

*Kidgercut No. elev.;*  
The elevation of the top of  
the Cement flood gate at  
the west end of the dam is 27!

*J. Chamberlain*  
*Reg. 10/1/37*  
Page 12

Ord # 907 (1937)  
OPTION AND AGREEMENT

THIS OPTION AND AGREEMENT entered into this 17<sup>th</sup> day  
of July, 1937, by and between CORNELIA A. HERSHEY,  
DAVIDELLA HERSHEY, GRACE H. HERSHEY, D. N. HERSHEY and FLORENCE  
F. HERSHEY, hereinafter designated as first parties, and  
SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, a public agency  
operated and created under and by virtue of the laws of the  
State of California, hereinafter designated as second party,

W I T N E S S E T H :

WHEREAS, on June 27, 1911, there was submitted to  
Congress a report by the California Debris Commission, designated  
as House Document No. 81, Sixty-second Congress, First Session,  
setting forth the plan for a flood control project for the  
Sacramento Valley which report and plan were heretofore adopted  
by the Congress of the United States and by the Legislature of  
the State of California; and

WHEREAS, on January 5, 1925, the California Debris  
Commission submitted to Congress a further report, Senate  
Document No. 23, Sixty-ninth Congress, First Session, modifying  
the said plan in some particulars and presenting a revision of  
the costs of completion of the flood control project for the  
Sacramento Valley and reallocating the division of those costs  
among the federal government, the State of California and local  
interests, and said report having been adopted by Congress in  
Public Law No. 569, Sixty-ninth Congress, approved May 15, 1928,  
45 Stats. L., page 534, and by the Legislature of the State of  
California in Chapter 176 of the Statutes of 1925; and

WHEREAS, the Yolo By-pass is an integral part of the  
said plan as adopted and is necessary for the safe passage of  
excess flood waters of the Sacramento River and its tributaries

through said valley and to the sea for the protection of the lands in said valley and for the navigation of said river; and

WHEREAS, by said Senate Document No. 23, the State of California is required as a portion of its share in completion of the said flood control project to acquire the necessary easement and flowage rights over, upon and across the lands situated within the boundaries of the said Yolo By-pass; and

WHEREAS, the Legislature of the State of California, in accordance with Chapter 176, Statutes of 1925, has made appropriations biennially to meet its share of the cost of completion of the flood control project the larger proportion of which has been used in the past in completion of levee construction and in refinancing of assessments for portions of the flood control project; and,

WHEREAS, the said construction of levees and the refinancing of assessments are now nearing completion and funds are now available for further work and the purchase of easements and flowage rights aforesaid for the passage of floods through the Yolo By-pass; and

WHEREAS, Chapter 176, Statutes of 1925, has limited the sum to be appropriated by the State of California toward the completion of the Flood Control Project to \$17,700,000, of which sum \$13,081,000 has been heretofore appropriated; and,

WHEREAS, the Reclamation Board desires to complete the State's share of the project within the amount set forth in Chapter 176, Statutes of 1925, in all portions of said project and in the area affected by the Yolo By-pass:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) in hand paid, the receipt of which is hereby acknowledged and for other good and valuable considerations, it is understood and agreed as follows:

1. That the first parties do hereby grant to the second party, its successors and assigns, an option to purchase

a perpetual right and easement, without recourse to compensation for damage therefrom, for the passage of all flood waters of the Yolo By-pass, which may from time to time inundate the lands of the first parties over and upon and across all of the following described property in the county of Yolo, State of California:

All that certain real property, situate, lying and being in Yolo County, Township 10 North, Range 3 East, Mount Diablo Base and Meridian, and described as follows, to-wit:

✓ All that portion of the south half of Section 8 lying east of the proposed west levee of the Yolo By-Pass.

✓ All that portion of the south one-half of Section 9 lying east of the proposed west levee of and west of the east levee of the Yolo By-Pass.

✓ All that portion of the west one-half of Section 10 lying west of the east levee of said Yolo By-Pass.

✓ All that portion of Section 17 lying east of the proposed west levee of the Yolo By-Pass and north of the center line of the Tule Canal.

✓ All that portion of Section 16 lying west of the east levee of Yolo By-Pass.

✓ All that portion of the northwest 1/4 of Section 15 lying west of the east levee of Yolo By-Pass.

✓ All that portion of Section 20 lying east of the proposed west levee of the Yolo By-Pass.

✓ All that portion of Section 21 lying west of the east levee of Yolo By-Pass, excepting all those portions of Swamp Land Surveys 448 and 449 lying Westerly of the east levee of Yolo By-Pass.

