

WITHDRAWN FROM BOARD AGENDA

8-9

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

December 20, 1994

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

From: General Manager

Subject: Resolution of Necessity Directing the General Counsel to Condemn Property Required for the Eastside Pipeline in Riverside County, California, identified by Riverside County Assessor's Parcel Numbers, MWD Right-of-Way Parcel Numbers and Owners' Names, on the Attachment hereto.

Report

The Metropolitan Water District will require the real property or interests in real property described in Exhibits A and B, attached hereto, located in Riverside County, California, for portions of the Eastside Pipeline Project. A list of Assessor's Parcel Numbers, MWD Right-of-Way Numbers, and Owners' Names 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 as required by California Government Code section 7262.2 were made.

On November 22, 1994, notices of intention to adopt a resolution of necessity and of an opportunity to appear and be heard before the Land Committee on December 12, 1994, as to the necessity for the Project and the taking of the property were served on the owners of the properties 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 request to appear was received from Mr. Robert Hawkins of the law offices of Susan Trager on behalf of Louis R. and Dawne Wilhelm. A request to appear was also received from Mr. James Dilworth. A quorum of the Committee was present and a hearing was held. A written summary of the hearing and written recommendation by the Land Committee as to whether the Board should adopt a resolution is attached hereto.

Transmitted herewith is the 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.

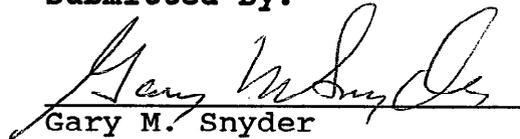
On October 8, 1991, your Board and its Advisory Committees acting on this matter certified that the Final Environmental Impact Report for the Eastside Reservoir Project, herein referred to as the Domenigoni Valley Reservoir Project, had been completed in compliance with the California Environmental Quality Act (CEQA) and the State Guidelines, and that it had reviewed and considered the information contained in that document. On February 8, 1994, your Board adopted a final Supplemental Environmental Impact Report and determined that the alignment of the Eastside Pipeline 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.

Recommendation

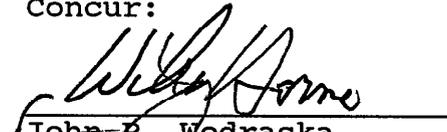
It is recommended that the Board of Directors, by a two-thirds vote, adopt the attached resolution declaring the necessity for the Project and for the property described in Exhibits A and B, attached hereto, and directing the General Counsel to commence condemnation proceedings in Riverside County to acquire the property.

John R. Wodraska
General Manager

Submitted By:


Gary M. Snyder
Chief Engineer

Concur:


John R. Wodraska
General Manager
JV:ks
KARSCH\JVBOARD\RESNLT25.bd
Attm.

**SUMMARY OF DECEMBER 12, 1994 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 EASTSIDE PIPELINE PROJECT**

On December 12, 1994, at the offices 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 Doude Wysbeek presided. A quorum of the Committee was present.

Chairman Wysbeek requested that Deputy General Counsel Joseph Vanderhorst present the matter to the Committee. Mr. Vanderhorst advised the Committee that Committee Item 7a involved the hearing required by the eminent domain law prior to the commencement of a condemnation action. Notice of the hearing was mailed to the property owners on November 22, 1994, and the owners of both properties filed requests to appear and be heard. The issues for determination in the hearing are: 1) Whether the public interest and necessity require the project; 2) Whether the project is planned and located in the manner most compatible with the greatest public good and the least private injury; and 3) Whether the property to be acquired is necessary for the project.

The properties which are the subject of the resolution are identified in Exhibits to the Committee letter. However, Mr. Vanderhorst distributed a revised legal description and map for Parcels 144-3-100 and 144-3-102, which reflect that a survey has disclosed a gap between the parcels. The revised exhibits will be attached to the resolution presented to the Board. Mr. Vanderhorst further advised that Metropolitan had made an offer to purchase each of the parcels, and the offers were rejected by the property owners.

