

When Recorded Return To:  
Central Utah Water Conservancy District  
355 West University Parkway  
Orem, Utah 84058

Ent 338207 Bk 971 Pg 589-603  
Date: 18-JUL-2008 4:03PM  
Fee: None Filed By: MG  
ELIZABETH PALMIER, Recorder  
WASATCH COUNTY CORPORATION  
For: WASATCH COUNTY SPECIAL SERVICE  
AREA 1

**CONFIRMATION OF LOCATION OF  
WATER LINE EASEMENT AND AGREEMENT  
AMONG CENTRAL UTAH WATER CONSERVANCY DISTRICT,  
WASATCH COUNTY SPECIAL SERVICE AREA #1,  
BOYER HEBER LAND, L. C. AND BOYER HEBER CITY, L.C.**

This Agreement to confirm the location of a certain easement for the construction, reconstruction, operation, maintenance, repair and replacement of water pipelines and their appurtenant facilities ("Agreement") is made and entered into this 14 day of June, 2008 by and among the Central Utah Water Conservancy District ("CUWCD") a water conservancy district organized and existing under the laws of the State of Utah, the Wasatch County Special Service Area #1 ("WCSSA") a special service area organized and existing under the laws of the State of Utah, Boyer Heber City, L. C. a Utah Limited Liability Company, and Boyer Heber Land, L. C., a Utah Limited Liability Company, together ("Boyer"). The individual parties to this Agreement may be referred to as a Party or collectively as Parties in this Agreement.

**RECITALS**

- A. Wasatch Irrigation Company acquired pursuant to federal public land laws certain easements and rights of way across the public domain for the construction, operation and maintenance of the Wasatch Canal, in the Heber Valley, Utah. This easement and right of way has been operated and maintained by the irrigation company for purposes of delivering irrigation water to its shareholders. In 1998, Wasatch Irrigation Company conveyed title to the canal and its easements and rights of way to the WCSSA, and WCSSA in turn conveyed the canal and its appurtenant easements and rights of way to the United States, as part of the Wasatch County Water Efficiency Project ("WCWEP"), a feature of the Bonneville Unit of the Central Utah Project.

B. CUWCD constructed the WCWEP which incorporated in places the original Wasatch Canal and in other locations has replaced the old canal with one or more water pipelines and appurtenant facilities both within the historic easement of Wasatch Irrigation Company as well as within new easements as evidenced by the following recorded documents ("WCWEP Facilities"):

1. A right of way and easement for the purpose for construction, operations and maintenance of irrigation pipelines and related facilities, in favor of Wasatch County Special Service Area No. 1, as disclosed by that certain Notice of Interest recorded April 21, 1999, entry No. 213180 in Book, 421, Page 115, and that certain Notice of Location of Easement recorded January 12, 2006, as Entry No. 295159, in Book 821, page 528, in the Records of Wasatch County, State of Utah;
2. A right of way and easement for the purpose for construction, operations and maintenance of irrigation pipelines and related facilities, in favor of Wasatch County Special Service Area No. 1, as disclosed by that certain Notice of Interest recorded April 21, 1999, entry No. 213184 in Book, 421, Page 119, and that certain Notice of Location of Easement recorded June 14, 2006, as Entry No. 303021, in Book 864, page 627, in the Records of Wasatch County, State of Utah;
3. A right of way and easement for the purpose for construction, operations and maintenance of irrigation pipelines and related facilities, in favor of Wasatch County Special Service Area No. 1, as disclosed by that certain Notice of Interest recorded April 26, 1999, entry No. 213286 in Book, 421, Page 452, and that certain Notice of Location of Easement recorded April 7, 2006, as Entry No. 299487, in Book 844, page 18, in the Records of Wasatch County, State of Utah;
4. A right of way and easement for the purpose for construction, operations and maintenance of irrigation pipelines and related facilities, in favor of Wasatch County Special Service Area No. 1, as disclosed by that certain Notice of Interest recorded April 26, 1999, entry No. 213292 in Book, 421, Page 458, and that certain Notice of Location of Easement recorded January 26, 2006, as Entry No. 295729, in Book 824, page 509, in the Records of Wasatch County, State of Utah.

