations DWR has made that operation of the proposed Project is compatible with the existing conservation easements.

As stated in the USFWS easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service. In order to facilitate this Project, we are reviewing hydrologic data provided by DWR, engaging with the landowner, and will work with DWR and the landowner to resolve identified issues. Upon receipt of an application, the Service will then engage in a compatibility determination for the Project, as required under federal refuge law and regulation. Note that the Service *cannot* make a compatibility determination on future permitted construction and operation of the fish passage and floodplain restoration projects amounting to a change in the Project not analyzed previously. Should they arise, any future changes to the Project would require additional environmental analyses. Such future projects would also require a federal compatibility determination, but this cannot occur until these projects have been sufficiently analyzed in future environmental analyses, which would allow us to ensure proposed future modifications do not impact our interest in the property.

Existing Purpose of USFWS Easement on Huntington Family Trust Parcel

The USFWS Easement was purchased to protect wetlands and easement waters in perpetuity for waterfowl and other migratory birds. Wetlands on this property are considered managed freshwater

wetlands and consist of a complex of shallow wetland impoundments contained by levees that are delivered water through managed irrigation infrastructure. Landowners actively manage the water levels of these wetlands using water control structures to promote beneficial wetland vegetation and provide foraging habitat for wintering and migrating waterfowl. Although water depth varies with wetland topography, landowners typically mange for an average depth of 8-10 inches that provides optimal foraging habitat for most waterfowl and a great diversity of migratory waterbirds.

DWR's Proposed Flowage Easement

Under DWR's proposed flowage easement, the landowner would grant a perpetual right-of-way and easement in the real property, for the purposes of seasonal floodplain fisheries rearing habitat and fish passage in the Yolo Bypass. In addition, the proposed flowage easement would provide the Grantee (DWR) the right for the flowage of water over and upon the Property as may be required for the *present and future* permitted construction and operation of fish passage and floodplain restoration projects. It is not clear if the easement would allow alteration to riparian habitat. The proposed flowage easement would also include the right to flow water and materials and by said flow erode; or place or deposit earth, debris, sediment, or other material.

Anticipated Project Impacts from DWR data

According to DWR analysis, the Big Notch Project would flood the Huntington Family Trust Parcel 042-260-024 an average of 9.6 additional days above 6" within the November 1 through February 28 hunt period. The number of additional days the parcel would flood above 6" during the hunt period would range from 0 to 36 days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 7.6 additional days above 12" during the hunt period, with a range from 0 to 25 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 8.1 additional days above 18" during the hunt period, with a range from 0 to 23 additional days flooded above 18". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 8.1 additional days above 18" during the hunt period, with a range from 0 to 23 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, water control structures) in addition to access, waterfowl use and hunting quality.

Standard for Resolution of Necessity

The lands covered by this United States easement are already appropriated for a public use. As such, the Commission must follow certain procedures to make determinations as to whether the proposed new use is either compatible with or more necessary than the existing use.

CCP 1240.510 requires that the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. As noted, this easement was acquired for the purpose of waterfowl habitat suitable for migratory birds.

Under CCP 1240.610, the Commission would need to find that use for which the property is sought to be taken is a more necessary public use than the use for which the property is appropriated.

Increased flooding over 6" in depth on these wetlands would likely have a negative impact on migratory bird foraging habitat, potentially impacting waterfowl use and ultimately hunting quality. Increased flooding over 12" would further decrease migratory bird foraging habitat and would also impact landowner access by potentially flooding roads/ levees/hunting blinds and making it unsafe for hunters to wade the wetlands. Finally, increased flooding over 18" would not only impact migratory bird habitat and landowner access, but significantly overtop roads, levees and water control structures potentially

causing costly damage to wetland infrastructure. The FWS purchased a conservation easement on this property with the understanding that landowners would continue to optimally manage their lands for migratory birds as long as they had the incentive to hunt and enjoy passive recreation on their properties. Increased flooding has the potential to decrease hunting quality, decrease landowner access, and increase infrastructure maintenance costs, all of which could be impediments to future management of the property as migratory bird habitat.