2. This option shall be deemed accepted if and when at any time prior to August 1, 1937, the second party shall pay to the first parties twenty-five per cent (25%) of the purchase price hereinafter specified. If not accepted by payment of twenty-five (25%) of the purchase price prior to August 1, 1937, this option will cease and terminate.

3. The total purchase price of the easement and flowage rights aforesaid over, upon and across the premises aforesaid shall be \$42,576.20, of which \$10,644.05 shall be paid by the second party to the first parties upon acceptance of this option, and the remainder of the total purchase price

shall be paid only if and when appropriations are made by the State Legislature in connection with the flood control project pursuant to the provisions of Chapter 176, California Statutes of 1925, and then only out of the joint navigation and flood control project fund, or such other fund as the Legislature may create for the flood control project. It is expressly understood that said payments are to be paid from no other source than legislative appropriations for the flood control project under Chapter 176, California Statutes of 1925 aforesaid, and out of the joint navigation and flood control project fund, or such other fund as the Legislature may establish in connection with the flood control project aforesaid, and then only in the event that there shall be sufficient money received into that fund, or such other fund as the Legislature may create under Chapter 176 of the California Statutes of 1925 aforesaid and made available for that purpose.

4. At least twenty per cent (20%) of the total amount made available for the flood control project by the Legislature as aforesaid for expenditure by the State Reclamation Board under Chapter 176, California Statutes of 1925, shall be set aside and allocated by the State Reclamation Board for the purpose of meeting payments on accepted options for purchase of flowage rights in the Yolo By-pass, and the amount so made available shall be pro-rated annually upon such accepted options. Such pro-rating shall be made so that the first parties shall receive such proportion of said money so available as the total purchase price hereunder shall bear to the total amount of all accepted options.

5. In the event that full payment of the purchase price hereunder, to-wit, \$42,576.20, shall not have been made to the first parties prior to July 1, 1948, all rights of the second party hereunder shall cease and terminate, and the flowage rights and easements upon, over and across the lands

hereinabove described, herein contracted to be sold, shall revert to the first parties, their successors or assigns.

Any and all payments made hereunder shall be deemed full compensation for all use made by the second party of the property hereinabove described for flood control purposes during the period of this agreement.

6. Upon full payment by the second party to the first parties of the purchase price as aforesaid, prior to July 1, 1948, the first parties shall contemporaneously execute and deliver to the second party a deed covering all of the rights and easements hereinbefore specified upon, over and across the lands of the first parties in Yolo County, hereinbefore described.

7. Title insurance in the full amount of the purchase price issued by a responsible title insurance company shall be provided by the sellers, at their sole cost and expense, contemporaneously with final payment and delivery of deed, and said policy shall insure the second party in the flowage rights hereby granted; subject, however, to state and county taxes and public easements, assessments and taxes of all kinds, including roads, rights of way, reclamation assessments, and any other charges or assessments or incumbrances which in the opinion of the second party will not affect its enjoyment of the flowage rights herein granted, provided however that the preceding provisions of this paragraph shall be deemed subject to certain qualifications hereinafter set out.

8. Acceptance of this option or any compliance with its terms by the parties hereto shall not be deemed or considered an admission of legal liability or obligation except as herein specifically provided contractually, and shall be without prejudice to the right of the parties hereto, and The Reclamation Board of the State of California, to set up any defenses in any action or proceeding now or hereafter brought not growing out of the specific contractual provisions of this option and agreement.

9. This option and agreement and all of its terms and provisions shall be binding upon the parties hereto, their successors and assigns.

10. The first parties, subject to the conditions and agreements hereinafter set forth, do hereby grant to the second party, right of way for the construction, reconstruction and maintenance of the West levee and the connecting levees, of the Yolo By-pass over the following described tracts or parcels of land:

Parcel No. 1

178E-10N-3E All that portion of that certain real property situate, lying and being in the County of Yolo, State of California, being the property of Cornelia A. Hershey, et al., located in Section 20, Township 10 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows, to-wit:

Beginning at a point on the section line between Sections 19 and 20, Township 10 North, Range 3 East, M.D.B. & M., Yolo County, California, said point being located S. 02° 31' E. 2,255.44 feet from the section corner common to Sections 17, 18, 19 and 20 of said Township and Range; thence from said point of beginning and along the easterly boundary of the herein described right of way for the proposed west levee of the Yolo By-pass N. 22° 26' E. 2,419.1 feet to a point on the north boundary of said Section 20, said point being also on the southerly boundary of that certain 30.64 acre tract described in document from Norman P. Ellis to Sacramento and San Joaquin Drainage District, dated March 16, 1935, and recorded in Book 84 of Official Records of Yolo County, at page 69; thence along said last named southerly boundary N. 89° 02' W. 365.34 feet to a point, said point being located S. 89° 02' E. 656.75 feet from said section corner common to Sections 17, 18, 19 and 20; thence leaving said southerly boundary and along the westerly right of way line of the proposed west levee of the Yolo By-pass S. 22° 26' W. 1,554.04 feet to the westerly boundary of said Section 20; thence leaving said westerly boundary and along the said westerly boundary of Section 20 S. 02° 31' E. 806.53 feet to the point of beginning.

