

# RECLAMATION


## *Managing Water in the West*

### Categorical Exclusion Checklist

## RD 799 10-Year License Renewal

CEC-13-021

Prepared by:

  
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Date: 4/3/15

Concurred by:

See Attachment A  
Architectural Historian  
Mid-Pacific Regional Office

Date: See Attachment A

Concurred by:

  
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Date: 4/3/2015

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Date: 04/03/2015

Approved by:

 for   
Michael Jackson  
Area Manager  
South-Central California Area Office

Date: 04/03/2015





# Background

The Contra Costa Canal (Canal) was constructed by the Bureau of Reclamation (Reclamation) between 1937 and 1948. The Canal originates at Rock Slough, 4 miles southeast of Oakley, California, where it intercepts natural flow from the Sacramento-San Joaquin Delta. Contra Costa Water District pursuant to an operating agreement (Contract No. 14-06-200-6072A) operates and maintains (O&Ms) the Canal on behalf of Reclamation.

On November 20, 2002, Reclamation issued two 10-year licenses to Reclamation District No. 799 (RD 799) for access along milepost 0.0 and milepost 2.0 of the Canal known as the Hotchkiss Tract (see Figure 1). As provided in the licenses (Contract No. 02-LC-20-7939), RD799 could implement routine O&M, emergency work, and/or levee improvement as long as they requested approval from the Contra Costa Water District and Reclamation prior to implementation and completed the appropriate environmental documentation analyzing such work. As the licenses have expired, RD 799 has requested renewal for another 10 years.

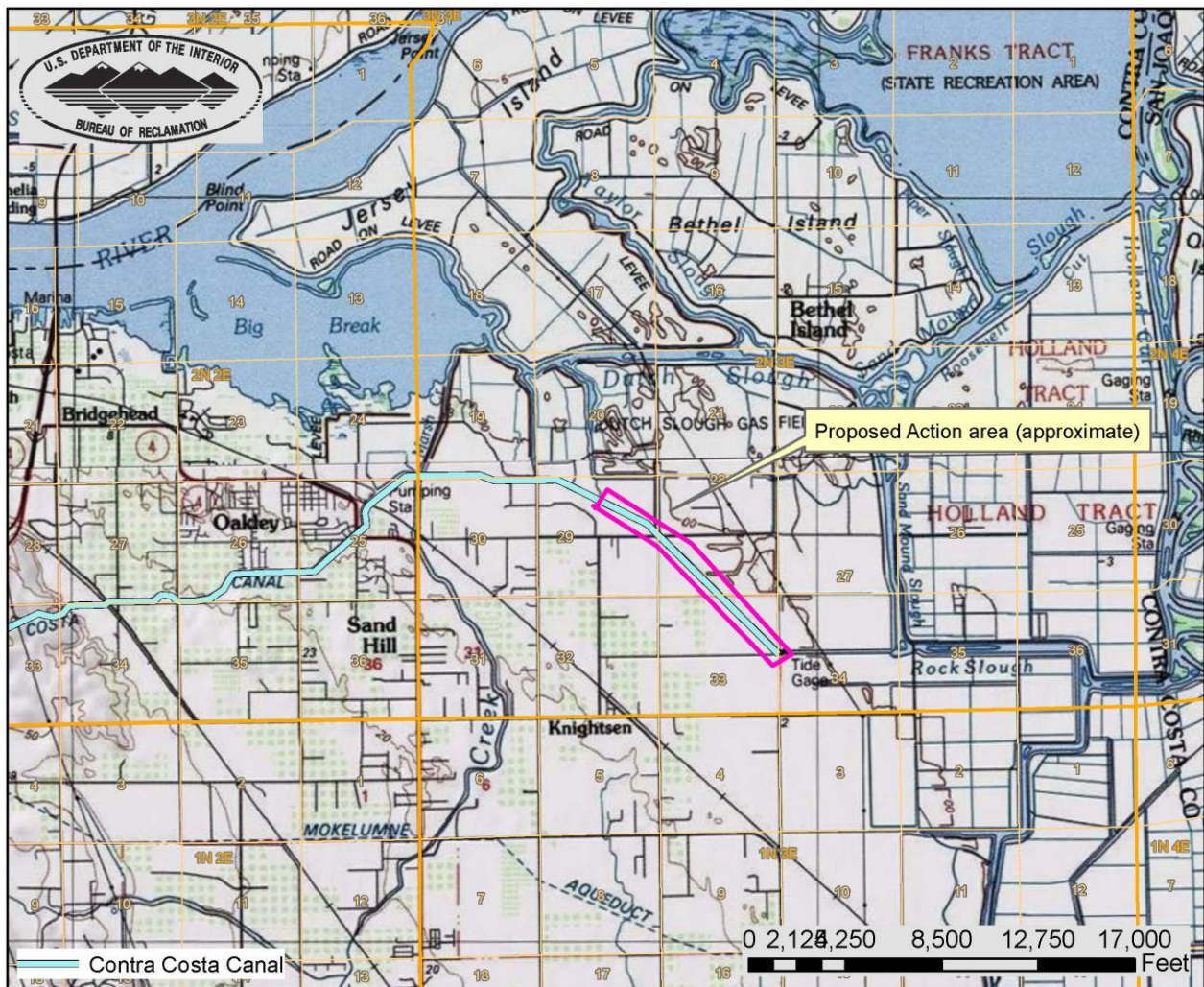


Figure 1: Proposed Action Area

## Need for the Proposal

RD 799 needs to renew the licenses in order to continue to have access across the Canal to maintain their levee for protection of lands along the Canal within the Hotchkiss Tract.

## Proposed Action

Reclamation will consolidate and renew RD 799's licenses under one 10-year license. The license will have the same terms and conditions as the two expired licenses and allow for RD 799 to cross the Canal from milepost 0.0 to 2.0 (see Attachment B). The license would continue to allow RD799 to implement routine O&M, emergency work, and/or levee improvement; however, any work that involves ground disturbing activities and/or modification of the Canal will require separate environmental review and approval from Reclamation prior to implementation and must be requested in advance. Access to the Canal would continue to be coordinated with the Contra Costa Water District.

## Exclusion Category

516 DM 14.5 paragraph D (10): *Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Bureau lands where the action does not allow for or lead to a major public or private action.*

## Evaluation of Criteria for Categorical Exclusion

- |   |   |                                       |                                 |
|---|---|---------------------------------------|---------------------------------|
| 1. This action would have a significant effect on the quality of the human environment (40 CFR 1502.3).   | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 2. This action would have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E) and 43 CFR 46.215(c)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 3. This action would have significant impacts on public health or safety (43 CFR 46.215(a)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 4. This action would have significant impacts on such natural resources and unique geographical characteristics as historic or cultural resources; parks, recreation, and refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); flood plains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas (43 CFR 46.215 (b)). | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 5. This action would have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks (43 CFR 46.215(d)).   | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 6. This action would establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects (43 CFR 46.215 (e)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 7. This action would have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects (43 CFR 46.215 (f)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 8. This action would have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by Reclamation (LND 02-01) (43 CFR 46.215 (g)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |

- |  |   |                                       |                                 |
|--|---|---------------------------------------|---------------------------------|
| 9. This action would have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat for these species (43 CFR 46.215 (h)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 10. This action would violate a Federal, tribal, State, or local law or requirement imposed for protection of the environment (43 CFR 46.215 (i)).   | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 11. This action would affect ITAs (512 DM 2, Policy Memorandum dated December 15, 1993).   | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 12. This action would have a disproportionately high and adverse effect on low income or minority populations (EO 12898) (43 CFR 46.215 (j)).  | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 13. This action would limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007, 43 CFR 46.215 (k), and 512 DM 3)).   | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |
| 14. This action would contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act, EO 13112, and 43 CFR 46.215 (l)). | No<br><input checked="" type="checkbox"/> | Uncertain<br><input type="checkbox"/> | Yes<br><input type="checkbox"/> |

## **Attachment A: Cultural Resources Determination**

**CULTURAL RESOURCES COMPLIANCE**  
**Mid-Pacific Region**  
**Division of Environmental Affairs**  
**Cultural Resources Branch**

MP-153 Tracking Number: 15-SCAO-078

Project Name: RD 799 10-Year License Renewal

NEPA Document: CEC-13-021

MP-153 Cultural Resources Reviewer: BranDee Bruce

Date: March 30, 2015

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At the request of Reclamation District (RD) 799, Reclamation proposes to consolidate two previous licenses under one renewal license to allow RD 799 to continue to have access across the Contra Costa Canal (CCC) from milepost 0.0 to 2.0 to implement routine operations and maintenance work, emergency work, and/or levee improvement on the Hotchkiss Tract. Any ground disturbing activities or modification of the CCC will required separate environmental review and approval from Reclamation prior to implementation of any proposed project.