Mr. Dennis Majors then made a presentation regarding the project and the property sought to be acquired. He stated that the Eastside Pipeline had originally been planned to run along the west side of the San Diego Canal. The alignment was changed to the east side of the Canal, and the new alignment was reviewed and approved together with a Supplemental Environmental Impact Report. The change was necessary to eliminate two crossings of the Canal, which are expensive and create safety problems. Construction of the Pipeline requires acquisition of additional right-of-way along the Canal and temporary construction easements to allow the work to be performed in a manner that does not endanger the Canal.

Mr. Majors further stated that the environmental review of the Pipeline alignment revealed that there would be impacts on both wetlands and sensitive species of plants. The

San Jacinto saltbush is present within the right-of-way, and this plant is expected to be listed as an endangered species in the near future. The wetlands and sensitive species will be impacted by the construction, and also by the potential for future disturbance for pipeline maintenance and emergency repairs.

Metropolitan's staff coordinated with state and federal agencies, including the U. S. Fish and Wildlife Service and Army Corps of Engineers, and the State Water Quality Control Board, in obtaining required approvals for the Pipeline Project. One of the conditions for approval of the project was the acquisition of mitigation lands to offset the impacts on wetlands and sensitive species. Mr. Vanderhorst distributed a copy of the Corps of Engineers letter authorizing the construction work to be performed under a Nationwide 12 permit if certain conditions are met, including acquisition of the mitigation parcels which are the subject of the resolution. A copy of this letter along with the reports and correspondence between Metropolitan and the federal regulatory agencies will be available for review in the Executive Secretary's office.

Director Peterson inquired about who would manage the mitigation property. Mr. Majors responded that the property would be managed by the U. S. Fish and Wildlife Service or the California Department of Fish and Game.

Director Little asked why the mitigation could not be done with the lands already acquired within the Shipley Reserve. Mr. Majors answered that the impacted species and wetlands cannot be mitigated by other lands acquired because the Reserve lands do not include wetlands or the species of plant affected. These mitigation lands are specifically required for this project because they have both wetlands and the sensitive species present.

Mr. Vanderhorst then requested the property owners and their representatives to make their presentations. Mr. Nelson Dilworth stated that he was opposed to the acquisition of his property for several reasons. First, the acquisition involves 45 acres of mitigation land even though only 29 acres are being affected by the Project. He argued that Metropolitan should oppose any requirement for mitigation above a one-to-one ratio. Second, the acquisition violates the statement at page 2-2 of the Supplemental EIR that the purpose is to "reduce to insignificance the effects of the modified project upon biological resources and land." Third, the wetlands and vegetation in the Project right-of-way will be restored after construction, and therefore, acquisition of other lands is unnecessary. He suggested that leasing land for the construction period should suffice for mitigation of the impacts. Fourth, his property is not the best mitigation land

because it includes an elevated area that is not wetlands, but is valuable for home sites. This land is adjacent to a housing development already, and should be excluded from the taking. Fifth, the imposition of standby charges on the property guarantees that Metropolitan will not interfere with putting the property to productive use.

Mr. Robert Hawkins of the Law Offices of Susan Trager made a presentation on behalf of the Wilhelms. Mr. Hawkins stated that no mitigation should be required for the Eastside Pipeline when none was required for the Domenigoni Valley Reservoir, which is substantially larger. In reviewing the Corps of Engineers file, Mr. Hawkins stated it appears that Metropolitan proposed the mitigation sites rather than receiving a demand for those sites from the Corps. He also supported Mr. Dilworth's statement that no permanent mitigation land should be acquired because the impacts of the Project are going to be restored after construction. Mr. Hawkins suggested that Metropolitan consider acquiring only a conservation easement, rather than fee title to the land. The Wilhelms would like to have the opportunity to negotiate to retain some of the mitigation credits available for conserving the land. Finally, the Wilhelms also own rights to earth fill from an adjacent property also affected by the Project. Mr. Hawkins requested that consideration of the resolution of necessity be delayed to allow negotiations on these issues. If the Committee went forward he urged that the Corps of Engineers be asked to accept the Domenigoni Valley Reservoir as a wetlands for purposes of mitigating the Eastside Pipeline Project.