Parcel No. 2

159E-10N-3E All that portion of that certain real property situate, lying and being in the County of Yolo, State of California, being the property of Cornelia A. Hershey, et al., located in Sections 8 and 17, Township 10 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows, to-wit:

Beginning at a point where the easterly boundary line of the lands of the first parties in said Section 8 (which line runs north and south) intersects the quarter section line running east and west through the center of said Section 8, which point of beginning is at the westerly termination of a line running east and west between the property formerly owned by D. N. Hershey, also known as David N. Hershey, who is now deceased, the first parties being his successors in interest, and the property formerly owned by Antonio Freitas; thence from said point of beginning easterly and along said east and west boundary between said two properties 340.0 feet to a point; thence leaving said boundary and along the easterly boundary of the herein described right of way for the proposed west levee of the Yolo By-pass the four following course and distances: South 169.1 feet to a point, S. 61° 45' W. 1,860.45 feet to a point, S. 30° 23' E. 1,439.4 feet to a point, and S. 22° 13' W. 2,031.9 feet to a point on the center line of Tule Canal, said point being also on the north-easterly boundary of that certain 162.4 acre tract described in document from Norman P. Ellis to Sacramento and San Joaquin Drainage District, dated March 16, 1935, and recorded in Book 84 of Official Records of Yolo County at page 69; thence leaving said easterly boundary of said levee right of way and along the center line of said Tule Canal N. 40° 21' W. 383.7 feet to a point on the Westerly boundary of said levee right of way, said last named point being also located S. 89° 02' E. 656.75 feet and N. 22° 13' E. 3,912.5 feet from the southwest corner of Section 17, Township 10 North, Range 3 East, M. D. B. & M.; thence along said westerly right of way boundary N. 22° 13' E. 1,360.0 feet to a point; thence continuing along said westerly boundary N. 30° 23' W. 1,936.75 feet to a point opposite the mouth of the existing Knights Landing Ridge Cut; thence northeasterly across the mouth of the said Knights Landing Ridge Cut, a distance of approximately 790 feet to a point located S. 61° 45' W. 1,532.5 feet from the hereinabove described point of beginning; thence along the westerly boundary of said levee right of way N. 61° 45' E. 1,532.5 feet to the point of beginning.

Parcel No. 3

160 E - 10N - 3 E

All that portion of that certain real property situate, lying and being in the County of Yolo, State of California, being the property of Cornelia A. Hershey, et al., located in Sections 7 and 8, Township 10 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows, to-wit:

Beginning for a beginning point for the description of said Parcel No. 3 at a point on the westerly boundary of the levee right of way for the proposed west levee of the Yolo By-pass, said point being located S. 61° 45' W. 1,532.5 feet from the beginning point of the description of

Parcel No. 2; thence from said beginning point of the description of said Parcel No. 3 along and parallel to the existing north levee of Knights Landing Ridge Cut the four following courses and distances: N. 39° 51' W. 677.32 feet to a point, N. 49° 13' W. 478.76 feet to a point, N. 55° 34' W. 408.56 feet to a point, and N. 58° 21' W. 1,201.3 feet to a point; thence across said Knights Landing Ridge Cut S. 30° 58' W. 749.68 feet to a point southerly of the existing south levee of said Knights Landing Ridge Cut; thence along and parallel to said existing south levee the four following courses and distances: S. 59° 14' E. 1,291.16 feet to a point, S. 54° 54' E. 292.14 feet to a point, S. 47° 21' E. 293.70 feet to a point, and S. 43° 20' E. 390.48 feet to a point opposite the mouth of the existing Knights Landing Ridge Cut, said point being also on northwesterly boundary of "Parcel No. 2" hereinbefore described; thence northeasterly across the mouth of said Knights Landing Ridge Cut a distance of approximately 790 feet to the beginning point of the description of said Parcel No. 3.