Reclamation has determined that the proposed action would have no impacts to cultural resources and is an undertaking that has no potential to cause effects on historic properties pursuant to 36 CFR § 800.3(a)(1). At this time, Reclamation has no further obligations under Section 106 of the National Historic Preservation Act ( ) related to the proposed action.

This document communicates the completion of the NHPA Section 106 review process for this undertaking. If there are any changes to the proposed action prior to implementation, additional Section 106 review would be required. Please retain a copy of this document with the administrative record for this action



## **Attachment B: Previous RD 799 Licenses**

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
CENTRAL VALLEY PROJECT, CALIFORNIA

Contract Number  
Approved/Authorized  
Executed

01-12816,  
11/13/02  
12/6/02 cc-11  
200

LICENSE TO USE RECLAMATION LAND  
CONTRA COSTA CANAL

TO RECLAMATION DISTRICT NO. 799 (HOTCHKISS TRACT) FOR MAINTENANCE AND CONSTRUCTION TO THE EAST LEVEE SYSTEM OF THE CONTRA COSTA CANAL BETWEEN MILEPOST 0.0 TO MILEPOST 2.0

THIS License is given this 20th day of November, 2002, in pursuance of the Act of June 7, 1902 (32 Stat. 388) and Acts amendatory thereof or supplementary thereto, by THE UNITED STATES OF AMERICA, acting by and through its Bureau of Reclamation, Department of the Interior, represented by the duly authorized officer executing this License hereinafter styled the "United States" to:

Reclamation District No. 799  
P.O. Box 547  
Bethel Island, California 94511

Hereinafter styled the "Licensee" or "RD 799".

RECITALS

WHEREAS, the purpose of this License is to establish an understanding that allows RD799 to use the centerline of the Contra Costa Canal ("Canal") as a boundary; to perform routine maintenance work and emergency work, and perform levee improvements to the east bank of the Canal; and

WHEREAS, the parties recognize that the primary purpose of the east bank of the Contra Costa Canal, from MP 0.0 to MP 2.0 (east bank) is to convey water supply to Contra Costa Water District ("CCWD") from the Delta and by nature of the Canal's geographic location it coincidentally and secondarily provides flood protection for RD 799 and in the event that a failure of that bank occurs, quality and capacity of water delivered through the Canal to customers of CCWD would be impacted and flooding within the boundaries of RD 799 could occur; and

WHEREAS, the area in which this License is to be exercised is restricted to the area described in the License for specified access granted contemporaneously herewith, and shown in the diagrams attached hereto (Attached A1.1; A1.2, A1.3) and

WHEREAS, it is in the best interest of CCWD that the integrity of the Canal be maintained for the purpose of conveying water supply and it is in the best interest of RD 799 that the integrity of the east bank be maintained for the purpose of flood protection; and

WHEREAS, Reclamation is the owner of the Canal and CCWD is under contract with Reclamation to operate and maintain the Canal; and

WHEREAS, the parties desire to possibly share the costs of routine maintenance of the east bank in the future, understanding that any funding from Reclamation is contingent up appropriations from the Congress; and

WHEREAS, the parties desire to act cooperatively to perform potential future improvements to such east bank, and emergency repair work on such bank, and to seek available funding from State and/or Federal agencies or programs to finance in such improvements, emergency repair work, and/or routine maintenance; and

WHEREAS, Reclamation and CCWD have, contemporaneously with this License, granted to RD 799 a license for specified access along such east bank.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, CONDITIONS AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Term. This License is personal, revocable, and nontransferable and will become effective on the date hereinabove written and unless otherwise sooner terminated, will continue for the term specified herein, and will continue so long as in the opinion of Reclamation and CCWD it is considered expedient and not detrimental to the public interest, and will be revocable upon written notice to the Licensee in accordance with the provisions in Paragraphs 25 and 26 herein. Upon such revocation or termination, the aforesaid structure or structures and all accessories will be removed without delay at the expense of the Licensee. The Licensee will leave the site(s) in a condition satisfactory to Reclamation and CCWD. The term of this License shall be for ten (10) years, and, with the approval of the Board of Directors of CCWD and Reclamation, may thereafter be extended for an additional ten (10) years. The permission given herein will neither constitute nor be construed as any surrender of the jurisdiction and supervision by the United States over the lands described herein.
2. Request to Perform Work on Canal Right of Way: RD799 shall submit to CCWD all requests to perform routine maintenance, emergency work, or levee improvement to levee or any other portion of the Canal Right-of-Way property to CCWD for approval by CCWD and Reclamation (or as delegated by Reclamation) along with the required environmental documentation. If acceptable, CCWD will request from Reclamation a Permit for Additions or Alterations to Conveyance and Distribution Facilities or other necessary approval from Reclamation. All work shall be designed and constructed to CCWD's and Reclamation's standards and will be subject to their approval. No work shall be performed by RD 799 without prior written approval by CCWD and Reclamation (or as delegated by Reclamation). It is understood by all parties that at no time shall CCWD or Reclamation be responsible for any costs incurred for the purpose of maintaining, repairing or improving the east bank of the Canal to flood protection standards. Whether work is performed under Paragraph 3 or Paragraph 5 of this License, RD 799 shall notify CCWD at least 72 hours before commencing work.
3. Routine Maintenance. RD 799 shall have the right subject to CCWD's and Reclamation's (or as delegated by Reclamation) approval, but not the duty, to provide routine maintenance along such east bank. Routine maintenance includes, for example, repair of potholes, and sloughs and settlements, rodent control, control and removal of detrimental vegetation on and along the toe of the embankment, placement of minor erosion protection, and minor repairs to the access road along such east bank. RD 799 will ensure protection of all structures, facilities and resources from damage during routine maintenance and will not diminish the ability of CCWD or Reclamation to operate and maintain the facilities. RD 799 shall submit for CCWD and Reclamation approval an annual schedule and budget giving an outline of routine maintenance and estimated costs for the work. Following satisfactory completion of the work and no more frequently than each quarter of a year, an invoice for CCWD's portion of the actual cost of the work shall be submitted for approval and payment by CCWD. Both the work plan and actual annual invoice shall clearly describe in detail the work, dates for the work, justification for the work, and breakdown of the total direct cost for the work, any indirect costs claimed, any outside funding to be sought or received to offset the total cost of the work, and CCWD's estimated or actual portion of the costs. After RD 799 completes the work to CCWD's satisfaction and CCWD approves the invoice, CCWD shall reimburse RD 799 for CCWD's portion of the actual cost of such routine maintenance, in arrears, within thirty (30) days of the receipt of an invoice acceptable to CCWD. If the actual CCWD cost exceeds the estimated CCWD cost, CCWD shall pay the lesser of the two amounts unless agreed to otherwise in advance in writing. CCWD's invoiced portion of the costs shall be no greater than one-half of the routine maintenance costs for those tasks CCWD and Reclamation agree are required for their purposes. CCWD shall not pay any portion of costs for routine maintenance performed by RD 799, which is attributable to maintaining the east bank for RD 799 purposes. Nothing in this paragraph shall prevent CCWD from performing routine maintenance work on its own without the consent of RD 799.
4. Emergency Work. For the purposes of this Paragraph 4, emergency work is defined as described in Paragraph 28 (d) of this License. RD 799 shall have the right subject to CCWD's and Reclamation's

(or as delegated by Reclamation) approval, but not the duty, in the event emergency work is necessary, to take such actions as are necessary, including but not limited to, sandbagging, placement of riprap, placement of levee or bank fill material, and similar actions to avert or remedy the emergency situation. RD 799 will ensure protection of all structures, facilities and resources from damage during emergency work and will not diminish the ability of CCWD or Reclamation to operate and maintain the facilities. To the extent possible, RD 799 shall attempt to gain CCWD's and Reclamation's approval of such emergency work prior to commencement and shall notify CCWD as soon as possible after commencement of such emergency work. RD 799 shall provide a verbal estimated cost for the work upon seeking CCWD's and Reclamation's approval and an invoice for the actual cost after completing the work. The invoice shall clearly describe in detail the work, dates for the work, justification for the work, a breakdown of the total direct cost for the work, any indirect costs claimed, and any outside funding to be sought or received to offset the total cost of the work and CCWD's portion of the costs. After RD 799 completes the work to CCWD's satisfaction and CCWD approves the invoice, CCWD shall reimburse RD 799 for one-half of the cost of such emergency work, in arrears, within thirty (30) days of the receipt of an invoice acceptable to CCWD. CCWD's portion of the costs shall not include the cost for work performed for RD 799's purposes. Nothing in this paragraph shall prevent CCWD from performing emergency work on its own, and, in such case, RD 799 shall reimburse CCWD for one-half of the cost of such emergency work, in arrears, within thirty (30) days of the receipt of an invoice. Neither party shall so neglect routine maintenance as to degrade or allow the degradation of the east bank, to a point that emergency work becomes necessary because of such neglect.