The April 6, 2022, letter from DWR states without explanation that operation of the Project is compatible with the existing conservation easements and will not unreasonably interfere with or impair the continuance of the Service's public use as it exists or may reasonably be expected to exist in the future. Citing to the Easement for the 'Upper Swanton[sic]' property, the DWR letter further indicates the Service's conservation easements specify that the "properties are subject to a nonexclusive right to flood the properties between October 15 and March 1, as an existing use [footnote omitted]. Therefore, DWR does not anticipate the need to modify the existing Service conservation easements."

The 1999 Upper Swanston Ranch easement provides in Paragraph 5 that "[h]owever, in any year that Grantors do not flood the Easement Lands in the customary manner to their historical hunting season level, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the Easement Lands from October 15th through March first of the following year." However, flooding by the United States in the "customary manner to their hunting season level" would be for the purpose of maintaining habitat for waterfowl, which is not the same as the prospective flooding under the proposed project to the levels shown in modeling, which in certain cases exceed the historic levels that were contemplated in the Upper Swanston Ranch easement.

Conclusion

The Fish and Wildlife Service has been in contact with the landowner for this property. We have initiated discussions to determine if reasonable measures can be implemented to ensure landowners have access to the property and to identify other reasonable improvements, such as modifications of levees and water control structures, to ensure these properties can continue to be managed and used as private wetlands.

As stated in the USFWS Easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service, which, in determining whether to grant such authorization, will be looking at whether the proposed interest interferes with the use of the Easement lands as waterfowl habitat suitable for migratory birds. To that end, we request DWR continue to work with FWS and the landowners to implement reasonable measures to help ensure this property continues to provide the migratory bird benefits for which it was acquired, regardless of a Resolution of Necessity determination for the property. As DWR moves forward, it needs to take appropriate steps to ensure that

the Project will not unreasonably interfere with or impair the vital public use to provide suitable habitat for migratory waterfowl. We look forward to cooperating with DWR and the landowners on the Project, while ensuring the US easement parcel continues to provide benefits for migratory waterfowl.

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Sincerely,

CURTIS Digitally signed by CURTIS MCCASLAND Date 2022.10.06 16:07:56 07:00

Curtis McCasland Assistant Regional Director, Refuges Program United States Fish and Wildlife Service California Great Basin Region 2800 Cottage Way, Suite W-2606 Sacramento, CA 95825

Enclosures

cc:

Catherine McCalvin, DWR Elizabeth Vasquez, DWR Rachel Taylor, DWR Mario Manzo, BOR

EXHIBIT A

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UNITED STATES DEPARTMENT OF THE INTERIOR U.G. FIGH AND HILDLIFE BURVICE

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AND ALSO MURRIAN, the ensemble interest rights in the following denogibed lands are being sequired for administration by the decordery of the interior (nonregary) through the United Musics Field and Mildlife mervice, and the use, modpation and operation of the reservations retained herein shall be subordinate to and subject to much rules and requisitions as may be preseded by the decreasing governing the use, occupation, protocolor and administration of uples of the Hacional Mildlife Arings Ayeles under and in compliance with provisions of Saction 6 of the Migratory Bird Conservation Act of Vokewary 10, 1929 (45 bird. 1935), as anamided by dection 301 of the networ Nevanus Maring Act of ours 18, 1935, (49 shat, 321).

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North Contral Valley (240)

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Trad. (29G-1); Tervaship & North, Rauge 1, East, Meuni Diable Moridisu;

That portion of Lots 4, 5, 12, and 13, as shown on the plat of "Eucelyptus Grove," filed in Book 3 of Maps and Surveys at page 33 in the Office of the County Recurds of the County of Yole, lying northerly of a sing of land 200 fiest in width adjoining the original Reflected Right of Way, as described in deeds to Southern Paello Company, recorded June 19, 1911, in Hock 76 of Deeds at Page 404, and lying east of the west 284.2 feet of Loss 4, 10 and 17. Section 3 Lote 4, 5, 12 and 13,

Containing 19.70 seres more or loss.

North Control Valley (246)

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Township & North, Ranzo 3 Rost, Mount Dinisla Medillan:

Section 3

All of Lota 1, 2, 3, 6, 7, 9, 9, 10, 11, 14, 15, and 16, as shown on the plat of "Russhyptus Grove," filed in Book 3 of Maps and Surveys et page 83 in the Office of the County Records of the Gounty of Yela, lying northerly of a ntrip of land 200 feet in width adjoining the original Reliced Right of Way, as described in decise to Southern Pacific Company, recorded June 19, 1911, in Book 76 of Decida at Page 494.