11. The foregoing option and grant of right of way and easement is made upon the following conditions, terms and agreements:

a. The word "plans" as used herein are the plans exhibited by and shown on blue print, file 50, Div. 4, Sheet 1548-, Sacramento River Flood Control Project, Proposed levees, Yolo By-pass, Knights Landing Ridge Cut, Cache Creek and Cache Creek Settling Basin, Scale 1" - 400'; dated July, 1936, a copy of which blue print has been furnished the first parties. All elevations referred to herein are based on U. S. E. D. datum.

b. Nothing herein contained shall be deemed an agreement that first parties grant or agree to grant land not within the legal description of lands of said first parties nor as an agreement that any other person owns any land within such descriptions, nor as an agreement fixing any boundaries.

c. In the construction of levees or other work in connection with this agreement, borrow areas shall be limited to the following: Parcels No. 1 and No. 3 as hereinbefore in Section 10 described; that portion of Parcel No. 2 lying northeast of a line running S. 30° 23' E. from a point on the



south line of said Parcel No. 3, 300 feet southwest of the extreme southeast corner of Parcel No. 3, and extended southerly to intersect with the westerly projection of that course of said Parcel No. 2 running S. 61° 45' W. 1860.45 feet; and to an area hereinafter called the "high area" and bounded as follows:

On the northeast by a line parallel to and 50 feet westerly of the westerly bank of the "Wallace Ditch"; on the southeast by a line connecting said "Wallace Ditch" and the center line of the Old Tule Canal at a point where the distance between said "Wallace Ditch" and the Old Tule Canal is 150 feet; on the southwest by a line parallel to and 50 feet easterly of the easterly levee of the old Tule Canal; on the Northwest by a line parallel to and 50 feet southeast of the toe of the proposed levee.

In this "high area" no borrow as it proceeds southeasterly shall be made below an elevation which is lower than the elevation of the natural ground 50 feet out from the bank of the "Wallace Ditch"; and to an area known as the "156 acre tract", lying between the Ellis property and the west levee of the Knights Landing Ridge Cut and its extension. In said 156 acre tract, borrow may be obtained to the extent necessary as follows:

After all available borrow shall have been made or projected from all other areas above described, material from the 156 acre tract shall be used for the construction of the extension of the west levee of the Knights Landing Ridge Cut to the west line of Yolo By-pass and for the proposed west Yolo By-pass levee from the mouth of said Knights Landing Ridge Cut to the north line of the property of Norman P. Ellis to the following extent: No borrow shall be taken nearer than 75 feet of the landside toe of the proposed levee nor further away than usual engineering practice dictates in view of conditions; no borrow shall be taken nearer than 50 feet of the east bank of the Old Tule Canal; material shall be excavated as deeply as possible, considering the character of soil and ground water level as affecting the excavating tools, machinery and equipment used by the contractor; excavation shall be consistent and shall be in strips parallel to the two portions of levee so as to take as

small an amount of the land as is reasonably possible. It is the intention of this paragraph to provide that all possible material for borrow shall be used from Parcel No. 3 and from the "high area" rather than from the 156 acre tract for the levee bordering said 156 acre tract on the east and northeast, but such intention does not extend to the uneconomical use of material from said Parcel No. 3 nor from the "high area". This does not imply that the material from the "high area" shall be moved by the drag line method. It is agreed that a distance of 1600 feet shall not be deemed an uneconomical haul in this high area.

d. The north borrow pit of the Knights Landing Ridge Cut shall be connected to the borrow pit for the levee connecting the north levee of the said Ridge Cut with the west levee of the Yolo By-pass near Station 113+64.5 "F".

e. The extension of the westerly levee of Knights Landing Ridge Cut shall be in a straight line along the southwesterly side of the "Wallace Ditch" a distance of approximately 1450 feet to the intersection with the west levee of Yolo By-pass on the original proposed location northerly of the Ellis land, the waterside toe of the proposed extension of said westerly levee of the Ridge Cut shall in no case be nearer than 5 feet to the top of the bank of the "Wallace Ditch".

f. There shall, as hereinafter stated, be a standard and head-on road crossing on the first parties' land immediately north of the Ellis land with the head-on approach on the land side; on the water side there shall be left an area of undisturbed land or plug which shall extend 100 feet northeasterly from the base of said approach and shall extend 250 feet southeasterly from the center line of said road approach. No borrow shall be made within 50 feet of the approach or roadway on the land side of the levee.

g. No borrow material shall be removed from the lands of the first parties except for use in the works herein referred to and located solely on the lands of said first parties.

h. It is not the intention to record this instrument; recording thereof, however, is not prohibited if any of the parties so desire. It is agreed that when the levee construction is completed, new descriptions shall be drawn for the levee and borrow areas in accordance with actual location of the areas actually used and the same shall be substituted for the areas generally described herein. This does not apply to the high area.

i. The following construction details and methods of operation are hereby agreed upon:

The first parties have irrigation ditches established for use of water from Knights Landing Ridge Cut. Nothing herein shall prohibit or prevent first parties from maintaining on their own lands irrigating ditches connecting with water in said cut or with water in the borrow pit running northeasterly from the mouth of said cut, or from maintaining the water at the mouth of the cut or in said borrow pit at a level of 24.9 feet or at approximately the working level of the Wallace Ditch or at approximately the working level required to take water out on their lands from the source to irrigate the same through the Wallace Ditch or through other means. Nothing herein contained is a restriction on the elevation at which first parties may elect to maintain water for irrigation of their lands from the sources indicated, it not being in any way understood that the second party is or will be a party to the irrigation operations of first parties. Second party shall, in the doing of the work which it proposes to do, leave the Wallace Ditch and the head thereof undisturbed. Nothing herein contained shall prohibit first parties from installing, maintaining or restoring

irrigation works for irrigating their lands.