5. Levee Improvement Work. Improvement of the east bank to flood control standards may be desired by RD 799 at some time in the future. RD 799 shall have the right, subject to CCWD's and Reclamation's (or as delegated by Reclamation) approval, but not the duty, to improve the east bank to standards required of a flood control levee. All such work shall be at the sole expense of RD 799. Prior to performing any such work, RD 799 will submit plans for such work to CCWD for approval. A separate Agreement specifically addressing improvements to be made, standards to be followed, and designating the responsibilities of the parties shall be prepared by RD 799 and approved by CCWD and Reclamation. The Agreement may require RD 799 to provide a bond in an amount determined by CCWD and the bond will be maintained until all construction activities detailed in the Agreement are complete and accepted by CCWD. CCWD and Reclamation shall not unreasonably withhold approval. Such work shall not obstruct in any manner the water quality, canal capacity or flow of water in the canal, or interfere in any way with the construction, operation, or maintenance of the canal. Such work shall be conducted in a manner that does not interfere with current and future ownership, use, facility configuration, or operation of the canal by CCWD or Reclamation. RD 799 will ensure protection of all structures, facilities and resources from damage during levee improvement work and will not diminish the ability of CCWD or Reclamation to operate and maintain the facilities. Should CCWD or Reclamation undertake to improve the levee for its purposes, RD 799 shall not oppose and shall cooperate with CCWD in the planning and construction of the work. Nothing in this License shall require CCWD or Reclamation to make improvements that go beyond that which is necessary to improve the east bank for CCWD's or Reclamation's purpose.
6. Funding. All parties shall cooperate in seeking funding or reimbursements from available State or Federal sources for the matters described in Paragraphs 3, 4, and 5 of this License. Where the operations of this License extend beyond the current fiscal year, it is understood that this License is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out the requirements of Reclamation under this License is not made, Reclamation is hereby released from all liability due to the failure of Congress to make such appropriation. To the extent reimbursement for any such work is received, it shall be applied between CCWD and RD 799 in the same proportion as payment made by CCWD and RD 799 with respect to the work for which reimbursement is made. Application of such reimbursement shall be made, by the party receiving the reimbursement, by application of the amounts due the other party to reduction of debts or payments owed and/or the establishment of a credit toward future debts or payments.
7. Property Assessment. RD 799 hereby declares that the interests granted to it in this License and the license referenced in the Recitals to this License are sufficient to cause the canal property, for purposes

of assessment calculation (California Constitution Article XIIC and Article XIID) to be considered a portion of the flood control works of RD 799, and therefore non-assessable. In accordance with this License, RD 799 shall not impose upon either CCWD or Reclamation any assessments, taxes, fees, charges, or seek to recover against either any other costs above and beyond the routine maintenance, emergency work and levee improvements authorized under paragraphs 3, 4, and 5 of this License. In addition, RD 799 also agrees that while Canal property ownership is with Reclamation, assessments under the California Constitution Article XIIC and Article XIID are inapplicable.

8. Boundary Reorganization. In order to comply with California Constitution Article XIIC and Article XIID, it is necessary for RD 799 to complete a boundary reorganization presently before Contra Costa County Local Agency Formation Commission, which reorganization in part relocates RD 799's boundary along the centerline of the Canal. Reclamation and CCWD shall withdraw any and all opposition either may have to such boundary reorganization after execution of this License.
9. Use and Ownership of Property. Reclamation and/or CCWD may in the future desire to change the ownership, use, facility configuration or method of operation, of the Canal (for example, by utilizing a pipeline, instead of an open canal, to transport water). RD 799 shall not oppose and shall cooperate with any such change in ownership, use, configuration or operation. Nothing in this License shall be construed to provide RD 799 with real property ownership interest or statutory authority over any portion of the Canal property. RD 799's use of the east bank and the subject right of way shall not obstruct or impede in any manner the quality, capacity or flow of water in the Canal or interfere in any way with the construction, operation, and maintenance of the Canal. Furthermore, the rights granted to RD 799 by this License are subject to existing rights of way in favor of the public or third parties for highways, roads, railroads, telegraph, telephone, and electric transmission lines, canals, laterals, ditches, flumes, siphons, and pipelines over and across said Canal and subject right of way. CCWD and Reclamation reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of east bank, to make investigations of all kinds, dig test pits, and drill test holes, to survey for and construct facilities and structures incident to CCWD or Reclamation projects, or for any purpose whatsoever. CCWD and Reclamation will make every reasonable effort to keep damages to a minimum.
10. Indemnification. To the extent permitted by law, RD 799 shall be solely responsible for and shall indemnify and hold harmless CCWD and Reclamation their employees, agents, and assigns from any loss or damage and from any and all liability and/or claims of liability for injuries to, or death of, persons or property damage to the east bank, or claims for personal injury or death arising out of RD 799's activities under this License or from RD 799's use, maintenance, or improvement of the Canal bank. To the extent permitted by law, neither CCWD nor Reclamation shall be liable for any damage caused to RD 799, its employees, agents, or invitees, or to the property of any of them, by reason of any act or failure to act on the part of CCWD or Reclamation in the operation and maintenance of the right-of-way of the Contra Costa Canal or any facility thereon.
11. Officials not to Benefit. No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.
12. Contamination. RD 799 shall not: (a) store any hazardous material on the east bank, (b) use water from the Contra Costa canal, or (c) leave waste and debris on the east bank. RD 799 shall not cause contamination of lands, waters or facilities owned or administered by Reclamation or CCWD by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants. RD 799 shall report to CCWD immediately, and the Tracy Office of Reclamation within 24 hours, of its occurrence, any event that may or does result in pollution or contamination adversely affecting lands, water or facilities owned or administered by CCWD or Reclamation. Should it be determined that work performed by RD 799 in any way contaminated the water in the Canal or caused the water to become contaminated at some time in the future, then it shall be RD 799's responsibility to remedy the contamination immediately and RD 799 shall bear any and all costs associated with contamination, clean-up and remedy of the event.

13. Notice. Except as otherwise expressly provided by law, any and all notices, invoices, or other communication required or permitted by this License or by law to be served on or delivered to or given to a party by another party to this License shall be in writing, and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is directed or, in lieu of such personal service, two (2) days after such written notice is deposited in the United States mail, First Class, postage prepaid, addressed to the party at the address identified in this Paragraph 13 for that party in this License. Any party may change their address for the purpose of this paragraph by giving written notice of such change to each other party in the manner provided in this paragraph.

