



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

REVISED

8-18

August 31, 1993

To: Board of Directors (Land Committee--Action)
(Legal and Claims Committee--Action)

From: General Manager

Subject: Resolution of Necessity Directing the General Counsel to
Condemn Property Required for the Domenigoni Valley Reservoir
Project in Riverside County, California, identified by
Riverside County Assessor's Parcel Numbers, MWD Right-of-Way
Parcel Numbers and Owner's Name, on the Attachment hereto.

Report

The Metropolitan Water District will require the real property described in Exhibits A and B, attached hereto, located in Domenigoni Valley, Riverside County, California, for portions of the Domenigoni Valley Reservoir Project. A list of the Assessor's Parcel Numbers, MWD Right-of-Way Numbers, and Owner's Name is set forth in the Parcel List attached hereto. The location of each property is shown on the attached drawings designated as Exhibit B. Offers to purchase the property required by California Government Code section 7262.2 were made.

A hearing for resolution of necessity was originally held by the Land Committee regarding this property at its meeting on June 14, 1993. At that time the Committee voted to recommend adoption of the resolution. A written summary of the hearing and a written recommendation by the Land Committee as to whether the Board should adopt a resolution is attached hereto and was provided to the persons who appeared before the Committee. Before the matter could be presented to the Board, the property owner filed an action in the Riverside Superior Court challenging Metropolitan's determination that no significant environmental impacts would result from a change in the alignment of the relocated Newport Road. As a result of the pending litigation, the resolution of necessity was not presented to the Board for adoption. On August 31, 1993, the Superior Court ruled that the action was barred by the statute of limitations.

Metropolitan may now re-commence the procedures for adoption of the resolution of necessity. The opportunity for the property owner to be heard was provided by the hearing at the June 14, 1993 meeting of the Land Committee. However,

this further opportunity is being provided to the owner to make any further presentation, as well as to advise the Committees and the Board of the outcome of the litigation. If the Land Committee reiterates its recommendation that the resolution of necessity be adopted, the matter will be presented to the Legal and Claims Committee and to the Board at its meeting on September 21, 1993.

On September 1, 1993, notice of intention to adopt a resolution of necessity and of an opportunity to appear and be heard before the Land Committee on September 20, 1993, as to the necessity for the Project and for the taking of the property were served on the owner of the property identified in Exhibits A and B. Under the law, we must have received a written request for a hearing within 15 days after the notice was served in order for a hearing to be required. A quorum of the Committee is required for such a hearing. Following the hearing, and before the meeting of the Board of Directors on September 21, 1993, a written summary of the hearing and a written recommendation by the Land Committee as to whether the Board should adopt a resolution will be provided to the Board and to each person who received notice and appeared before the Committee.

Transmitted herewith is a form of resolution declaring the necessity for the Project and for the acquisition of the property described in Exhibits A and B, attached hereto, and directing the General Counsel to commence condemnation proceedings in Riverside County to acquire the property.

On October 8, 1991, your Board and its Advisory Committees acting on this matter certified that the Final Environmental Impact Report for the Eastside Reservoir Project, herein referred to as the Domenigoni Valley Reservoir Project, had been completed in compliance with the California Environmental Quality Act (CEQA) and the State Guidelines, and that it had reviewed and considered the information contained in that document. On April 13, 1993, your Board adopted Addendum No. 1 to the Final Environmental Impact Report and determined that the minor technical change to the project moving the alignment of Newport Road to the south will not have a significant impact on the environment. Your action on the subject resolution is therefore in compliance with CEQA. No further environmental documentation or review is necessary for your Board to act on this request.

Board Committee Assignments

This letter is referred for action to:

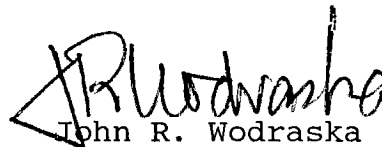
The Land Committee because of its authority (1) to advise, study, and make recommendations with regard to the initiation of condemnation proceedings under Administrative Code section 2451(g); and (2) to hold the hearing and make the recommendation required by Code of Civil Procedure section 1245.135(c) concerning adoption by the Board of a resolution of necessity to acquire property under Administrative Code section 8207.