Containing (21,02 norse more or lass.

The above described three tracts of high, containing in the aggregate of 2494.67 acres, is delineated on a map tracing designated Upper Swanaton Ranoli, inc., et al. Tracts (29C.C-1,C-2) considing of one page, bearing the date of February 2, 1999, of recard in the Mes of the Department of the Interior. A print from that map is attached hereto.

i. There are excepted and reserved from this Grant of Research all minorals, including gas, oil, and other hydrocarbon substances, underlying the Besearch Lands, and this Grant of Research is subject to all existing assements and rights-of-way of resord held by third parties, and to all outstanding mineral rights, including all oil and gas leases of record, held by third parties, including but not limited by

[4] Iskas for dil and gas to The Superior dil Gengany for terms of lease recorded April 37, 1946 is Book 126 Official Records, page 178, [6] dil and gas lease to Evan J. Vojvede recorded Hovember 2, 1967 in Book 858 Ufficial Records, page 639; [6] dil and gas jess to depiced oll deportion reducted Petracy 3, 1948, nod 1950 Official Records, page 519; [d] dil, gas and mineral less option agreement between Upper Ausieton Anoch, Susakon Ranch, and Chriling Linggi, Truston and Barks Farbars Herousows socorded Harch 7, 1956, Instrument Ho. 805982; [o] dil, gas and mineral Lease reducted Hovember 0, 1996 as Instrument Ho. 27449 and [2] oil, gas and mineral lease to disense to Superson Company recorded January 5, 1958 as Instrument Ho. 00143.

3. The Sockmant Matern doneist of (I) any ulparian water rights appurtenant to the Maxmann Lands, [11] any appropriative water rights entent three rights are spoutenant to the Maxmann Lands, [11] any waters, the rights to which are sound under contrast between the Grantor and any irrights to which are sound under contrast between the Grantor and any irrights to which are sound under contrast between the Grantor and any irrights to which are sound under contrast between the Grantor and any irrights to the Maxmann Lands, but in any water are dustomarily applied to the Arsenant Lands, and irright waters are dustomarily shows lands described as encoyed from the Maxmann Lands in the lands or on those lands described as encoyed from the Maxmann Lands in the lands or on those lands described as encoyed from the Maxmann Lands in the lands of the amount of Grantor's water removed from the Maxmann Maters are limited to the amount of Grantor's water removed by required to main the Maxmann Lands is all and under seasons! layel. Any survey undertaken in commetion with the determination of flood seastion layers in masurement locations shall be ut the option and separate of bin United Status.

North Contral Vailay (240)

Page 3 of 10

011525 APR 169

1. (a) demnines shall nob, except as provided in paragraphs 3(b) and 4 below, (i) alter the existing topography of or entitivele marketed around the the tasemant fands, (ii) otherwhen alter or use nor paratic the sub by third parties of the Sammant Lands for any purpose, including this explorability or development of any resouved minerals, or (iii) place any disubluces on the development of any resouved minerals, or (iii) place any disubluces on the Bansard Lands other them hunting hinds without the prior without suborigation of Granten durant phirds without the prior without suborigation will only be given if the secretary or his designatud representables determines that he proposed articly will not change the character of the Essenset lands or advantly affaut the use of the Zasmant Lands as waterfoul habitud suitable for algestary bindu.