- C. The Parties acknowledge that the exact location of the easement for the WCWEP Facilities is not precisely described in the above referenced recorded instruments, as these easements and rights of way were acquired and recorded prior to completing the design and engineering for the WCWEP. Consequently, these instruments, as recorded, encumber more land than necessary for the on-going operation, maintenance, repair and replacement of the WCWEP Facilities.
- D. Boyer has acquired the land encumbered by the above described easements and rights of way, and is planning a commercial development on this land. To facilitate the development of the Boyer property, Boyer has requested the CUWCD and WCSSA to enter into this Agreement to more precisely describe the exact location of the existing easements for the WCWEP Facilities, and by doing so, reduce the area encumbered by this prior existing easement from those portions of the Boyer property that are not occupied by the WCWEP Facilities or necessary for the continued operation, maintenance, repair and replacement of the WCWEP Facilities or ingress and egress to the easements.

### AGREEMENT

- 1. **Confirmation of Existing Easement:** The Parties hereby confirm the existence of prior exclusive, perpetual easements and rights of way that were acquired by CUWCD, WCSSA, and their predecessors in interest, for valuable consideration, for the construction, reconstruction, operation, maintenance, repair and replacement of irrigation pipelines and appurtenant facilities as part of the WCWEP in, over, across and through certain lands now owned by Boyer together with the right of ingress to and egress from the easements by a practical route or routes across that portion of Boyer's real property.
  - a. The Parties acknowledge that the easements as described in the recorded documents as noted in the Recitals to this Agreement are overly broad and have resulted in encumbering lands that are not physically occupied by WCWEP Facilities and their appurtenances and that are not reasonably necessary for continued operation, maintenance, repair and replacement of the WCWEP Facilities and ingress and egress

to the WCWEP Facilities. The Parties desire to more accurately describe the location of the existing and necessary easements, and thereby remove the encumbrance of these easements from those portions of the Boyer Property no longer required for purposes of the WCWEP.

- b. The Parties agree that the legal description for the existing, perpetual and exclusive easements, which are hereby ratified and affirmed, are more particularly described in Exhibit A ("Easement") attached hereto and incorporated by this reference.
  - c. CUWCD and WCSSA hereby relinquish and terminate all of their easements and rights of way, if any, in all other portions of the Boyer property not specifically described in Exhibit A.
2. **No Encroachment.** Boyer, its heirs, successors, or assigns, shall not:
- a. Construct within the perpetual Easement described in Exhibit A hereto, any buildings or structures of a permanent nature.
  - b. Construct roads, bridges, utilities or other crossings over the Easement, parking surfaces, curb and gutter, sidewalks or other non-permanent improvements, without the prior written permission of CUWCD and WCSSA, which permission will not be unreasonably withheld, conditioned or delayed.
  - c. Boyer and its successors and assigns will not plant trees or woody vegetation within the Easement and acknowledge that CUWCD and/or WCSSA may remove any such vegetation from the Easement without liability to Boyer and its successors and assigns, to facilitate the safe operation and maintenance of the WCWEP Facilities.
  - d. If Boyer or its successors or assigns, places, or permits to be placed, any encroachment on any portion of the Easement without first receiving the written permission of CUWCD and/or WCSSA, then either CUWCD and/or WCSSA shall have the right to remove the encroachment if after five (5) days written notice to Boyer to remove the encroachment Boyer has failed to do so, or has failed to commence its removal, if the removal cannot be accomplished in five days. Boyer shall reimburse all costs incurred by CUWCD and WCSSA in removing any such

unauthorized encroachment, including any costs and reasonable attorneys and other consultant's fees.