Mr. Majors responded that the mitigation plans for the Project were initially coordinated with the Fish and Wildlife Service, and the 45 acres of mitigation property were identified in those negotiations. Metropolitan surveyed the parcels and identified the top priority parcels for meeting mitigation requirements. The Fish and Wildlife Service did an independent evaluation and reached the same conclusion. The Army Corps of Engineers concurred with the selection.

Director Parker requested a response to the suggestion that only a conservation easement be acquired. Mr. Majors responded that the Fish and Wildlife Service and Corps of Engineers had specified that fee title should be acquired and the conservation easement will provide the means to enforce performance criteria for maintaining the wetlands in perpetuity. Mr. Vanderhorst added that the conservation easement would prohibit any use being made of the property, and therefore, would involve paying for virtually the full fee value of the property. He suggested that the fee title should be acquired and inquiries made to the regulatory agencies to determine if any additional mitigation credits would be available that the Wilhelms could retain.

Director Little inquired about the need for acquiring permanent mitigation lands if Metropolitan will be restoring the disturbed areas after construction of the Project. Mr. Majors responded that the mitigation is required because there will be continuing impacts from maintenance activities, and Metropolitan will retain the right to disturb the areas again for emergency repairs.

Director Peterson asked about the possibility of excluding the elevated area on the Dilworth property. Mr. Majors responded that this issue had been discussed with the Dilworths, but that the regulatory agencies wanted to have this elevated area located at the western edge of the mitigation lands to act as a boundary between the mitigation lands and adjacent development. Mr. James Dilworth stated that the land would not act as a boundary because it already has a paved road and building pads on it. He further stated that he felt a stronger position should have been taken with the Fish and Wildlife Service regarding the scope of required mitigation and that the acquisition of the property was not required for the Project.

Director Watton commented that he was concerned about the apparent lack of an overall mitigation plan that would avoid the need to acquire mitigation parcels on a piecemeal basis. He further supported the Dilworth's proposal that temporary impacts could be mitigated by a lease-to-purchase arrangement that would allow the land to be leased pending completion of the restoration of the impacted lands. Mr. Vanderhorst responded that Metropolitan has been working with the environmental regulatory agencies to obtain the necessary clearances to build its capital projects, but that the mitigation requirements for each project must be assessed and approved on a project by project basis.

Director Little asked if the wetlands issue was considered in the decision to move the alignment to the east side of the Canal. Mr. Majors answered that there are wetlands on both sides of the Canal, and there would have been impacts regardless of which side the Project was located on.

Mr. Hawkins stated that the Wilhelm land overlays a groundwater basin, and Metropolitan does not have the power to condemn water rights. He asked that the resolution be amended to reflect this issue. Mr. Vanderhorst responded that Metropolitan's power of eminent domain includes the power to acquire fee title in property needed for its projects. The fee title to land may include incidental rights to minerals or water. It is not a violation of Metropolitan's enabling act to condemn the fee title to land for a purpose other than acquiring the water rights appurtenant to the land.

Director Peterson inquired about the project schedule. Mr. Majors responded that bids would be opened on December 15, and the project would be awarded soon thereafter.

Director Wright recommended that staff request the exclusion of the elevated area of the Dilworth property from the mitigation lands. Mr. Vanderhorst indicated that staff would try to negotiate a downsizing of the mitigation parcel with the Army Corps of Engineers. Mr. Majors concurred that he would work with the Corps on the issues raised by the property owners.

Director Wright moved to continue the hearing to the January meeting of the Land Committee. Director Watton seconded the motion. The motion was defeated on a vote of four to six.

Director Peterson moved to recommend approval of the resolution of necessity, with the instruction that staff would return to the Corps of Engineers to negotiate on the issues raised by the property owners. The motion was seconded by Director King, and passed by the Committee with Director Watton voting "no."

STATEMENT OF GARY M. SNYDER IN SUPPORT OF
RESOLUTION OF NECESSITY (DOMENIGONI VALLEY RESERVOIR PROJECT)

I, GARY M. SNYDER, declare:

1. I am chief engineer of The Metropolitan Water District of Southern California.

2. In order for Metropolitan to insure reliable delivery of water to its member public agencies for service to the public, it is necessary to construct, operate and maintain a water reservoir in Domenigoni Valley, Riverside County, California. Construction of the reservoir requires construction of the Eastside Pipeline which will transport water to the reservoir.