The Legal and Claims Committee because of its authority to advise, study, and make recommendations with regard to litigation brought by the District under Administrative Code section 2461(a).

Recommendation

LAND AND LEGAL AND CLAIMS COMMITTEES FOR ACTION.

It is recommended that the Board of Directors adopt the attached resolution declaring the necessity for the project and for the property described in Exhibits A and B, attached thereto, and directing the General Counsel to commence condemnation proceedings in Riverside County to acquire the property.


John R. Wodraska

JV:ks
KARSCH\JVCOMM\resneltt.cm9
Attn.

**SUMMARY OF HEARING AND RECOMMENDATION OF THE LAND
COMMITTEE REGARDING WHETHER THE BOARD OF DIRECTORS
SHOULD ADOPT A RESOLUTION OF NECESSITY TO CONDEMN
CERTAIN PROPERTY FOR THE DOMENIGONI
VALLEY RESERVOIR PROJECT**

On June 14, 1993, at the headquarters building of The Metropolitan Water District of Southern California, a hearing was held by the Land Committee of Metropolitan's Board of Directors. Land Committee Chairman Edward L. Kussman presided. The Committee was called to order and a quorum was present.

Chairman Kussman requested that Deputy General Counsel Joseph Vanderhorst present the matter to the Committee. Mr. Vanderhorst advised the Committee that the eminent domain law makes adoption of a resolution of necessity, by a two-thirds vote of the Board, a prerequisite to the filing of an action to condemn property. Prior to such a vote being taken, the property owner must be given an opportunity to be heard. Metropolitan's Board of Directors has designated the Land Committee as the body to hold such hearings.

Notice of the hearing was served on the property owners by mail. A request to appear was received from Berger & Norton to appear on behalf of Paul Garrett. The Committee was advised that Parcel 144-1-251 was being withdrawn.

Mr. Vanderhorst stated that the resolution establishes three issues: 1) Whether public interest or necessity require the project; 2) Whether the project is planned or located in the manner that will be most compatible with the greatest public good and least private injury; and 3) Whether the subject property is necessary for the project.

Mr. Dennis Majors made a presentation on the need for the project, and the process by which the site was selected. The Domenigoni Valley location was selected because of its ideal location near the San Diego Canal, which allows it to hold water from the State Water Project and the Colorado River. Its elevation also allows water to be taken out of the reservoir and delivered to about 90 percent of Metropolitan's service area. He identified the parcels which are the subject of the resolution and the reasons these parcels are required for the project.

Parcels 89, 335, and 677 are located in the area below the saddle dam to be constructed in the north hills. Construction access will be required across these properties. Other portions of the property are needed for mitigation of impacts on endangered species within the reservoir area. The Eastside Pipeline will be constructed across the property to

deliver water from the State Water Project to the reservoir. The pipeline will also allow water to be carried back to Lake Mathews and into the western portions of the service area. Finally, Newport Road, which presently runs across the Domenigoni Valley, will be relocated to the northern side of the north hills and will cross the property. The alignment of Newport Road considered in the Environmental Impact Report (EIR) ran along the property line of these parcels. Subsequent to the EIR, the alignment of the road was moved south pursuant to discussions with city and county transportation agencies. An Addendum to the EIR was prepared to address this change in the alignment, and the Addendum was approved by the Board in April, 1993.

Parcels 79, 213, 331 and 339 are required as part of the operational area of the reservoir. They are also necessary for the multi-species reserve established to mitigate the impacts of the project on endangered species. The properties will also be required for construction of the realigned Newport Road. Mr. Majors pointed out that Newport Road will be constructed as a limited access road, so that the parcels being acquired would not have access onto the road even though it crosses these properties.

There were no questions from the Committee members at that time, and Mr. Berger was asked to make his presentation on behalf of Mr. Garrett, the owner of Parcels 89, 335, and 677.

