

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: October 14-15, 2009

Reference No.: 2.4a.
Action Item

From: NORMA ORTEGA
Chief Financial Officer (Interim)

Prepared by: Tony Tavares
Chief
Division of Right of Way and
Land Surveys

Subject: **RESOLUTIONS OF NECESSITY - APPEARANCE**

RECOMMENDATION:

The California Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Amended Resolutions of Necessity (Resolutions) C-20213 and C-20214 summarized on the following page.

ISSUE:

Prior to initiating Eminent Domain proceedings to acquire needed right of way for a programmed project, the Commission must first adopt a Resolution, stipulating specific findings identified under Section 1245.230 of the Code of Civil Procedure (CCP), which are:

1. The public interest and necessity require the proposed project.
2. The proposed project is planned and located in a manner that will be most compatible with the greatest public good and the least private injury.
3. This property is necessary for the proposed project.
4. An offer to acquire the property in compliance with Government Code Section 7267.2 has been made to the owner of record.

In this case, the property owners are contesting the Amended Resolutions and have requested an appearance before the Commission. The property owner believes that the project, as proposed, is not compatible with the greatest public good and the least private injury, and that the acquisition of their property could be avoided by realigning the route to the south of their property. The owner's objections and the Department's responses are contained in Attachment A and Exhibits A through E.

BACKGROUND:

The Department submitted Resolutions C-20129 and C-20130 for the subject properties to the Commission as an appearance at the June 10-11, 2009 Commission meeting. The Resolutions were adopted but said Resolutions had omitted, in error, inclusion of CCP Section 1240.510 and 1240.610. The adoption of Resolutions C-20213 and C-20214 will correct said administrative error. There have been no changes to the project, the proposed acquisitions, or to the property impacts as described in the approved Resolutions C-20129 and C-20130. Discussions have taken place with the owner, who

has been offered the full amount of the Department's appraisal and advised of any relocation assistance benefits to which they may subsequently be entitled. Adoption of the Resolutions will not interrupt the Department's efforts to secure an equitable settlement. In accordance with statutory requirements, the owner has been advised that the Department is requesting the amendment of the Resolutions at this time. Adoption will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-20213 - Berrenda Mesa Water District

06-Ker-46-PM 4.16/6.03 - Parcel 85919-1A, 1B, 2, 3, 4, 5 - EA 353419.

Right of Way Certification (RWC) Date: 03/18/09; Ready to List (RTL) Date: 03/18/09.

Expressway - two-lane conventional highway to four-lane expressway. Amends Resolution C-20129, adopted June 10, 2009, which authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, a temporary easement for construction purposes, a permanent easement for utility purposes to be conveyed to Pacific Gas & Electric (PG & E) and Verizon, and underlying fee. This amendment is to correct the administrative error in that the Resolution did not include CCP Section 1240.510 in that the property is being acquired for a compatible use; and CCP Section 1240.610 in that the property is required for a more necessary public use from the Resolution. Located near the unincorporated area of Lost Hills, northeast of Highway 46 and 1 3/4 miles west of Kecks Road.

Assessor's Parcel Numbers 057-011-04, -05; 057-012-05, -08, -09.

C-20214 - Berrenda Mesa Water District

06-Ker-46-PM 4.16/4.85 - Parcel 85925-1A, 1B, 2, 3, 4, 5 - EA 353419.

RWC Date: 03/18/09; RLT Date: 03/18/09. Expressway - two-lane conventional highway to four-lane expressway. Amends Resolution C-20130, adopted June 10, 2009, which authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, temporary easements for construction purposes, a permanent easement for highway slopes, an easement for utility purposes to be conveyed to PG & E and Berrenda Mesa Water District, and underlying fee. This amendment is to correct the administrative error in that the Resolution did not include CCP Section 1240.510 in that the property is being acquired for a compatible use; and CCP Section 1240.610 in that the property is required for a more necessary public use from the Resolution. Located near the unincorporated area of Lost Hills, on the southwest side of Highway 46 and 2 1/4 miles west of Kecks Road. Assessor's Parcel Numbers 057-011-04, -05, -06, -07, -10.

Attachments:

Attachment A – Updated Summary of Issues

Exhibit A – Department's Confirmation Letter to Owner to Amend Complaint September 14, 2009

Exhibit B – Stipulation to Amend Complaint

Exhibit C – Owner's Written Objections September 8, 2009

Exhibit D – Owner's Written Objections September 14, 2009

Exhibit E – June 2009 Panel Report

UPDATED SUMMARY OF ISSUES

On June 10, 2009, Resolutions of Necessity (Resolutions) C-20129 and C-20130 were presented, as an appearance, to the California Transportation Commission (Commission) for adoption. Mr. George Logan, legal counsel, appeared at the Commission meeting to represent the property owner, Berrenda Mesa Water District (District). Malcolm Dougherty, District 6 Director, represented the Department of Transportation (Department).

The Department filed its eminent domain proceeding in Kern County Superior Court on or about July 16, 2009. In response, the District filed a Demurrer to the Department's action, claiming that the Complaint was defective because the Complaint and Resolutions failed to cite Code of Civil Procedure (CCP) Sections 1240.510 and 1240.610. At that time, the Department discovered an administrative error in both resolutions, as the District is a public utility, and the Resolutions should have included CCP Section 1240.510, in that the property is being acquired for a compatible use; and CCP Section 1240.610, in that the property is required for a more necessary public use. The Amended Resolutions correct the administrative error. The adoption of Amended Resolutions C-20213 and C-20214 will allow the Department to move forward with the eminent domain proceedings.

The Department's legal counsel confirmed, in September 14, 2009 correspondence to the District's counsel, that the District's Demurrer hearing scheduled for October 1, 2009, would be taken off calendar, the Department would seek amended resolutions and thereafter the Department would amend the eminent domain action to reflect the above CCP references. In fact, counsel for the District and the Department have entered into a format stipulation, currently being filed with the court, which memorializes these agreements.

The property owner does not contest the purpose and need for the project, but does contest:

- The project as designed is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- The property sought to be acquired is not necessary for the project.
- The project should be moved to the south to avoid the pumping plant and pipelines located on the north side of the existing highway. The new lanes could be located south of the creek to avoid disturbance of the man-made creek, which is not an environmentally sensitive facility.
- The Department has offered to pay for the relocation of the pumping plant at a location and specifications of its choosing, but this is totally unacceptable. The time, place and manner of the relocation of the pumping plant should be at the property owner's discretion.

The Department's response to the District includes the following:

- The Resolutions were presented to the Commission as an appearance on June 10, 2009. The District opposed the adoption of the Resolutions based on said issues identified in the

previous paragraph. The property owner's issues were addressed at the June 10, 2009 Commission meeting. The Commission adopted Resolutions C-20129 and C-20130.

- The creek that parallels existing State Route 46 along the frontage of the District parcels has been a focus of United States (US) Fish and Wildlife services as a potential waterway of the US. The panel report indicates that focus and it was maintained throughout the environmental process. In final negotiations with the Army Corp of Engineers for our permit, they ultimately did not deem it as a waterway of the US, but that does not change the Department's responsibility to be a good steward of natural resources. This information was shared with the Commission as part of the Department's presentation June 10, 2009. The creek is an important biological resource. Additionally, there were several other right-of-way and environmental factors taken into consideration that ultimately did not change the selection of the preferred alternative and the alignment of the expressway.
- The relocation of the pumping station is per federal public utility guidelines and existing policy and procedures. The Department has not and will not specify a location for the possible relocation of the existing irrigation facilities including the pumping plant.

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION – MS 57

1120 N STREET, SACRAMENTO, CA 95814

P. O. BOX 1438, SACRAMENTO, CA 95812-1438

PHONE (916) 654-2630

FAX (916) 654-6128

TTY 711



*Flex your power!
Be energy efficient!*

September 14, 2009

George G. Logan
Attorney at Law
2669 Alabama St.
Atwater, CA 95301

Re: Berrenda Mesa Water District

Dear Mr. Logan:

This correspondence confirms our telephone conversation regarding Berrenda Mesa's Demurrer to First Amended Complaint in Eminent Domain, currently scheduled for October 1, 2009 and the September 3, 2009 correspondence that you received from the Department of Transportation regarding the California Transportation Commission (CTC) hearing on October 14 and 15, 2009 in San Diego, CA.

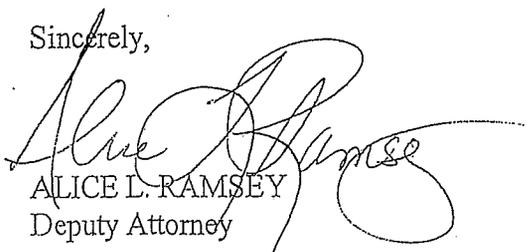
The purpose of the October CTC hearing in regard to the Berrenda Mesa Water District is to amend resolutions of necessity C-20216 and C-20217 to correct the omission of Code of Civil Procedure Section 1240.510, in that the property is being acquired for a compatible use; and Code of Civil Procedure Section 1240.610, in that the property is required for a more necessary public use.

After the resolutions of necessity are amended, the First Amended Complaint will be amended to include Code of Civil Procedure Section 1240.510, in that the property is being acquired for a compatible use; and Code of Civil Procedure Section 1240.610, in that the property is required for a more necessary public use.

I have enclosed the Stipulation for Demurrer to be Taken Off Calendar and to Amend the First Amended Complaint for your signature. After you have reviewed the Stipulation, if approved, please sign and return to my attention either by scanned document or by fax and I will file with the Court.

Thank you for your assistance in this matter and if you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,


ALICE L. RAMSEY
Deputy Attorney

1 RONALD W. BEALS, Chief Counsel
2 THOMAS C. FELLEENZ, Deputy Chief Counsel
3 JOANN GEORGALLIS, Assistant Chief Counsel
4 ALICE L. RAMSEY State Bar No. 130445
5 1120 N Street (MS 57) P.O. Box 1438
6 Sacramento, California 95812-1438
7 Telephone: (916) 654-2630
8 Facsimile: (916) 654-6128

9 Attorneys for Plaintiff

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF KERN**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 acting by and through the Department of
15 Transportation,

16 Plaintiff,

17 vs.

18 BERRENDA MESA WATER DISTRICT; and Does 1
19 through 20, inclusive,

20 Defendants.

Case No.: S-1500-CV-267797-SPC

Parcel(s) 85919-1A, 1B, 2, 3, 4, 5 and
85925-1A, 1B, 2, 3, 4, 5

STIPULATION FOR DEMURRER TO BE
TAKEN OFF CALENDAR AND
AGREEMENT FOR PLAINTIFF TO
AMEND FIRST AMENDED COMPLAINT

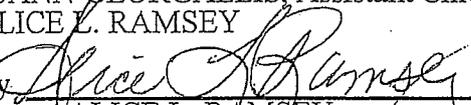
21 IT IS HEREBY STIPULATED by and between plaintiff THE PEOPLE OF THE STATE OF
22 CALIFORNIA, acting by and through the Department of Transportation ("Plaintiff") and defendant
23 BERRENDA MESA WATER DISTRICT, individually and/or through their respective counsel of
24 record, that the DEMURRER TO FIRST AMENDED COMPLAINT IN EMINENT DOMAIN,
25 currently scheduled for hearing on October 1, 2009 be taken off calendar. Plaintiff agrees to amend the
26 First Amended Complaint, filed on August 11, 2009, to correct the omission of Code of Civil Procedure
27 Section 1240.510 that the property is being acquired for a compatible use; and Code of Civil Procedure
28 Section 1240.610 that the property is required for a more necessary public use. The amendment to the

1 First Amended Complaint will be within 20 days from the October 14 and 15, 2009 California
2 Transportation Commission ("CTC") meeting, that will amend the previous CTC resolutions of
3 necessity that were adopted on June 10, 2009, to correct the omission of Code of Civil Procedure
4 Section 1240.510 that the property is being acquired for a compatible use; and Code of Civil Procedure
5 Section 1240.610 that the property is required for a more necessary public use.