(b) Grantors and Grantes spee that the emploration, development, and production of reserved oil and gas deposite by Granters or authorized third parties shall be providered compatible with relaterance and use of the Rassment Land, and Hatwey for the management of algestory birds and whill be matchersed by the Fish and Wildlife Series Long to the Grantor shall neeity Grantes by the Fish and Wildlife Series Long activity planned by the owners authorized by the Fish and Wildlife Series both desire that any depletion descent an Witting, of any proposal appreciate both desire that any depletion, descent and production operations both desire that any depletion, due to parabient and Undlife Series both desire that any depletion, due operations and grantes and Grantes both desire that any depletion, due operations and Grantes agrae that (1) all exploration and development and production operations, all defiling and workows attivition, are donducted after Juno 19t and prior to September is of another such approve, as in purable, the institute and wildlife devices the law of contains are seried out in a manner that is compatible with probabies of Carates's second to the second by the tish and Wildlife device when have the sight to approve, as in purable, the induction and makinds to insure such operations are seried out in a manner that is compatible with probabies of Carates's second the device the the tish and Wildlife device when have the sight to approve at in the second the second states of all proved to approve a the purable. Approved by the with and Hildlife device the links such operations are seried out in a manner that is compatible with probables of the inters of anotes and with a the second the second states of the the second the approve with the second the second second with the second second whethes and an example with a second the second second whethes are and an example of the second the second second second at the second second second at the second second second whethes and an example of the second s

4. The provisions of Paragraph 3 kacaaf shall not prohibit humking ar operation of a kunting slub on the Ensemant Lands and such and the bask he deemed to be grantished with making and the Engenesis Lands and such as the bask and the bask of the state of the Engenesis and the state and the state

Gennborn shall also be parmitted to conduct or participate in all reasonably groundinger monitoring notivities, including without limitation, drilling and monitoring test walls and shall be permitted to develop under resourder, in excess of the demeant vaters, for any and all languit purposes.

Nurth Contral Valley (240)

Pago 4 of 10

011625 APR 16 0 -4

Granter shall be expressly permitted to construct such water conveyences an are reasonable to deliver any exquest where to the subject inde or arress or under the subject lands to a remote location. Field and Wildlife dervice phall be consulted in advance of any construction pursuants to this personaph.

B. Granuors are not obligated to take any action or to indur any unpense related to the milneenness or custoration of the Massement Lands as waterfaul habitab. Her are Maintens obligated to apply water to the Ennement Lands or to maintain, repair, or construct any using disarbifution faultilles to serve the Hasdmant Lands. However, in any year that Granters do not flood the Easement Lands in the customery manner to their distribution faultilles lauel, Grantes shill have, at the wold disorded on the factorist hundling magan lauel, or the sole disorder in the set of disorded on the non-original modeling instant to the far the sole disorder in the set of disorded on the non-original set and lauel, or the sole disorder is the following war. In this contended, due have a shill have the following war. In this contended and from Datcher 18th through Haroh first of the following war. In this contended, dualant are obligation, to use any shill all of the Kanement Maters that Oranitas deanne suitable for waterfour habitat purposed and to place on the Bassmant Lands and donvey through Granter water distribution facilities any other waters Grantes may southe

In commotion with any floading done by Grantas personal to this paragraph (1) Grantas thall have the Fight to make full the of Grantage' wates distribution facilities, including both spisting facilities and any facilities constructed in the future and including all water walls and suppoto the origination facilities are applie of serving the Research faults, on the condition that Cantes while pay the waters of grantas' pumps, exclusive of maintenance costs, but including of the provide shands, on in stands that Cantes while pay the waters of the provide shands, on the condition that Cantes while pay the waters of the provide shands, on the condition that Cantes while pay the waters of the provide shands, of any stanted of shanday charges, during any pariod of such use by Grantas, and (1) Openators shandly charges, during any pariod of such us by Grantas, and full denotes, due to may water or includion dispited on account of the use by Grantas of Research thate supplied by such dispited.

6. Grantos shall not grant any additional ensembla, rights-of-way, or other interests in the Statement Lands, other them a fan of insuchold inhurset, or grant or otherwise transfor to any other person or antipy or to other lands or otherwise simulation of grants given through the U.S. Fish and wildlife nervice. Buch mithorization will be given inhese the farmeners or his dedor nated representation of Grants given inhese the farmeners or his dedor nated representation of the first the proposid interest or transfer will inherize with the use of the first the proposid interest or transfer will inherize with the use of the first shall be distributed to transfer will inherize with the use of the first shall be autorial and the transfer of his first or interfore with the availability of Hammand Nature for the farment fands. The paragraph shall not predict the transfer of a fas this or issuesheld interest in the first fands the the transfer of a fas this of issuesheld interest in the farmenet fands that is subjust to the terms of this or an of the second to the farmenet for the the standar of a fas this

7. Upon assuppance of this drant, the essenant interast acquired by the United States shall become a component part of the Mational Minifes Refuss system and shall be subject to those laws and regulations pertaining to the Mational Middlfm Refugs System that are applicable to the second interasts being acquired. Violation of those applicable to the second in interasts being acquired. Violation of those applicable is a second by subject the violation to divis and/or schular laws and regulations that second that does not afform the property interasts conveyed to the United dutes through this Grant of Second the model applicable. Top

Borth Control Valiny (24C)

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example, regulations controlling hundlag and fishing or any public use are not applicable wince these rights have not been conveyed.