3. The acquisition of the interests in the properties described in the proposed resolution of necessity is necessary for the construction, operation and maintenance of the Eastside Pipeline. The properties are located within Metropolitan's boundaries.

4. Metropolitan will require entry upon the properties in order to be able to commence construction of the project.

5. So that it may be assured that Metropolitan will have possession and may proceed with the work, it is necessary that the resolution be adopted in order that an action or actions may be commenced to condemn the properties described in the proposed resolution of necessity, and a court order or orders obtained authorizing Metropolitan to take possession of the properties.

Executed in Los Angeles, on November 28, 1994.


Gary M. Snyder

A T T A C H M E N T

<u>ASSESSOR'S PARCEL NO.</u>	<u>MWD PARCEL NO.</u>	<u>OWNER'S NAMES</u>
465-020-010, 011, 465-030-003, 010, and 018	144-3-102, 144-3-6, 144-3-6TEA1	Louis R. Wilhelm and Dawne Wilhelm
465-030-002	144-3-100	James W. Dilworth, Nelson S. Dilworth, Jr. George H. Dilworth

karsch\jvboard\resnlt.25

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 for the storage and transportation of water, and for the construction of the Eastside Pipeline in connection with the reservoir, in the County of Riverside, California, 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 interests 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 10th day of January, 1995, 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

(1) Fee simple interest in the properties described herein as Parcels 144-3-102, 144-3-6, and 144-3-100.

(2) Temporary construction easement commencing on the effective date of an order for possession and terminating on June 30, 1999, in the property described herein as Parcel 144-3-6TEA1 for the purpose of constructing a water pipeline and related facilities on land other than such parcel. The easement area shall be returned to its pre-existing condition upon completion of the construction work.

EXHIBIT A

144-3-102
Louis R. Wilhelm &
Dawn Whilhelm
Co-Trustees

All that portion of the northeast quarter of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, in the County of Riverside, State of California, lying within the following described parcel:

Beginning at the southeast corner of said northeast quarter of the southwest quarter; thence west 70 rods; thence at a right angle north 220 rods; thence at a right angle east 50 rods; thence at a right angle north 20 rods to the north line of said Section; thence east along said north line, 20 rods to the northeast corner of the west half of said Section; thence south along the center line of said Section a distance of 240 rods to the point of beginning.

EXCEPTING therefrom that portion lying easterly of the westerly line of that certain parcel of land conveyed to The Metropolitan Water District of Southern California by Grant Deed recorded July 20, 1959, in Book 2512, page 270, of Official Records of said County.

Together with any right, title, and interest that the Grantor's might have to all that portion of the northeast quarter of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, lying westerly of that course mentioned above being "north 220 rods".

EXHIBIT B

A PORTION OF SEC. 13, T.5S. R.2W., S.B.M.
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

