Stone River Ranch

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APN: 119-0230-009-000
Resolution of Necessity 2011-21

October 19, 2011

State of California, Resources Building
1416 Ninth Street, First Floor Auditorium
Sacramento, CA 95814

To: The California Water Commission

Added information for the 10-19-2011 hearing on the Resolutions of Necessity.

In preparation for today's hearing, I have looked at DWR's supplement to Staff Report Negotiation Fact Sheet.

In that document, it references my 27 page response to the original TEP request in 2010. I didn't realize that information back to the TEP process was to be considered, but as it has been brought up I will attach a copy of my response as referenced by DWR.

There are many excellent and key points made by many of the attorneys' representing landowners. To this point it appears that the general philosophy related to the TEPs and now the RONs is to have negotiated items property by property. I would request and strongly recommend that an approach be taken that if I or an attorney or anyone else have made a good point that is applicable to all properties, that all properties have the change made so that all can benefit from the improvement.

Thanks for your consideration.

Sincerely,

Peter W. Stone

Peter W. Stone

Stone River Ranch

Peter & Karen Stone
8941 River Road
Sacramento, CA 95832-9714

Received by: [signature]
Thomas O'Neil, DWR Right of Way Agent

Date: 9-30-2010

Received but not yet read.

September 30, 2010

DEPARTMENT OF WATER RESOURCES
Attn: Mr. Allan Davis
Real Estate Manager DHCCP Team
901 P. Street, Suite 411B
Sacramento, CA 95814

Attn: Thomas M. O'Neil
Right of Way Agent
Division of Engineering
Department of Water Resources
1416 Ninth Street, Room 425
Sacramento, California 95814
P.O. Box 942836
Sacramento, CA 94236-0001

CC:
COUNTY OF SACRAMENTO
Don Nottoli
Board of Supervisors 5th District
700 H Street, Suite 2450
Sacramento, CA 95814-1298

RECLAMATION DISTRICT 744
Russell van Loben Sels
PO Box 517
Clarksburg, CA 95612-0517

Hand Delivered to DWR (Thomas O'Neil)

Re: BDCP Temporary Access Permits
APN: 119-0230-009-000

Gentlemen:

Summary:
I am respectfully responding to your requested Temporary Entry Permit for the BDCP environmental process. First, I want to again thank you for participating in the Hood community informational meeting July 15th, 2010.

I apologize for the length of my response in advance but since I have been forced to dig into this whole matter to be able to give a good response, I have found that there really are a large number of concerns to be addressed that wouldn't appear at a casual first glance. One of my purposes in this response is to ensure that considerations to significant issues aren't missed and thereby to help reduce any needless damage to my property.

I have many concerns regarding the broad scope of activities proposed in the TEP request as well as believing that the desired entry on our property is not lawful. I have been in a quandary as I have been told by Thomas O'Neil of DWR that he would be willing to meet with me to discuss any questions I might have regarding the TEP request and that negotiations could be undertaken to address some of my concerns. On the other hand, all information I have seen indicates that there is not a legal basis for DWR to enter our property at this time as there is not an authorized project nor funding for such a peripheral canal or BDCP project. Further, the Delta Stewardship Council at its August 26th meeting requested input from an independent consultant, ARCADIS, to provide an analysis of the BDCP plan which is slated to be released November 18, 2010. The report of ARCADIS's report which is attached at the end of this letter (pages 14 – 18) speaks of "Major unresolved issues" which are grouped into 5 headings. Its findings indicate that the BDCP at this point appears to not have addressed a large number of legal requirements. As an example of one of its conclusions the report states that "the efficacy of proposed measures is not well supported and significant future uncertainty persists with regards to the effects of proposed BDCP actions on the distribution, abundance, and ecological influence of invasive species".

I have been told on another occasion that if negotiations take place and we don't come to an agreement with DWR that we would most likely be taken to court and that any concessions that DWR was willing to make would be taken back. I have serious concerns about what appears to be a one-sided and heavy handed approach. I have chosen to list my concerns in the Detail section of this document that must be addressed even if the court were to rule for DWR in order to reduce damages to our property (which would save DWR money in terms of claims after the fact) and our related Reclamation District #744 as a result of the proposed TEP activities and also to follow appropriate laws such as CEQA. I agreed with Mr. O'Neil to meet in an evening but it didn't work out for him. He sent me a letter that indicated that currently the proposed activities on our property were targeted at boring holes for various samples. While that could have been comforting, it was not since there still was no written restriction to the broadest of access and powers still in writing in the TEP request. Therefore, I can take no comfort in the implied reduction of activities on our property. I respectfully ask that if DWR chooses to take this matter to court, that it present this response to the court for inclusion in the record of our concerns and that it address them in writing and adjust or exclude proposed activities on our property so as to avoid the damages discussed herein.

While I believe that the course of action taken by DWR is of dubious legality, there is another course of action that DWR could take that would be more straightforward. In many of the BDCP public meetings, information given could reasonably infer that the total BDCP project could cost

anywhere from $20 billion to $50 billion or more to complete. We have also been given maps of proposed canal/tunnel routes including five 20 acre pumping stations. The various options clearly show that our property is "ground zero" for the first of 5 of these massive pumping stations. If it is that important to take our property, the kind of negotiations that should be had is with DWR seeking to purchase our property out right at this time. Then it could do all that it would want to with the land. I must note, that I would entertain such a request for negotiation but not on the basis that we typically hear of related to eminent domain (which of course we will have to comply with if there is ever a legally approved and funded project). As has been noted by Delta landowners in various of the public BDCP meetings, the entire BDCP process has and continues to make normal property sales, farm and equipment loans and other normal business dealings throughout the entire Sacramento River Delta difficult if not impossible due to the threat of the entire BDCP process. Accordingly, there isn't going to be a fair "fair market value" basis anymore to determine property values. In our case, as with many others, we have plans to live here and enjoy the beauty of this area for the rest of our lives and then to pass the property down to our children. That is worth a great deal to me and would be factored in to a voluntary decision on our part to sell or not to sell. If the BDCP project is of such great value to the people of the State of California, then as has been said in many of the public meetings, the people being displaced should be taken care of properly. (Give them not just "fair market value" but compensation for all the other intangible losses.) That will not be done if standard eminent domain is applied to an area like the Sacramento River Delta years after economic activity and values have been blighted by the threat of the pervasive BDCP project. It is also worthy of note that in September 1992 the legislature passed the Delta Protection Act which among other things established the "statutory" Delta with 500,000 acres in what is known as the Primary Zone of the Delta and 238,000 acres in the Secondary Zone of the Delta. The purpose of the two zones was to ensure that no urban encroachment/development would be allowed in the Primary Zone of the Delta. The Secondary Zone of the Delta includes all of or portions of the cities of West Sacramento, Antioch, Pittsburgh, Stockton, Tracy and the south western part of the city of Sacramento. Our property is also in the Secondary Zone of the Delta and available for urban expansion in the future. Accordingly, I would be considering that also in any property valuation.

While I am not a lawyer nor eloquent, it is real easy for all of us in the Delta to see that our state government is willing to spend $10s of billions on experiments with wildlife habitat restoration in the Delta and $10s of billions on plans to bring water to the south part of the state as a part of the BDCP. However, in the same BDCP plan there appears to be not one thing to assure that a comparatively small amount of money will be set aside to properly take care of the people whose property and/or livelihoods will be destroyed and/or taken and who have made the Delta what it is and I believe have preserved it much better than some of the proposals we have been seeing would do if implemented. That is not right and certainly isn't in the spirit of preserving our rights to "...life, liberty and the pursuit of happiness." Accordingly, I respectfully decline your Temporary Entry Permit request.

Detail:

I have some specific concerns regarding the request from BDCP, and so those are included here. In addition, as our property is part of the Reclamation District No. 744 there are some issues that are broader even than those related to our property. I will touch on the concerns related to our specific property first and then proceed to the broader Reclamation District No. 744 concerns. My understanding is that DWR has filed over 160 lawsuits to date against Sacramento Delta farmers and landowners to gain access to properties throughout the Sacramento Delta. I have been told by DWR personnel that when the "TEP requests" have been issued that DWR will work with the landowner and come to a negotiated settlement that may include specifically dealing with the landowner concerns. On the other hand, if the landowner then doesn't sign the "TEP request", then DWR will take the landowner to court and none of the previously negotiated items will be done. Many Sacramento Delta residents and I believe this to be a very heavy handed approach. I respectfully request that the concerns that I have listed be taken into consideration and presented to the court so that needless property damage is avoided if the court does in fact grant DWR its request. DWR indicates that it intends to do its best to not damage property. If that is true, then the heavy handed process I have recounted above should not be continued. With that said, I want to lay before you concerns that I have 1) from my personal standpoint as it relates to our property; 2) from an overarching standpoint dealing with the legality of these requests in the first place (which I have been told are not legally enforceable as there is no authorized BDCP peripheral canal project and no funding for a BDCP peripheral canal.); and, 3) from a reclamation district standpoint (which I do not purport to represent but do care about as it has responsibility for the care of all properties in the district – if one property is flooded due to the damage to levees we all are flooded in District 744), DWR's assessment of voluntary damages of $500 (a very small amount) for long term access and disruption of our property do not bode well for what will happen if and when any of the concerns listed in this letter result in real property damages. I have heard that there is a process whereby a landowner whose property DWR damages in the process of doing its work has means of recourse to DWR for just compensation. However, I have not been able to find it listed in the TEP request. Is there such a process in place? In the absence of such an identified process, the assumption is that at our expense I will have to pay for expert witnesses to go to court to prove the damages and sue DWR for just compensation. If this is true, this is not right and I would like to know in advance exactly what the process is for just compensation when damage is done without having to incur a large amount of costs just to get the compensation.