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3. This drunt of feesmant shall be binding upon; and shall inurs to the benefit of, the trantor, its successors and sealons and trantes and the so-

9. THIS ORDER IN HADE HUBBERT TO ARISTIN PLANE OF MAY, OF RECORD DE In use, for roads, pipelines, divones, canals, conduits, beiephone and claubriant transmission lines, on, over and across and premises; ALSO Subject to all outstanding minorel skyles; including oil and gas leases second, exceptions and reservations of smoord as of the date of recording descin.

10. This drank of Mamanumb imponen no other oblightlons of sentrichions on the Granton and mathies her they show the Granton and mathies show they show the fact the sentences, not any other person or entity detaining under them, whall be in any way restricted from using all of the subject lands in the dustrementy manner except as provided hereig.

11. THIS GRANT is made in compliance with notification to Yole County Board of Supervisors fine 23, 1980, and shall not schervise limit the sonbrol and management over consident wildlife epocide vested under law in the California Fish and Consistent and the Department of Fish and Came.

> upper engenation ranch, the., a Galifornia Borgoration

871 lei fli part T. Avanaton, President

SHANBTOH PROPERTIES, a Constal Packasuship

and the 3¥1 tı . H Nurt T. Swanston, Hanaging Conversi Partnap

۵X I G. Wiling hingel, Trustweist the Marilyn J. Lingel Tastamentary Trush L.t.

North Control Valley (240)

Page 6 of 10

011525 APR 168

CENTIFICATE OF ACCEPTANCE State of Unlifered doversont Code Section 27201

This is he servicy that the Hearstery of the Interior, acting by and through his authorized representative, the denior Healty Officer, U.S. Fish and Hild-life desvice, hereby Acapte on barels of the UNITED STATE OF AMERICA, the yeal property donaribed in the within dramt of Newsons and comments of recor-dution thereas.

Apr: 1 13.

South Restry Officer V.S. FION AND WILDLIFF SURVICE

ACCHRONIT TO GRADERY

areas or fa ternið country or Manuniciph 97

on <u>ANDER 5</u>, 1999, basors so, <u>MANYILL MUSA</u> personally appeared Dark T. Anameter, presonally known to me (ur pirmedis and the two wide start is subsorted to the within instrument and anknowledged to me that he secondard the same in his capacity, and that by his signature on the instrument, the person, or the untity upon bahalt of which the person sated, executed the instrument.

WITHERE my hand and official seal.

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North Control Valley (240)





Page 7 of 10

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STATE OF . COUNTY OF, SLANAVILLAITA

on <u>Applied 5</u>, 1090, before man<u>ually fire and the personally</u> appeared 6, welling Singel, personally appeared 6, welling Singel, personally be the person whose name to be obtained to the subsorbed to be the person whose name to be obtained to the wellin instrument and acknowledged to me that he ansated the same in the encloy open behave of the signature on the instrument, the person, or the encloy open behave of which the general adult, excouted the instrument.

HITHERE my hand and official surl.

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North Control Valley (240)

Page 5 of 10

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REFERENCE 1

The following list contains most of the plants considered desirable for wetgefoul and other wildlife in the most numeral Vallay Wildlife Hamagement Area. This list is not intended to be all-isolusive, and objec species may be desirable under same discumstander. Fights not on this list may not be introduced on the basement band without written permission from the Grantes.