- e. Boyer agrees that damage to the Easement or any of the WCWEP Facilities and their appurtenances caused by Boyer's use of the Easement shall be repaired at the sole cost and expense of Boyer.
3. **Exclusive Nature of Easement.** Boyer agrees for itself and its successors and assigns, that that no other easement or easements shall be granted upon, over, under, across or through the Easement without obtaining the prior written consent of CUWCD and WCSSA, which consent will not be unreasonably withheld, conditioned or delayed.
  4. **Modification of WCWEP Facilities.** CUWCD and/or WCSSA may at any time increase their use of the Easement consistent with the purpose of the WCWEP, change the physical location of pipelines or other appurtenant facilities within the boundaries of the Easement, or modify the size of existing pipelines and appurtenant facilities, as they may determine from time to time, without paying additional compensation to Boyer or its successors and assigns.
    - a. CUWCD and WCSSA hereby consent to the granting of a public easement for a pedestrian trail over and across the Easement. It is understood by Boyer that by making improvements within and using of the easement for a public trail that CUWCD, WCSSA or their agents may remove or damage these improvements as reasonably necessary during operation, maintenance or replacement activities without CUWCD and WCSSA incurring any liability to Boyer. CUWCD, WCSSA, or their agents will not be obligated in any way to restore the improvements removed or damaged by their use of the easement.
    - b. Upon completion of operation and maintenance activities, the Districts will only be responsible to bring the repaired area back to original grade. All non-permanent facilities (grass, sprinkler systems, waterlines, asphalt, curbs and gutters, etc.) will be replaced by Boyer or the party ultimately charged with the operation and maintenance of the trail.

- c. If the operation, maintenance or repair of any or all structures and facilities of the Districts located on the easement area should be made more expensive by reason of the existence of the trail encroachment, or other authorized improvements or works of Boyer or its assigns, Boyer will promptly pay to the Districts, their agents or assigns, responsible for operation and maintenance of said structures or facilities, the full amount of such additional expense upon receipt of an itemized bill.
5. **Roads, Bridges, Utilities and Other Improvements Crossing the Easement.** All roads, road bridges, recreational trail bridges, utilities and other improvements ("Improvements") that must cross the Easement for the development of the Boyer property will require the following:
- a. The construction and installation of the Improvements shall be authorized only within a designated area approved by the CUWCD and WCSSA, in consultation with Boyer, the ("Crossing Area") and according to the plan and profile drawings approved by CUWCD and WCSSA, who will not unreasonably delay, withhold or conditioned their review and approval.
  - b. Boyer shall fully repair and rebuild at its sole expense any damage to the existing or future WCWEP Facilities within the Crossing Area or the Easement in general, to the extent the WCWEP Facilities are damaged in the process of installing the authorized Improvements.
  - c. The Improvements so constructed will be owned by Boyer or appropriate governmental agencies or in the case of utilities, by the utility provider, and thereafter be operated, maintained, inspected, protected, repaired, removed and replaced in such a manner as will not interrupt, interfere with or otherwise impair the CUWCD and WCSSA's uninterrupted use of the WCWEP Facilities for the delivery of water to those who have contracted for water delivery. Boyer or utility providers shall give CUWCD and WCSSA not less than ten (10) days prior written notice of any initial construction activity within a Crossing Area, and reasonable notice of any subsequent construction or maintenance activities to be performed within a Crossing Area.

- d. Upon completion of the initial construction of any such underground Improvement, Boyer will cause its contractor to set a permanent marker on either side of the Easement marking the location of the installed Improvement(s). Further, upon completion of the all construction activities on the Property, Boyer will provide CUWCD and WCSSA a complete set of "as built" or record drawings of all Improvements within each designated Crossing Area.
- e. Gravity surface drainage of the Easement must be maintained. No new concentration of surface or subsurface drainage may be directed onto or under the WCWEP Facilities within the Easement without adequate provision for removal of drainage water or adequate protection of the Easement and the WCWEP Facilities.
- f. Following any construction, repair or maintenance, the ground surfaces within the Easement must be restored to a condition as close as is reasonably possible to that which existed before the construction, repair or maintenance activity began.
- g. Except in case of emergency repairs to authorized utility, bridge or road encroachments, Boyer shall give CUWCD and/or WCSSA at least 10 days written notice before entering upon the Easement for the purpose of reconstructing, repairing, or removing the authorized utility, bridge or road encroachments or performing any work on or in connection with the operation of the encroaching utility or structure.
- h. Any nonmetallic encroaching structure below ground level shall be accompanied with a metallic strip within the Easement to facilitate detection.
- i. No hazardous material, substance or waste, pollutant or contaminant, including, but not limited to, those defined in or pursuant to 42 U.S.C. ' 9601, *et seq.* shall be stored on the Easement.
- j. Boyer will inform CUWCD and WCSSA upon the completion of any construction and/or installation work within the Easement. CUWCD and WCSSA will then have the right to inspect the completed work and if the work is not completed in accordance with the approved plans and specifications, Boyer will cause its contractor to take all steps reasonably necessary to remedy the same. All such work will be done at no expense to CUWCD or WCSSA.