1. Issues and concerns I have related to our property follow:

(a) I am concerned about the confidentiality section 2 of the TEP request. The section purports to give some protections but those protections are completely negated by the "except as required by law" portion.

(b) I am concerned that access to our property as described in the TEP does not show any legal basis for such access. Due to the potential impacts to the District's reclamation works as well as all other environmental conditions, from the proposed access and anticipated physical interferences, it is imperative that such access and interference be legally authorized.

California Code of Civil Procedure section 11245.010 states: "Subject to requirements of this article, any person authorized to acquire property for a particular use by eminent domain may enter upon property to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that use." Please provide the basis for DWR's implied assertion that it is "authorized to acquire property for [the instant] particular use by eminent domain...." Among other considerations, please explain how the instant use, i.e., the construction and operation of an isolated facility, is consistent with the Delta Protection Act of 1959 (Water Code sections 12200 et seq.) and the Delta Protection Act of 1992 (Pub. Resources Code 29700 et seq.).

If the point of the project for which the initial studies are proposed to be performed pursuant to the requested permit is to restore the Delta, what are the benchmarks for the point of beginning and the end point of restoration? In other words, from what current metrics will the Delta be restored and to what level will it be restored? The permit request is entirely ambiguous as to this point.

(c) To the extent that the proposed BDCP project and initial studies are intended to produce a more reliable water conveyance system using one or more isolated facilities with or without a "through-Delta" channel, who are the intended recipients of the improved conveyance facilities?

(d) I have concerns about random access by DWR staff and agents which could damage growing crops or interfere with harvesting activities.

(e) Notwithstanding the undersigned's opinions, I ask the straightforward questions – What is the Project? Has it been legally approved and funded?

(f) I formally request copies of all studies and results thereof which either have been performed thus far with respect to the Project and the scoping or preparation of the phase of the Project to which the requested permit is related.

(g) Request is hereby also made for scientific or other evidence to support the proposition that upstream diversions that circumvent the Delta will be beneficial to, and restorative of, the Delta and its many inhabitants – human and otherwise.

(h) The Location of Landside Test Pits Should be Restricted.

With regard to the location of the landside test pits the aerial photo for our property shows one possible location on or at the toe of our levee. Digging a test pit on or near the toe of our levee creates the reasonable possibility that the integrity of the levee will be substantially undermined. To minimize that possibility, the test pit(s) should be setback an adequate distance from the landside toe of the levee and that distance must be evaluated by taking into consideration all of the specific geologic and other conditions at the particular site. DWR says the size limit of the test pits will be "4 feet wide x 20 feet long x 12 feet deep." That size is tremendously significant if it is dug within the vicinity of a levee. One of the major reasons an open deep test pit is a substantial concern on or near a levee that is subject to "seepage" is because the test pit will create a preferential path for the seepage flow and accelerate the rate of seepage to the point where the seepage flow may erode the interior core of the levee and carry

out foundation material of the levee thereby undermining the integrity of the levee and potentially causing levee failure. Having an open deep test pit on or near the levee at a point that is well below sea level during any time and, in particular, during high water times presents a reasonable possibility of substantial levee damage and potential levee failure due to a gross levee foundation failure. With regard to the timing of the test pits, while the TEP states that the test pits will be backfilled the TEP places no restrictions on when they can be dug. Accordingly, they can be dug any time of the year, even during extreme high water and storm events when the reclamation district and/or DWR personnel is actively patrolling the levees and/or flood fighting and when the levees are highly saturated and already under extreme stress from high water pressure, high winds and heavy rains. Digging such pits near the levees during such times exponentially increases the possibility that the digging will substantially undermine the integrity of the levee. Accordingly, to minimize the reasonable possibility that the integrity of the levees will be substantially undermined by the test pits, a mitigation measure should be imposed to ensure that the test pits are located a sufficient distance landward of the landside levee toes, and that the determination of that sufficient distance should be determined by taking into consideration all of the specific geologic and other conditions at each particular site and should be subject to the review and approval of the affected Reclamation District 744 (and/or other entity responsible for the operation and maintenance of the particular levee at issue).

(i). The Location and Timing of Landside Borings Should be Restricted.

With regard to the location of the landside borings on our property, presumably any number of those borings can take place directly on the levees (i.e., directly on the waterside or landside slopes, or crowns of the levees) as well as immediately adjacent to the landside levee toes. Conducting the borings on or near the levees creates the reasonable possibility that such activities will substantially undermine the integrity of the levee systems as well as substantially impair flood fighting capabilities. a. Substantial Impairment of Flood Fighting Capabilities. With regard to the impairment of flood fighting capabilities, DWR places no restrictions on when the drilling can take place. Accordingly, as with the test pits, the borings can be dug any time of the year, even during high water and storm events when our reclamation district's levees are being actively patrolled or flood fighting. During such events the levees are highly saturated and already under extreme stress from high water pressure, high winds and heavy rains. During such events it is imperative that the reclamation district's visibility of its levees is not obstructed by vehicles or equipment such as the drilling vehicles/equipment. It is also imperative that the reclamation district's maintenance vehicles and equipment access along its levee crowns for patrolling or flood fighting is not obstructed or impaired by the presence of DWR's vehicles/equipment. In addition, during such events the reclamation district and/or DWR maintenance crews need to be able to timely respond to any potential levee problems, such as sloughing or cracking of its levee slopes, levee boils from increased seepage flowing through or under the levees, etc. Any equipment, such as the drilling vehicles/equipment than cannot be quickly and easily moved out of the way creates the reasonable possibility of substantial impairment of the ability to address levee problems in the immediate vicinity of such vehicles/equipment before they escalate out of control.

According to the TEP, the time frame of the drilling varies from 2 to 5 work days for each drill hole with no stated time for when the holes will be sealed. For the reasons discussed above, the mere presence of the drilling equipment on or near the levees creates the reasonable possibility that levee patrol and flood fighting capabilities will be substantially impaired in terms of impairment to

visibility and impairment to access by levee patrol and flood fighting vehicles/equipment. Moreover, during an emergency, when a levee is beginning to fail, every second counts. The TEP fails to discuss how quickly the drilling vehicles/equipment, especially the ones that are already in the middle of boring several hundred feet, can be relocated and moved out of the way. But even if they could be "quickly" moved out of the way, as noted above, their mere presence on or near the levee obstructs visibility of levee problems that are occurring in the immediate vicinity of the vehicles/equipment and, hence, substantially impairs the ability to detect levee problems at their initial stages before they escalate out of control. And when seconds count, to the extent the equipment can be moved within a couple of hours, that is not quick enough.

Accordingly, to minimize the possibility of substantial impairment of flood fighting capabilities, at a minimum, a mitigation measure should be imposed to prohibit any such borings on or within a specified distance from any levee during any high water events or during times of anticipated high water events (i.e., events where the water levels are at, or anticipated to be, at the high end of, or beyond, their typical ranges a result of high tides, high river runoff, low atmospheric pressure, etc. or any combination of such factors). That specified distance should be determined by taking into consideration all of the specific geologic and other conditions at each particular site and should be subject to the review and approval of the affected Reclamation District 744 (and/or other entity responsible for the operation and maintenance of the particular levee at issue). b. Substantial Undermining of Levee Integrity. The location of the landside borings on or near levees and any time of the year, even during high water and storm events, also creates the reasonable possibility that such activities will substantially undermine the integrity of the levees. To minimize that possibility, at a minimum, none of the borings should take place on or near any levee during any high water events or during times of anticipated high water events. Those are times when levee systems are already under increased stress from the high water pressures, which is also typically accompanied by high winds and heavy rains. To understand one of the reasons why conducting borings on or near levees during high water events creates the potential for substantial levee damage or failure, one must understand "seepage." In general, seepage is the flow of river water under and through levees, and it is common knowledge that seepage flows under and through nearly all levees with the Delta, and, hence, within the areas of DWR's proposed borings. (Exceptions include where an artificial slurry wall or other "cut-off" type wall is constructed to physically block the flow of seepage under or through levees, which is very expensive and not common within the Delta and not present in our Reclamation District 744.) In general, seepage occurs as a result of the river waters being higher in elevation than the lands on the other side of the levee that is holding back those waters, together with the fact that levees are made of soil materials that are permeable. This discrepancy in elevation exists continuously in the vast majority of the Delta. In the outer perimeter of the Delta, where the lands are higher in elevation, it may occur only during high water events where there are large amounts of water flowing down the rivers from the upper watersheds which cause the water elevation in the rivers to rise.