6 This stipulation may be executed in counterparts, with facsimile signatures sufficient for filing
7 and approval for the Court.

8 DATED: 9/15/09

9
10 RONALD W. BEALS, Chief Counsel
11 THOMAS C. FELLEZ, Deputy Chief Counsel
12 JOANN GEORGALLIS, Assistant Chief Counsel
13 ALICE L. RAMSEY

14 By 
15 ALICE L. RAMSEY
16 Attorneys for Plaintiff

17 DATED: _____

18 LAW OFFICES OF GEORGE C. LOGAN

19 By _____
20 GEORGE C. LOGAN
21 Attorneys for Defendant

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1 First Amended Complaint will be within 20 days from the October 14 and 15, 2009 California
 2 Transportation Commission ("CTC") meeting, that will amend the previous CTC resolutions of
 3 necessity that were adopted on June 10, 2009, to correct the omission of Code of Civil Procedure
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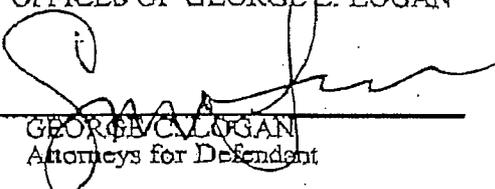
8 DATED: _____

9
 10 RONALD W. BEALS, Chief Counsel
 11 THOMAS C. FELLEENZ, Deputy Chief Counsel
 12 JOANN GEORGALLIS, Assistant Chief Counsel
 13 ALICE L. RAMSEY

14 By _____
 15 ALICE L. RAMSEY
 16 Attorneys for Plaintiff

17 DATED: 9/17/09

18 LAW OFFICES OF GEORGE C. LOGAN

19 By 
 20 GEORGE C. LOGAN
 21 Attorneys for Defendant

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4 **PROOF OF SERVICE**

5 I, the undersigned, say: I am, and was at all times herein mentioned, a citizen of the United
6 States and employed in the County of Sacramento, State of California, over the age of 18 years and not
7 a party to the within action or proceeding; that my business address is 1120 N Street, Sacramento,
8 California; that **September 15, 2009**, I enclosed a true copy of the attached:

9 **STIPULATION FOR DEMURRER TO BE TAKEN OFF CALENDAR AND AGREEMENT TO**
10 **AMEND FIRST AMENDED COMPLAINT**

11 in a separate envelope for each of the persons named below, addressed as set forth immediately below
12 the respective names, as follows:

13 SEE ATTACHED:

14 **By Mail:** I caused such envelope(s) to be deposited in the mail at my business address,
15 addressed to the addressee(s) designated. I am readily familiar with The State of California, Department
16 of Transportation, Legal Division's practice for collection and processing of correspondence and
17 pleadings for mailing. In the ordinary course of business at the Department of Transportation, Legal
18 Division, mail is given the correct amount of postage and is deposited on that same day in a United
19 States Postal Service mailbox in the City of Sacramento, California.

20 **By Personal Service:** I caused such envelope(s) to be delivered in person to the addressee(s)
21 designated.

22 **By Overnight Courier Service:** I caused such envelope(s) to be delivered via overnight courier
23 service to the addressee(s) designated.

24 **By Facsimile:** I caused said document(s) to be transmitted to the telephone number(s) of the
25 addressee(s) designated. A copy of the transmission report showing the transmission was complete and
26 without error is attached hereto.

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

Executed at Sacramento, California, on **September 15, 2009**.


Declarant

1 *People v. Berrenda Mesa Water District, et al.*
2 *Kern County Superior Court Case No. S-1500-CV267797-SPC*

3 George G. Logan, Esq. 4 2669 Alabama Street 5 Atwater, California 95301	Attorney for Defendant Berrenda Mesa Water District
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George G. Logan

Attorney At Law
2669 Alabama St.
Atwater, California 95301
Tel (209) 357-3064
Fax (209) 357-0940

Fax _____
Mail _____
Express Mail _____

September 8, 2009

Executive Director
California Transportation Commission
P.O. Box 942873, Mail Station 52
Sacramento, CA 94273-0001

Re: 06-Ker-46-KP 6.7/7.8, EA 353419, Parcel 85925-1A2,3,4,5
Berrenda Mesa Water District

In response to the letter from the Department of Transportation, dated September 3, 2009, the Berrenda Mesa Water District hereby requests a hearing on the issues as stated below:

1. The project is NOT planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
2. The property sought to be acquired is NOT necessary for the project.

The new lanes should be located on the south side of the existing lanes so as to avoid the destruction of the District's pumping plant and pipelines located on the north side of the existing highway.

The proposed location causes unnecessary injury to the District which could be avoided if the project was located to the south of the existing highway.

Very truly yours,

George G. Logan

GEORGE G. LOGAN
General Counsel
Berrenda Mesa Water District

cc: -Berrenda Mesa Water District
-D.O.T., Attn: Larry Steelman, Senior Right of Way Agent

Exhibit C

George G. Logan

Attorney At Law
2669 Alabama St.
Atwater, California 95301
Tel (209) 357-3064
Fax (209) 357-0940

Fax _____
Mail _____
Express Mail _____

September 14, 2009

Executive Director
California Transportation Commission
P.O. Box 942873, Mail Station 52
Sacramento, CA 94273-0001

Re: 06-Ker-46-KP 6.7/7.8, EA 353419, Parcel 85925-1A2,3,4,5
Berrenda Mesa Water District; and

Re: 06-Ker-46-KP 6.7/9.7, EA 353419, Parcel 85919-1A, 1B,2,3,4,5
Berrenda Mesa Water District

The hearings set for October 14th in the above-referenced parcels are duplicate of the hearings held on June 10, 2009, which resulted in the adoption of Resolutions No. C-20129 and C-20130. Pursuant to these resolutions, the Department of Transportation (DOT) has filed a condemnation action against the Berrenda Mesa Water District.

At the previous hearing the DOT withheld pertinent information regarding the District's pumping plant located in the proposed right-of-way and did not ask the Commission to make any findings regarding this plant. We raised this omission in court which led to this new hearing.

The DOT could easily avoid the necessity of taking the District's plant by placing the new lanes to the south of the existing lanes. There is a man-made creek which parallels the highway on the south side but new lanes could be located south of the creek to avoid disturbance of this alleged environmentally sensitive facility.

A southerly alignment would necessitate crossing the creek at its westerly upstream leg but the DOT's alignment necessitates crossing at the creek's easterly downstream leg so there would be no more disturbance of the creek by either alignment. The District tried to make this point at the last hearing but the Commission accepted, without questions, the unsupported assertions by the DOT that more environmental damage would be caused by crossing the western leg. It is hoped that a more critical inquiry will be made by the Commission at the new hearing.

The DOT has offered to pay for the relocation of this pumping plant at a location and to the specifications of its choosing, but this is totally unacceptable to the District. The District should be able to pick the time, place and manner of

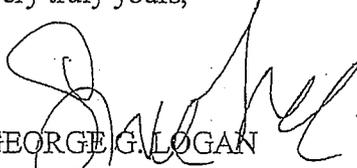
Exhibit D

Executive Director
California Transportation Commission
September 14, 2009
Page Two

replacing the capacity of the plant. A potential capacity replacement would be a reservoir to serve replacement lands. Absent a no-strings payment of the relocation costs, the DOT should leave the plant alone and choose the southerly route.

Please deliver a copy of this letter to all members of the Commission.

Very truly yours,


GEORGE G. LOGAN
General Counsel
Berrenda Mesa Water District

cc:

-D.O.T., Attn: Larry Steelman, Senior Right of Way Agent
~~-Alice Ramsey, Attorney for State of CA~~
-Berrenda Mesa Water District

PROJECT INFORMATION

PROJECT DATA	06-Ker-46-PM 0.0/7.3 EA: 06-353419
<u>Location:</u>	State Route (SR) 46 in Kern County west of the town of Lost Hills
<u>Limits:</u>	From Kern County line to 328 feet west of Keck's Road
<u>Cost:</u>	Construction Cost: \$31,281,000 Right of Way Cost: \$21,000,000
<u>Funding Source:</u>	State Transportation Improvement Program Funds programmed in the 2008-09 fiscal year (Interregional Improvement Program, Regional Improvement Program), Corridor Mobility Improvement Account, Federal Demonstration, and Traffic Congestion Relief Plan
<u>Number of Lanes:</u>	Existing: two-lane conventional Proposed: four-lane expressway
<u>Proposed Major Features:</u>	Intersection: Widening from a two-lane conventional highway to a four-lane divided expressway with a 61 feet median.
<u>Traffic:</u>	Existing SR 46 (year 2007): 8,400 Annual Daily Traffic (ADT) Proposed SR 46 (year 2017): 11,900 ADT Proposed SR 46 (year 2027): 16,800 ADT Proposed SR 46 (year 2019): 1,650 Design Hourly Volume (DHV) Proposed SR 46 (year 2029): 2,350 DHV

NEED FOR THE PROJECT

The purpose of this project is to improve safety and traffic operations on State Route (SR) 46, as well as to reduce congestion on the subject section of highway by converting the existing two-lane conventional highway to a four-lane divided controlled access expressway. This will increase capacity and will separate the east and west bound traffic with a median.

SR 46 is a major route for trucks and recreational traffic traveling between the Central Coast and the Central Valley. On a year-around basis it functions as a significant interregional route for recreational traffic to and from the Central Coast/Central Valley, as well as a significant interregional and intrastate route for agricultural products. On weekends, when travel demand is the greatest, this roadway experiences even greater congestion. This project, along with other projects to widen SR 46 to four lanes, is included in the Kern Council of Governments 20 year

Regional Transportation Plan. SR 46 is one of several state highways considered a high priority for increased capacity.

The existing roadway consists of two twelve-foot travel lanes composed of asphalt concrete along with shoulder widths that vary from zero to four feet. The right-of-way width throughout the project limit varies from 131 to 197 feet. The existing SR 46 project limit begins at the county line with San Luis Obispo. The topography along the route is made up of rolling hills and descends at a grade that varies from approximately 0.9 to 3 percent, and gradually flattens out at the eastern end of the project limit. The design speed for the existing highway is 55 miles per hour. There are numerous driveway access points and two unpaved public road intersections located within the project limits. The existing vertical and horizontal alignment does not meet the current geometric standards.

By providing additional lanes, the proposed project would improve capacity for this heavily traveled east-west corridor, reduce traffic congestion and improve safety. There is currently little opportunity for drivers to pass slower-moving vehicles.

The traffic data indicates that the current Level of Service (LOS) D for this part of SR 46 is expected to decline to LOS F by year 2020. In addition, the average daily traffic is comprised of 40 percent trucks with the majority (61 percent) being the five-axle type trucks.