Solonbifle Hang

1 1

Soman Rive Anustic: Closeling and submericals

Lenha minok Potamogeton pestinetus Potamogeton gestinetus Lannichistis pistustris Pajas guadelupensis Chara spesius Ovokvned Sogio pondkaed Other gondkends Normed pondkend Southern natud Nuskornes

Andat in conversion to a

lisedaten bulguth

Rairpus aoutun (tuis) Boirpus kobistus duirpus fluviatille daran spoles Heluscheis pelusis dypestis spoles Kohinodosus bertenol degitteris letifolis shgitteris letifolis shgitteris pecies Typha opecies

Aikali bulcush Kivar bulcush Solgen Spike cuth Plat sulgus (mutgraper) Suchand Rapato, duck potete Accultan Onttallu

Holnt soils

Kahinguhlos grusyalli Laptophlos fassiuulasia Halgophlos sakoanoides Gryptla hiliata Polygonum spasiat hamannia geodinas Paspalum distichum Syndhon dastilon

North General Velley (248)

Haturgenza Sprangistop Examp timotiy Prickle grass Smartwords Andatum Joint grass Docnuda grass

Uniandas.

Phalazia tuharone var. otenoptera Phalazia tubarone var. hirtigiumis Phalazia nyukinaona Morghum haleponee Autoria mpuchee Pistighiis spicata Huttersan Arter devar Arter devar Arter devar Arter devar Arter devar Arter devar Arter devar

Page 9 of 10

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Apropyron elongation Hellichum speciou

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Reason Hean Walanda done Laundi,

Ashragalus close Lotus corniculatus Olaar sillkvahan Birdufaat krafall

Trada, Miruba, and Plonar

dalla gooddingii Salla hindalana Dogulua francontii Alnua zhombifolla Slaanguus Angunkisolla

North Central Valley (940)

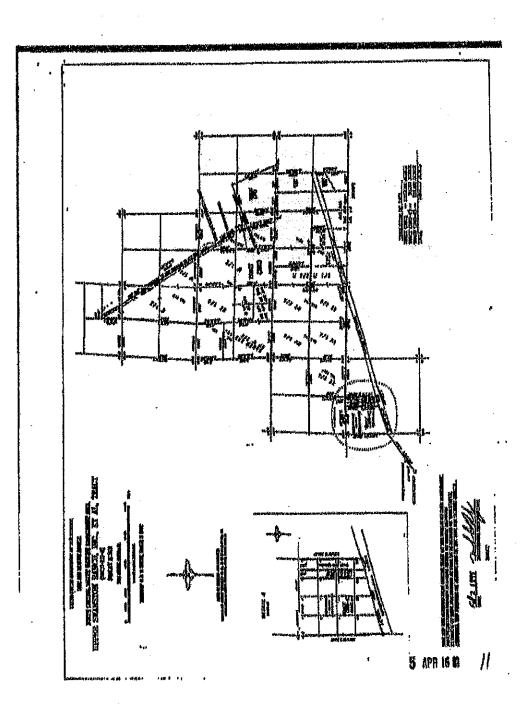
Disok Willow Bandbap Willow France uobsonwood Wille Albo Russian olive

Page 10 of 10

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UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE DIVISION OF REALTY

TRACT DESCRIPTION

OF THE

UPPER SWANSTON RANCH, INC., ET AL, TRACTS

(29C,C-1,C-2)

NORTH CENTRAL VALLEY WILDLIFE MANAGEMENT AREA

YOLO COUNTY, CALIFORNIA

CONTAINING 2494.67 ACRES

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Description frepared by: Michael L. Richby Land Surveyor February 2, 1999

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DESCRIPTION

of the

UPPER SWANSTON BANCH, INC., ET AL, TRACTS

(29C,C-1,C-2)

YOLO COUNTY, CALIFORNIA

The following described three tracts of land are located in Yolo County, California, situated about 7 miles eastering of the city of Davis, California, and being a part of the fands conveyed to Upper Swanston Ranch, Inc. from Lillian K. Swanston by Grant Deed, recorded in book 1224 of Official Records at page 463 in the files of Yolo County, California, said threa tracts being more particularly described as follows;

TRACE (29G);