All of the areas on our property where proposed borings will be located involves a levee that holds back river water that is at times higher than the land on the other side of that levee and, hence, experiences seepage flowing under and/or through the levee in various degrees and at various times throughout the year (on our property this is true even in summer and 24 hours a day, 365 days a year based on my personal observations.) When the water elevation in the Sacramento river is abnormally high, the flow of seepage under and through the levees is also abnormally high. Those are the times when DWR's proposed boring of holes on or near levees is the most dangerous and has the highest possibility of resulting in substantial levee impairment or failure, and, hence, are times when such boring should be avoided.

DWR's proposed borings involve borings up to 8 inches in diameter and up to 225 feet in

depth. DWR proposes to "seal" the borings after the boring is complete by using "cement-bentonite grout". However, while DWR fails to demonstrate that the borings can truly be "sealed," especially where very lose, permeable soil is involved such as "peat soil" which is widespread throughout the delta (see "Exhibit B"), there will be a period of time during and after the drilling of the bores that the bores will not be sealed. That time period is not stated in the TEP and should be. Thus, the bore holes will remain unsealed for an unknown period of time. The reason an unsealed bore is a major concern on or near a levee that is subject to seepage, and especially when it is subject to abnormally high levels of seepage, is because that unsealed bore hole can create a preferential path for the seepage flow and accelerate the rate of seepage to the point where the seepage flow starts to erode the interior core of the levee and carry out foundation material of the levee thereby undermining the integrity of the levee and potentially causing levee failure. Having an unsealed bore hole on or near the levee for an unspecified period of time during high water times presents a reasonable possibility of substantial levee damage and potential levee failure.

Understanding that the unsealed bore hole will have drilling fluid/mud within it during drilling and may have drilling fluid/mud left within it during non-drilling periods, it is unlikely that the weight of the drilling fluid/mud is heavy enough to counter the pressure that would be caused by the seepage beneath and through the levee. General practice for geotechnical explorations is not to leave any unsealed holes at the toe of the levee unattended. The TEP makes no provision for any such attendance. To minimize the possibility of substantial levee damage and potential levee failure, at a minimum, a mitigation measure should be imposed to prohibit any such borings on or within a specified distance from any levee during any high water events or during times of anticipated high water events. That specified distance should, again, be determined by taking into consideration all of the specific geologic and other conditions at each particular site and should be subject to the review and approval of Reclamation District 744 (and/or other entity responsible for the operation and maintenance of the particular levee at issue). In addition, at all times, regardless of whether there is, or there is anticipated to be, a high water event, a mitigation measure should be imposed to require all unsealed bores located at the toe of the levee, or at other elevations along the levee slopes or landward of the levee slopes, that are below the river water elevations, to be attended during all non-drilling periods and monitored for any seepage flow through, or in the vicinity of, the bore. A procedure, along with suitable equipment and materials, should be on site to promptly address and (attempt to) control any such flow. Said procedure, and the proximity to the levee where this mitigation measure should be imposed, should be subject to the review and approval of the affected Reclamation District 744 (and/or other entity responsible for the operation and maintenance of the particular levee at issue).

(j). Care and protection of "drain tiles".

To ensure that the underflow or seepage from the Sacramento River does not hamper the farming operations, a system of "drain tiles" was placed completely underground on our farm. The drain tiles are from approximately 6 – 8 inches in diameter and are perforated at many points. The drain tiles collect the Sacramento River seepage and channels it to the drainage ditches in the central portion of the reclamation district. As of this writing, the flow in the drain tile system on our farm is very brisk even though we are towards the end of summer. The flow in the drain tile system is 24 hours per day 365 days per year and is essential to ensure that the property does not become unfarmable. The location of the vast majority of the drain tile system on our property is not known. The methodologies described in the TEP of digging large pits and making bore holes could easily break through one or more of the drain tile routes possibly without

anyone being aware of it. This would have two effects: 1) damage the flow of river seepage to the central district 744 reclamation canal system leaving no means of escape for the water from a portion of our property; 2) give a false read to DWR in the study by directing a large portion of under levee seepage to the pit or bore where the drain tiles are broken. As the methods of digging and boring described in the TEP could easily result in damage to the drain tile system on our property without anyone even knowing it had happened, how does DWR propose to ensure that they aren't broken/damaged and how to take care of inspections to ensure that none are broken?

(k) Care and protection of the well providing drinking water to the home on the property.

Our property has a well that provides drinking water to our home. There are various levels of water under the property that can be tapped into. Ours is tapped into a good source of water. A neighbor dug his well deeper and got into a much less favorable strata of water. When test bores as proposed are done down to 225, they will naturally cross through both stratas of water which will facilitate the intermixing of the two potentially rendering ours significantly less usable. What does DWR propose to do to keep this from happening and doing if it does happens?

(l). Care and protection of the underground crop irrigation system.

Our property has an underground concrete crop irrigation system with pipes ranging in diameter from approximately 10 – 24 inches. The location of some of the pipes is known but many are not. The methods of digging and boring described in the TEP could easily result in damage to the crop irrigation system on our property. How does DWR propose to ensure that they aren't broken/damaged and how to take care of inspections to ensure that none are broken?

(m). Care and protection of the crop underground propane lines.

Our property has underground propane lines with tubing less than 1 ½ inches in diameter. The location of the pipe is generally but not exactly known. The methods of digging and boring described in the TEP could easily result in damage to the propane gas line system on our property. How does DWR propose to ensure that it isn't broken/damaged and how to take care of inspections to ensure that it isn't broken/damaged?

(n). Care and protection of the underground electrical lines.

Our property has multiple underground electrical lines in conduit. The location of the conduit is reasonably but not exactly known. The methods of digging and boring described in the TEP could easily result in damage to the electrical conduit and lines on our property. How does DWR propose to ensure that it isn't broken/damaged and how to take care of inspections to ensure that it isn't broken/damaged? Will DWR consult with me before commencing digging on a particular spot on the property and modify the location if there is a high probability of hitting one of the underground electrical lines? I want to make sure that we aren't experiencing needless damage due to not taking the time up front to mitigate such risk.

(o). Care and protection of the underground data communication lines.

Our property has multiple underground data communication lines in conduit. The location of the conduit is not exactly known. The methods of digging and boring described in the TEP could easily result in damage to the electrical conduit and lines on our property. How does DWR propose to ensure that it isn't broken/damaged and how to take care of inspections to ensure that it isn't broken/damaged?

(p). Care and protection of the underground sprinkler lines.

Our property has multiple underground sprinkler lines to water trees and other plants The location of some of the pipes is known but many are not. The methods of digging and boring described in the TEP could easily result in damage to the sprinkler systems on our property. How does DWR propose to ensure that they aren't broken/damaged and how to take care of inspections to ensure that none are broken?

(q). Care and protection of items of intrinsic value buried on the property.

Our property has been farmed since the 1850's and was included in the Thompson and West *History of Sacramento with illustrations* 1880. A detailed illustration of this property was included in the book. Assessor records have been used to trace the property's ownership back to 1852. R.A.G. Gourlie (who in 1849 was a gold miner and bought this property in 1857) whose story and picture of the home/farm in 1880 and location along the Sacramento River coupled with the assessor records show clearly that prior to the current home (built probably in the late 1800's) that there was another home on the property. (See some of the documentation on Pages 19-27) That home is clearly not the current one and may have burned. We have found articles with intrinsic value buried on this property. The methods of digging and boring described in the TEP could easily result in damage to buried items of intrinsic value on our property. How does DWR propose to ensure that they aren't broken/damaged and how to take care of inspections to ensure that none are broken?

(r). Inadequacy of USA (Underground Service Alert) notifications regarding items i through o above.

The TEP indicates that USA will be consulted to determine if there are any underground lines to avoid. All of the items noted in (i) through (r) above will not be marked by USA. Accordingly, reliance on their markings must not be considered sufficient to protect any of (i) through (r) above. Since USA will not know the locations of any of the items noted abovfe, will DWR consult with me before commencing digging on a particular spot on the property and modify the location if there is a high probability of hitting something underground as mentioned above? I want to make sure that we aren't experiencing needless damage due to simply not taking the time up front to mitigate such risk.