The level of service along this segment of SR 46 is at or near the Route Concept LOS assigned for this portion of SR 46. As traffic increases, the level of service will decrease below the assigned level of service. The table below lists the current and projected no build level of service, as well as the projected level of service with the improvements proposed by this report.

LOCATION	LOS With				
	Current LOS	No Build		4-lane Expressway	
		2017 LOS	2027 LOS	2017 LOS	2027 LOS
San Luis Obispo County Line to Keck's Corner KP 0.0/11.7 (PM 0.0/7.3)	D	E	F	A	B

Based on the Transportation Planning Design Designation, the projected traffic along this segment of SR 46 is listed below:

<u>Design Period</u>	<u>Year 2007</u> <u>(Construction Year)</u>	Year 2017	Year 2027
ADT	8,400	11,900	16,800
DHV	---	1,650	2,350
% of Peak Directional Volume	---	67%	67%
% of Truck DHV	---	40%	40%
Traffic Index (T.I.)	---	11.5	13.0

The forecasted traffic volumes are based on the 1999 Traffic Volumes book and growth factors from traffic modeling received from the Kern Council of Governments.

Recent accident history (May 1, 2000 to April 30, 2003) for this section of the highway indicates that the fatal accident rate and total accident rates are below the statewide average for similar facilities. Within the three-year study period, there were 27 accidents within the project limits. Fifteen of the accidents involved multiple vehicles (including one which occurred under wet pavement conditions), and 12 of the accidents occurred at night. There was one fatality and twelve people injured in eight separate accidents. The Actual Fatal and Fatal plus Injury accident rates were less than the state average for such a roadway.

The types and causes of accidents are as follows:

TYPE OF COLLISION		PRIMARY COLLISION FACTORS	
Head On	2	Influence of Alcohol	2
Sideswipe	10	Failure to Yield	1
Rear End	2	Improper Turn	10
Broadside	1	Speeding	2
Hit Object	7	Other Violations	8
Overturn	5	Other Than Driver	3
Other	---	Unknown	1
TOTAL	27	TOTAL	27

The majority of accidents within the limits of this project were of the "Sideswipe" type followed by "Hit Object" and "Overturn" types. The primary cause of the accidents was due to improper turn.

PROJECT PLANNING AND LOCATION

SR 46 was adopted into the California Highway System in 1915 and is part of the California Freeway and Expressway System. In the vicinity of the proposed project, SR 46 operates as a two-lane conventional highway, however, in 1971 the California Transportation Commission (Commission) adopted SR 46 as a controlled access highway. This project proposes to convert a 7.3 mile segment of SR 46 from a two-lane conventional highway to a four-lane divided controlled access expressway to improve safety and traffic operations, as well as reduce congestion from the San Luis Obispo County line to just east of Keck's Road. As part of the proposed project, SR 46 will construct a split alignment near the San Luis Obispo/Kern County line in order to avoid an environmentally sensitive area.

This highway crosses terrain that transitions from gently rolling rangeland to level agricultural land and small urban areas. SR 46 begins at the junction of SR 1 in San Luis Obispo County and continues for 118 miles through the Central Valley in San Luis Obispo and Kern Counties. The route terminates at its junction with SR 99 in Kern County. The Kern County portion of the highway is 58 miles in length.

The proposed project is one of four projects that is being developed as part of a corridor improvement program. The total length of the corridor improvement is 33.5 miles in length and is broken into four segments for design and construction. The Project Study Report-Environmental Only (PSR-EO) was approved on March 7, 2000. The PSR-EO contained two "build" alternatives and a "no-build" alternative. Alternative 1 proposed to widen the roadway symmetrically on both the north and south side of the highway, and would have standard twelve foot travel lanes and eight foot shoulders. Alternative 2 proposed to widen the roadway to a four-lane expressway with a 61 foot median. The alignment for this alternative would shift north from the existing centerline to avoid the natural creek running longitudinally south of State right of way. Alternative 3 is a no build alternative.

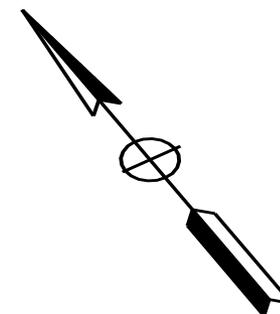
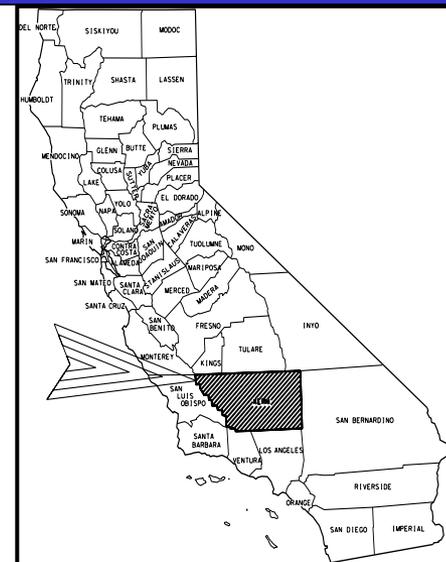
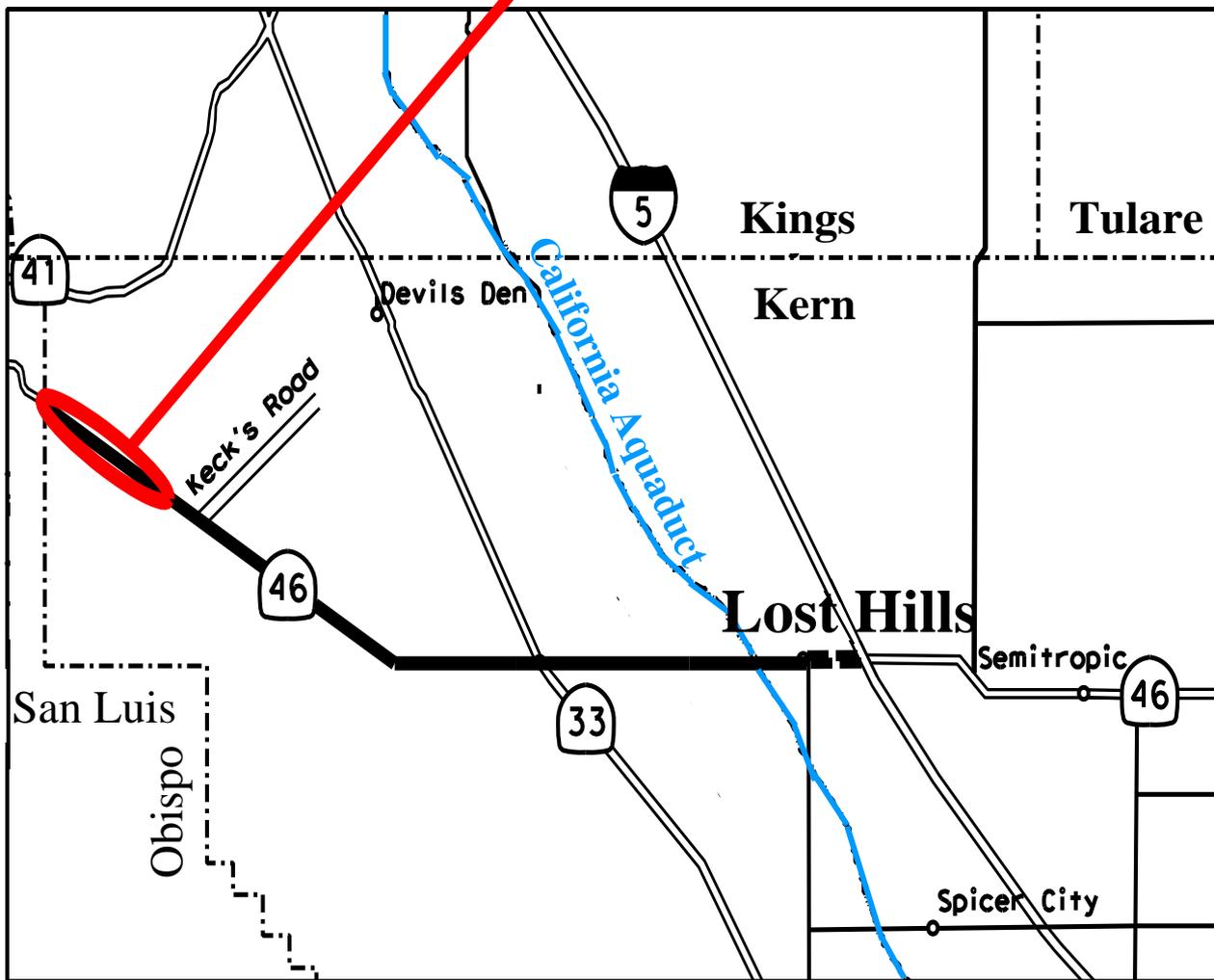
The Project Report was approved on June 14, 2005.

This project has been assigned Project Development Processing Category 1 because it requires substantial new right of way, increases traffic capacity, and requires a Controlled Access Highway Agreement.