A standard and head-on approach shall be constructed about 200 feet southwesterly of Station 113+64.5 "F", with 14' roadway and 6% maximum grade; a regulation plug shall be left in the borrow pit and two 42-inch levelling pipes with Calco No. 1001 gates shall be installed through the plug at the bottom of the borrow pit. First parties shall have control of said gates for irrigation purposes. The intent herein is to avoid interference with the irrigation of first parties' lands and in case of omission or of uncertainty, this intent shall govern.

Second party shall construct an elevated area of approximately 40 feet in width and to an elevation of approximately 25.5 feet, beginning approximately 200 feet northeasterly of the head of the Wallace Ditch and running northeasterly along or near the borrow pit to connect with the levee at the road approach of the road last referred to. Material for this elevated area may be taken from first parties' lands by the widening of the borrow area adjacent to said elevated area, if sufficient material is not available in borrow areas hereinbefore described. Said elevated area so to be constructed by second party shall be rolled and tamped so as to make a compact body, but water may be taken out through this area by first parties in irrigating their lands and they are not required to leave said area undisturbed. It shall belong to them after it is constructed by second party. Nothing herein contained shall prevent first parties from extending said area southerly or southwesterly to connect with the northerly bank of the Wallace Ditch or from constructing a similar area between the southerly bank of said Ditch and the levee or from extending such area on their lands along the borrow pit northerly of the regulation plug last referred to. Sub-

ject to the qualifications herein set out, the northerly levee and the southerly levee of the Knights Landing Ridge Cut shall be built up as indicated on said plans and made to connect with the westerly By-pass levees.

Second party shall also leave a plug in the borrow pit which will run northeasterly in the most northerly segment of said Parcel No. 2 and shall furnish and install in such plug at the level of the bottom of the borrow pit two 40-inch corrugated iron pipes extending through the plug which pipes shall be approximately 100 feet in length and have Calco No. 1001 gates. And second party shall construct a spur to the said elevated area which shall extend at right angles from such area as hereinbefore described across and over the said last named plug and which spur shall be of the height and width of the elevated area hereinbefore referred to. A distance of approximately 1200 feet shall be left between the said plug hereinbefore mentioned in this subparagraph and the plug at the road crossing which is to be about 200 feet southwesterly of Station 113 + 64.5 "F". First parties shall also have control of this additional elevated area and of said gates last named for purposes of irrigation.

All the levees as shown on the plans hereinbefore mentioned shall be constructed without expense to parties of the first part. From said Parcel No. 1 the levee shall extend southerly at least to a point one-third of the width of the Hauser lands from the south boundary of section 19. The levee starting from the north as shown on said plans shall be continuous to this point last referred to and without gaps excepting the mouth of

the Knights Landing Ridge Cut.

The borrow pit for the levee through Parcel No. 1 shall be on the water side of the levee and shall terminate not less than 100 feet from the west line of Section 20, thereby leaving a plug on lands of the first parties and there shall be no borrow pit in Parcel No. 1 nearer than 75 feet from the north boundary of said parcel. First parties may construct and maintain at their own expense a levee along the said west line of Section 20; said levee shall be of a height not to exceed 4 feet, and may begin at the intersection of said west line of Section 20 with the main west Yolo By-pass levee and may continue southerly along first parties' lands and along said west line of Section 20 to the Southwest corner thereof, thence east at a height not to exceed 3 feet along the south line of first parties' lands; said levee may be built of such crown and side slopes as may be proper to ward off low waters originating westerly or southerly of first parties' lands.

*See  
@alt* → The drainage culvert shown on plans at Station 11 + 00 "F", shall be moved to approximately Station 3+70 "M" and shall be constructed so as not to empty drain water onto lands of the first parties.

The standard road crossing shown on the plans at Station 31 + 40 "F" shall have a maximum 6% grade and shall be 14 feet wide.

The road crossing shown on plans at Station 85 + 00 "F" shall be eliminated.

In place of the road crossing shown at Station 85+00 "F", there shall be a standard and head-on crossing, hereinbefore mentioned, immediately north of the Ellis land, having a width of 14 feet and a maximum grade of 6%, with head-on approach on the land side.