We want to make a specific objection and offer the following opposition to the Petition for Right of Entry on the grounds that the TEP request is not in compliance with Code of Civil Procedure Section 1245.010 et seq. and constitutes a physical invasion of the property, as specified in detail below. This objection will be based on the points and authorities below and supporting declarations.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

In its TEP request, the Department of Water Resources (DWR) is seeking to co-opt

the real property of Peter and Karen Stone without prior just compensation. It asks for extensive rights over the land for a period in excess of one year under a process only intended for incidental early entry for study of the property prior to condemnation. Peter and Karen Stone own approximately 20 agricultural acres in Sacramento County, which are identified by DWR for a right of entry. DWR claims to require entry to conduct comprehensive studies over the property for a project it calls the Bay Delta Conservation Plan (in effect a rebranding of the "Peripheral Canal"). Rather than come to a court to seek entry to the property to investigate discrete and innocuous tasks related to the acquisition, DWR instead attempts to circumvent eminent domain procedure to make itself a cotenant on the property for more than a year in violation of Peter and Karen Stone's fundamental rights. The studies demanded are invasive, extensive and long term. Even if DWR requested access confined to a specific corridor of study related to a peripheral canal acquisition, the proposed activity would be far in excess of what the applicable entry statute contemplates. Moreover, from the descriptions of the parcels and the tasks to be performed, there is not sufficient detail to determine interference with farming operations of the whole. DWR's petition is brought pursuant to Code of Civil Procedure section 1245.010, which allows a potential condemning agency a limited right to enter property being considered for condemnation for the purpose of preliminary studies. Section 1245.010 is based on former section 1242(b), which dates to 1872 (it was a part of the original California procedure for eminent domain). The present statute specifically provides: "a person authorized to acquire property for a particular use by eminent domain may enter upon property to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, or appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that purpose." In its Petition, DWR is far more expansive in its request for entry (actually it seeks multiple entries over more than 1 year in duration), claiming that it is entitled to do so in accordance with section 1245.010: "to make photographs, studies, surveys, examinations, tests, soundings, borings, samplings, appraisals, *archeological, biological, floral and faunal studies, geological studies, Phase 1 Environmental Site Assessments, and engineering studies,* or engage in similar activities reasonably related to acquisition or use of that property to determine the suitability of the property for a potential public use." (*Emphasis added* to show words used in the TEP request beyond those provided in the statute.) DWR requests a maximum of 60 separate entries until the permit expires December 31, 2011 upon nearly the entire property owned by Peter and Karen Stone. DWR's requested entry includes numerous intrusive tests, including as examples drilling an unspecified number of 8-inch holes up to 225 feet deep, digging an unspecified number of 20-foot long, 12-foot deep pits, installing an unspecified number of iron pipes in the ground to be fenced off, and installing an unspecified number of survey stakes at 100-foot intervals on the property. DWR has failed to show entitlement to the relief requested. It has not identified its authority to use eminent domain for its claimed purpose. It has not identified any acquisition of property that its entry for study is intended to be reasonably related to "acquisition or use of the property for that purpose." It proposes a massive environmental investigation far beyond any incidental entry for a particular study. This is not the intent of the statute. What DWR has requested is so expansive and intrusive as to constitute a separate taking without compensation.

Portions of the Property are encumbered with easements in favor of various public and private entities, including but not limited to installation and maintenance access to levees,

state highway 160, farming road and Reclamation District 744 maintenance access. Peter & Karen Stone currently lease the Ranch to Mark Scribner, who farms the Ranch land.

Current Use of the Property
The vast majority of the Property consisted of wheat crops in 2010. Another portion of the Property is user as the residence of Peter & Karen Stone's family. Workers can be on the property at any time of day during any time of the year handling irrigation, planting, tending and harvesting crops. During the wheat harvest, large equipment, including a harvester and hay bailer, double trailer semi-trucks are used. Tractors and other expensive farming equipment and tools are used on a year-round basis. Pesticides and herbicides and fertilizers are regularly used on the Property applied in a variety of methods including on the ground distribution and crop dusting. The Property is improved with unpaved roads used for farming operations and other activities. The current plan for 2010-2011 use of the Property is consistent with the 2010 usage.

The access requested by DWR will cause significant interruption with the ongoing economic activities on the property. It will potentially disrupt activities such as harvesting, irrigation, and fertilizing. It will destroy crops. It creates potential for damage to farm equipment. And it creates significant risks, as detailed below. Without knowing the precise location and time for each of the studies to be conducted by DWR, it is impossible to determine in advance the damage that will be suffered as a result of the access and interference by DWR. Providing access to DWR workers to conduct studies, or allowing DWR to leave equipment on the land could Disrupt farming activities and potentially damage crops. Every pit or bore hole located in a field will necessarily destroy any crops located at and around the test locations and access to those locations. Moreover, harvesting crops with the presence of such pits and bore holes will require circumnavigating each study location. Excavations and borings into the Property could cause contamination of the soil and ground water or induce seepage from adjoining water sources.

2. As to Reclamation District No. 744 (the "District"), I believe that DWR/BDCP has no legal right to perform biological, environmental or geotechnical work involving the levees of the District without a permit from the District. Thus, even with landowner consents in-hand, the District will not allow access to the levees prior to issuing a mutually satisfactory permit. The District has rights deriving from general laws of condemnation that would not afford DWR the right to enter the District and perform environmental or geotechnical testing on the District's levees.

The District trustees will need additional time, as well as information from DWR, in order to properly complete a review. To further assist the District's review, please provide the following information:

(a) The District will need to know the exact locations of all proposed interferences with the ground surface, including the locations of any and all proposed geologic explorations, which DWR is seeking permission to conduct. Water Code section 50652 provides that, "the board of trustees of the District shall exercise general supervision and complete control over the construction, maintenance and operation of the reclamation works, and generally over the affairs of the district." Of particular

importance are interferences that may impact the District's levees, drainage canals and other flood or drainage works.

(b) The California Environmental Quality Act ("CEQA") applies with equal force to the District and DWR/BDCP, and thus the District will need you to provide all CEQA documentation and determinations supporting your request for temporary access and anticipated interferences with the physical environment in connection therewith. The request made to Peter W. and Karen L. Stone is part of a much larger study involving multiple parcels of land in a significant number of locations, such that the cumulative impacts of the proposed work on all involved parcels should be viewed as a "Project" in and of itself which would seem to mandate strict compliance with CEQA before any proposed work begins. The District itself may not be able to lawfully issue a permit for a small part of a much larger project without first lawfully complying with CEQA or insuring that compliance is achieved. If DWR has an opinion on this subject, the Trustees should be given an opportunity to review it. If DWR has not prepared a conforming analysis, the District could be required to prepare the required analysis and, if the District determines an analysis is mandatory; arrangements will need to be made for DWR's advanced payment for same.

(c) Due to the potential impacts to the District's reclamation works, as well as all other environmental conditions, from the proposed access and anticipated physical interferences, it is imperative that such access and interferences be legally authorized. Please state the basis upon which DWR/BDCP relies to assert the lawfulness of its proposed entry and interferences with the District's reclamation works.

(d) The attempt to assure confidentiality of data and observations adduced by DWR staff and contractors is interesting, but is rendered somewhat empty by the addition of the limitation excluding matters otherwise required to be disclosed by applicable laws. The scoping provisions and list of intended activities attached to the amended form of permit still portray extensive activities that appear to fall within the purpose and intent of CEQA.

(e) I am willing to facilitate a meeting between the Trustees of RD 744 and your staff to attend a special meeting of the District to discuss the many and complex issues raised by DWR's request. Please contact me to facilitate your attendance at a District meeting should you be interested in so doing.

Respectfully,

Peter W. Stone

Attachments:
2nd Report to the Delta Stewardship Council by ARCADIS Independent Consultants in response to the Council's requests at its August 26, 2010 meeting. (Pages 14 – 18)
Some of the documentation related to the history, farming and water rights on this property with various Sacramento County assessor maps since 1870. (Pages 19 – 27)

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Report from the Independent Consultant, ARCADIS

INTRODUCTION

This is the second report on the Bay Delta Conservation Plan (BDCP) from the Delta Stewardship Council's (the Council) independent consultant. This report provides a summary of major unresolved BDCP issues identified to date and provides our initial response to questions from the Council during the August 26, 2010, Council meeting. Our review is based on attending ongoing BDCP meetings and reviewing publicly available BDCP materials. In the past month, we have contacted state and federal agencies involved in BDCP (CDWR, USBOR, CDFG, USFWS) to gain direct access to information to better assess the status of BDCP.

The BDCP final draft is scheduled for release on November 18, 2010, and much of the BDCP document is still under development. The BDCP Steering Committee recognizes that there are unresolved issues and that various key decisions still need to be made (for example, BDCP Key Decisions by Major Issue, BDCP Steering Committee, April 22, 2010).

MAJOR UNRESOLVED ISSUES

In our review of available portions of BDCP documentation, we have developed a preliminary list of major unresolved issues that are divided into five themes: policy, programmatic, regulatory, technical, and future uncertainties. These issues, which have implications on either ecosystem or water management, or both, are briefly described below and are listed in full in an attachment to this report.