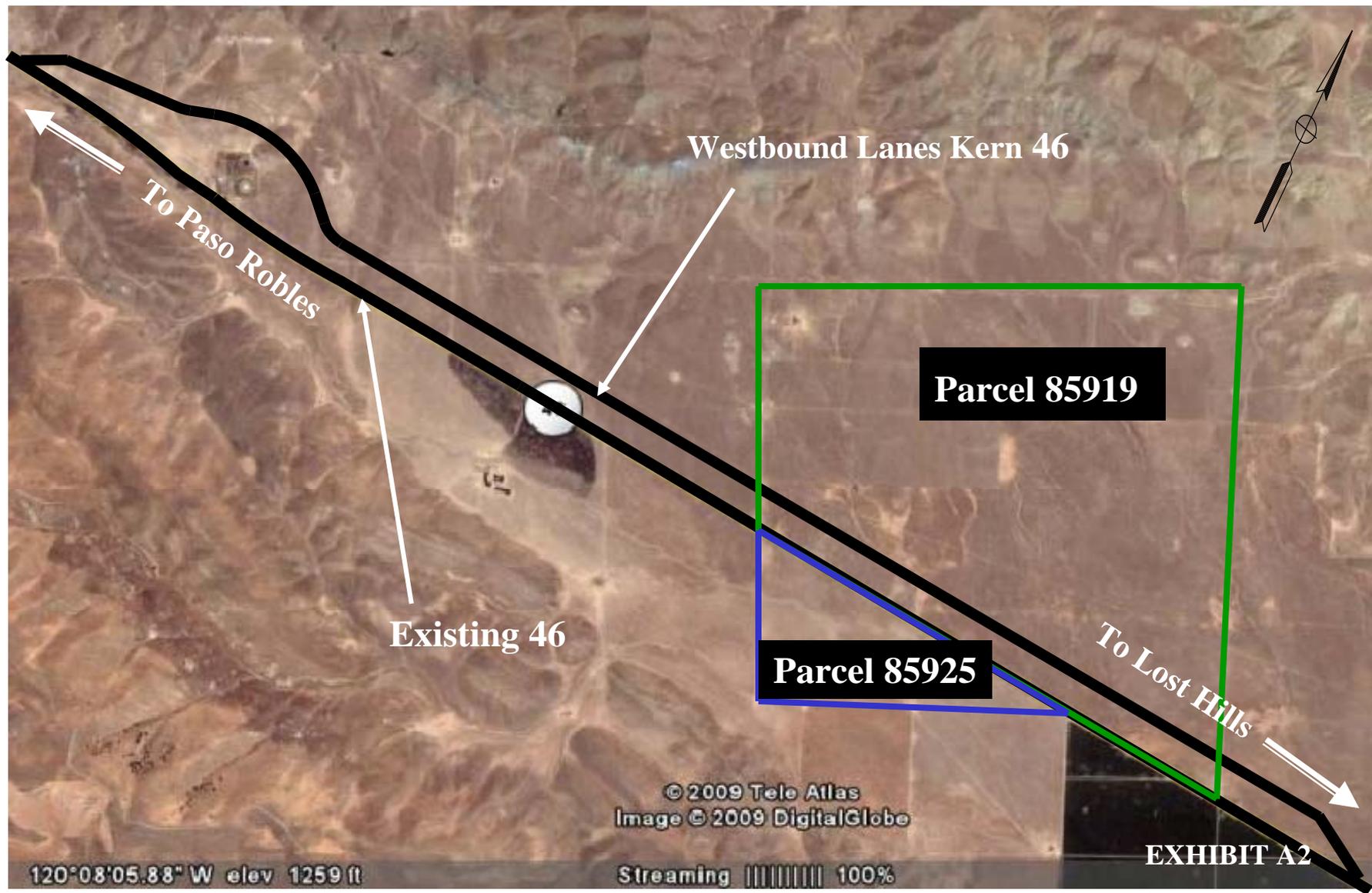
Location Map

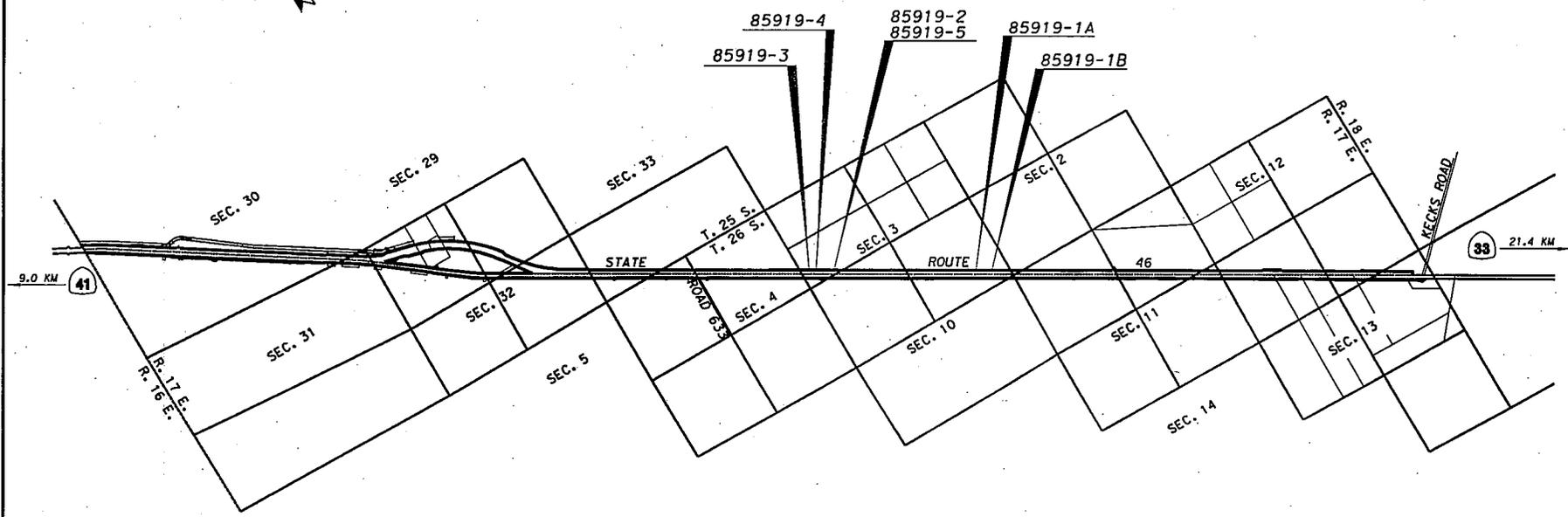
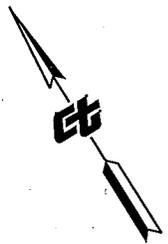
Project Location

Segment II



Overview of Project





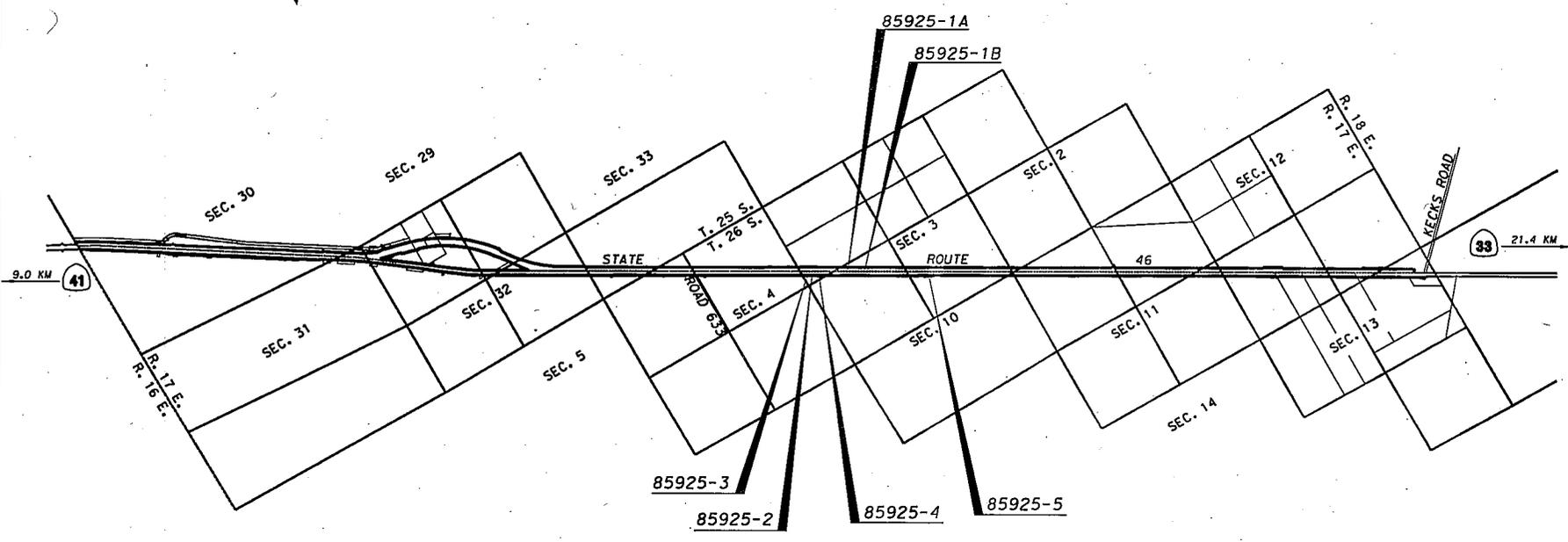
STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 RESOLUTION OF NECESSITY
 AREA MAP
 EXHIBIT A**
 NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET KP	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/9.7	1	5

01/09/2009

EXHIBIT A3

EXHIBIT A3



STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY
RESOLUTION OF NECESSITY
AREA MAP
EXHIBIT A
 NOT TO SCALE

DISTRICT	COUNTY	ROUTE	SHEET KP	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/7.8	1	3

01/09/2009

EXHIBIT A4

EXHIBIT A4

PARCEL PANEL REPORT

PARCEL DATA

- Property Owner:** Berrenda Mesa Water District (BMWD)
- Parcel Location:** Parcel: 85919 - The northeast side of State Route (SR) 46, one and three quarter miles northwest of Keck's Road.
Assessor Parcel Numbers: 057-011-04, -05; 057-012-05, -08, -09.
- Present Use:** Parcel: 85919 – Dry Grazing, Zoned “A” (Exclusive Agricultural District)
- Area of Property:** Parcel: 85919 – 1,283.45 acres
- Area Required:** Parcel: 85919-1 - 26.24 acres in fee and access rights
- 10.5 acres underlying fee to SR 46
85919-2 - 4.0 acres; utility easement for PG & E and Verizon
85919-3 - 0.019 temporary construction easement (TCE)
85919-4 - 0.29 acre TCE
85919-5 - 0.31 acre in utility easement

PARCEL DESCRIPTION

The subject parcel is located within the Kern County boundary lines, west of the community of Lost Hills. This community has experienced static to slow, gradual growth rate. The subject property is located on the northeast side of State Route (SR) 46, one and three quarter miles northwest of Keck's Road, has an area of 1283.45 acres, and is identified as Assessor Parcel Numbers 057-011-04, -05; and 057-012-05, -08, -09. The property lines are irregular in shape with approximately 9,100 linear feet of frontage. The property is zoned Agricultural and is currently leased for sheep grazing.

The subject property is within the boundaries of the BMWD and is owned by the BMWD. The lands have neither appurtenant water rights nor entitlements, however there is a delivery system, including a booster pumping plant that serves this location and other properties to the east and west. In addition to the booster pumping plant, it includes main pipelines and laterals, turnouts, isolation valve, terminal reservoir and other connecting facilities. It was originally designed and constructed to serve and irrigate an area approximately 2,500 acres or more within this service area.

NEED FOR SUBJECT PROPERTY

The proposed partial acquisition of the subject property will accommodate the realignment and widening of SR 46, is necessary for the proposed project, and not deemed to be excessive.

The proposed project requires the acquisition of the following areas:

- Parcel 85919-1 is the proposed acquisition of 26.24 acres of fee land and includes all abutter's rights of access except for the reservation of one access opening (joint use) to SR 46. The new right of way line will extend approximately 125 feet into the subject property and is uniform in width along the entire remaining frontage, except at the access opening. The improvements on said parcel include the existing booster pumping plant, standpipe, pipelines and laterals, and reservoir site. In addition to the "fee" land there is 10.5 acres of underlying fee to SR 46.
- Parcel 85919-2 is a proposed utility easement of 4.0 acres and is required for relocation of an overhead electrical pole line for PG & E. The easement parcel is 20 feet in width paralleling and abutting the new right of way and access control line. The easement begins near the westerly property line and runs along the full length of the property. Said easement will be shared with Verizon for an underground cable line.
- Parcels 85919-3 and 85919-4 are proposed temporary construction easements required for the construction of highway facilities and a work area for the relocation of utilities. The area of 85919-3 is 0.019 acre and the area of 85919-4 is 0.29 acre.
- Parcel 85919-5 is another utility easement that will be acquired for the placement of underground cable lines for Verizon. The easement parcel contains 0.31 acre and is abutting the new right of way and access control line.

The following design standards and factors were used to establish the right of way lines on the subject parcel:

- Standard lane, shoulder, and median widths for a current four-lane expressway were used for SR 46. A design speed of 55 miles per hour is used for SR 46.
- The split alignment that impacts BMWD was required to meet the US Waterway requirements. The alignment could not be moved south of SR 46 due to the creek south of said route.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Bakersfield on April 15, 2009. The Panel members included Donald Grebe, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Alice Ramsey, Department Sacramento Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner, BMWD, were Harry Starkey and legal counsel, George Logan.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The property owner does not contest the purpose and need for the project. The outstanding concern of BMWD is the acquisition of the pumping plant without compensation or the relocation of said

plant. Due to the acquisition of the pumping plant BMWD would like the alignment relocated to the north to miss said pumping plant.