6. **INDEMNIFICATION.** Boyer shall indemnify, save harmless, and defend CUWCD, WCSSA and the United States, their officers, directors, employees, agents and independent contractors from and against any and all losses, expenses, costs (including without limitation attorney's fees), claims, actions, demands, damages, and liabilities imposed upon or claimed against CUWCD and/or WCSSA or the United States for bodily injuries, including death, or for damage to property, real or personal, sustained by any person, whether such bodily injuries, death or damage to property arise or are claimed to arise in whole or in part out of negligence or any other grounds for legal liability (including violation of any duty imposed by statute, ordinance, contract or regulation), which result from, arise out of, or are otherwise attributable to Boyer's construction, operation, maintenance and repair of any Improvements it constructs within the Easement; provided, however, that this indemnification shall not extend to any losses, expenses, costs, claims, actions, demands, damages, and liabilities to the extent that they are caused by, result from, or are otherwise attributable to the negligence or willful misconduct of CUWCD, WCSSA or the United States, and their officers, directors, employees, agents and independent contractors.
7. **AMENDMENT.** This Agreement cannot be extended, terminated, modified or amended except by written agreement signed by each of the parties.
8. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement between the parties hereto, and supersedes all prior agreements, representations or understandings between them, whether written or oral, pertaining to the subject matter hereof.
9. **SUCCESSORS AND ASSIGNS.** The rights, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties.
10. **NO PARTNERSHIP OR AGENCY.** Nothing contained in this Agreement and no action by the Parties hereto will be construed by the Parties or by any third person to create the relationship of principal and agent, or a partnership, joint venture, or any other association between the Parties.



11. **SEVERABILITY.** If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
12. **ATTORNEY'S FEES.** In the event this Agreement or any provision hereof shall be enforced by an attorney retained by any Party hereto, whether by litigation or otherwise, all costs incurred, including court costs and reasonable attorney's fees, shall be paid by the Party who breaches or defaults hereunder.
13. **WARRANTY OF AUTHORITY.** The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective officers on the date first above written.

*[Balance of this page intentionally left blank]*

CENTRAL UTAH WATER  
CONSERVANCY  
DISTRICT

By: Thomas Brant  
Its: ODM Manager

Attest: Connie Mullins  
Secretary

WASATCH COUNTY  
SPECIAL SERVICE AREA  
No. 1

By: Steve Farwell  
Its: Chairman

Attest: Heather Bawson  
Secretary

BOYER HEBER CITY, L.C.

By: The Boyer Company, L.C.  
Its: Manager

Steve B. Osth  
By: Steve B. Osth  
Its: Manager

BOYER HEBER LAND, L.C.

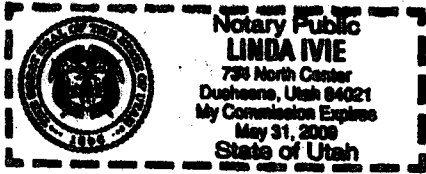
By: The Boyer Company, L.C.  
Its: Manager

Steve B. Osth  
By: Steve B. Osth  
Its: Manager

ACKNOWLEDGMENTS

STATE OF UTAH )  
                  ) Duchesne : ss  
County of ~~Utah~~ )

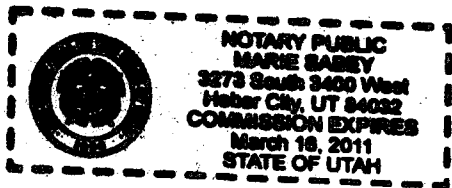
On the 17<sup>th</sup> day of July, 2008, personally appeared before me  
Thomas J. Fisher and N/A, known to me, or  
proved to me on the basis of satisfactory evidence, to be the persons who executed the within  
instrument as President and Secretary, respectively, on behalf of Central Utah Water  
Conservancy District, who duly acknowledged to me that the district executed the same.