1. **Policy – Ecosystem and Water Management**

   BDCP compliance with 2009 Delta Reform Act (CA SBX7 1) provisions is not fully supported to date. The BDCP Scoping Report (March 2010) states that the purpose of BDCP is to: "Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water…" In its current form BDCP does not appear to

evaluate a wide range of conveyance alternatives, nor does it appear to consider alternatives that will reduce current levels of reliance on the Delta for water export. BDCP stakeholders have suggested that a revised purpose and need statement should be developed.

It appears that BDCP assumes full contract delivery as a goal and does not provide an analysis of ecosystem benefits that may be gained from reduced exports. In addition, information available on operational criteria for proposed BDCP conveyance facilities does not appear to consider a full range of operational scenarios and associated alternatives, for both near- and long-term operations.

We understand that BDCP has begun performing system model runs that consider the recently released SWRCB flow criteria in proposed operations of the conveyance system. However, the scope of the evaluation is not yet defined; this is an example of information that is still forthcoming. The importance of the SWRCB flow criteria is defined in the Delta Reform Act: "For the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan, the board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem necessary to protect public trust resources." (Water Code § 85086(c)).

Addressing the SWRCB flow criteria requires BDCP operational scenarios that support both the quantity and pattern of flows needed for covered fish and other aquatic species. This issue has yet to be addressed. The SWRCB report concludes that, under the current physical configuration of the Delta, the quantity of in-Delta water currently provided for fish is insufficient to maintain the ecosystem or to support recovery.

BDCP stakeholders have also expressed concern regarding the currently anticipated release of the draft BDCP document prior to the release of the draft EIR/EIS. It has been noted that the BDCP Planning Agreement requires concurrent release to facilitate adequate public review and comment.

2. Programmatic – Ecosystem and Water Management

At this time, clear project descriptions for BDCP/DHCCP elements are not available for our review. In addition, BDCP biological objectives for restoration and species recovery are not clear; this is a key issue that has been pointed out by various stakeholders and that needs further investigation. The BDCP Steering Committee recognizes the need for more specific goals and objectives and clear species recovery goals.

There is also lack of clarity on how various elements of BDCP will be integrated and how they will relate to implementation of the overall plan. The proposed

adaptive management program is inadequately developed. It lacks full integration of technical information into a coherent implementation plan and there is a need to define clear performance objectives as well as an outcome-based strategy linked to implementation decision-making and governance. Proposed BDCP governance, including definition of the management entity, operations, and decision-making processes, is not yet fully defined.

As described in our first report, it remains unclear if BDCP will meet its schedule, and whether there will be sufficient time to adequately address comments and evaluate alternatives prior to release of final public draft. At this time, the cost of BDCP implementation, the sources of funding, the share arrangements, and funding guarantees are not well defined.

3. Regulatory – Ecosystem

The "White Paper on Application of the 5 Point Policy - 04-29-10" states that the Habitat Conservation Plan (HCP) should include explicit biological goals and objectives that provide a clear basis for proposed BDCP conservation measures. The adequacy of BDCP to comply with HCP requirements and with Natural Community Conservation Plan (NCCP) requirements is not fully developed. The benefits to be realized by covered species from proposed BDCP conservation measures are not yet defined.

It will be difficult for federal agencies to issue permits if BDCP does not include: 1) clearly defined and scientifically supported biological goals and objectives; 2) an adaptive management plan that tests alternative strategies for meeting those biological goals and objectives; and 3) a robust framework for adjusting future conservation actions to meet actual conditions. BDCP also does not currently provide funding assurances as required by the HCP process.

In addition, as an NCCP, BDCP will need to address impact mitigation, will need to demonstrate an effective species recovery program, and will need to support delisting of listed species and help preclude listing of additional species in the future. The recent ISA report (Reed et al, 2010) discusses the need to measure both individual and population-level performance. These metrics should link habitat-specific attributes of quantitative estimates of abundance with quantitative measures of movement and distribution. BDCP performance metrics must be measureable and relate/link to fish vital demographic rates.

4. Technical – Ecosystem and Water Management

Though BDCP is an open process, limited information is publicly available on DHCCP, under which the preliminary engineering and design is done. It is important that we gain access to technical information that has led to key decisions. Major unresolved technical issues include:

4.1. The role and adequacy of BDCP system modeling efforts to date is unclear.
4.2. Additional characterization of proposed near-term and long-term operations with respect to a transparent, real-time operational decision making process is needed.
4.3. Specific biological goals and objectives remain to be fully defined. The proposed logic chain is not fully developed and it is not yet integrated with proposed conservation measures and specific BDCP biological goals.
4.4. The ecological system models are incomplete and not fully integrated.
4.5. The role of stressors is incomplete, and improved linkage should be provided between stressors and conservation measures with respect to BDCP goals and objectives.
4.6. It is not yet clear how certain species will benefit from proposed conservation measures. The proposed Adaptive Management Program does not appear to link conservation measures to predicted outcomes.
4.7. Monitoring programs and scientific investigations for conservation measures are as yet unspecified.
4.8. Currently there are insufficient descriptions of the effects of turbidity on fish movement and survival.

5. Future Uncertainties – Ecosystem and Water Management

There are many future uncertainties associated with BDCP. For example, the criteria for evaluating conservation measures is not yet clear, and the ability of proposed conservation measures to prove effective in addressing targeted stressors appears uncertain. Also the ability of BDCP to adapt to changes in covered activities, regulations, and other circumstances does not appear to have been fully addressed to date.

In addition, invasive species present an ongoing and increasing risk to the viability and distribution of native aquatic organisms and communities within the Delta. Limited measures for addressing invasive species impacts have been included within the broad suite of conservation measures proposed under BDCP. The efficacy of proposed measures is not well supported and significant future uncertainty persists with regards to the effects of proposed BDCP actions on the distribution, abundance, and ecological influence of invasive species.

We have not yet been able to completely review other unresolved issues and future uncertainties such as the potential for climate change and flood and risk management.

ARCADIS

COUNCIL QUESTIONS AND REQUESTS

At the August 26, 2010, Council meeting, Council members requested additional input regarding clarification of the logic chain and the associated need for an adaptive management program.

A logic chain has been strongly recommended to provide the overall structure and necessary linkages to ensure that BDCP conservation measures achieve biological goals and objectives (to be defined) and ecosystem/species recovery goals. The logic chain defines the flow of information that supports the adaptive management process to identify what has been learned and how this information will be used to inform ongoing actions and the decision-making process.

Because there is considerable uncertainty as to the likelihood that conservation measures will achieve the biological goals and objectives, BDCP will need to incorporate monitoring and adaptive management to increase the likelihood that it will meet its conservation goals. Because of significant data gaps, a strong adaptive management program is essential for HCPs and NCCPs.

Recent review by the Delta Science Program of the proposed logic chain process provides insight and recommendations for developing program goals and objectives. The science panel found that a logic chain should be applied to clearly link goals, objectives, actions, and outcomes. We agree with the request by federal agencies that BDCP incorporate the recommendations from the Delta Science Program into development of biological goals and objectives.

The Council requested additional information from the consultant team that will require more study:

1. How is BDCP evaluating risks associated with floods and potential levee failures?
2. What would achieve the goal of restoring the ecosystem, a canal, a tunnel or something else?
3. What are examples of alternative prototypes of practical adaptive management programs that include governance and that could be used to support both ecosystem recovery goals and water management goals?

NEXT STEPS

We are currently addressing Council requests and will report on our findings at future Council meetings. In addition, we will continue targeted review of BDCP materials and update our list of major unresolved issues. At the Council's request, we are assisting Council staff in preparing a second scoping letter for the Council, as a responsible agency, to send to the California Department of Water Resources.

STONE RIVER RANCH – PROPERTY OWNERSHIP HISTORY

Property formerly a portion of Hackett's claim

George C. Jackson & Charles P. Young Until October 23, 1852

Francois Bouchard October 23, 1852 – October 17, 1857

Robert Argyle Gordon Gourlie October 17, 1857 – March 20, 1901

"Lives three miles from Freeport, his Post Office and ten miles from Sacramento; owns one hundred and sixty-seven acres, and has twelve acres of orchard; was born in Scotland in 1802, and lived there until 1826. He went to sea in that year on an English man-of-war, and remained on hter for twenty-two years; during that time he was in twenty seven engagements. He came to California in 1849: he spent some time in the mines, and then came to Sacramento, and in 1857 settled where he is now living. He is engaged in farming and fruit-raising. In 1854 he married Miss Mary M. Lassner, a native of Bavaria. His land and orchard are valued at $16,000. A view of his place may be seen in this work." "Mrs Gourlie is a native of Germany; born August 24, 1819. Left for the United States in 1845, and found a home in Missouri, where, with her first husband (J. Newbauer) and children, she remained four years. In 1849 they started for California. When only three weeks out, Mr. Newbauer died with the Cholera. His wife dug his grave and buried him. Her friends tried to induce her with her children to return, but to no purpose, for she was brave enough to come to California, and she came. She was one hundred and eighty-five days in reaching Sacramento. Here, by keeping a boarding-house, she managed to support herself and four children and to accumulate some property. In 1854 she was married to R.A.G. Gourlie, since which time she has been living at the present home, on the Sacramento River, eleven miles below Sacramento City. No children by the second marriage." R.A.G. Gourlie had the existing house at 8941 River Road built.