At Station 74+00 "F" there shall be installed a 24 inch drain pipe leading from the 156 acre tract with concrete box inlet, and proper gate. This and each of the other gates shall, unless otherwise specified, be a No. 1001 Calco gate. The top of said pipe shall be 3 feet below natural ground surface.

At approximate Station 14+00 "I", there shall be installed a 36 inch drain pipe with No. 1001 Calco gate on water side and with proper concrete spill box on land side, so as to be used for irrigation pipe when necessary. This pipe shall be laid so that the top of pipe shall be at least 3 feet below ground surface.

The borrow pit on the land side shall not be nearer than 50 feet to this pipe nor shall it extend westerly or northwesterly thereof.

All Calco No. 1001 gates or gates of screw type herein referred to may be operated by first parties during irrigation season for their own use.

At approximate Station 14+00 "NA" there shall be installed two 42 inch drain pipes with Calco No. 1001 gates, said pipes connecting with borrow pit on water side and having suitable concrete box inlets on land side. The tops of the pipes shall be at least 3 feet below ground surface.

A ditch shall be constructed on land side of levee from vicinity of low ground near Station 92+00 "G" to the pipes at approximate Station 14+00 "NA" so as to drain the said low ground. There shall be installed a 24 inch culvert in said ditch under the road crossing near Station 0+00 "NA", and the ditch at its northerly end shall be at least 100 feet south of pipes at Station 92+00 "G".

At Station 92+00 "G" there shall be installed a 42 inch drain pipe with No. 1001 Calco gate with top of pipe at elevation 23.0 and connecting east and west borrow pit in first parties' lands to borrow pit on water side of new levee; first parties may use this pipe for drainage of their lands. Irrigation waters shall not be dumped into the borrow pit on water side in such quantities as to damage lands of second party, but all such water as shall not cause damage during "dry" season may be passed into said main borrow pit and thence south to first parties' lands.

Irrigation pipe installation shown on plans at Station 42+00 "G" shall be moved to approximate Station 44+00 "G" on land of first parties.

j. In the past certain waters have flowed in the Knights Landing Ridge Cut in irrigation season. The present mouth of the cut is on first parties' lands. It is realized that first parties have made use of these waters upon their accessible lands for irrigation and will desire to do so in the future. Should the borrow pits on the water side of the levee extending northeasterly from the mouth of the Knights Landing Ridge Cut on first parties' lands and thence north on lands adjacent to the first parties' lands become clogged or filled so as to impede the flow of water therein, the first parties may at their option clean out such borrow pits and in so doing the material necessarily removed may be thrown and left upon either side of the said borrow pits and water coming from those lands of first parties which lie within the Knights Landing Ridge Cut and which may in irrigation seasons flow northerly into any such borrow pits from the borrow pit on first parties' lands may be used by the first parties in irrigating their lands located westerly of such levees through any pipe systems suitable therefor and provided in such levees under the terms of this agreement or otherwise as hereinafter set out, it being understood that this use shall not injure or inter-



here with such levees and that nothing herein is an undertaking that the second party shall be a party to any irrigation operations of first parties.

Nothing herein shall be construed as a grant to others to pass water over lands of first parties for irrigation purposes. The grants herein made and provided for are all grants of easements limited to the purposes herein expressed, it being expressly understood and agreed that subject only to such easements the right is reserved to the parties of the first part to enter upon, cultivate, farm, irrigate and drain and otherwise use their lands. It is not intended that the rights of the parties of the first part to make those agricultural uses of their lands of the type which they have been making is or shall be granted away, it being specifically understood and agreed that every kind of use that may be conceivably made of the lands of the parties of the first part that is not inconsistent with the easements agreed to be granted therein is and shall be reserved to the parties of the first part. It is explicitly agreed that the party of the second part is not granted and that there is no option or agreement to grant to the party of the second part any right to cultivate or graze or make any farming or agricultural use of any lands herein referred to, but each and all such uses except solely to the extent the same may be limited by the

X { easements referred to shall continue forever in the parties of the first part their successors and assigns. The reservations and conditions which are herein set out may all be incorporated in and shall be conditions of the flowage easement covered by the option herein referred to.

No mining or mineral rights in lands of first parties are granted or are to be granted. While it is not implied in the grant of a flowage right that the rights next mentioned are granted away, nevertheless it is expressly stated that there is reserved to the first parties the right at all times to enter upon all of the lands of the first parties hereinbefore referred to exclusive of those lands affected by easement for levee construction for the purpose of sinking shafts or mining or drilling or sinking wells in any manner usual or customary in searching for or obtaining minerals, oil or gas, together with the right or privilege of erecting derricks and such other structures as are required for the aforesaid purposes and together with the right to remove all such minerals and to remove through pipes or otherwise any oil or gas in said lands. The construction and plac-

ing of storage tanks for storing oil shall be subject to consent of proper authorities. But the first parties shall have the right to have such consent to construction and placing of storage tanks granted in the event the construction and placing thereof does not materially interfere with flowage.