[Signature]  
NOTARY PUBLIC

STATE OF UTAH )  
                  ) : ss  
County of Wasatch )

On the 16<sup>th</sup> day of July, 2008, personally appeared before me  
Steve Farrell and \_\_\_\_\_, known to me, or  
proved to me on the basis of satisfactory evidence, to be the persons who executed the within  
instrument as President and Secretary, respectively of Wasatch County Special Service Area No.  
1, who duly acknowledged to me that the service area executed the same.



[Signature]  
NOTARY PUBLIC

STATE OF UTAH )  
: ss  
County of Salt Lake )

On the 14 day of July, 2008, personally appeared before me Steven B Ostler known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument as Manager of The Boyer Company, L.C., the Manager of Boyer Heber City, L. C., who duly acknowledged to me that the company executed the same.



Misty Landward  
NOTARY PUBLIC

STATE OF UTAH )  
: ss  
County of Salt Lake )

On the 14 day of July, 2008, personally appeared before me Steven B Ostler known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument as Manager of The Boyer Company, L.C., the Manager of Boyer Heber Land, L. C., who duly acknowledged to me that the company executed the same.



Misty Landward  
NOTARY PUBLIC

**Exhibit A**

**Boyer – Heber City  
Irrigation Line Easement**

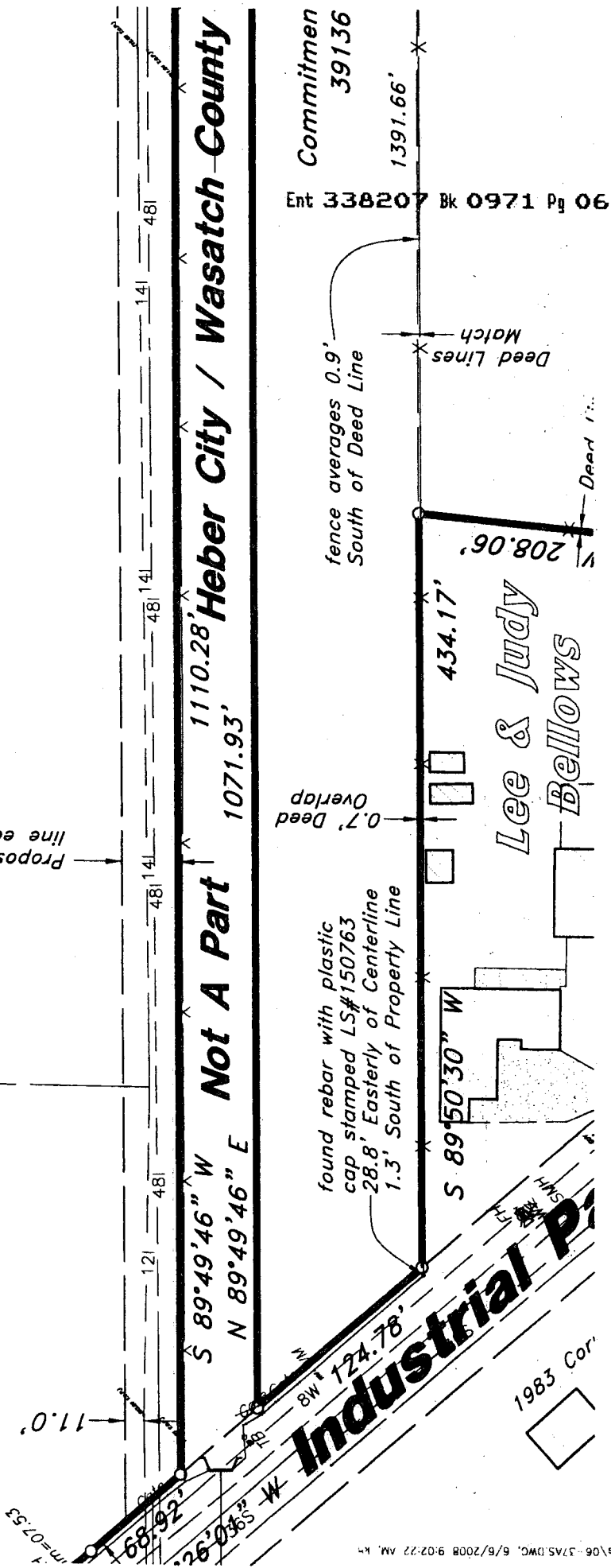
**May 13, 2008  
Revised June 6, 2008**

A part of the Northeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base & Meridian, U.S. Survey in Wasatch County, Utah:

Beginning at a point of intersection of the Northwesterly Line of U.S. Highway 189 and the North Line of the Heber City and Wasatch County Flood Control Channel Parcel located 460.77 feet South 0°06'02" East along the Section Line; and 397.59 feet North 89°33'36" West from the Northeast Corner of said Section 7; and running thence along the North Line of said Flood Control Channel Parcel the following two courses: North 89°33'36" West 552.40 feet; and South 89°49'46" West 1110.28 feet to the Easterly Line of Industrial Parkway as it exists at 33.00 foot half-width; thence North 40°26'01" West 42.12 feet along said Easterly Line; thence North 89°44'45" East 1665.97 feet; thence South 39°13'45" East 46.42 feet to the Northwesterly Line of U.S. Highway 189 as it exists at 50.00 foot half-width; thence Southwesterly along the arc of a 5779.58 foot radius curve to the left a distance 6.94 feet (Center bears South 39°36'03" East; Central Angle equals 0°04'08" and Long Chord bears South 50°21'53" West 6.94 feet) along said Northwesterly Line of the Highway to the point of beginning.

**Contains 57,262 sq. ft.  
or 1.315 acres**

*OHE-1570*



Proposed irrigation line easement

Not A Part  
Heber City / Wasatch County

Commitment 39136

Ent 338207 Bk 0971 Pg 0602

fence averages 0.9' South of Deed Line

0.7' Deed Overlap

found rebar with plastic cap stamped LS#150763 28.8' Easterly of Centerline 1.3' South of Property Line

Lee & Judy Bellows

1983 Cor

50' access  
Station 600

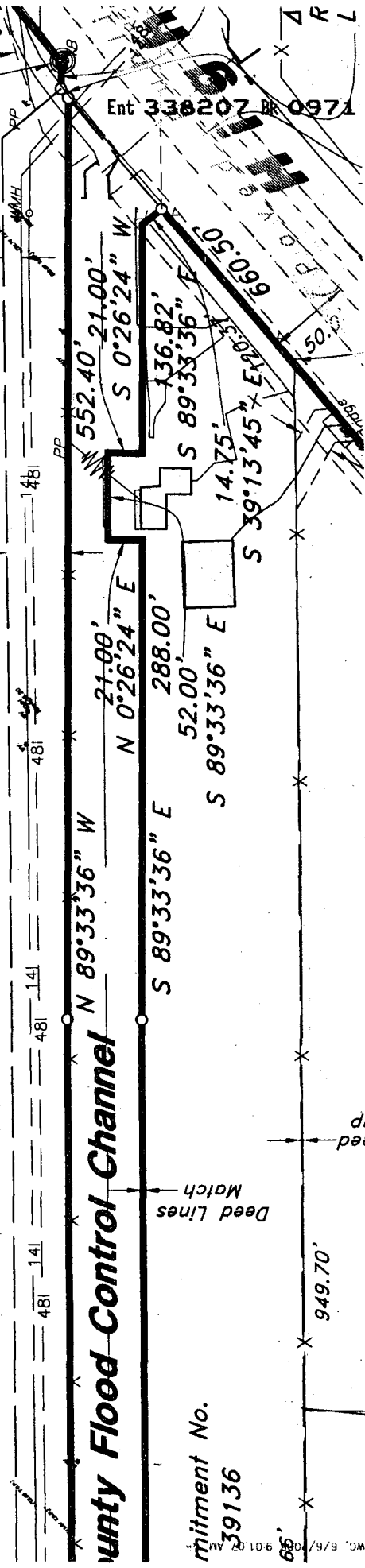
Ent 338207 PL 0971 Pg 0603

found right-of-way  
marker sta 598+095

Proposed Irrigation  
line easement

### County Flood Control Channel

Commitment No.  
39136



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