Ralph & Jennie Moore March 20, 1901 – January 5, 1910

George Washington & Sophia M. Scribner January 5, 1910 – ~ 1949

George Washington Scribner died ~ 1937

George H. Scribner ~ 1949 - February 18, 1977

George H. Scribner had the home at 8951 River Road built in ~1949.

Theodore C. Caldwell; Daniel M. & Carole E. D'Amico

February 18, 1977 - ~May 1978

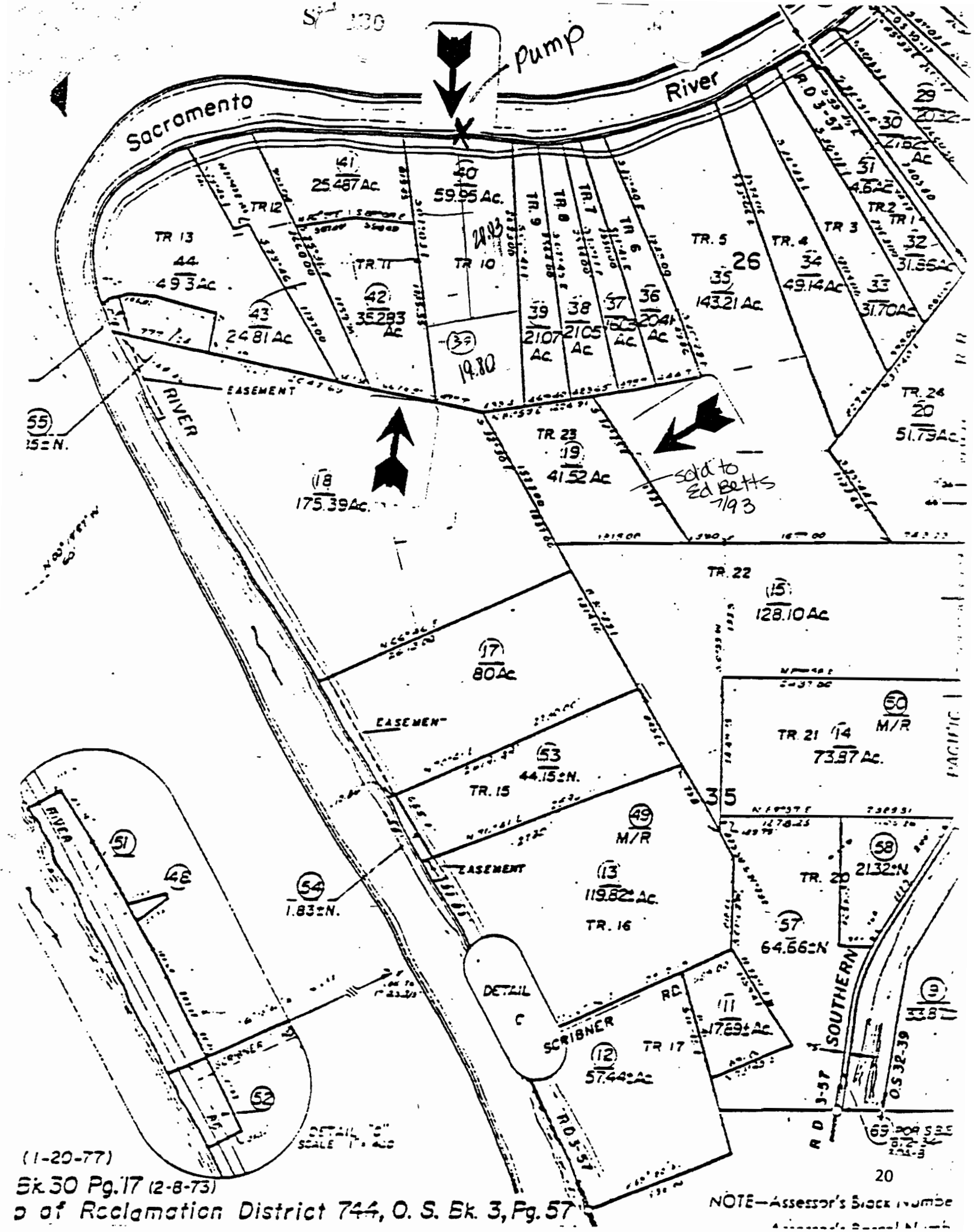
Theodore C. Caldwell subdivided into 20 acre properties May 12, 1977.

Parker Development Company ~ May 1978 to October 4, 2000

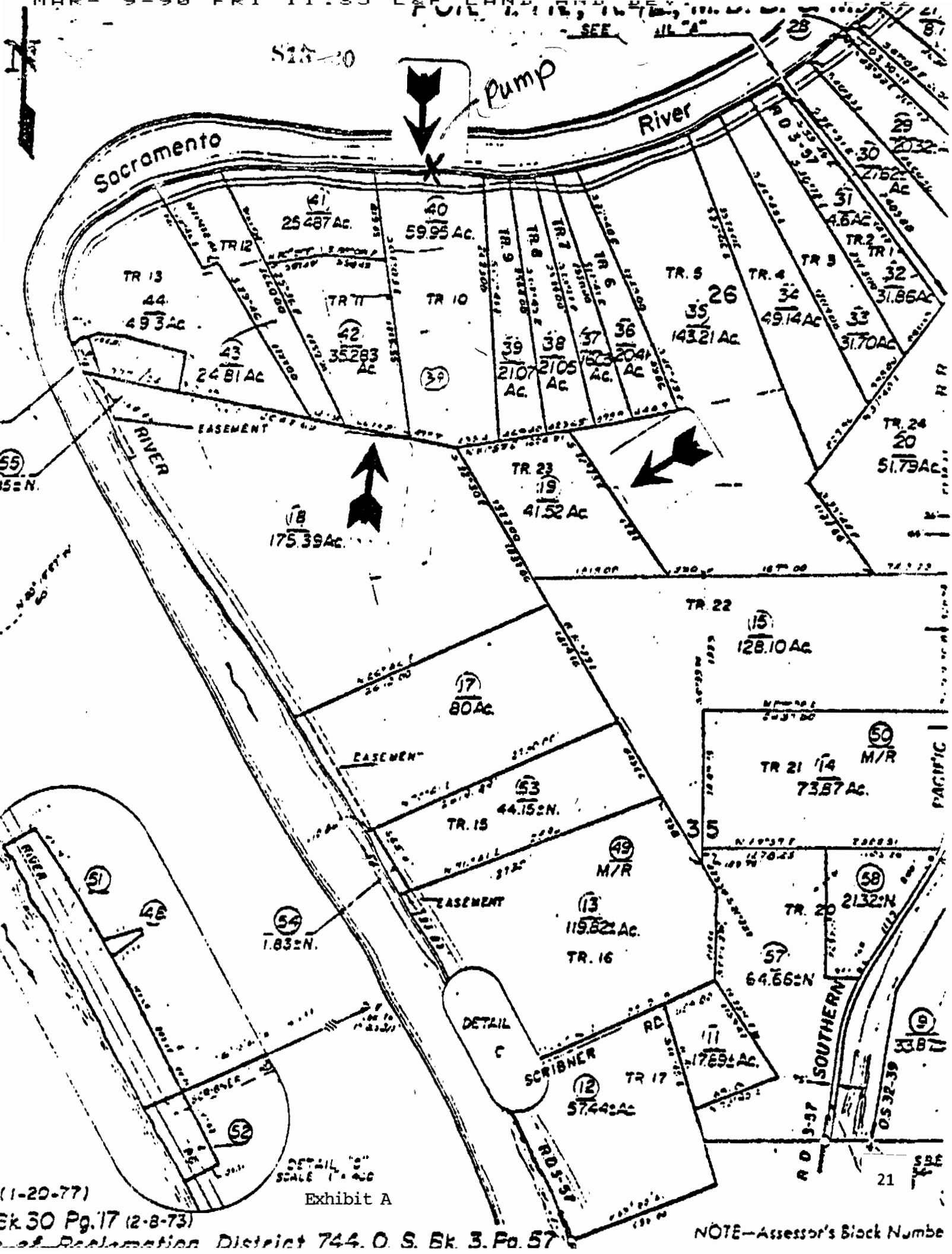
Parker Development had much interior renovation done to the home.