Mr. Berger stated that Mr. Garrett had been trying to negotiate the acquisition of the property for some time but had been unsuccessful, and, therefore, had begun to look into the legal prerequisites for filing a condemnation action. In reviewing those prerequisites a serious problem had been found in the environmental review of the Newport Road alignment. At the time the environmental analysis was performed, two alternative alignments were analyzed. Both were north of the Salt Creek Channel. The present alignment is located south of the Salt Creek Channel, and the EIR contained no analysis of the environmental impact of putting a street in that location. The location is important because the Channel carries substantial amounts of water in heavy rain years, and the raised road will act as a dike. Another aspect of the northern alignments is that they followed existing road rights-of-way and affected small amounts of farmland. The new southern alignment will affect a larger amount of farmland because it does not follow the existing right-of-way.

Mr. Berger stated that neither Mr. Garrett, nor his representatives, had received notice of a supplemental environmental impact report, and he objected to any consideration being given to information which was not made available to the people whose property would be acquired for the road. One of the prerequisites to filing a condemnation action is compliance with the environmental laws, and their examination of the record indicates that there has been no analysis of the environmental impact of the new alignment for the road. Without such analysis, there is not a legal basis for proceeding to acquire the property at this time.

Mr. Majors made a further statement about the alignment of Newport Road. He presented slides showing the location of the Salt Creek Channel and the alignments of Newport Road which had been considered in the EIR. He stated that the Addendum to the EIR covered the impact on resource inventories, and determined that with the realigned Channel the biological, cultural, and environmental impacts were actually less than for the northerly alignments. Also, the amount of acreage affected was equivalent to that affected by the northerly alignment. The conclusion of the Addendum which was adopted by the Board of Directors in April was that there was not any significant change. Mr. Majors further stated that, as legally required, notice of the document was not sent to individual property owners, but was posted with the county clerk. The alignment had been discussed for well over a year in public meetings with property owners' associations.

Director Boen inquired into the status of negotiations for the Garrett property. Mr. Randy Case of Metropolitan's Right of Way and Land Division stated that an offer had been made to Mr. Garrett and that meetings had been held with Mr. Garrett to discuss the acquisition. At this point the parties are still far apart.

Director Peterson moved that the Land Committee recommend that the Board of Directors adopt the proposed Resolution of Necessity. The motion was seconded by Director Grandsen. The motion was passed unanimously.

Mr. Berger requested that a copy of the Addendum to the EIR be provided to Mr. Garrett, which Mr. Majors agreed to provide.

The meeting was adjourned at 9:15 a.m.

**SUMMARY OF SEPTEMBER 20, 1993 HEARING AND
RECOMMENDATION OF THE LAND COMMITTEE REGARDING
WHETHER THE BOARD OF DIRECTORS SHOULD ADOPT A
RESOLUTION OF NECESSITY TO CONDEMN CERTAIN PROPERTY
FOR THE DOMENIGONI VALLEY RESERVOIR PROJECT**

On September 20, 1993, at the headquarters building of The Metropolitan Water District of Southern California, a hearing was held by the Land Committee of Metropolitan's Board of Directors. Land Committee Chairman Edward L. Kussman presided. The Committee was called to order and a quorum was present.

Chairman Kussman requested that Deputy General Counsel Joseph Vanderhorst present the matter to the Committee. Mr. Vanderhorst advised the Committee that it had originally held a hearing on the resolution of necessity on June 14, 1993. The resolution would authorize the filing of an eminent domain action to acquire property owned by Paul Garrett.

At the June 14 hearing, Mr. Garrett appeared with his counsel, Michael Berger, to object to the adoption of the resolution. The basis for the objection was the alleged failure of Metropolitan to comply with the California Environmental Quality Act when it changed the alignment of the proposed Newport Road. Dennis Majors had responded by explaining that the changed alignment had been addressed in an Addendum to the Final Environmental Impact Report which was certified by the Board of Directors on April 14, 1993. The Committee voted to recommend that the Board adopt the resolution of necessity.

Mr. Vanderhorst stated that the resolution was not presented to the Board because Mr. Garrett filed an action in Riverside County Superior Court challenging the CEQA compliance. That litigation has now been resolved in favor of Metropolitan on the ground that the lawsuit was not timely filed. The matter was again set for hearing before the Land Committee to allow Mr. Garrett a further opportunity to present objections to the resolution of necessity. Mr. Garrett made a written request to appear and be heard, and was present for the hearing.