<u>Reclamation</u>	<u>CCWD</u>	<u>RD 799</u>
<u>Area Manager</u>	<u>General Manger</u>	<u>Robert Gromm, Chairman</u>
<u>1243 N Street</u>	<u>P.O. Box H2O</u>	<u>P.O. Box 547</u>
<u>Fresno, CA 93721-1813</u>	<u>Concord, CA 94524</u>	<u>Bethel Island, CA 94511</u>

14. Successors, Assigns, and Third Parties.

- (a) The covenants, conditions, terms, and provisions of this License shall inure to the benefit of, and apply to and bind, the heirs, successors, executors, administrators, and assigns of the parties.
- (b) Nothing in this License, whether express or implied, is intended to confer any rights or remedies under or by reason of this License on any persons other than the parties to it and their respective successors and assigns, nor is anything in this License intended to relieve or discharge the obligation or liability of any third persons to any party to this License, nor shall any provision give any third persons any right of subrogation or action over against any party to this License.
15. Excuse of Default. Should the performance of the obligations of any party under this License be prevented or delayed by act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation, or order of any federal, state, county, municipal authority, or by any other cause beyond the control of such party, such party's performance under this License shall be excused to the extent it is so prevented or delayed.
16. No Continuing Waiver. The waiver by any party of any breach of this License shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this License.
17. No Assumption. The parties agree that no party assumes any obligation or liability of any other party, except as specifically set forth in this License.
18. No Other Relationship Created. Except as otherwise specifically set forth in this License, no partnership, joint venture, employment, franchise, agency, corporation, association, or other relationship is intended to have been created between or among the parties as a result of this License.
19. Severability. Each provision of the License shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this License shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the License as a whole.
20. Compliance with Law. Each party shall comply with all applicable statutes, regulations, and laws that properly apply to this License and its subject matter. To the extent allowed by law, the provisions of this License shall be construed and given effect in a manner that avoids any violation of statute, regulation, or law.



21. Time of Essence. Time is of the essence of this License, and of all of the terms, covenants, conditions, and provisions contained in this License.
22. Counterparts. This License may be executed simultaneously in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same document.
23. Integrated License, Future Amendments. This License and the referenced license contain all of the agreements and warranties of the parties with respect to any matter covered or mentioned herein. No prior agreements, arrangements, or understandings pertaining to such matters shall be effective for any purpose. No provision of this License may be amended or added to except by an agreement in writing signed by each party or each party's successor in interest.
24. Signatory's Warranty. Each party warrants to each other party that it is fully authorized and competent to enter into this License in the capacity indicated by its signature and agrees to be bound by this License as of the day and year first mentioned above upon the execution of this License by each other party.
25. Default. If either party defaults in the performance of any material term or condition of this Agreement, the non-defaulting party may give written notice of the default to the defaulting party; if such default is not cured within sixty (60) days of the receipt of such notice, the non-defaulting party may terminate this Agreement without further notice.
26. Termination.
- (a) This License will terminate and all rights of RD 799 hereunder will cease, and RD 799 will quietly deliver to CCWD and Reclamation possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:
    - (1) Immediately upon occurrence of any activity deemed to be illegal on Federal lands; or
    - (2) At the expiration of the term as provided by Article 1; or
    - (3) After failure of RD 799 to observe any of the conditions of this License, and on the sixtieth (60) day following service of written notice on RD 799 of termination because of failure to observe such condition(s).
  - (b) The notices provided by this article will be served by certified mail addressed to RD 799, and the mailing of any such notice properly enclosed, addressed, stamped, and certified, will be considered service.
  - (c) If this License is terminated under Article 26(a)(3), CCWD and Reclamation reserves the right to bar RD 799 from use of the Premises for a period of time as determined by CCWD or Reclamation.
  - (d) Upon the expiration, termination, or revocation of this License, if all costs, fees, and damage claims due to CCWD or Reclamation have been paid, RD 799 shall remove all structures, equipment, or other improvements made by it from the premises at no cost to CCWD or Reclamation. Upon failure to remove any such improvements within sixty (60) days of expiration, termination, or revocation, any remaining improvements shall, at the option of CCWD and Reclamation, be removed or become the property of CCWD or Reclamation. RD 799 shall pay all expenses of CCWD and Reclamation, or its assigns, related to removal of such improvements.
27. Dispute Resolution: For disputes involving Reclamation, the parties agree to first submit any dispute arising out of or in connection with this License to the Regional Resources Manager for the Mid-Pacific Region of Reclamation to negotiate in good faith toward an agreement with respect to the dispute. Either party within 30 days of providing written notice may initiate this dispute resolution. If the decision of the Regional Resources Manager for Reclamation is unacceptable, the dispute will be presented to the Regional Director for the Mid-Pacific Region of Reclamation. Any decision rendered by the Regional Director will be binding on all parties.

For all other disputes the following shall apply:

- (a) Mediation. The parties agree to first submit any dispute arising out of or in connection with this Agreement to a mutually acceptable professional mediator and to negotiate in good faith toward an agreement with respect to the dispute. Either party within 30 days of providing written notice may initiate mediation. Either party within 60 days of having participated in the first mediation session may provide notice of termination of mediation and request Binding Arbitration.
- (b) Binding Arbitration. Should the parties be unable or unwilling to resolve their dispute through the mediation process provided in subsection (a) above, either party may give written notice to the other party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Section. The party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an Arbitrator in accordance with then-current procedures. The arbitrator shall be a retired judge of the Superior Court of California, or a justice of the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the Contra Costa Superior Court (Unlimited Jurisdiction) shall appoint an Arbitrator in accordance with its then-current procedures. The rules and procedures for arbitration shall be as follows:
  - i. The Arbitrator shall be selected and arbitration shall be conducted within a reasonable time, but in no event later than ninety (90) days after the date upon which the demand for arbitration is filed.
  - ii. The arbitration proceedings shall be conducted in Contra Costa County, California, at a time and location as agreed to in writing by the parties, or in absence of an agreement, as designated by the Arbitrator.
  - iii. Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the Arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration.
  - iv. The Arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the Arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the Arbitrator shall have no authority or jurisdiction to enter an award for consequential, special, exemplary or punitive damages. The Arbitrator may also grant such ancillary relief as is necessary to make effective the award.
  - v. Both parties may conduct discovery as if the matter were pending before a Superior Court of the State of California and the Arbitrator shall have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Either party shall have the right to demand in writing that the other party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding party's list(s) shall be served personally or by registered or certified mail on the requesting party, with a copy to the Arbitrator, at least thirty (30) days before the hearing.
  - vi. Each party shall have the right to be represented by counsel.
  - vii. The Arbitrator shall be paid a per diem or hourly charge as established at the time of appointment. Each party shall bear its own attorneys' fees and costs in presenting its



case. All other actual costs of conducting the arbitration, including without limitation, the administrative fee and the Arbitrator's compensation, shall be shared equally.

- viii. This arbitration clause shall be interpreted under the arbitration laws of the State of California. Except as otherwise provided in this Agreement, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.
- ix. Unless otherwise provided in this Agreement or otherwise agreed in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of arbitration proceedings.
- x. Except as modified or stated to the contrary in this Section, the rules and procedures of the Arbitrator in effect at the time of the arbitration shall apply to the arbitration procedure.

28. Hazardous Materials. During the term of this License, RD 799 and/or its contractors agree as follows:

- (a) RD 799 will not allow contamination or pollution of Federal project lands, waters or project works of the United States or administered by the Bureau of Reclamation by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
- (b) RD 799 and/or its contractors shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies, directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in Federal project lands, waters or project works of the Central Valley Project.
- (c) "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.), and the regulations promulgated pursuant to that Act.
- (d) Upon discovery of any event caused by RD 799 or its agent that results from RD 799's activities under this License that may or does result in contamination or pollution of Federal project lands, water, or project works of the Central Valley Project, RD 799 shall initiate emergency measures to protect health, safety and the environment and shall report such discovery, with full details of the actions taken, to Reclamation's authorized official and CCWD. Reporting shall be within a reasonable time period, but not to exceed 24 hours of the time of discovery if it is an emergency and the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.
- (e) Violation of any of the provisions of this Article, upon which RD 799 does not take immediate corrective action may, as determined by CCWD or Reclamation's authorized official, constitute grounds for termination of this License and shall make RD 799 liable for the cost of full and complete remediation and/or restoration of any Federal or CCWD resources or facilities that are adversely affected as a result of the violation.
- (f) RD 799 agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this License.
- (g) Reclamation agrees to provide information necessary for RD 799, using reasonable diligence, to comply with the provisions of this Article.