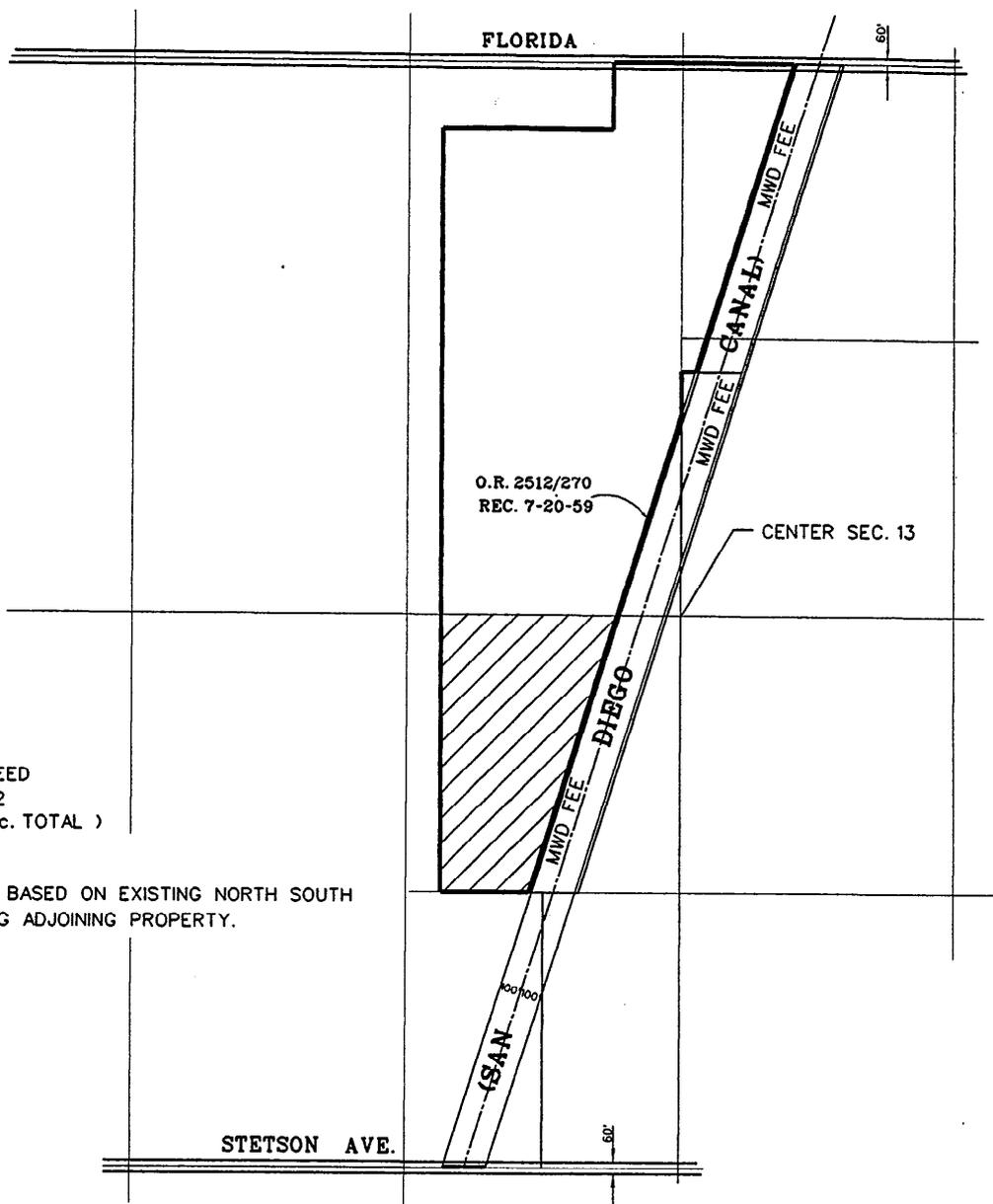


NOT TO SCALE

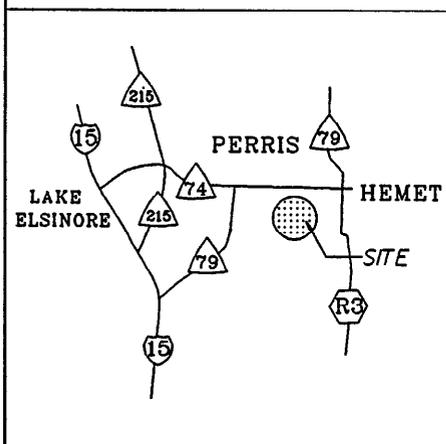
LEGEND

 GRANT DEED
144-3-102
(19.480 ac. TOTAL)

NOTE:
AREA CALCULATION BASED ON EXISTING NORTH SOUTH
FENCE LINE DIVIDING ADJOINING PROPERTY.



VICINITY MAP
NOT TO SCALE



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

EASTSIDE PIPELINE PROJECT

GRANT DEED

LOUIS R. WILHELM & DAWNE WILHELM
CO-TRUSTEES

TO

MWD

PARCEL 144-3-102

EXHIBIT A

144-3-6
Louis R. Wilhelm &
Dawne Wilhelm
Co-trustees

That portion of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, in the County of Riverside, State of California, described as follows:

The westerly 50 feet of that southerly 30 foot EXCEPTION as referenced in a Grant Deed to City of Hemet recorded July 8, 1988 as Instrument No. 189882, of Official Records of said County, the southeasterly line of said westerly 50 feet being parallel with and distant 50 feet southeasterly, as measured at right angles, to the southeasterly line of the Second San Diego Aqueduct Canal as described in said Grant Deed to City of Hemet.