The following is a description of the concerns expressed by the owner, followed by the Department's response:

Owner:

The proposed alignment should be moved to the south to avoid the water pumping facility on the property.

Department:

The proposal to move the highway alignment to the south to avoid the pumping facility would not be in the greatest public good and least private injury because:

- The location of the highway alignment was determined through an extensive engineering and environmental process to minimize property impacts through the entire project and entire SR 46 corridor.
- In the area of the BMWD parcels, the Department is also required to comply with the Clean Water Act (Regulatory Program of the U.S. Army Corps of Engineers), which prohibits impacts to Waters of the US without first showing that there is no feasible avoidance measure. The U.S. Army Corps of Engineers would not permit a discharge of dredged or fill material into the creek if there is a practicable alternative with less adverse impact to the waterway. The least damaging practicable alternative is widening to the north of the existing alignment, which would avoid adverse impacts to the creek. Therefore, the determination to design the project to the north in this area to avoid the waterway on the south was seen as a requirement.
- Additional impacts to adjacent property owners would be required to realign the roadway to the south.

It remains the Department's responsibility to plan and locate the project in a manner that will be most compatible with the greatest public good and the least private injury while adhering to regulatory guidelines and restriction. The Department is unable to change the project location as requested without greater public harm.

Owner:

The initial objection was that the Department was in error because it did not consider the replacement, relocation or compensated in full for the cost of the Berrenda Mesa water pumping facility. The revised offer does allocate funds for the relocation of the pumping plant but the funds will not be released until after the work is completed, which we object to.

Department:

The Department has investigated the relocation of the pumping facility and a revised written offer, which includes the cost to relocate the pumping station, was made to the property owner on May 11, 2009.

BMWD does not take issue with the current offer but does object to the distribution of the funds allocated for the relocation of the pumping plant. The funds will be released in payments as work is completed and invoices are received by the Department, or the funds will be released upon completion of the water pumping facility. BMWD is in disagreement with the payment plan and would like said relocation funds to be paid in full before relocation of the pumping plant begins.

An offer for the full amount of the Department's appraisal has been made to the property owner in compliance with Government Code Section 7267.2. BMWD has been notified that issues related to compensation are outside the purview of the Commission.

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	5+
E-Mail of information	24
Telephone contacts	35+
Personal / meeting contacts	9+

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the Commission.

DONALD E. GREBE
Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

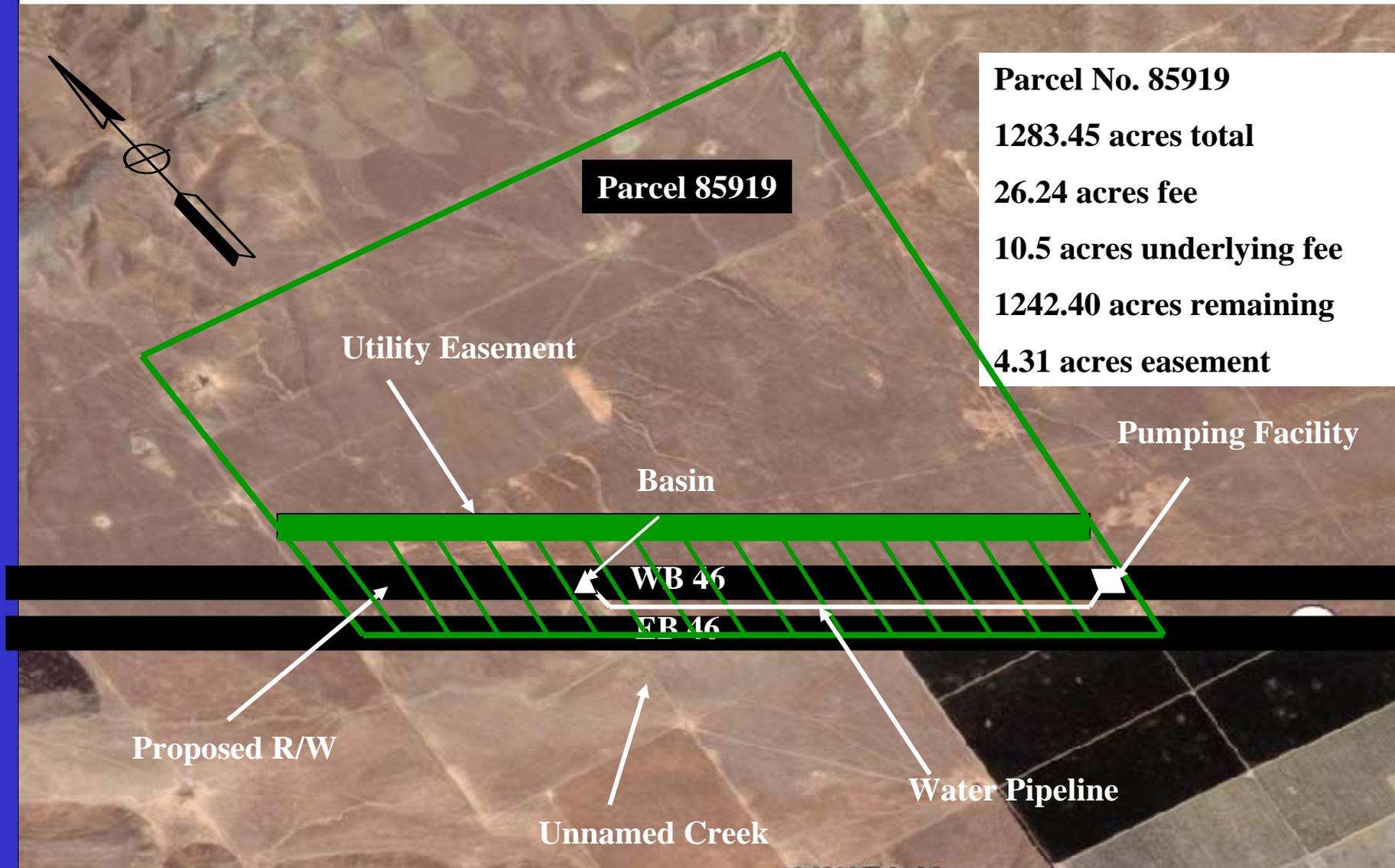
**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON APRIL 15, 2009**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Alice Ramsey, Sacramento Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

Harry Starkey, Representative of BMWD
George Logan, Attorney for the owner of the Property

Malcolm Dougherty, District 6 Director
Terry Ogle, Central Region Design
Spiros Karimbakas, Central Region Right of Way
Jamie Lupo, Central Region Right of Way

Parcel 85919 Impacts



T. 26 S., R. 17 E., M.D.B. & M.

SECTION 3

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.

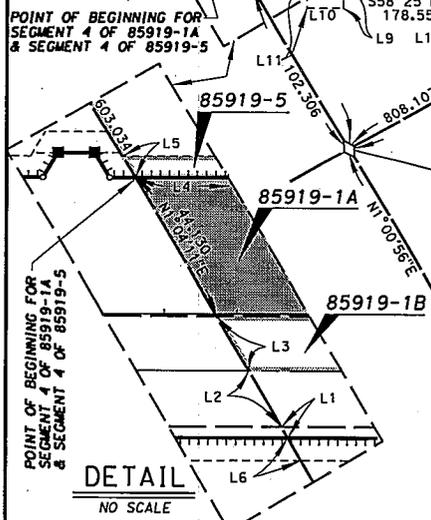
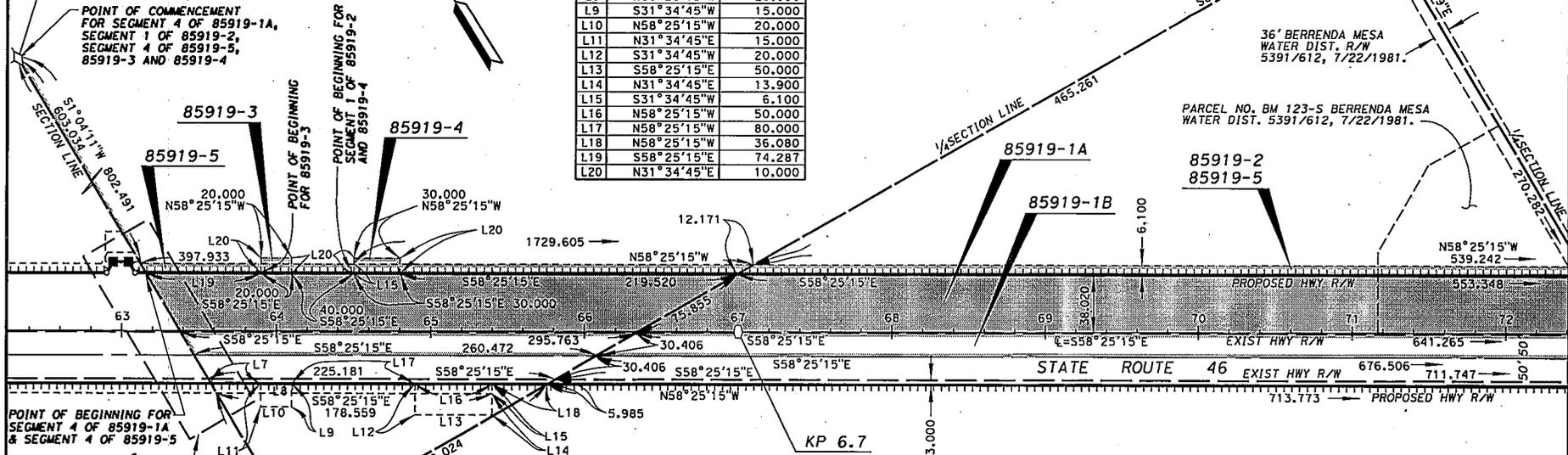


NW COR. SEC. 3, 26/17
OBLITERATED, CALC. FROM REC. OF SURVEY 21/152, SET 2" IRON PIPE W/ BRASS CAP STAMPED "CALIF. DEPT. OF TRANSPORTATION" AND STAMPED FOR CORNER DOWN 7".
N 746330.2040
E 1806820.1700

N/4 COR. SEC. 3 26/17
FND. 2.5" DIA KERN COUNTY SURVEYOR BRASS DISC MARKED FOR SECTION CORNER IN 4" DIA CONCRETE COLLAR, FLUSH W/ A WHITE CARSONITE WITNESS POST, PER REC. OF SURVEY 21/152, K.C.R. N 746307.3410
E 1807629.9430

NO.	BEARING	DIST
L1	N1°04'11"E	3.482
L2	N1°04'11"E	17.689
L3	N1°04'11"E	17.689
L4	S58°25'15"E	74.287
L5	S1°04'11"W	7.080
L6	N1°04'11"E	7.080
L7	N58°25'15"W	32.154
L8	N58°25'15"W	20.000
L9	S31°34'45"W	15.000
L10	N58°25'15"W	20.000
L11	N31°34'45"E	15.000
L12	S31°34'45"W	20.000
L13	S58°25'15"E	50.000
L14	N31°34'45"E	13.900
L15	S31°34'45"W	6.100
L16	N58°25'15"W	50.000
L17	N58°25'15"W	80.000
L18	N58°25'15"W	36.080
L19	S58°25'15"E	74.287
L20	N31°34'45"E	10.000

C/4 COR. SEC. 3, 26/17
CALC BY INTERSECTION.