Mr. Garrett addressed the Committee and reiterated his position that Metropolitan had not adequately addressed the environmental impacts that would result from changing the roadway alignment. In particular, he was concerned that the alignment was moved from an existing roadway alignment to cross over his agricultural property. He advised the Committee that he would continue to oppose the taking of the property until Metropolitan complied with the process and held a public hearing on the environmental documentation addressing the alignment change.

Members of the Committee questioned whether Metropolitan had given the proper notice of the documentation. General Counsel N. Gregory Taylor answered that Metropolitan had complied with the CEQA requirements, and the court decision supported this. Other questions concerned the basis for changing the alignment, and what instigated the change. Dennis Majors explained that the change in alignment resulted from discussions with the City of Hemet, County of Riverside, local homeowners' associations, and property owners. With the use of graphics, Mr. Majors showed how the Garrett property would be affected by the construction of the relocated Newport Road, and that the alignment follows the proposed Salt Creek Flood Control Channel which would also be built on the Garrett property. In addition, the property is crossed by the San Diego Canal and the proposed Eastside Pipeline.

Mr. Vanderhorst stated that he had received a request from Mr. Garrett that the resolution of necessity, if adopted, include Parcel 645 which is located directly west of the property now covered by the resolution. Mr. Garrett confirmed that he was making that request and that he further waived the notice requirements for hearing as to Parcel 645. Mr. Vanderhorst confirmed that Parcel 645 was to be acquired by Metropolitan and including it in the resolution would save time and avoid an unnecessary hearing in the future.

In response to an inquiry from a member of the Committee, Mr. Garrett reiterated that the basis for his challenge to the CEQA compliance was that Metropolitan had not followed proper procedures and should have held a public hearing on the Addendum.

There was a motion to recommend to the Board of Directors that the resolution of necessity be adopted as amended to include Parcel 645. The motion was passed unanimously.

ATTACHMENT

ASSESSOR'S
PARCEL NO.

MWD PARCEL NO.

OWNERS' NAMES

465-200-001,
-002,-004, 465-
220-003,-005,
-006,-007, and
-008

144-1-89, 144-1-
335, 144-1-677

Paul Garrett

465-18-004

144-1-645

Modoc Cattle Company

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
DIRECTING THE CONDEMNATION OF CERTAIN PROPERTIES SITUATED
IN RIVERSIDE COUNTY (DOMENIGONI VALLEY RESERVOIR PROJECT)

BE IT RESOLVED, by the Board of Directors of The
Metropolitan Water District of Southern California (District):

Section 1. The District's Board finds and determines that the public interest and necessity require, for public use, the construction, operation, and maintenance of a reservoir, and for the relocation of Newport Road and pipeline construction in connection with the reservoir, in the County of Riverside, California, for the storage and transportation of water, and that certain properties situated in the County of Riverside are necessary therefor.

Section 2. The properties to be acquired for the public use set forth in Section 1 hereof consist of the fee interest in the parcels of land described in Exhibit A attached hereto and incorporated herein by reference. The properties are located within the District's boundaries at the locations shown on Exhibit B attached hereto and incorporated herein by reference. The District's Board finds and determines that the properties are necessary for the proposed project.

Section 3. The District's Board of Directors hereby declares its intention to acquire the properties by proceedings in eminent domain as authorized by the Metropolitan Water District Act (Stats. 1969, Ch. 209, as amended).

Section 4. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The offer required by section 7267.2 of the California Government Code has been made to the owners of record of the properties.

Section 6. The District's General Counsel is hereby directed to commence proceedings in the Superior Court of California, County of Riverside, for the purpose of condemning and acquiring the properties and to take such steps as may be necessary to secure an order of court permitting the District to take possession of the properties for the uses and purposes herein described. He is authorized to take such action and steps as he deems necessary in connection with such proceedings, including the amending of the complaint to reduce the extent of the property to be acquired so as to reduce the

compensation payable in the action where such change would not substantially impair the construction and operation of the said public works, and to incur expenses necessary and incidental to the action.