Containing 0.036 acre, more or less.

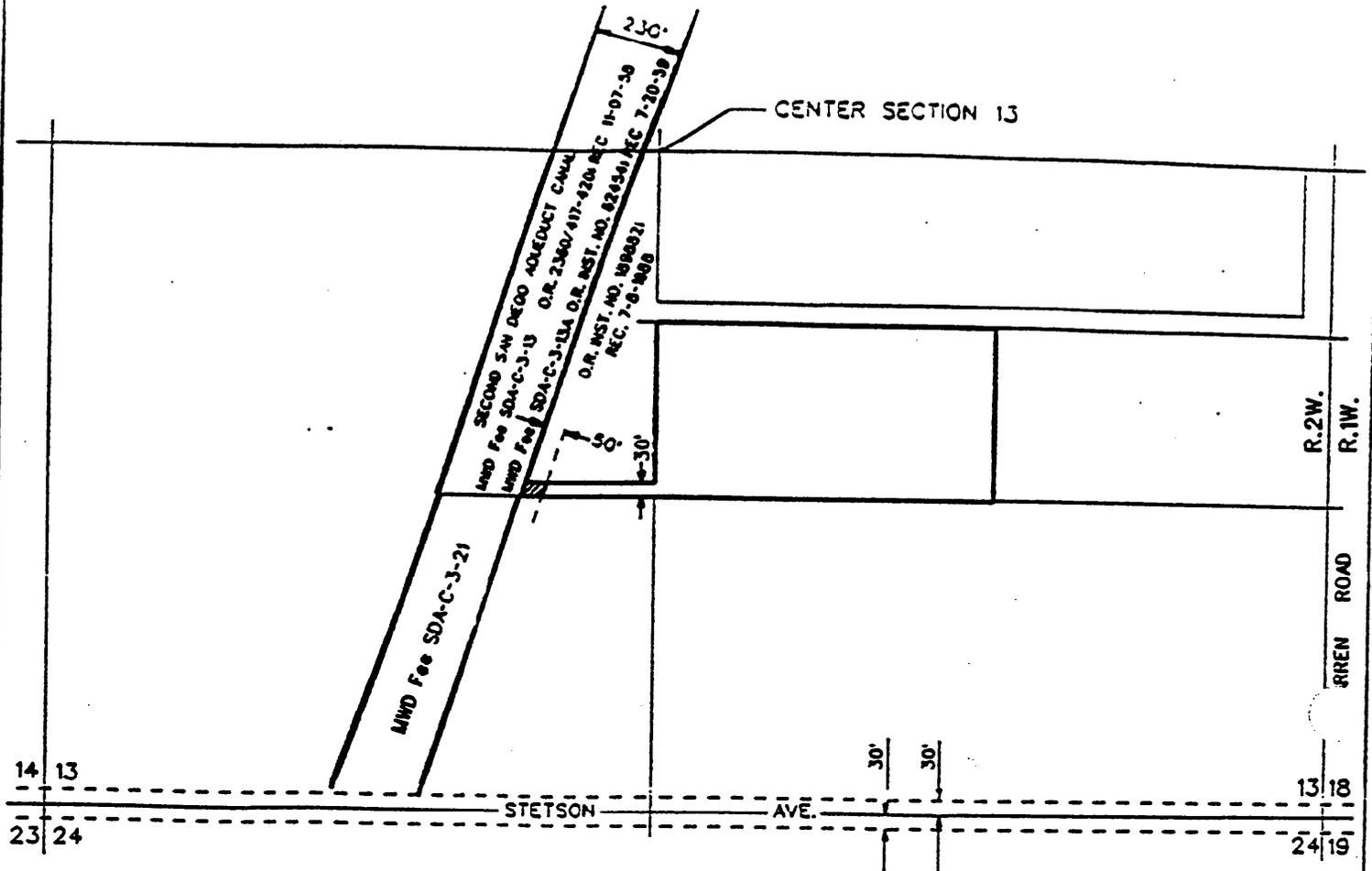
R.B./EP-3-6

9-14-93



EXHIBIT B

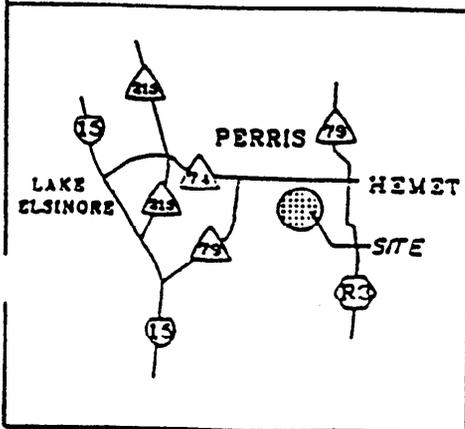
A PORTION OF THE SW1/4 SEC. 13. T.5S. R.2W., S.B.M.
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



LEGEND

 GRANT DEED
144-3-6
(0.036 ac. TOTAL)

VICINITY MAP
NOT TO SCALE



NOT TO SCALE

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

EASTSIDE PIPELINE PROJECT
GRANT DEED
LOUIS R. WILHELM & DAWNE WILHELM
CO-TRUSTEES
TO
MWD
PARCEL 144-3-6

9-14-93

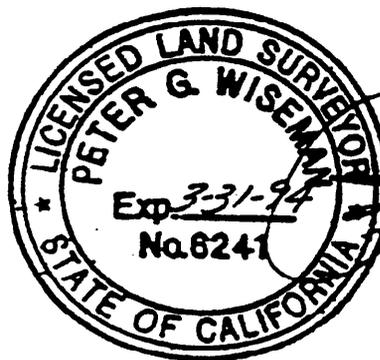


EXHIBIT A

144-3-6TEA1
Louis R. Wilhelm &
Dawne Wilhelm
Co-trustees

That portion of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, in the County of Riverside, State of California, described as follows:

The easterly 85 feet of the westerly 135 feet of that southerly 30 foot EXCEPTION as referenced in a Grant Deed to City of Hemet recorded July 8, 1988 as Instrument No. 189882, of Official Records of said County, the southeasterly line of said easterly 85 feet being parallel with and distant 135 feet southeasterly, as measured at right angles, to the southeasterly line of the Second San Diego Aqueduct Canal as described in said Grant Deed to City of Hemet.