These privileges of operation subject to the same qualifications are likewise reserved in borrow areas, this to be subject to the qualification that the exercise of the privileges shall in no manner materially interfere with the enjoyment of the easements granted therein. But no mineral or mineral rights in said areas are granted to anyone else.

k. First parties shall have the right to have waters coming upon their lands in the By-pass area, including waters that come thereon from Knights Landing Ridge Cut or Cache Creek or other sources, drain off their lands into the By-pass area and to that end may establish drains on their lands having spoil banks not above four feet in height.

First parties shall have the right to have the waters that may be stopped from flowing into such By-pass area by the levee systems of the By-pass or that may accumulate on their lands westerly of and behind such levees drain off through such By-pass area. To accomplish this, they may use the pipes installed for such purposes in accordance with this agreement. To accomplish this they may also use pumping plants.

First parties may use pumping plants both in drainage of and in irrigating their lands providing it is understood and agreed that they shall not have the right to place such works upon or in the levees of the By-pass in such a way as to weaken or injure the same and provided that if it is the law that before a pumping plant or works shall be located upon or in such levees consent of public authority shall be obtained in order to insure a method of installation or operation that will not cause injury, consent of such authority shall be obtained but it is understood that such consent shall not be unreasonably withheld or withheld in any case when first parties are ready to and do comply with

all conditions which will avoid injury to such levees as a result of any such plant installation or the operation thereof.

First parties agree that it is not intended by this paragraph that they shall have the right to interfere with the Bypass levees in any way that will injure the same. The intent is to preserve consistently with the maintenance of such levees for the purposes which they are intended the drainage and irrigation of the first parties' lands and avoid unnecessary injury thereto.

1. All work hereinbefore referred to shall except as otherwise expressly agreed be done by and at the expense of the second party; all material hereinbefore referred to shall, except as otherwise agreed, be supplied by the second party. No assessment of any kind for such work or for acquiring flowage rights in the Bypass, or levees or drains in such levees shall be imposed upon first parties nor upon their lands. The requirement that the work shall be done by and at the expense of the second party, all as last set forth, shall not apply to the work which this instrument states the first parties may do under various provisions hereof.

Second party states that it is not at present authorized by law to maintain the works to be by it constructed and which are hereinbefore referred to. For that reason the second party does not in this instrument agree to maintain such works. To the extent it has authority so to agree, second party does hereby agree that if it hereafter has authority to maintain such works it shall perform such duty. This paragraph is in no way an indication that it is the expectation of the parties that the first parties will be under any obligation to maintain such works or be charged with the expense of so doing. The right and easement to construct such works shall include the right, privilege and easement to restore and maintain the same. Furthermore,

second party agrees, insofar as it has authority to so agree, that in the event it shall become necessary in order to protect the lands of first parties to repair or maintain any such works and the second party has not authority to do such work and the work is not otherwise done, then first parties may do or cause the performance thereof, it being understood that any such work that may be performed by first parties shall be in accordance with consent and regulations of legal authority, but second party agrees, in so far as it has power to agree, that such consent shall not be unreasonably withheld.

m. All levee construction shall be standard construction and shall be provided with a core trench filled and tamped in the usual way where standard construction so requires.

n. While it may not be necessary to so state in the grant of an easement that the grantee shall have the privilege of entry for the purpose of doing the work which this instrument permits, nevertheless it is hereby stated and agreed that there is in connection with the grant of the easement herein granted to second party the right to enter upon the land of the first parties in order to do the work on their land herein referred to. This includes agents, employees, officers, contractors and the bringing in and use of such equipment, tools and materials as are required. However, it is strictly understood that all reasonable care shall be exercised by second party to avoid injury or damage to the first parties and said right shall be exercised and enjoyed only to the extent the same is reasonably necessary. No camp or headquarters established in doing the work shall, without written consent of first parties, be in any field where first parties may have land in cultivation. If entry is through any gate, the same shall be kept closed.

o. Reference herein to a "proposed" west levee of the Yolo By-pass used in describing the flowage option shall not without the further and additional written consent of first parties be taken as referring to land further westerly than the levee as depicted on said plans, and the easterly levee referred to shall not without such written consent be taken as referring to land further easterly than the back levee of District 1600.