I HEREBY CERTIFY, that the foregoing resolution was adopted at the meeting of the Board of Directors of The Metropolitan Water District of Southern California held the 21st day of September, 1993, by vote of two-thirds of all its members, and I further certify that the foregoing is a full, true and correct copy of the resolution.

Executive Secretary
The Metropolitan Water District
of Southern California

EXHIBIT A

144-1-89, 677
Paul Garrett, et al

PARCEL 1

The north half of Section 35, T5S, R2W, SBM, Riverside County, California, as shown by United States Government Survey.

EXCEPTING therefrom that portion conveyed to The Metropolitan Water District of Southern California in the Deed recorded August 11, 1959 as Instrument No. 69525, of Official Records of said County.

PARCEL 2

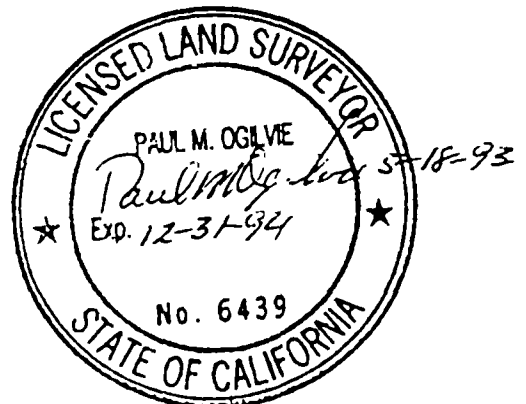
The north half of Section 36, T5S, R2W, SBM, Riverside County, California, as shown by United States Government Survey and Plats on file.

EXCEPTING therefrom the southeast quarter of the northeast quarter of said Section, said excepted portion being described as follows:

Commencing at a point 1333.2 feet south of the northeast corner of said Section 36; thence N 88° 59' W 1330 feet; thence south 1333 feet to the south line of the north half of said Section 36; thence east to the southeast corner of the north half of said Section 36; thence north to the point of beginning.

ALSO EXCEPTING therefrom that portion conveyed to The Metropolitan Water District of Southern California in the Deed recorded July 3, 1959 as Instrument No. 57973, of Official Records of said County.

ALSO EXCEPTING therefrom that portion conveyed to The Metropolitan Water District of Southern California in the Deed recorded May 14, 1987 as Instrument No. 134996, of Official Records of said County.



144-1-89,677,335
Paul Garrett

-2-

PARCEL 3 (144-1-335)

The southeast quarter of the northeast quarter of Section 36, T5S, R2W, SBM, Riverside County, California, as shown by United States Government Survey approved September 16, 1880.

EXCEPTING therefrom all oil, gas, oil shale, coal phosphate, sodium, gold, silver and all other mineral deposits contained in said land and further reserving to the State of California and persons authorized by the State, the right to drill for and extract such deposits of oil and gas or gas and to prospect for, mine and remove such deposits of other minerals from said land and to occupy and use so much of the surface of said land as may be required therefor, as reserved in the Patent recorded November 78, 1956 in Book 1995, page 172 of Official Records of said County.