Peter Wesley & Karen Lee Stone October 4, 2000 – present

Peter & Karen Stone rebuilt, restored and added on to the home from 2003 to 2006.



o of Reclamation District 744, O. S. Bk. 3, Pg. 57



(1-20-77)

Exhibit A

Bk. 30 Pg. 17 (2-8-73)

...of Reclamation District 744. O. S. Bk. 3. Pg. 57

NOTE—Assessor's Block Numbe

DECLARATION OF GRACE SCRIBNER

I, Grace Scribner, declare as follows:

1. I was born in Freeport, California in 1896 and have lived in the Freeport area my entire life.

2. I am familiar with the property adjoining the Sacramento River and levee, shown on the attached title report map (labelled Exhibit A). I am familiar with the pumping location on the Sacramento River, which diverts water to some of the property shown on Exhibit A.

3. In 1916, my husband and I moved onto the property identified on Exhibit A as "TR 10" (hereinafter referred to as "Tract 10"), which was owned by my husband's father. My father-in-law acquired Tract 10, as well as adjoining properties, sometime in the early 1900s. By 1916, water use from the Sacramento River was already well-established on my father-in-law's properties, pumped from the River by windmill for irrigation and drinking water. In 1916, we installed an electric pump at the location marked on Exhibit A, and used the water to irrigate approximately 40 to 50 acres.

4. The water diversion from the Sacramento River to the property shown on Exhibit A has continued without interruption to this day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 9, 1990, at Freeport, California.