E/4 COR SEC 4 26/17
FD 2" DIA I.P. WITH 2" DIA KERN COUNTY SURVEYOR BRASS DISC, REPLACED 11-21-75, DOWN 2.2 FT PER FILED MAP 7-1, 6/56, K.C.R. N 745527.8530
E 1806805.1890

NE COR. SEC. 9, 26/17
FD 6"x6" CONC. MON., NO TAG DN. 1.0', 1'E. & 1'N. OF FENCE LINES PER N 744722.8740
E 1806790.9180

SECTION 3

LEGEND	
	PARCEL 85919-1A FEE
	PARCEL 85919-1B UNDERLYING FEE
	PARCEL 85919-2,3,4 & 5 EASEMENTS
	PARCEL 85919 PROPERTY BOUNDARY

NOTES
Coordinates and bearings are on CCS 1983(1991.35) Zone 5. Distances and stationing are grid distances. Divide by 1.00000195 to obtain ground distances.
All distances are in meters unless otherwise noted.
To convert meters to U.S. Survey feet, multiply distance by 3937/1200.

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY**

EXHIBIT B
SCALE 1:4000

DISTRICT	COUNTY	ROUTE	SHEET KP	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/9.7	2	5

01/09/2009

EXHIBIT B2

EXHIBIT B2

T. 26 S., R. 17 E., M.D.B. & M.

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



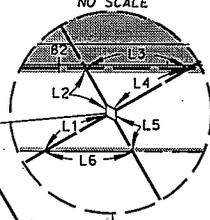
SECTION 3

NW COR. SEC. 2, 26/17
 FND. 3" X 3" KERN COUNTY SURVEYOR BRASS PLATE
 MARKED FOR SECTION CORNER ON A 6" X 6" CONC.
 MON., UP 1.4 FT., PER REC. OF SURVEY 21/152, K.C.R.
 N 746284.5720
 E 1808439.8130

POINT OF COMMENCEMENT
 FOR SEGMENT 5 OF 85919-1A,
 SEGMENT 2 OF 85919-2
 AND SEGMENT 5 OF 85919-5

SECTION 2

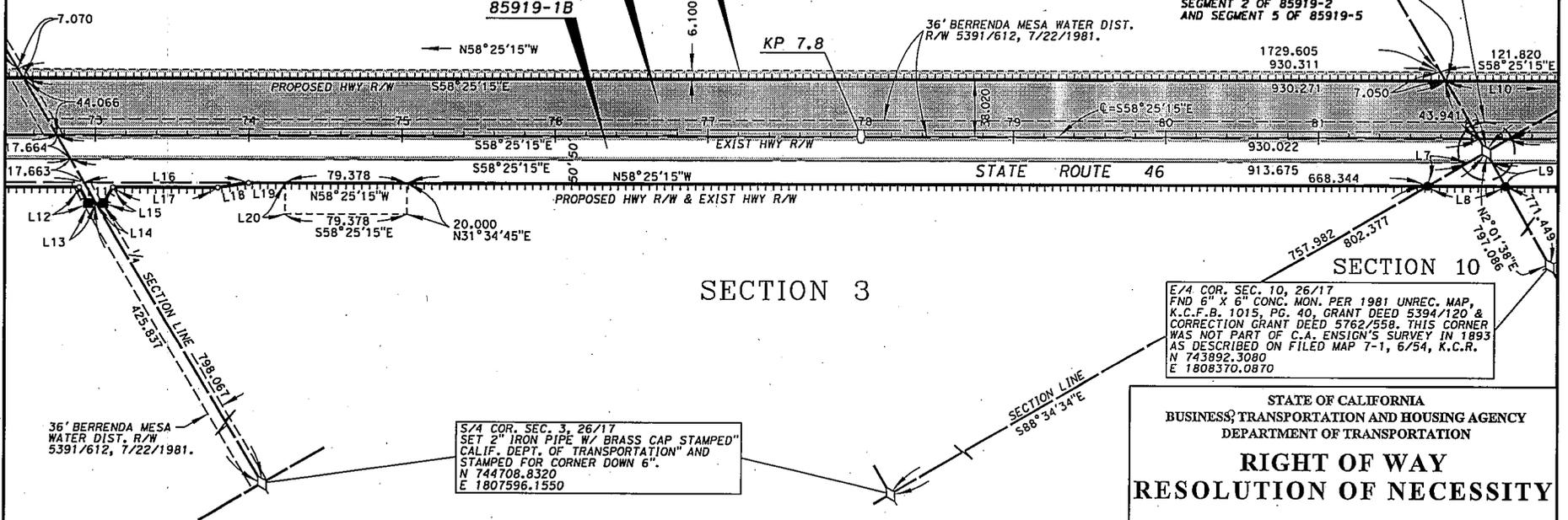
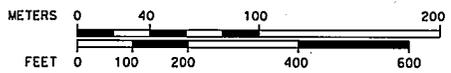
DETAIL



POINT OF BEGINNING FOR
 SEGMENT 5 OF 85919-1A,
 SEGMENT 2 OF 85919-2
 AND SEGMENT 5 OF 85919-5

SW COR. SEC. 2, 26/17
 SET 2" IRON PIPE W/ BRASS CAP STAMPED"
 CALIF. DEPT. OF TRANSPORTATION" AND
 STAMPED FOR CORNER DOWN 8".
 N 744688.0950
 E 1808398.2840

DATA TABLE		
NO.	BEARING	DIST
L1	S88°34'34"E	14.058
L2	S1°29'27"W	9.452
L3	S58°25'15"E	19.050
L4	N88°10'01"W	16.483
L5	S2°01'38"W	8.118
L6	N58°25'15"W	16.159
L7	N88°34'34"W	30.337
L8	N58°25'15"W	51.031
L9	S2°01'38"W	17.519
L10	S58°25'15"E	107.611
L11	N1°12'39"E	15.484
L12	N1°34'51"E	11.962
L13	N58°25'15"W	5.000
L14	N58°25'15"W	5.000
L15	S61°34'31"W	11.962
L16	N58°25'15"W	106.994
L17	N58°25'15"W	68.185
L18	N66°57'06"W	20.224
L19	N58°25'15"W	23.799
L20	S31°34'45"W	20.000



SECTION 3

SECTION 10

E/4 COR. SEC. 10, 26/17
 FND 6" X 6" CONC. MON. PER 1981 UNREC. MAP,
 K.C.F.B. 1015, PG. 40, GRANT DEED 5394/120 &
 CORRECTION GRANT DEED 5762/558. THIS CORNER
 WAS NOT PART OF C.A. ENSIGN'S SURVEY IN 1893
 AS DESCRIBED ON FILED MAP 7-1, 6/54, K.C.R.
 N 743892.3080
 E 1808370.0870

S/4 COR. SEC. 3, 26/17
 SET 2" IRON PIPE W/ BRASS CAP STAMPED"
 CALIF. DEPT. OF TRANSPORTATION" AND
 STAMPED FOR CORNER DOWN 6".
 N 744708.8320
 E 1807596.1550

LEGEND	
	PARCEL 85919-1A FEE
	PARCEL 85919-1B UNDERLYING FEE
	PARCEL 85919-2 & 5 EASEMENTS
	PARCEL 85919 PROPERTY BOUNDARY

NOTES
 Coordinates and bearings are on CCS
 1983(1991.35) Zone 5. Distances and
 stationing are grid distances.
 Divide by 1.00000195 to obtain
 ground distances.
 All distances are in meters unless
 otherwise noted.
 To convert meters to U.S. Survey
 feet, multiply distance by
 3937/1200.

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

EXHIBIT C
 SCALE 1:4000

DISTRICT	COUNTY	ROUTE	SHEET KP	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/9.7	3	5

01/09/2009

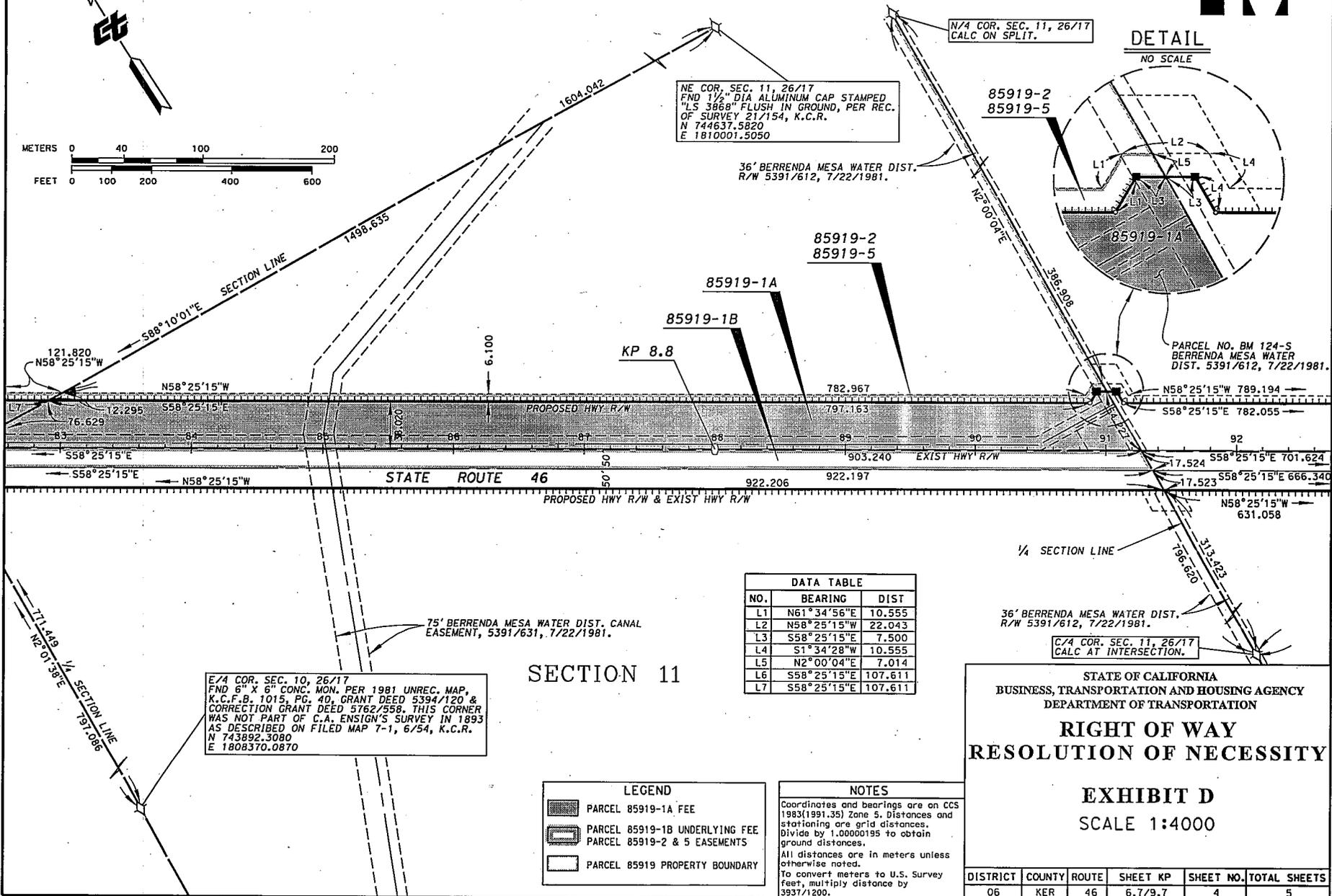
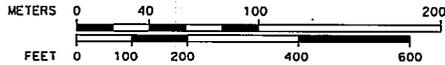
EXHIBIT B3

EXHIBIT B3

T. 26 S., R. 17 E., M.D.B. & M.

SECTION 2

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



DETAIL
NO SCALE

NE COR. SEC. 11, 26/17
FND 1/2" DIA ALUMINUM CAP STAMPED
"LS 3868" FLUSH IN GROUND, PER REC.
OF SURVEY 21/154, K.C.R.
N 744637.5820
E 1810001.5050

36' BERRENDA MESA WATER DIST.
R/W 5391/612, 7/22/1981.