29. Pest Control.

- (a) RD 799 shall not permit the use of any pesticides on Federal lands without prior written approval by Reclamation. RD 799 shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application.
- (b) All pesticides used shall be in accordance with the current registration, label, direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.) and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.
- (c) Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.
- (d) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.
- (e) RD 799 shall initiate any necessary measures for containment and clean up of pesticide spills. Spills shall be reported to the Contracting Officer with full details of the actions taken. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the spill if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.
- (f) Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.
- (g) RD 799 agrees to include the provisions contained in paragraphs (a) through (f) of this Article in any subcontract or third-party contract it may enter into pursuant to this License.

30. Discovery of Cultural Resources.

RD 799 shall immediately provide an oral notification to CCWD and Reclamation's authorized official of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on Reclamation lands. RD 799 shall follow up with a written report of its findings to CCWD and Reclamation's authorized official within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this License. RD 799 shall immediately cease the activity in the area of discovery, stabilize and protect such discoveries, and wait for approval from the Regional Archaeologist for Reclamation (916) 978-5041) before resuming the activity. Protective and mitigative measures specified by the Regional Archaeologist for Reclamation (916) 978-5041) shall be the responsibility of RD 799.

31. Nondiscrimination on the Basis of Race, Color, or National Origin.

RD 799 hereby agrees as follows:

- (a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241), which provides that, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR § 17.
- (b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the

requirements of this provision.

32. Nondiscrimination on the Basis of Disability.

RD 799 hereby agrees as follows:

- (a) To comply with Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.
- (b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

33. Nondiscrimination on the Basis of Age.

RD 799 hereby agrees as follows:

- (a) To comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., and the general age discrimination regulations at 45 CFR § 90, which are designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance, as set forth in 43 CFR § 17.
- (c) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

34. Waiver of Right-of-Use Fee. Reclamation has waived the value of the right-of-use in accordance with 43 CFR 429.4.

35. Insurance. Throughout the period of the license and construction, Licensee or its contractor, shall maintain in force a policy of Workers' Compensation insurance, as required by law, and policies of liability insurance, including comprehensive general liability, automobile liability and professional liability insurance, providing limits of not less than \$1,000,000 for each person and \$2,000,000 for each occurrence for bodily injury or death, and not less than \$1,000,000 property damage. Said policies of comprehensive general liability and automobile liability shall name the United States, the District, and their respective agents and employees, as additional insured (with ISO CG 2010 endorsement form or equivalent) and shall provide that the policy will not be canceled or reduced in coverage without thirty (30) days prior notice to the District. Prior to commencement of said construction and annually during the period of the license, Licensee shall cause to be delivered to the District and the Tracy Office of the Bureau of Reclamation a copy of the certificate of insurance reflecting all essential coverage.

36. Covenant Against Contingent Fees. The Licensee warrants that no person or agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees and bona fide commercial agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty, Reclamation will have the right to revoke this License without liability or in its discretion to require the Licensee to pay the full amount of such commission, percentage, brokerage, or contingency fee to the United States.

APPROVALS:

This License is in effect from the time all parties have signed below:

\_\_\_\_\_  
Michael P. Jackson  
Deputy Area Manager  
South-Central California Office  
Bureau of Reclamation

\_\_\_\_\_  
Date

Walter J. Bishop  
\_\_\_\_\_  
Walter J. Bishop  
General Manager  
Contra Costa Water District

Date

12/6/02

Robert R. Gromm  
\_\_\_\_\_  
Robert Gromm  
President, Board of Trustees  
Reclamation District 799

Date

11/20/02

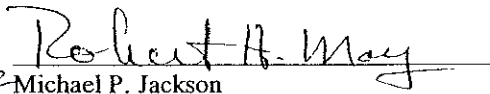
**APPROVED AS TO FORM**

Carl P A Nelson

**DISTRICT COUNSEL**

APPROVALS:

This License is in effect from the time all parties have signed below:

  
for Michael P. Jackson  
Deputy Area Manager  
South-Central California Office  
Bureau of Reclamation

11-20-02  
Date

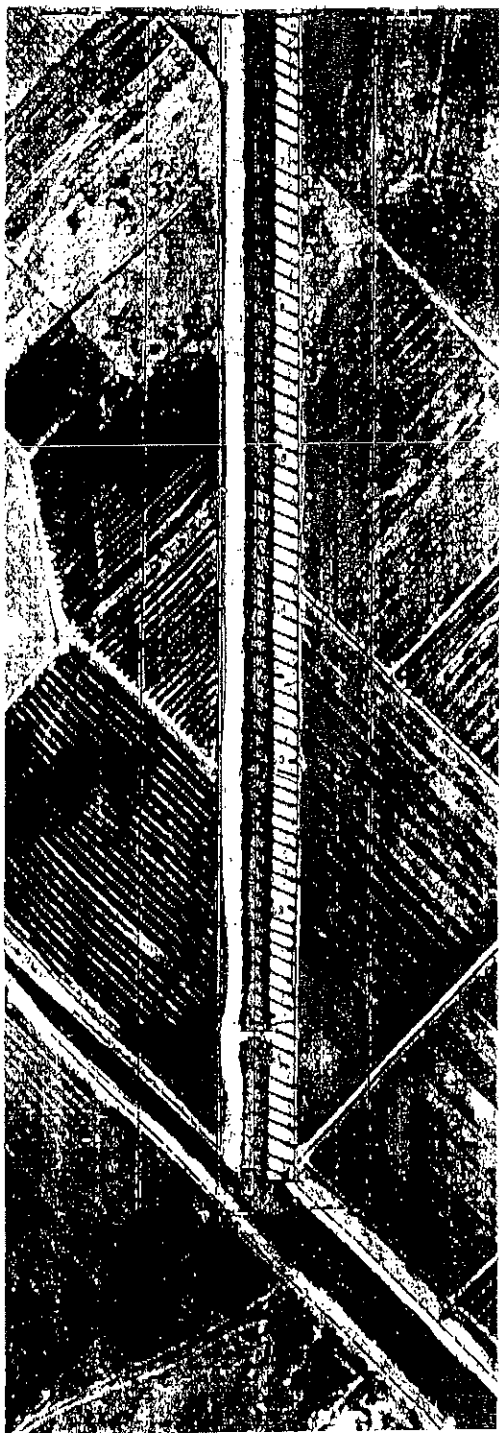
\_\_\_\_\_  
Walter J. Bishop  
General Manager  
Contra Costa Water District

Date

\_\_\_\_\_  
Robert Gromm  
President, Board of Trustees  
Reclamation District 799

Date

AGRICULTURAL OPEN LANDS		CRISTINA	LAND USE
AGRICULTURAL LANDS		GENERAL PLAN	
SPECIFIC FLOOD RISK		POTENTIAL CONFLICTS	RECREATION
BOOK STATION		RECREATION FEATURES	
GEOLOGY AND SOIL		SCENIC RESOURCES	



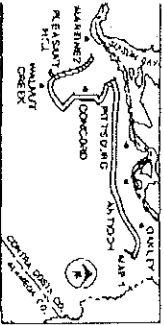
- LEGEND**
- CANAL CENTER LINE
  - RIGHT-BANK INTERIOR
  - STUDY CORRIDOR
  - CANAL RIGHT-OF-WAY
  - OTHER RIGHT-OF-WAY
  - JURISDICTION BOUNDARY
  - MARCH LINE
  - TURNOUT
  - TURNOUT-ADJACENT
  - CHANNING INLET
  - SURFACE
  - APPROXIMATE FAULT TRACE

**NOTES**

A public wall is proposed along the canal.