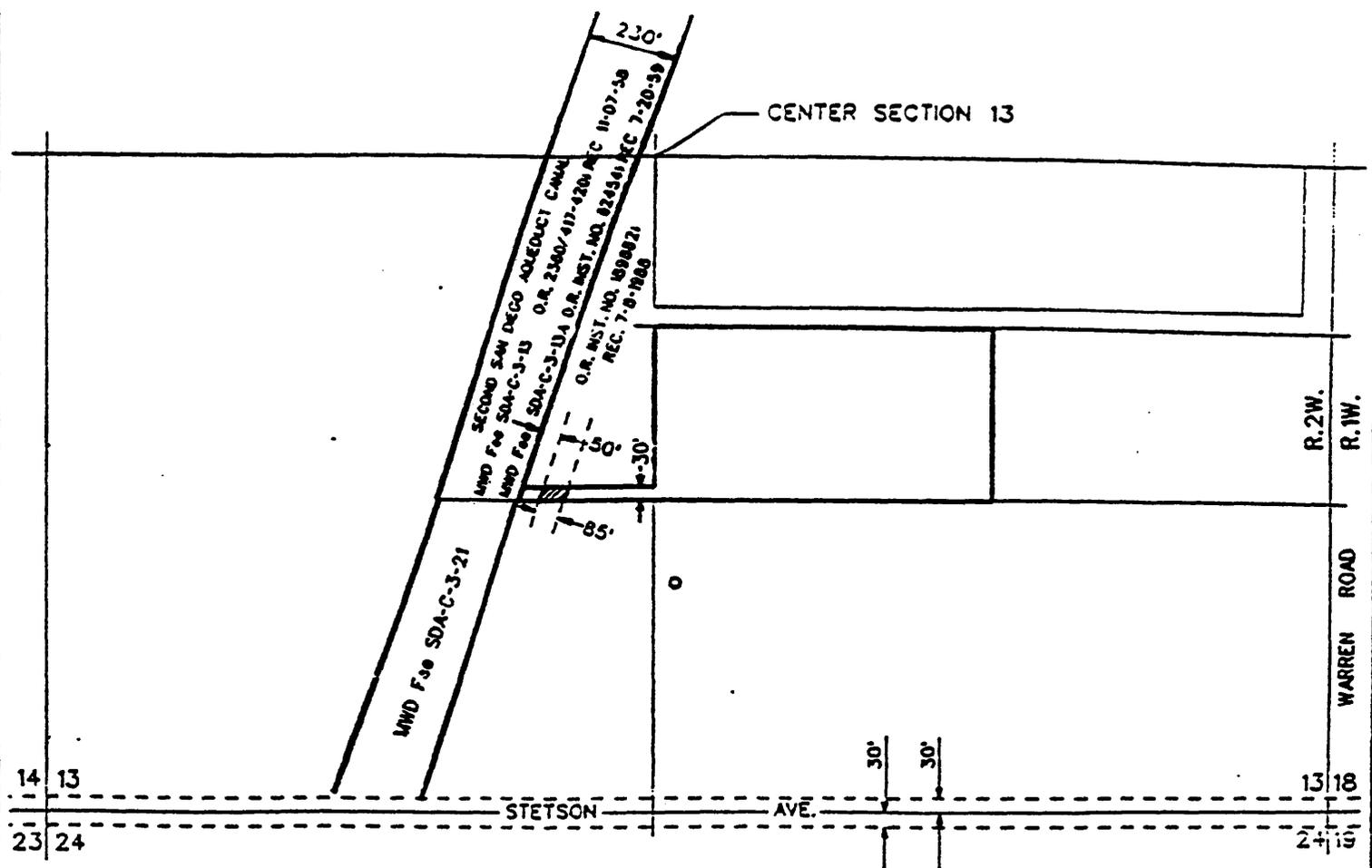
Containing 0.062 acre, more or less.

R.B./EP-3-6T



EXHIBIT B

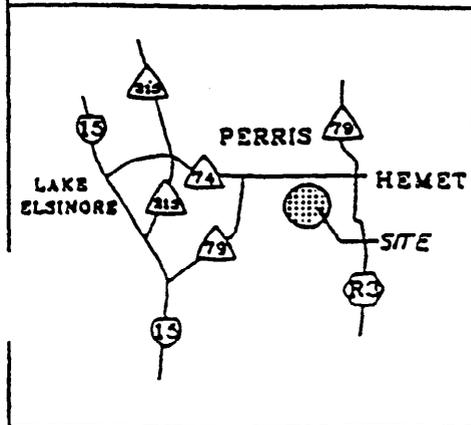
A PORTION OF THE SW1/4 SEC. 13, T.5S. R.2W., S.B.M.
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



LEGEND

 TEMPORARY EASEMENT
144-3-8TEA1
(0.062 ac. TOTAL)

VICINITY MAP
NOT TO SCALE



NOT TO SCALE



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

EASTSIDE PIPELINE PROJECT
TEMPORARY EASEMENT
LOUIS R. WILHELM & DAWNE WILHELM
CO-TRUSTEES
TO
MWD
PARCEL 144-3-8TEA1

EXHIBIT A

144-3-100
James W. Dilworth, et al

The east half of the northwest quarter of the southwest quarter AND the west five acres of the northeast quarter of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, in the County of Riverside, State of California.

Together with any right, title, and interest that the Grantor's might have to all of the northeast quarter of the southwest quarter of Section 13, Township 5 South, Range 2 West, San Bernardino Meridian, lying easterly of said west five acres and westerly of the westerly line of that certain parcel of land conveyed to The Metropolitan Water District of Southern California by Grant Deed recorded July 20, 1959, in Book 2512, page 270, of Official Records of said County.