p. The following shall qualify paragraph 7: Second party shall, if first parties allow the expense of present title insurance out of their first payment, satisfy itself now as to the present condition of first parties' title, and in said event and if the first parties pay their taxes for 1937-38, no objection shall under paragraph 7 be made to the title of the first parties to any of their land on account of anything up to the time of such title insurance. If title insurance shall be so obtained at the present time, then the only objections that might otherwise be raised under the terms of paragraph 7 hereof shall relate to the period between the present time and the time title insurance is otherwise called for by said paragraph and the only additional title insurance first parties shall be required to furnish under said paragraph 7 shall relate to said last named period, and the only objections raisable shall be such as arise from and after the present time and present time shall mean the date of the execution hereof and provided further that in no event shall an objection to first parties' title be valid that has been caused by any failure of second party to comply with this contract and in no event shall it ever be deemed a defect in first parties' title that an assessment has been levied or attempted to be levied on first parties' land as an expense of creating any By-pass easement, levees or works. And the foregoing is subject to this further qualification: Second party specifically agrees that no objection to first parties' title shall ever be based on the contention that first parties' title has been impaired by occupancy prior to the present time of others beyond their boundaries.

q. This agreement calls for payments. Second party strictly agrees that no preference whatsoever shall hereafter be shown in the distribution of those payments derived from appropriations made by governmental authority to pay for this and like agreements signed by other owners.

r. It is understood that first parties have heretofore constructed on their lands westerly of the proposed westerly By-pass levees a levee extending along the southerly side of the old Sacramento River channel and that they intend to continue to protect their lands westerly of the proposed westerly By-pass levees. First parties shall in the protection of their lands westerly of the proposed westerly By-pass levees have the right to construct on their said lands levees connecting on the land side with the said proposed westerly By-pass levees, although this involves levee construction on State land, but it is understood that this shall not require providing first parties with rights of way for levees on privately owned land of others or the privilege of injuring or damaging such By-pass levees.

s. Notwithstanding the use herein of the word "perpetual" or the use herein of any equivalent language in referring to the grant of any easement or easements mentioned herein, it is understood and agreed that should the second party, its successors or assigns, determine to abandon such easement, then the title of the first parties, their successors or assigns, to the land originally affected by such grant of easement shall be deemed free from such easement without the right to the second party to the return of any compensation that may have been paid for such easement.

t. Execution of this instrument shall proceed as follows: Three copies shall be prepared. Second party shall certify on a third copy that it is a copy of the two copies and deliver such third copy to the first parties. The certifying shall be by the <sup>Assistant</sup> Secretary of the State Reclamation Board. Second party shall then sign and acknowledge the two copies and they shall then be signed and acknowledged by first parties and one thereof delivered back to second party on payment of

the initial payment herein called for less the expense of the title policy mentioned in paragraph "p". <sup>Best call</sup> It is understood first parties do, unless they give written notice to the contrary, elect to proceed as they are permitted to proceed with respect to title as set forth in paragraph "p". <sup>Best - call</sup>

IN WITNESS WHEREOF, this option and agreement, on the day and year first above written, has been executed in duplicate by the first parties who have hereunto set their hands and seal, and by the proper officers of the second party, hereunto duly authorized, and its corporate seal affixed hereto.

Cornelia A. Hershey  
Danielle Hershey  
Grace H. Hershey  
D M Hershey  
Florence F. Hershey  
First Parties.

Witness

\_\_\_\_\_  
\_\_\_\_\_

SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, Acting by and through the Reclamation Board of the State of California.

By J. P. [Signature]  
President.

And by [Signature]  
Assistant Secretary.

Second Party.

STATE OF CALIFORNIA,  
County of Yolo ss.

On this 20th day of July, A. D. 1937,  
before me, Elmer M. Secker, a Notary Public in and for  
the said county and State, duly commissioned and qualified,  
personally appeared CORNELIA A. HERSHEY, DAVIDELLA HERSHEY,  
GRACE H. HERSHEY, D. N. HERSHEY and FLORENCE F. HERSHEY, known  
to me to be the persons whose names are subscribed to the above  
instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my Official Seal, the day and year in this certificate  
first above written.

Elmer M. Secker  
Notary Public in and for the County  
of Yolo, State of California.

STATE OF CALIFORNIA,  
County of Sacramento, ss.

On this 17th day of July, A. D. 1937,  
before me, B. Hicks, a Notary Public in and for  
the said county and state, duly commissioned and qualified,  
personally appeared A. R. GALLAWAY, JR., and S. A. HONAKER,  
known to me to be the President and Assistant Secretary, re-  
spectively, of the Reclamation Board of the State of California,  
and acknowledged to me that they executed the same for and on  
behalf of the Reclamation Board of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my official seal, the day and year in this certificate  
first above written.

B. Hicks  
Notary Public in and for the County  
of Sacramento, State of California.