**RD 799 Licensed Area**

0.7	0.6	0.5	0.4	0.3	0.2	0.1	0.0
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GEOLOGY AND SOIL							



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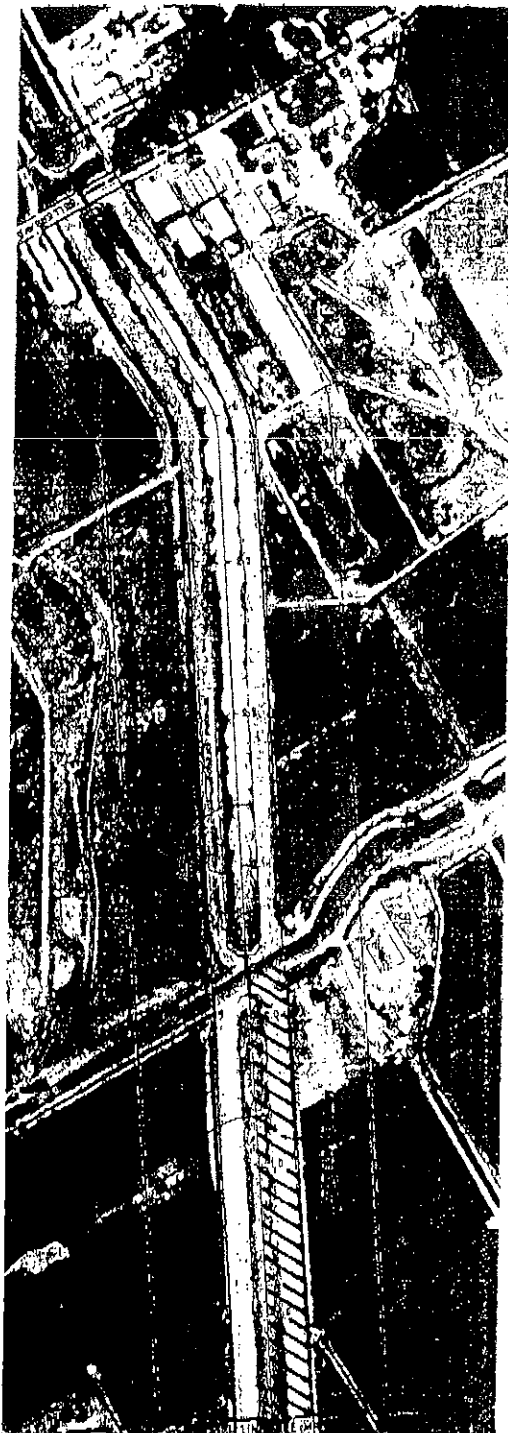
MAP 1

**CANAL FACILITY PLAN**  
CENTRA COSTA WATER DISTRICT

**OSAHILL**



AGRICULTURAL GENERAL PLAN		LAND USE	RIGHT BANK
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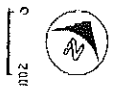
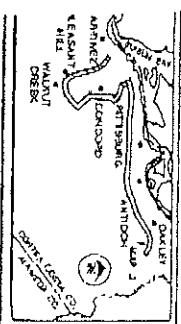
- LEGEND**
- CANAL CENTER LINE
  - WITH WIRELESS FLOWING
  - STUDY CORRIDOR
  - CANAL RIGHT-OF-WAY
  - OTHER RIGHT-OF-WAY
  - JURISDICTION BOUNDARY
  - MATCH LINE
  - TURNOUT
  - TURNOUT-PIESSED
  - CHANNEL INLET
  - SINKHOLE
  - APPROXIMATE FLOOD BRIDGE

**NOTES**

A RIGHT TURN IS PROVIDED WITHIN THE CANAL

**RD 799 Licensed Area**

2.6	2.5	2.4	2.3	2.2	2.1	2.0	1.9	1.8	
AGRICULTURAL LANDS		AGRICULTURAL LANDS		AGRICULTURAL LANDS		AGRICULTURAL LANDS		AGRICULTURAL LANDS	
POTENTIAL TRAIL ACCESS		POTENTIAL TRAIL ACCESS		POTENTIAL TRAIL ACCESS		POTENTIAL TRAIL ACCESS		POTENTIAL TRAIL ACCESS	
DITCH SLOUGH		DITCH SLOUGH		DITCH SLOUGH		DITCH SLOUGH		DITCH SLOUGH	
GEOLOGY AND SOIL		GEOLOGY AND SOIL		GEOLOGY AND SOIL		GEOLOGY AND SOIL		GEOLOGY AND SOIL	
RECREATION		RECREATION		RECREATION		RECREATION		RECREATION	
SCENIC RESOURCES		SCENIC RESOURCES		SCENIC RESOURCES		SCENIC RESOURCES		SCENIC RESOURCES	
POTENTIAL CONFLICTS		POTENTIAL CONFLICTS		POTENTIAL CONFLICTS		POTENTIAL CONFLICTS		POTENTIAL CONFLICTS	
GENERAL PLAN		GENERAL PLAN		GENERAL PLAN		GENERAL PLAN		GENERAL PLAN	
EXISTING		EXISTING		EXISTING		EXISTING		EXISTING	
STATIONING		STATIONING		STATIONING		STATIONING		STATIONING	
WATERFLOWS		WATERFLOWS		WATERFLOWS		WATERFLOWS		WATERFLOWS	



0 200'

MAP 3

**CANAL FACILITY PLAN**

COSTA COSTA  
WATER DISTRICT

**COSTA HILL**



CONTRACT NO.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
CENTRAL VALLEY PROJECT, CALIFORNIA

LICENSE TO USE RECLAMATION LAND

TO RECLAMATION DISTRICT NO. 799 (HOTCHKISS TRACT)  
FOR ACCESS TO  
CONTRA COSTA CANAL EAST BANK BETWEEN MP 0.0 AND MP 2.0

This License is given this 6<sup>th</sup> day of December 2002, in accordance with the Act of Congress approved June 17, 1902, (32 Stat. 388), and all other amendatory or supplementary acts by and between THE UNITED STATES OF AMERICA (United States), acting by and through its Department of the Interior, Bureau of Reclamation hereinafter called (Reclamation), represented for the purpose of issuing this License, pursuant to the Memorandum of Agreement (Contract Number 4-06-200-6072A) with Contra Costa Water District (District) dated June 28, 1972 relating to details of the Transfer of Operation and Maintenance of Contra Costa Canal System as amended by Amendment 1 dated May 15, 1995, by the officer executing this License, to Reclamation District No. 799 (Hotchkiss Tract), hereinafter called the Licensee.

RECITALS

The United States acquired land and has constructed the CONTRA COSTA CANAL (Canal) as a feature of the Central Valley Project; (CVP); and

The Contra Costa Water District (District) is operating the Canal on behalf of the United States; and

The Licensee has requested the United States grant to it a license for access on and along the east bank of the Canal between MP 0.0 and MP 2.0 (as shown in diagrams 1.1, 1.2, and 1.3 attached hereto) for the purpose of vehicular use on the existing maintenance road and performance of work in accordance with the terms of the LICENSE TO USE RECLAMATION LAND FOR MAINTENANCE AND CONSTRUCTION TO THE EAST LEVEE SYSTEM (CONTRACT NO. 02-LC-20-7939) entered into between the parties hereto, of even date herewith.

The United States has no objections to such use of the land and the use is, at this time, not incompatible with the purpose for which the land was acquired and is now being administered.

LICENSE

Subject to the terms and conditions herein, and in consideration of the covenants and agreements herein contained, the United States, through the authorized District officer executing this license, hereby grants a ten (10) year non-exclusive license to the Licensee for non-exclusive use of that maintenance road (roadway) located within the portion of the Canal right-of-way more particularly described in Exhibit A, attached hereto and incorporated herein.

1. This license is personal, revocable, and nontransferable and shall become effective on the

date hereinabove written and shall continue for a term of ten (10) years so long as, in the opinion of the United States or District, it is considered to be expedient and not detrimental to the public interest; and, with the approval of the District Board of Directors, may be extended for an additional term of ten years.