PMO/p;/144189A

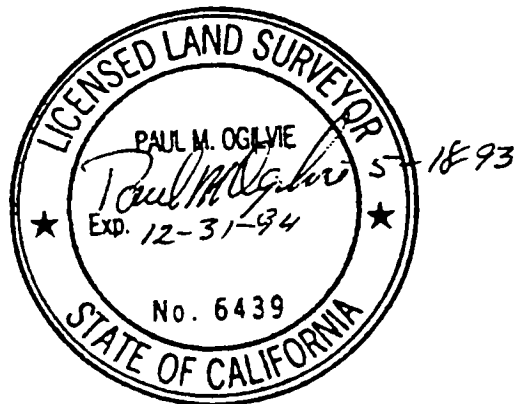
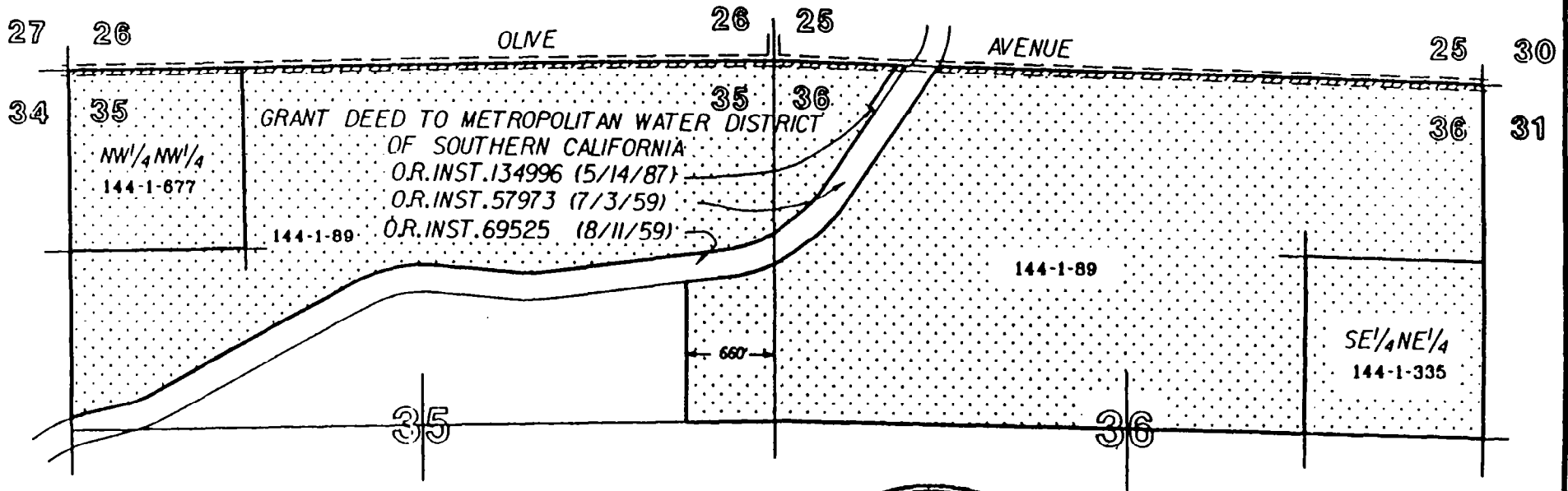

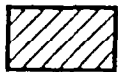


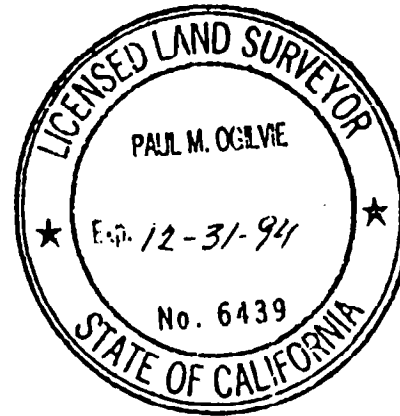
EXHIBIT B

SECS. 35 & 36, T.5S, R.2W., S.B.M.
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

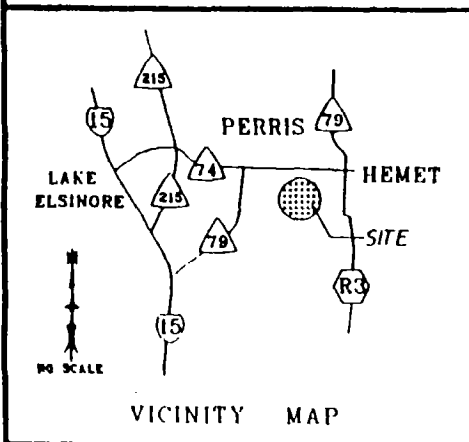


LEGEND

-  FEE PARCELS 144-1-89, 335, 677 NOT IN ROAD R/W
-  FEE PARCELS 144-1-89, 677 WITHIN ROAD R/W



PREPARED UNDER
 MY SUPERVISION
Paul M. Oglvie
 PAUL M. OGLVIE P.L.S. 6439
5-18-93
 DATE



NOT TO SCALE

THE METROPOLITAN WATER DISTRICT
 OF SOUTHERN CALIFORNIA
 DOMENIGONI VALLEY RESERVOIR PROJECT
 (NEWPORT ROAD RELOCATION)
GRANT DEED
 PAUL GARRETT, et al to MWD
 PARCELS 144-1-89 & 677
 PAUL GARRETT to MWD
 PARCEL 144-1-335