PARCEL NO. BM 124-S
BERRENDA MESA WATER
DIST. 5391/612, 7/22/1981.

STATE ROUTE 46

SECTION 11

E/4 COR. SEC. 10, 26/17
FND 6" X 6" CONC. MON. PER 1981 UNREC. MAP,
K.C.F.B. 1015, PG. 40, GRANT DEED 5394/120 &
CORRECTION GRANT DEED 5762/558. THIS CORNER
WAS NOT PART OF C.A. ENSIGN'S SURVEY IN 1893
AS DESCRIBED ON FILED MAP 7-1, 6/54, K.C.R.
N 743892.3080
E 1808370.0870

75' BERRENDA MESA WATER DIST. CANAL
EASEMENT, 5391/631, 7/22/1981.

DATA TABLE		
NO.	BEARING	DIST
L1	N61°34'56"E	10.555
L2	N58°25'15"W	22.043
L3	S58°25'15"E	7.500
L4	S1°34'28"W	10.555
L5	N2°00'04"E	7.014
L6	S58°25'15"E	107.611
L7	S58°25'15"E	107.611

LEGEND	
	PARCEL 85919-1A FEE
	PARCEL 85919-1B UNDERLYING FEE
	PARCEL 85919-2 & 5 EASEMENTS
	PARCEL 85919 PROPERTY BOUNDARY

NOTES
Coordinates and bearings are on CCS 1983(1991.35) Zone 5. Distances and stationing are grid distances. Divide by 1.00000195 to obtain ground distances.
All distances are in meters unless otherwise noted.
To convert meters to U.S. Survey feet, multiply distance by 3937/1200.

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY**

EXHIBIT D
SCALE 1:4000

DISTRICT	COUNTY	ROUTE	SHEET KP	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/9.7	4	5

01/09/2009

EXHIBIT B4

EXHIBIT B4

PARCEL PANEL REPORT

PARCEL DATA

Property Owner: Berrenda Mesa Water District (BMWD)

Parcel Location: Parcel: 85925 - The southwest side of State Route (SR) 46,
Two and one quarter miles northwest of Keck's Road.
Assessor Parcel Numbers: 057-011-04, -05, -06, -07, 06 -07, -10.

Present Use: Parcel: 85925 – Dry Grazing, Zoned “A” (Exclusive Agricultural District)

Area of Property: Parcel: 85925 – 335.38 acres

Area Required: Parcel: 85925-1 - 0.81 acre in fee and access rights
- 7.03 acres underlying fee to SR 46
85925-2 - 0.27 acre utility easement for PG & E
85925-3 - 0.07 temporary construction easement (TCE)
85925-4 - 0.25 acre TCE
85925-5 - 0.39 acre in slope easement

PARCEL DESCRIPTION

The subject parcel is located within the Kern County boundary lines just west of the community of Lost Hills. This community has experienced static to slow, gradual growth rate. The subject property, Assessor Parcel Numbers 057-011-04, -05, -06, -07, -10, has an area of 335.38 acres and is located on the southwest side of SR 46, two and one quarter miles northwest of Keck's Road. The property lines are irregular in shape on both sides of the highway. There are approximately 6,000 linear feet of frontage. The property is zoned Agricultural and is currently leased for cattle grazing.

The subject property is within the boundaries of the BMWD and is owned by the BMWD.

NEED FOR SUBJECT PROPERTY

The proposed partial acquisition of the subject property will accommodate the realignment and widening of SR 46, is necessary for the proposed project, and not deemed to be excessive.

The proposed project requires the acquisition of the following areas:

- Parcel 85925-1 is the proposed acquisition of 0.81 acre of fee land and includes all abutter's rights of access except for the reservation of one access opening to SR 46. The new right of way line will extend approximately ten feet into the subject property and is

uniform in width along the entire remaining frontage, except at the access opening. In addition to the “fee” land there is 7.03 acres of underlying fee to SR 46.

- Parcel 85925-2 is a proposed utility easement. The easement parcel area is 11,842 square feet (0.27 acre).
- Parcel 85925-3 and 85925-4 are proposed temporary construction easement, which are required for the construction of highway facilities and a work area for the relocation of utilities. The area of 85925-3 is 3,229 square feet (0.07 acre) and the area of 85925-4 is 10,764 square feet (0.25 acre).
- Parcel 85925-5 is a slope easement that will be needed to maintain the integrity of the highway. The slope easement area is 17,088 square feet in size (0.39 acre).

The following design standards and factors were used to establish the right of way lines on the subject parcel:

- Standard lane, shoulder, and median widths for a current four-lane expressway were used for SR 46. A design speed of 55 miles per hour is used for SR 46.
- The split alignment that impacts BMWD was required to meet the US Waterway requirements. The alignment could not be moved south of SR 46 due to the creek south of said route.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Condemnation Review Panel (Panel) met in Bakersfield on April 15, 2009. The Panel members included Donald Grebe, Panel Chair, Department Headquarters (HQ's) Division of Right of Way and Land Surveys; Alice Ramsey, Department Sacramento Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Division of Right of Way and Land Surveys, Secretary to the Panel. Representing the property owner, BMWD, were Harry Starkey and legal counsel, George Logan.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Department's Chief Engineer. The property owner does not contest the purpose and need for the project. The outstanding concern of BMWD is the acquisition of the pumping plant without compensation or the relocation of said plant. Due to the acquisition of the pumping plant BMWD would like the alignment relocated to the north to miss said pumping plant.

The following is a description of the concerns expressed by the owner, followed by the Department's response:

Owner:

The proposed alignment should be moved to the south to avoid the water pumping facility on the property.

Department:

The proposal to move the highway alignment to the south to avoid the pumping facility would not be in the greatest public good and least private injury because:

- The location of the highway alignment was determined through an extensive engineering and environmental process to minimize property impacts through the entire project and entire SR 46 corridor.
- In the area of the BMWD parcels, the Department is also required to comply with the Clean Water Act (Regulatory Program of the U.S. Army Corps of Engineers), which prohibits impacts to Waters of the US without first showing that there is no feasible avoidance measure. The U.S. Army Corps of Engineers would not permit a discharge of dredged or fill material into the creek if there is a practicable alternative with less adverse impact to the waterway. The least damaging practicable alternative is widening to the north of the existing alignment, which would avoid adverse impacts to the creek. Therefore, the determination to design the project to the north in this area to avoid the waterway on the south was seen as a requirement.
- Additional impacts to adjacent property owners would be required to realign the roadway to the south.

It remains the Department's responsibility to plan and locate the project in a manner that will be most compatible with the greatest public good and the least private injury while adhering to regulatory guidelines and restriction. As with Section 404 of the Clean Water Act, the Department is unable to change the project location as requested without greater public harm.

DEPARTMENT'S CONTACTS

The following contacts have been made with the property owner:

Type of Contact	Number of Contacts
Mailing of information	5+
E-Mail of information	24
Telephone contacts	35+
Personal / meeting contacts	9+

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

PANEL RECOMMENDATION

The Panel concludes that the Department's project complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property rights to be condemned are necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the Commission.

DONALD E. GREBE
Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

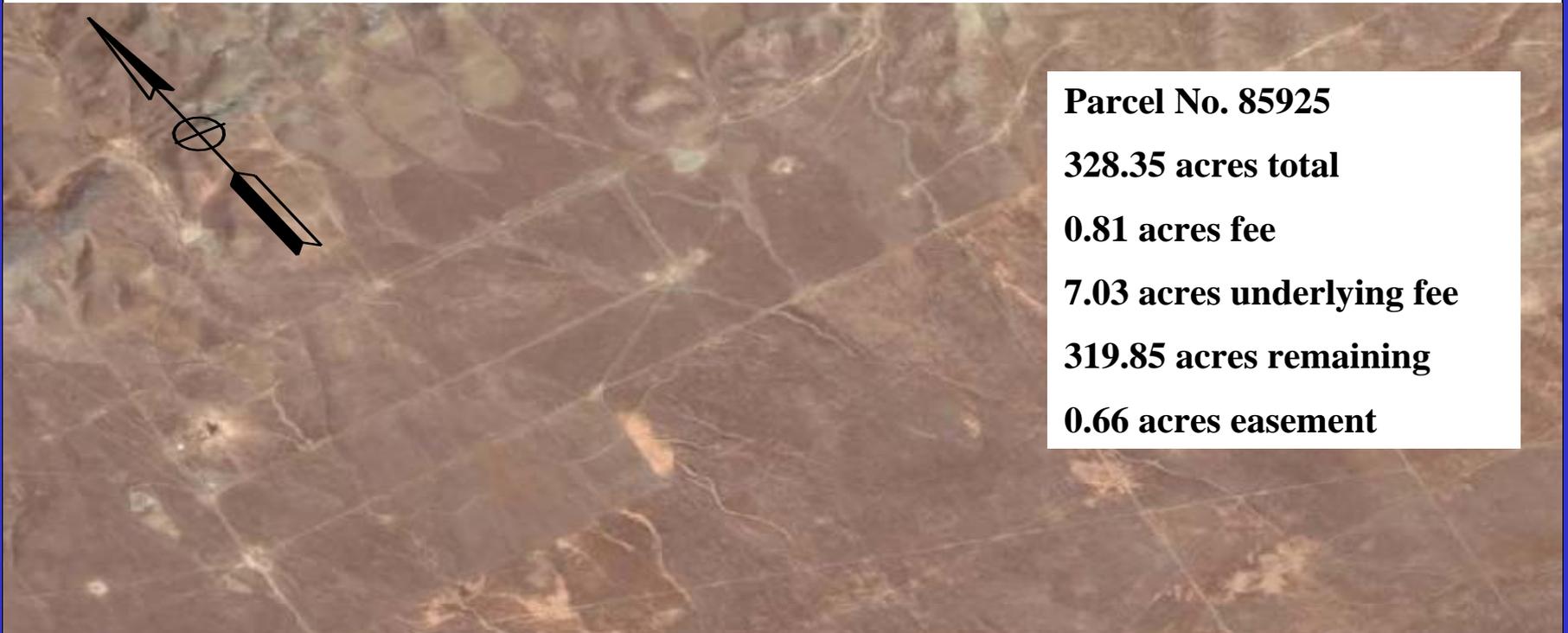
**PERSONS ATTENDING CONDEMNATION PANEL REVIEW MEETING
HEARING ON APRIL 15, 2009**

Donald Grebe, HQ's Division of Right of Way and Land Surveys, Panel Chair
Alice Ramsey, Sacramento Legal Office Attorney, Panel Member
Linda Fong, HQ's Division of Design, Panel Member
Deborah Gebers, HQ's Division of Right of Way and Land Surveys, Panel Secretary