2. This license may be revoked upon 30 days written notice to the Licensee:
  - a) If use of the licensed area by the Licensee interfere with existing or proposed facilities of the United States, or
  - b) If the land involved is needed for CVP or District purposes, or
  - c) In the event the United States disposes of its interest in the land, to other than the District, or
  - d) Upon failure of the Licensee to maintain the licensed area and conduct its activities in full compliance with the Federal, State, District and local laws, rules, and regulations, including, but not limited to, all those relating to or concerned with the environment, or
  - e) Upon failure of the Licensee to comply with any terms and conditions hereof.
3. This license is granted subject to the rights of the United States and the District to use said land for all operation and maintenance of the Canal and related facilities and to existing rights-of-way in favor of the public or third parties for highways, roads, railroads, telegraph, telephone, and electric transmission lines, canals, laterals, ditches, flumes, siphons, and pipelines over and across the land.
4. The use of the licensed area shall not obstruct in any manner the flow of water in the canals, laterals, or drain ditches of the Contra Costa Canal system, or interfere in any way with the construction, operation, and maintenance of any part of said system.
5. If during the period authorized by this license, a situation develops which, in the opinion of United States, the District, or of any third party or parties, presents a threat to the safety of persons or property of the United States, the District, or of any third party or parties, the Licensee will take immediate action to eliminate the threat. In the event the Licensee does not immediately provide the necessary protection, the United States or the District reserve the right, after notifying the Licensee and its contractor, to take such action as may be necessary to eliminate the immediate threat and the Licensee will, upon receipt of an itemized statement, reimburse all such costs.
6. To the extent permitted by law, the Licensee shall be solely responsible for and shall indemnify and save harmless the District, and the United States from any and all liability and claim of liability for injuries to or death of persons or damage to property caused or in any manner resulting from the exercise of the rights and privileges granted by the license, or from the Licensee's use of the licensed area, including but not limited to ingress and egress thereto. To the extent permitted by law, neither the District, nor the United States shall be liable for any damage caused to the Licensee, its employees, agents or invitees, or to the property of any of them, by reason of any act or failure to act on the part of the District or the United States in the operation and maintenance of the right-of-way of the Contra Costa Canal or any facility thereon. The Licensee acknowledges that this License is issued solely as an accommodation to permit use of the Canal right-of-way for the sole benefit of the Licensee.
7. The Licensee agrees to use and to operate its vehicles and equipment within the graded portion of the existing roadway to the satisfaction of the United States and the District, at the Licensee's sole expense. The Licensee's operation, maintenance and repair activities shall at all times conform to normal acceptable engineering standards and to all applicable Federal, State, District and local statutes, orders, laws, rules and regulations, and the roadway shall at all times be used in such a manner as to not interfere with the property or facilities, or the rights and privileges, of the United States or the District. The Licensee shall be responsible for any damage to the property or facilities of the United



States or the District and/or any loss of use of such property or facilities as a result of the use of the roadway by the Licensee.

8. If said use constitutes a hazard to said Canal, the Regional Director of Reclamation or his duly authorized representatives shall have the right to suspend and/or revoke this License under paragraph 2 above.
9. The Licensee agrees that said roadway will at all times be used in such a manner as not to endanger or interfere with the use of the facilities of the United States on said land. If the United States or the District determine the Licensee has failed to use the roadway in accordance with the terms and conditions contained herein, and if the Licensee fails to correct the deficiencies within 30 days after being given written notice thereof, the United States and its assignees reserve the right to correct such deficiencies and the Licensee agrees to reimburse the United States and its assignees for any and all costs incurred in connection with said deficiencies.
10. The Licensee expressly recognizes that the United States is the sole owner of the Canal and rights-of-way that are the subject of this license, and expressly disclaims any interest therein except as specifically granted herein.
11. This grant of license shall not constitute nor be construed as any surrender or subordination to the Licensee of the jurisdiction or supervision of the United States or the District, over the remaining interest of the United States and the District in the land described in this license contract.
12. To the extent permitted by law, the Licensee hereby agrees to indemnify and hold harmless the United States, the District, and their respective agents and employees from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature caused by any person, firm, or corporation authorized to act by or on behalf of the Licensee with regard to the Licensee's activities under this license. The Licensee's obligations to indemnify and hold harmless pursuant to this section include, but are not limited to, and an all claims arising out of or related to any negligent or intentional acts that result in injury or death to any person or damage to property on or adjacent to the licensed area. Throughout the period of the license and construction, Licensee or its contractor, shall maintain in force a policy of Workers' Compensation insurance, as required by law, and policies of liability insurance, including comprehensive general liability, automobile liability and professional liability insurance, providing limits of not less than \$1,000,000 for each person and \$2,000,000 for each occurrence for bodily injury or death, and not less than \$1,000,000 property damage. Said policies of comprehensive general liability and automobile liability shall name the United States, the District, and their respective agents and employees, as additional insured and shall provide that the policy will not be canceled or reduced in coverage without thirty (30) days prior notice to the District. Prior to commencement of said construction and annually during the period of the license, Licensee shall cause to be delivered to the District and the Tracy Office of the Bureau of Reclamation a copy of the certificate of insurance reflecting all essential coverage.
13. The Licensee warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to deduct from this agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
14. In the event the Licensee breaches or fails to perform or observe any of the terms and conditions herein, and fails to cure any breach or default within (90) days of the United States or the District giving the Licensee written notice thereof, or if not reasonably capable of being cured within such ninety (90) days, within such other period of time as may be reasonable in the circumstances, the United States or the District, may terminate



the Licensee's rights under this agreement in addition to and not in limitation of any other remedy of the United States or the District, at law and in equity, and failure of the United States or the District, to exercise such right at any time shall not waive the rights of the United States or the District, to terminate for any future breach or default.

15. In the event the Licensee ceases to use the roadway that is the subject of his License for a period of one (1) year, this agreement and all the Licensee's rights hereunder shall terminate and revert to the United States.
16. Termination or revocation of this license shall not release the Licensee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release the Licensee from its obligation and liability to remove said facilities and accessories from the United States property and restore the premises.
17. No member of or delegate to Congress or resident Commissioner shall be admitted to any share of part of this contract, or to any benefit that may arise from this contract. This provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
18. The waiver of a breach of any of the provisions of the license shall not be deemed to be a waiver of any other provision or a subsequent breach of a provision.
19. The Licensee shall comply with all applicable Federal, State, District and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.
  - a) "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.9601, et seq., and the regulations promulgated pursuant to that Act.
20. The Licensee shall not allow contamination of lands, waters or facilities owned or administered by the United States by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.
21. The Licensee shall report to the District and the Tracy Office of the Bureau of Reclamation, within 24 hours of its occurrence, any event that may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by Reclamation.
22. Violation of any of the provisions of paragraphs 19 through 21 of this license shall constitute grounds for immediate termination of this license and shall make the Licensee liable for the cost of full and complete remediation and/or restoration of any United States or District resources or facilities that are adversely affected as a result of the violation.
23. The Licensee agrees to include the provisions contained in paragraphs 19 through 22 above in any subcontract or third party contract it may enter into pursuant to this contract.
24. Reclamation agrees to provide information necessary for the Licensee, using reasonable diligence, to comply with the provision of the above paragraphs 19 through 23, including telephone numbers.
25. Prior to entering the Canal right-of-way to perform construction or maintenance activities, the contractor shall obtain from the District a Permit for the Temporary Use of

Portions of the right-of-way of the Contra Costa Canal System in accordance with the terms of the License for Use entered into between the parties hereto, of even date herewith. The Contractor and its Subcontractors, and their respective officers and employees shall at all times comply with the terms and conditions of said Permit.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRA COSTA WATER DISTRICT

Approved as to Form:

By: Walter J. Fisher  
Title: GENERAL MANAGER

By: Carl P. A. Nelson  
District Legal Counsel

ACCEPTED:

Reclamation District No. 799 (Hotchkiss Tract)