EXHIBIT A

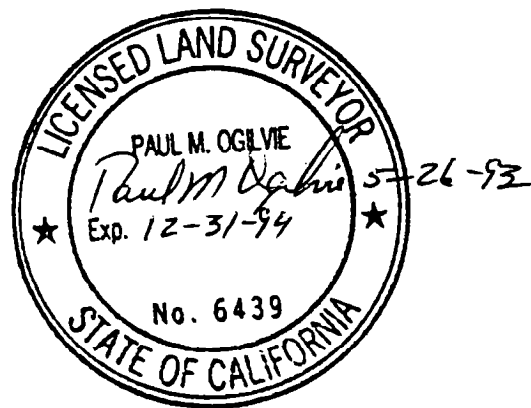
144-1-645

Modoc Cattle Co. et al

The east half of the east half of the northeast quarter ($E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}$) of Section 34, T5S, R2W, SBM, in the County of Riverside, State of California.

EXCEPTING therefrom that portion of said $E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}$ described as follows:

Beginning at the southeast corner of said northeast quarter; thence S 88° 59' 03" W along the south line of said northeast quarter of said Section 34 a distance of 282.20 feet to a point on a curve concave to the southeast and having a radius of 100 feet, a radial line of said curve to said point having a bearing of N 30° 51' 01" W, thence easterly along said curve 303.15 feet, more or less, to the east line of said northeast quarter of Section 34; thence S 01° 58' 35" E along said east line 112.94 feet to the point of beginning.



PMO/p:/1441645

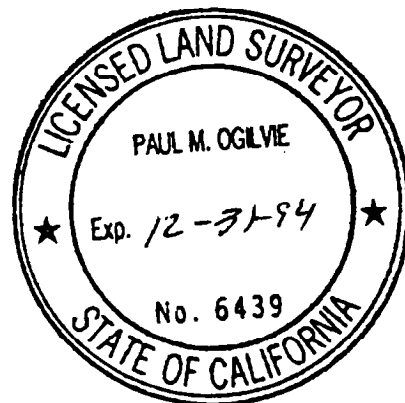
EXHIBIT B

NE 1/4, SECTION 34, T5S, R2W, S.B.M.
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

OLIVE AVENUE 27 26

34 35

E 1/2 E 1/2 NE 1/4



LEGEND

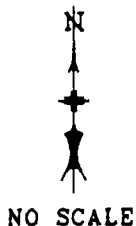
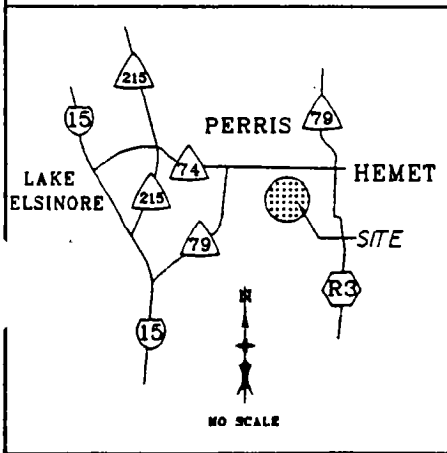
FEE PARCEL 144 - 1 - 645

SAN DIEGO CANAL (MWD)

PREPARED UNDER MY SUPERVISION

Paul M. Ogilvie
PAUL M. OGILVIE P.L.S. 6439

5-26-92
DATE



NO SCALE

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
DOMENIGONI VALLEY RESERVOIR PROJECT
(NEWPORT ROAD RE-LOCATION)
GRANT DEED
MODOC CATTLE CO. et al
TO
MWD
PARCEL 144-1-645