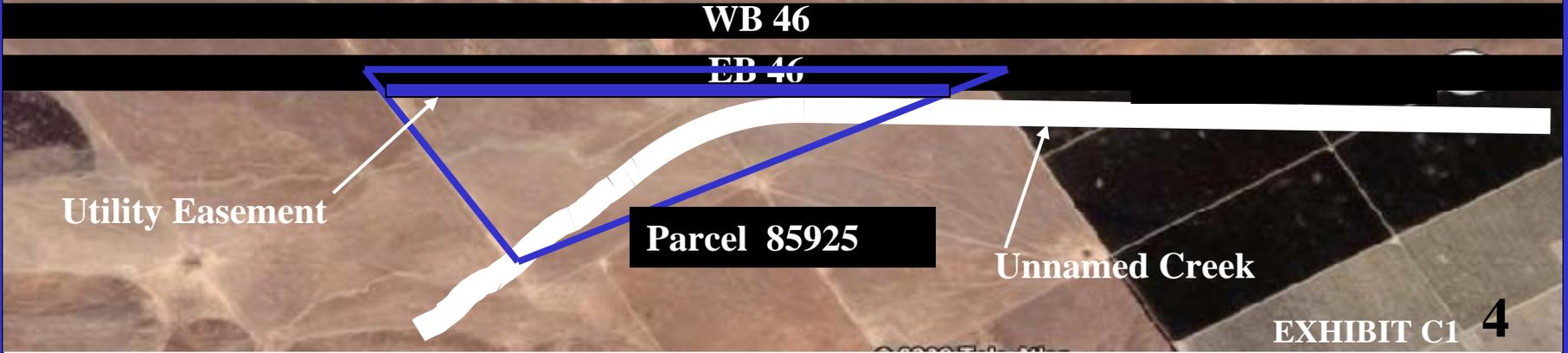
Harry Starkey, Representative of BMWD
George Logan, Attorney for the owner of the Property

Malcolm Dougherty, District 6 Director
Terry Ogle, Central Region Design
Spiros Karimbakas, Central Region Right of Way
Jamie Lupo, Central Region Right of Way

Parcel 85925 Impacts



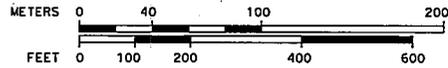
Parcel No. 85925
328.35 acres total
0.81 acres fee
7.03 acres underlying fee
319.85 acres remaining
0.66 acres easement



T. 26 S., R. 17 E., M.D.B. & M.

SECTION 3

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



DATA TABLE		
NO.	BEARING	DIST
L1	N1°04'11"E	3.482
L2	N1°04'11"E	17.689
L3	N1°04'11"E	17.689
L4	S58°25'15"E	74.287
L5	S1°04'11"W	7.080
L6	N1°04'11"E	7.080
L7	N58°25'15"W	32.154
L8	N58°25'15"W	20.000
L9	N31°34'45"E	15.000
L10	S58°25'15"E	20.000
L11	S31°34'45"W	15.000
L12	S31°34'45"W	20.000
L13	S58°25'15"E	50.000
L14	N31°34'45"E	13.900
L15	S31°34'45"W	6.100
L16	N58°25'15"W	50.000
L17	N58°25'15"W	80.000
L18	N58°25'15"W	36.080
L19	S58°25'15"E	74.287
L20	N31°34'45"E	10.000

NW COR. SEC. 3, 26/17
OBLITERATED, CALC. FROM REC. OF
SURVEY 21/152, SET 2" IRON PIPE W/
BRASS CAP STAMPED "CALIF. DEPT. OF
TRANSPORTATION" AND STAMPED FOR
CORNER DOWN 7".
N 746330.2040
E 1806820.1700

N/4 COR. SEC. 3 26/17
FND. 2.5" DIA KERN COUNTY SURVEYOR BRASS
DISC MARKED FOR SECTION CORNER IN 4" DIA
CONCRETE COLLAR, FLUSH W/ A WHITE CARSONITE
WITNESS POST, PER REC. OF SURVEY 21/152, K.C.R.
N 746307.3410
E 1807629.9430

C/4 COR. SEC. 3, 26/17
CALC BY INTERSECTION.

POINT OF COMMENCEMENT
FOR 85925-1A, 85925-2,
85925-3 AND 85925-4

POINT OF BEGINNING
FOR 85925-1A

POINT OF BEGINNING
FOR 85925-2

POINT OF BEGINNING
FOR 85925-3

POINT OF BEGINNING
FOR 85925-4

E/4 COR SEC 4 26/17
FD 2" DIA I.P. WITH 2" DIA KERN COUNTY
SURVEYOR BRASS DISC, REPLACED 11-21-75,
DOWN 2.2 FT PER FILED MAP 7-1, 6/56, K.C.R.
N 745527.8530
E 1806805.1890

NE COR. SEC. 9, 26/17
FD 6"x6" CONC. MON., NO TAG DN.
1.0' 1'E. & 1' N. OF FENCE LINES PER
N 744722.8740
E 1806790.9180

POINT OF BEGINNING
FOR 85925-1A

POINT OF BEGINNING
FOR 85925-1A

POINT OF BEGINNING
FOR 85925-3

POINT OF BEGINNING
FOR 85925-2

DETAIL
NO SCALE

LEGEND	
	PARCEL 85925-1A FEE
	PARCEL 85925-1B UNDERLYING FEE
	PARCEL 85925-2,3 & 4 EASEMENTS
	PARCEL 85925 PROPERTY BOUNDARY

NOTES
Coordinates and bearings are on CCS
1983(1991.35) Zone 5. Distances and
stationing are grid distances.
Divide by 1.00000195 to obtain
ground distances.
All distances are in meters unless
otherwise noted.
To convert meters to U.S. Survey
feet, multiply distance by
3937/1200.

SECTION 3

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
RESOLUTION OF NECESSITY**

EXHIBIT B
SCALE 1:4000

DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/7.8	2	3

01/09/2009

EXHIBIT C2

EXHIBIT C2

T. 26 S., R. 17 E., M.D.B. & M.

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



SECTION 3

DATA TABLE		
NO.	BEARING	DIST
L1	S88°34'34"E	14.058
L2	S1°29'27"W	9.452
L3	S58°25'15"E	19.050
L4	N88°10'01"W	16.483
L5	S2°01'38"W	8.118
L6	N58°25'15"W	16.159
L7	N88°34'34"W	30.337
L8	N58°25'15"W	51.031
L9	S2°01'38"W	17.519
L11	N1°12'39"E	15.484
L12	N1°34'51"E	11.962
L13	N58°25'15"W	5.000
L14	N58°25'15"W	5.000
L15	S61°34'31"W	11.962
L16	N58°25'15"W	106.994
L17	N58°25'15"W	68.185
L18	N66°57'06"W	20.224
L19	N58°25'15"W	23.799
L20	S31°34'45"W	20.000

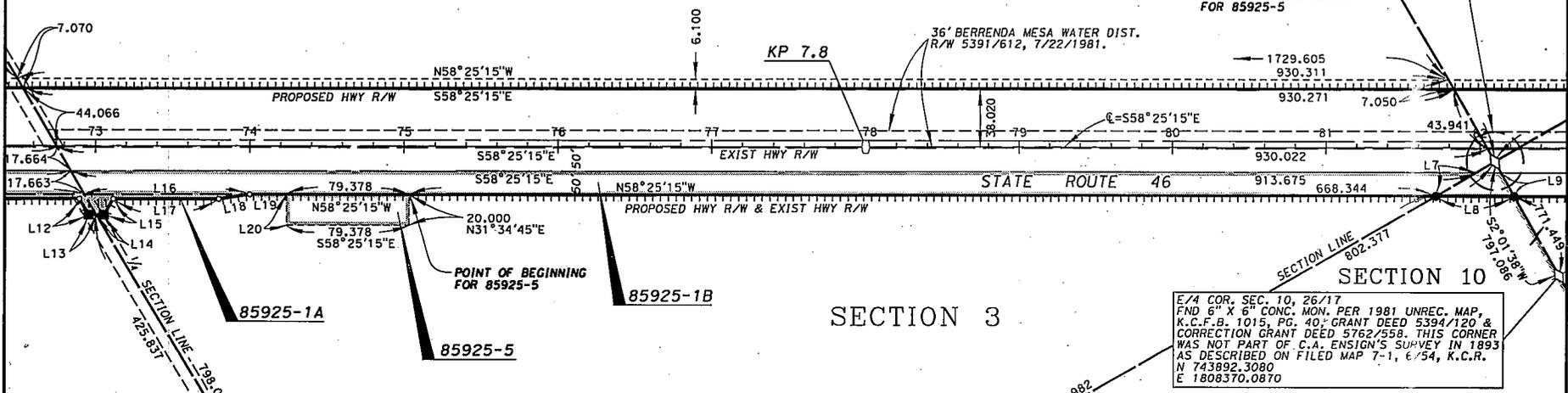
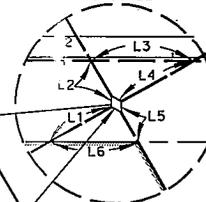


NE COR. SEC. 3, 26/17
 FND. 3" X 3" KERN COUNTY SURVEYOR BRASS PLATE
 MARKED FOR SECTION CORNER ON A 6" X 6" CONC.
 MON., UP 1.4 FT., PER REC. OF SURVEY 21/152, K.C.R.
 N 746284.5720
 E 1808439.8130

NE COR. SEC. 10, 26/17
 SET 2" IRON PIPE W/ BRASS CAP STAMPED"
 CALIF. DEPT. OF TRANSPORTATION" AND
 STAMPED FOR CORNER DOWN 8".
 N 744688.8950
 E 1808398.2840

SECTION 2

DETAIL
 NO SCALE



SECTION 3

S/4 COR. SEC. 3, 26/17
 SET 2" IRON PIPE W/ BRASS CAP STAMPED"
 CALIF. DEPT. OF TRANSPORTATION" AND
 STAMPED FOR CORNER DOWN 6".
 N 744708.8320
 E 1807596.1550

E/4 COR. SEC. 10, 26/17
 FND 6" X 6" CONC. MON. PER 1981 UNREC. MAP,
 K.C.F.B. 1015, PG. 40; GRANT DEED 5394/120 &
 CORRECTION GRANT DEED 5762/558. THIS CORNER
 WAS NOT PART OF C.A. ENSIGN'S SURVEY IN 1893
 AS DESCRIBED ON FILED MAP 7-1, 6/54, K.C.R.
 N 743892.3080
 E 1808370.0870

LEGEND	
	PARCEL 85925-1A FEE
	PARCEL 85925-1B UNDERLYING FEE PARCEL 85925-5 EASEMENTS
	PARCEL 85925 PROPERTY BOUNDARY

NOTES
 Coordinates and bearings are on CCS
 1983(1991.35) Zone 5. Distances and
 stationing are grid distances.
 Divide by 1.00000195 to obtain
 ground distances.
 All distances are in meters unless
 otherwise noted.
 To convert meters to U.S. Survey
 feet, multiply distance by
 3937/1200.

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING AGENCY
 DEPARTMENT OF TRANSPORTATION
**RIGHT OF WAY
 RESOLUTION OF NECESSITY**

EXHIBIT C
 SCALE 1:4000

DISTRICT	COUNTY	ROUTE	SHEET KP/PM	SHEET NO.	TOTAL SHEETS
06	KER	46	6.7/7.8	3	3

01/09/2009

EXHIBIT C3

EXHIBIT C3