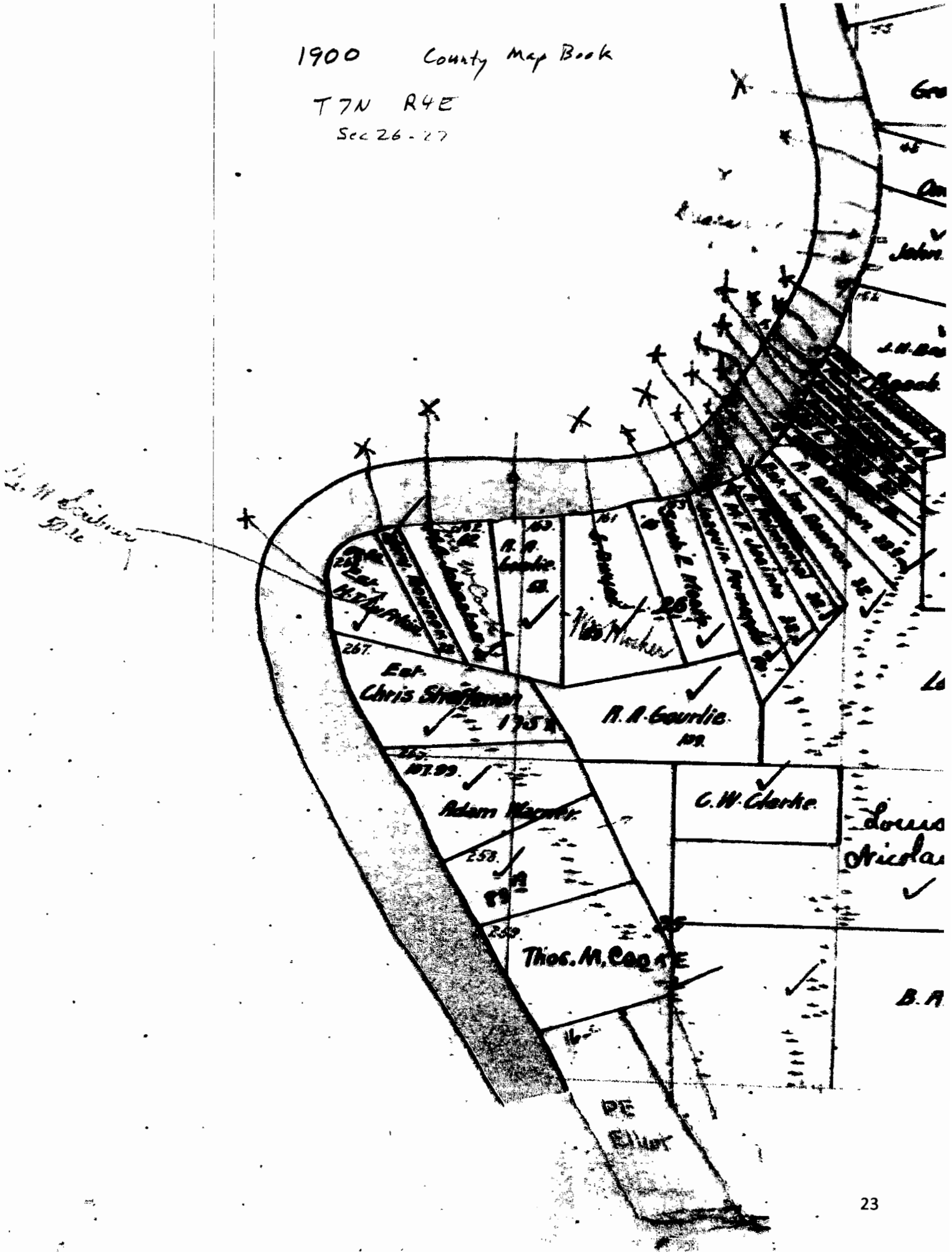
Grace Scribner

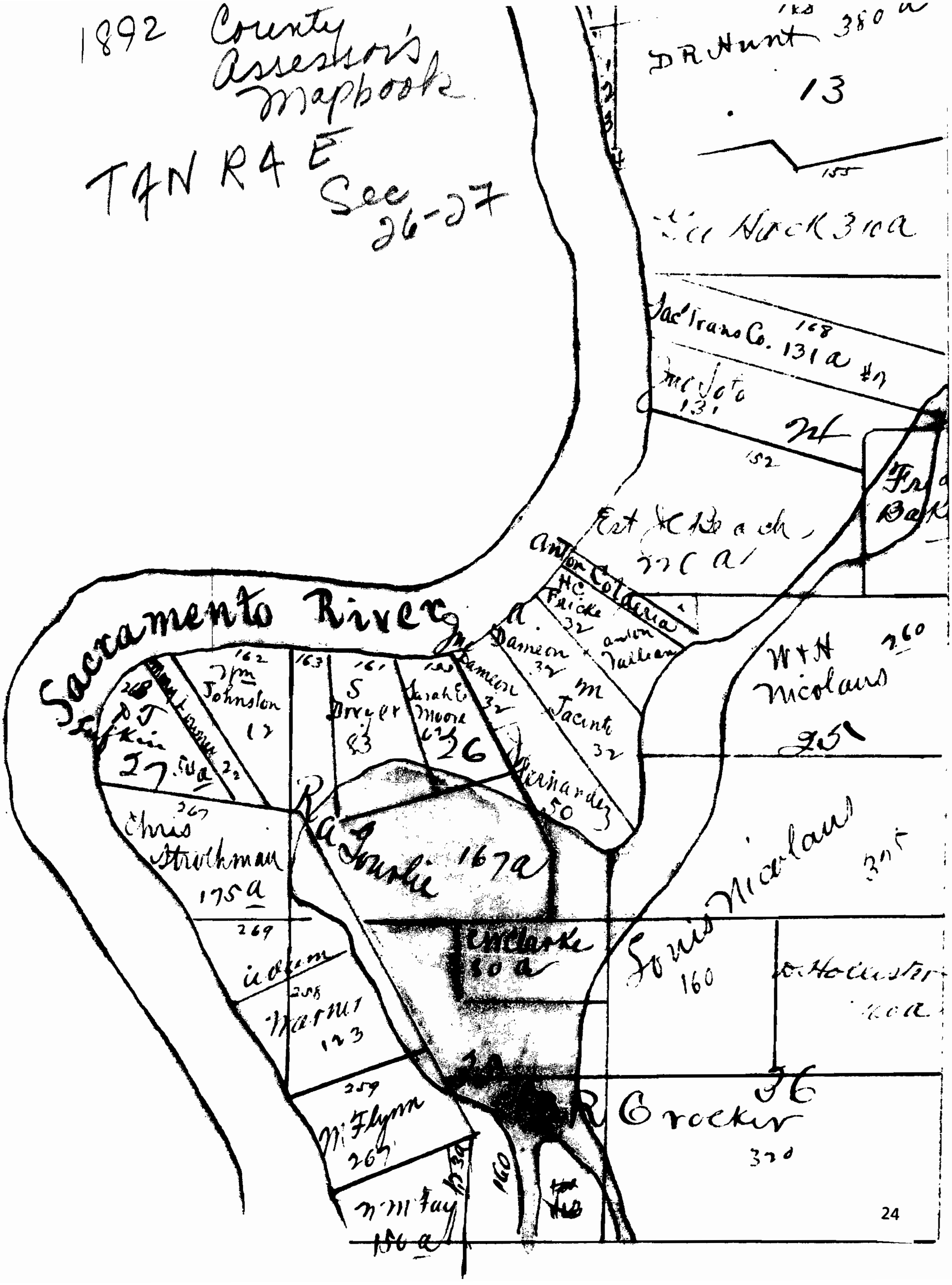
Grace Scribner

1900 County Map Book

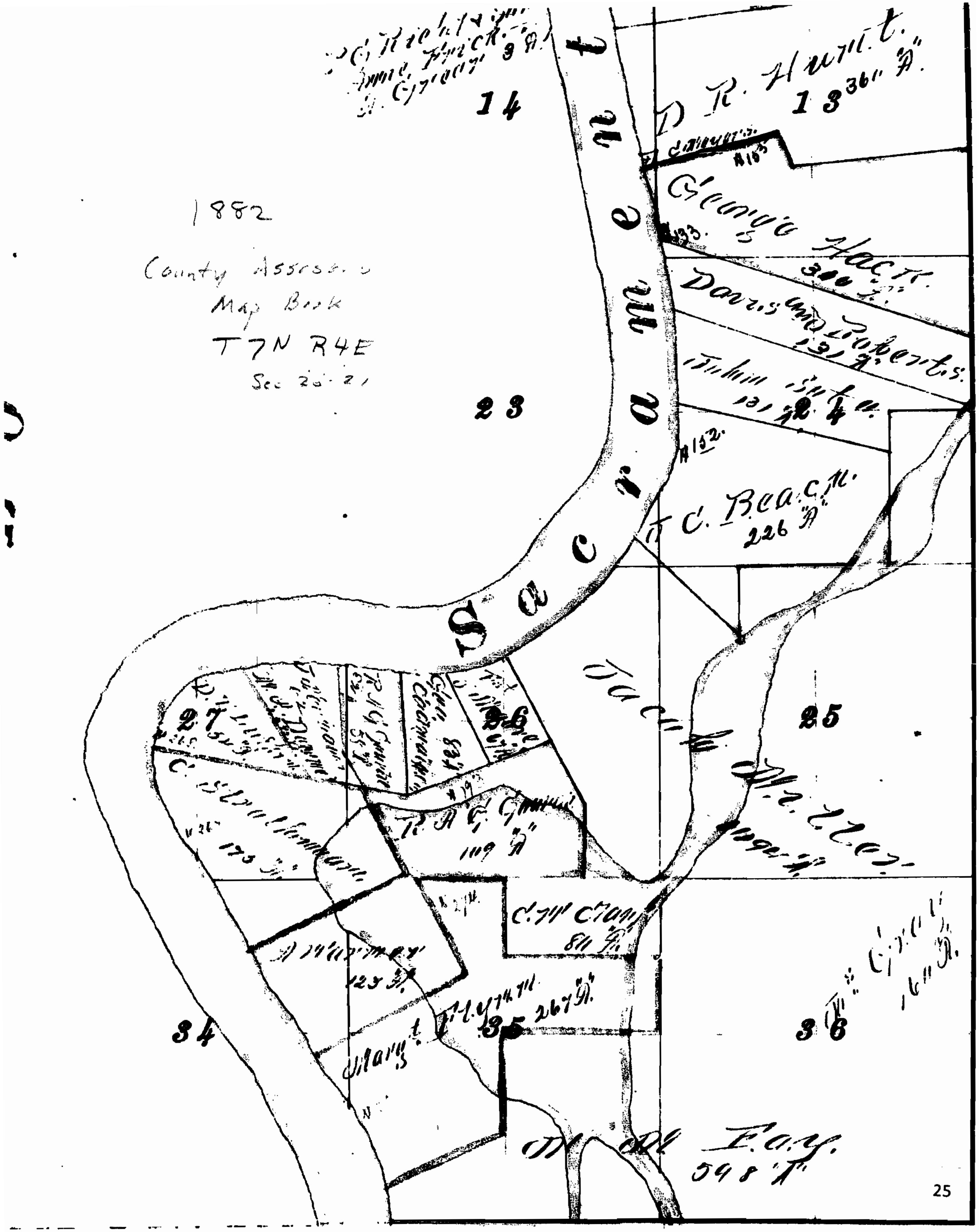
T 7N R 4E

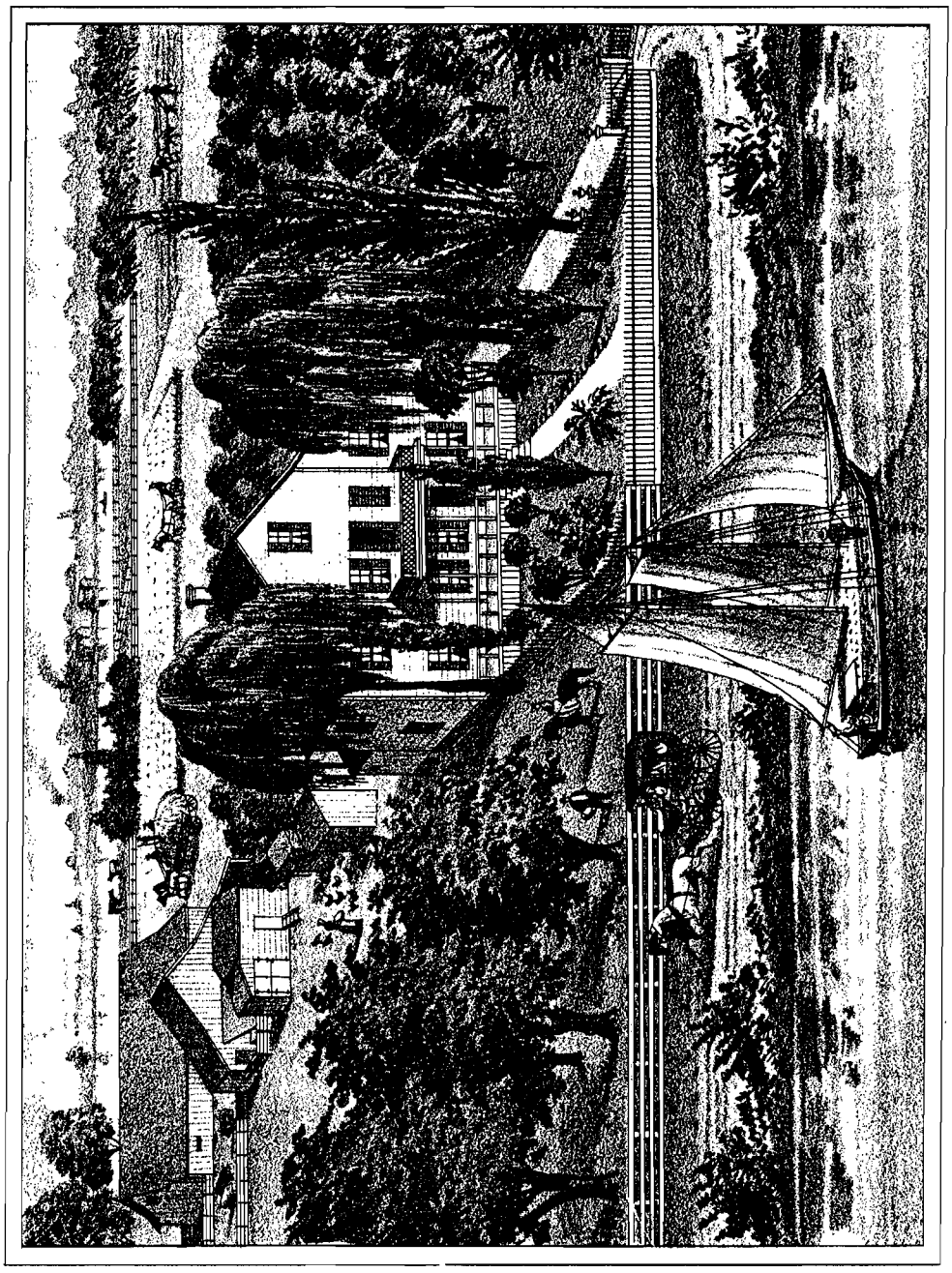
Sec 26 - 27




1892 County Assessor's Mapbook
T4N R4E
Sec 26-27
D R Hunt 380 a
13
Sacramento River
Jm Johnston
S Dreyer
83
26
27
Chris Strohman
175 a
R A Fowlie 167 a
W+H Nicolaus
Louis Nicolaus
160
R Crocker
320
M Flynn
263
Est H C Beach
Jacinto
32
Hernandez
50
C W Clarke
80 a

1882
County Assessor
Map Book
T7N R4E
Sec 26-27





VIEW ON THE FRUIT & VEGETABLE RANCH OF **ROBERT A.G.GOURLIE,** 167 ACRES, 10 MILES SOUTH OF SACRAMENTO. CAL

Picture of the earlier R.A.G. Gourlie home from the *Thompson and West History of Sacramento with Illustrations 1880.*

County Assessor Mapbook
1870

T7NR4E