By: Robert O. Givens

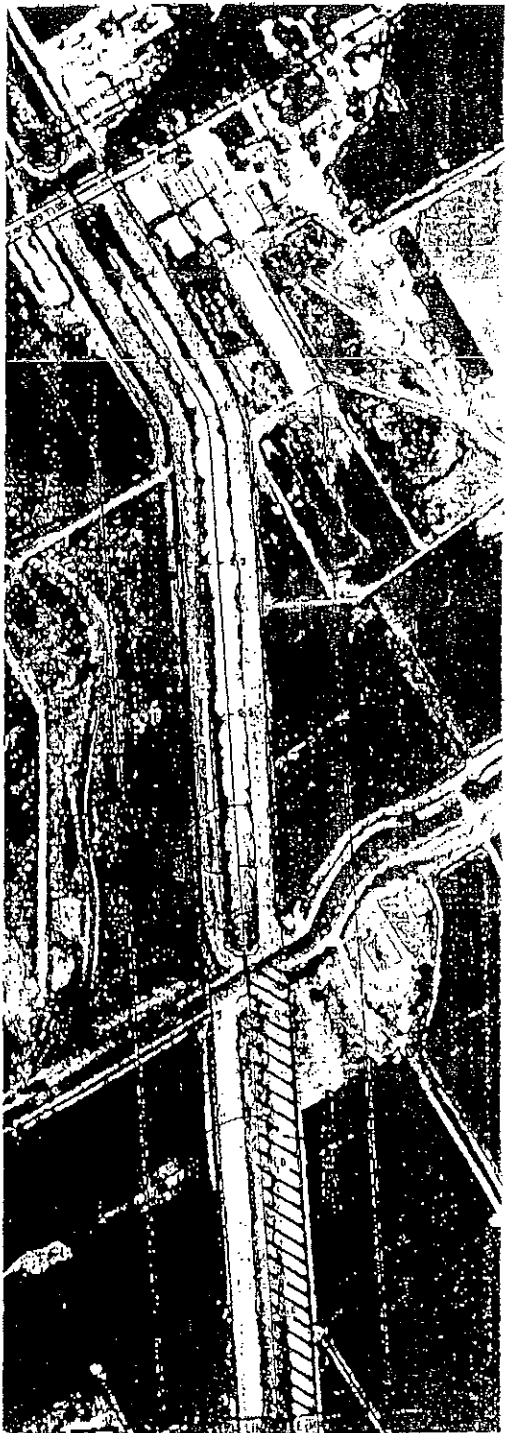
Title: President, Board of Trustees








FORM 10A (Rev. 1-77) GENERAL INFORMATION		AGRI-CULTURAL CELLAR	
AGRICULTURAL CODE		GENERAL PLAN	
STREET CODE		POTENTIAL CONFLICTS	
POTENTIAL TRAIL ACCESS		RECREATION FEATURES	
WATER COVER		SCENE RESPONSE	
GENERAL ABUTTING ADJACENT PROPERTY		RECREATION AND SOI	



A patch will be prepared during the coming

RD 799 Licensed A

[illegible]

2017

**PLAP 3**

CANAL FACILITY PLAN



CHAMILL





**CONTRA COSTA  
WATER DISTRICT**

1331 Concord Avenue  
P.O. Box H20  
Concord, CA 94524  
(925) 688-8000 FAX (925) 688-8122

November 15, 2002

*Via Overnight Mail*

**Directors**  
James Pretti  
*President*

Noble O. Elcenko, D.C.  
*Vice President*

Elizabeth R. Anello  
Bette Boatman  
Joseph L. Campbell

Walter J. Bishop  
*General Manager*

Greg Rowland, Real Estate Specialist  
U.S. Bureau of Reclamation  
1243 N Street  
Fresno, California 93721-1813

**Subject: NEPA Draft CEC: RD 799 License Access to Contra Costa Canal**

Dear Mr. Rowland:

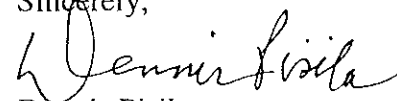
Enclosed is a draft NEPA Categorical Exclusion Checklist (CEC) prepared for the Reclamation District 799 (RD 799) application for a license allowing crossing access to a two mile section of the Contra Costa Canal right-of-way. This two mile long canal section extends from the Rock Slough intake (MP 0.0) to Dutch Slough (MP 2.0).

The license application is consistent with a proposed Memorandum of Understanding (MOU) negotiated among the U.S. Bureau of Reclamation, RD 799 and the Contra Costa Water District (CCWD) regarding RD 799 access for future routine maintenance, emergencies and to perform levee improvements to the east bank. The negotiations resulted from an original RD 799 boundary reorganization application to amend RD 799 boundaries along the centerline of the Contra Costa Canal within the two-mile section. The reorganization application is scheduled for a November 20, 2002 public hearing by the Contra Costa Local Agency Formation Commission (LAFCO).

This draft NEPA CEC applies only for RD 799's crossing convenience, security and routine site surveillance in connection with adjacent lands within the RD 799 service area boundaries. No ground disturbance or facility improvement activities are addressed in this CEC evaluation. Future CEC's will need to be approved for permits to be approved by Reclamation and CCWD covering annual work plan items, emergencies and planned levee improvements consistent with the proposed MOU.

Please review and expedite this draft CEC for Reclamation concurrence signatures for final MOU and license approvals prior to the November 20, 2002 Contra Costa LAFCO hearing. If you need further information, please call me at 925/688-8119.

Sincerely,

  
Dennis Pisila  
Senior Planner

Enclosure: Draft CEC with Attachments 1.1-1.3

## CATEGORICAL EXCLUSION CHECKLIST

### Reclamation District 799 Access to Contra Costa Canal Right-of-Way

Central Valley Project, California  
South-Central California Area Office

Date: November 15, 2002

**Background:** As a result of negotiations between the Contra Costa Water District (CCWD) and Reclamation District 799 in a recent reorganization action (i.e., an adjustment in RD 799 boundaries), a memorandum of understanding (MOU) and license to use Reclamation land has been entered into allowing RD 799 specified access to the Contra Costa Canal right-of-way between the Rock Slough Intake (MP 0.0) and Dutch Slough (MP 2.0, see Attachments 1.1 thru 1.3 Canal Vicinity Maps). The MOU and license allows access for several purposes: (1) crossing convenience for accessibility onto adjacent RD 799 lands, (2) routine light maintenance work on the canal access road, and minor erosion protection, rodent and vegetation control along the east bank or levee subject to prior Reclamation and CCWD approval of an annual work plan and budget, (3) emergency access for levee, facilities and property repair and protection subject to Reclamation and CCWD approval (to the extent possible) of such emergency action, and (4) levee improvement work subject to Reclamation and CCWD approval of a separate agreement. This CEC applies only to access for crossing convenience, security and routine site surveillance or patrols, as intended under category (1), above. It does not apply to annual work plan items covered in category (2) requiring Reclamation and CCWD reviews and permit approvals, or to emergency or planned levee improvement actions under categories (3) and (4). All category (2) through (4) actions will require separate NEPA evaluations prior to access and work permit approvals.

**Nature of Action:** Access by RD 799 staff and consultants to Contra Costa Canal MP 0.0 to 2.0 section from gate locations specified by CCWD for crossing convenience to adjacent RD 799 service area lands and for regular surveillance and levee inspection purposes by automobile, pickup or light truck use only.

**Purpose:** To allow RD 799 license agreement access onto the Contra Costa Canal right-of-way for crossing convenience, as well as convenient physical accessibility to adjacent RD 799 lands.

**Exclusion Category:** 516 DM 6 Appendix 9.4.D.10. Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Bureau lands where the action does not allow for, or lead to, a major public or private action.

### Evaluation of Criteria for Categorical Exclusion

- |    |  |             |                |          |
|----|--|-------------|----------------|----------|
| 1. | This action or group of actions would have a significant effect on the quality of the human environment.               | No <u>X</u> | Uncertain ____ | Yes ____ |
| 2. | This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources. | No <u>X</u> | Uncertain ____ | Yes ____ |

### Evaluation of Exemptions to Actions Within Categorical Exclusion

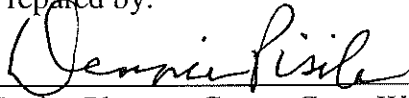
- |    |                                    |             |                |          |
|----|------------------------------------|-------------|----------------|----------|
| 1. | This action would have significant | No <u>X</u> | Uncertain ____ | Yes ____ |
|----|------------------------------------|-------------|----------------|----------|

11. This action will disproportionately affect minority or low-income populations. No X Uncertain \_\_\_\_ Yes \_\_\_\_

NEPA Action: Categorical Exclusion X EA \_\_\_\_ EIS \_\_\_\_

Environmental commitments, explanation, and/or remarks: None

Prepared by:



Senior Planner, Contra Costa Water District

Date: November 15, 2002

Regional Archeologist concurrence with Item 7:

See attachment.

ITA Designee concurrence with Item 10:

See attachment.

Concur:

\_\_\_\_\_  
Natural Resource Specialist, South-Central California Area Office

Date: \_\_\_\_\_

Concur:

\_\_\_\_\_  
Project Biologist, South-Central California Area Office

Date: \_\_\_\_\_

Concur:

\_\_\_\_\_  
Chief, Facilities Engineering Branch Division, South-Central California Area Office

Date: \_\_\_\_\_

Concur:

\_\_\_\_\_  
Chief, Resources Management Division, South-Central California Area Office

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Area Manager, South-Central California Area Office

Date: \_\_\_\_\_