Township 9 North, Range 3, Best, Meruni, Diable, Meridian

Section 14	All that portion of the South one-holf of the Solutional one-quarter lying southweaterly of a line drawn parallel to and 130 feet measured at a right angle northeasterly from the centerline of the Old Tule Cenal of Reclamation District
	number 785
Socilon 23	Alt that portion of the East one-half lying southwesterly of a line drawn parallel to and 150 feet measured at a right angle northesterly from the contriline of the Old Tule Canal of Reclamation District number 785;
Section 24	All that parties of the West one-half lying southwesterly of a line draws parallel to and 150 feet measured at a right angle northeasterly from the centerline of the Old Tule Canal of Reclamation District number 785;
Socilari 25	All that portion of the West one-half, Swamp Land Survey No. 802 and Swamp Land Survey No. 1010; fying southwasterly of a line drawn parallel to and 130 fest measured at a right angle northeasterly from the centerline of the Old Tule Cenal of Reclamation District number 705, northerly of the northern right of way line of the Storemente Expanse and lying southwesterly of the centerline of the Tule Canal, southerly of the northern right of way line of the Storemento Bypans;
Section 26	All of the East and-half, and the Scutti 200 series of the West one-half.
Section 34	All of the Southaust one-cuntion
Section 35	All that parties of Scolar 35 lying northesity of the northern right of way line of the Southern Pacific Reliroza lught of Way:
Socilon 36	All that parties of the West one-half of the West one-half, the East one-half of the Southwest one-quarter and West one-half of the Southeast one-quarter lying northerly of the northern right of way line of the Southern Paolito Railcord Right of Way.

Contrine 2153.95 series more or less,

011525 APA 169

B

TRACT (22C-U)

Township & Morile Rongo J. Bast. Mount Diable Meridian:

Section J

That panion of Lots 4, 5, 12, and 13, ar shows on the plot of "Euclyptus Unove," fied in Book 3 of Maps and Europys at page 83 in the Office of the County Records of the County of Yolo, bring nonlively of a strip of land 200 fact in width adjoining the original Bulkowd Bight of Way, as according in deads to Southern Pasific Company, recorded June 19, 2011, in Book 76 of Books at Paya 494, and lying cast of the Wast 284.2 feet of Lots 4, 5, 12 and 13.

Containing 19,70 scress more or less.

TRACL(29C=2)

Section 3

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Township & Month. Range J. Russ. Manust. Diablist. Maridiant

All of Lotz 1, 2, 3, 6, 7, 6, 9, 10, 11, 14, 15, and 16, us shown on the plat of "Rucalphus Grave," filed in Dock 3 of Mans and Surveys at page 13 in the Office of the Granty Records of the County of Yolo, lying nonthely of a step of land 200 fast in width adjoining the original Rainoad Right of Way, as described in doct to Southern Parillo Company, recorded June 19, 1911, in Dock 76 of Docds at Page

Containing 121.02 aures more or less.

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494.

The above described three tracts of land, containing in the supregate of 2494,67 acres, is defined to a map tracing designated Upper Swansion Ranch, inc., et al. Tracis (29C,C-1,C-2) consisting of one gage, besideg the date of February 2, 1999, of report in the files of the Department of the Interior. A print from that map is stational boreto.

011525 MR 168 /40

UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE DIVISION OF REALTY

STATE OF OLUCION COUNTY OF MULTHOMAH

I, Michael L. Richey, hereby certify that the attached map of the

55

Upper Swansion Ranali, Inc., et al. Tracts (29C,C-1,C-2)

has been correctly platted from official plate and other data obtained from the illes of the U.S. Bureau of Land Management and data obtained from recorded sorveys in county resuring that the scotion and lot lines and other subdivision lines, as here shown, have been placed upon said map offer carolial consideration of all available date on the subject; and that all said data, as shown upon the attached map, has been chucked by me and is correct to the best of my knowledge and bellef.

Michael L. Richey, Land Surveyer

Date: FRORUARY 2, 1999

011525 APR 16 8 //5

UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIPE SERVICE DIVISION OF REALTY

Centificate of occupancy North Central Valley wildlife Management Area Yolo County, California

I hereby certify that I, Michael L. Richey, have not made personal importion of Upper Swanaton Ranch, inc., et al. Teact (296,63-1,622) as shown on the attached map, and cannot report on avidence of present or past occupancy and land use.

Minister L. Richoy Land Surveyor

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DAIC: FEBRUARY 2, 1999

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END OF DOOUMENT

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