

T&M King Farms, LLC
P.O. Box 29
Colusa, CA 95932
(530) 723-3119
bking@pacgoldag.com

June 29, 2026

Kristal Davis Fadtke

Environment Program Manager

California Department of Fish and Wildlife

Re: T&M King Farms Comments on Proposed Contract for Administration of Public Benefits for the Sites Reservoir Project

Dear Ms. Davis Fadtke:

T&M King Farms, LLC supports the construction of the Sites Reservoir under the plans originally submitted to the California Water Commission in 2017 but believes that the inclusion of the proposed Dunnigan Pipeline was material and will be severely detrimental to the sustainability of wetlands located on the Colusa Basin Drain south of the Davis Weir Bladder dam and north of Balsdon Weir. The 2017 Project submittal and all previous considerations of a Sites Reservoir Projected included the provision for environmental flows down the full length of the Colusa Basin Drain. The proposed conveyance plans via the proposed Dunnigan Pipeline redirects the flow of water and circumvents a vital six-mile portion of the Colusa Basin Drain that is environmentally important and includes several thousand acres of seasonal wetlands and riparian habitat including our 250 acres of wetlands.

We have several concerns with the engagement process undertaken by the CDFW and the proposed CAPB as presented.

1. The CDFW Has Ignored The Existence and Importance of the USDA NRCS Seasonal Wetlands and Wetland Easements on the Colusa Basin Drain in its Negotiations With The Sites Reservoir Authority.

The CAPB highlights potential benefits for the Butte Basin but ignores the ecological benefits of area of origin wetlands on the Colusa Basin Drain. Several thousand acres of wetlands have been dedicated to USDA NRCS wetland easements resulting in the investment of millions of dollars of restoration yet there has been no effort by the CDFW to protect or enhance these wetlands in the CAPB.

2. The CDFW Has Wrongly Assumed That USBR and the Sites Authority Has Conveyance Easements For Environmental Flows.

The CDFW should reach out to the USDA NRCS regarding the necessary easements to construct the Dunnigan Pipeline across the existing NRCS easements near Byrd Creek and understand any impediments to the NRCS easements from the Flowage Easements that will be required to convey Prop 1 Environmental Flows. We do not believe that any easements or discussions regarding easements have taken place.

The CDFW should clarify if the USBR has the conveyance easement to transport Sites stored water via the Colusa Basin Drain. There is no easement to convey or commingle Stored Water in the channel of the Colusa Basin Drain. The scope of the easement granted to RD 2047 only encompasses the conveyance of return drainage flows and will not provide for a right to transport stored water. Glenn Colusa Irrigation District is operating an unlicensed dam at Davis Weir and is currently violating the terms of the easements granted to RD2047 by conveying irrigation water via the Colusa Basin Drain. The conveyance of stored water and commingling that water exceeds the scope of the conveyance easements granted and violates the water and property rights of downstream landowners on the Colusa Basin Drain including T&M King Farms, LLC.

3. The CDFW Has Not Considered Area of Origin Rights and Environmental Rights under California Fish and Wildlife Code Section 5937. The CDFW Prioritizes Butte Basin Habitat but Leaves Colusa County Habitat and Protected Species High and Dry

The wetlands on the Colusa Basin Drain in the six-miles between the Davis Weir Bladder Dam and Balsdon Weir are some of the most ecologically robust riparian and wetland habitat in the Colusa Basin but the CDFW has totally ignored their importance and has

allowed Glenn Colusa Irrigation District to operate an unlicensed dam to the detriment of fish and other protected species in violation of California Fish and Wildlife Code 5937. This area is documented as habitat for Giant Garter Snakes and other important species which suffer when Glenn Colusa Irrigation District eliminates downstream flows for extended periods of time even in wet years. The channel of the Colusa Basin Drain south of Davis Weir also is habitat for fish which have died during periods when flows have been eliminated.

The proposed CAPB which will rely on Glenn Colusa Irrigation District to restrict or eliminate flows to deliver Sites Water to the Colusa National Wildlife Refuge will result in the continuation of the violation of Section 5937 and the deprivation of area of origin wetlands for the benefit of Butte County and South of Delta Wetlands.

4. T&M King Farms Will Have the Right to Divert Sites Water Conveyed in The Colusa Basin Drain Under License 4433 (Application 12459) and Pursuant to The Terms of The Easement Granted to RD 2047 and Colusa County On August 12, 1920.

The CDFW has underestimated the amount of Sites Water needed for the Delevan and Colusa National Wildlife Refuges because the CDFW has not considered the downstream appropriative rights under State Water Resources Control Board Decision 683 decided on November 27, 1950. In Decision 683 the State Engineer made the explicit finding that the drainage system feeding the Colusa Trough is “essentially natural” and that excess waters have flowed there “from time immemorial.” These rights were granted precisely because of the natural drainage character of the system. Project operations that bypass or alter flows in this reach are inconsistent with the foundational findings that supported these historical water rights. Sites Water would be commingled with the natural, irrigation and drain waters upstream from diverters making the Sites Water indistinguishable and subject to downstream appropriation for beneficial use.

T&M King Farms, LLC and others are entitled to grant easements recorded in the Public Records of Colusa County prohibiting the operation of the Davis Weir Dam because it blocks the natural flow of water and reserves the right to beneficially use all water that naturally flows in the Colusa Basin Drain upstream of its diversion site. The easement reserving these rights were granted for the right to excavate across our property for the channel of the Colusa Basin Drain by my grandfather Alva King on August 12, 1920, as recorded in Book 90 Page 293 of the Public Records of Colusa County. We reserve the right to use the commingled Sites Water under this Easement in addition to our Appropriative

Water Right. We also hold two additional Appropriative Water Rights (Application 26164 and 27184) which would also allow us to use the Sites Water because it will be commingled but subject to Term 91 due to their respective Priority Dates.

5. State Water Resources Control Board Decision 1590 Issued in 1983 Recognizes the Priority of Instream Beneficial Uses In the Colusa Basin Drain South of the Davis Weir Bladder Dam. Sites Water Conveyed in the Colusa Basin Drain Should Also Be Used to Protect Instream Beneficial Uses Downstream of the Davis Weir Bladder Dam.

The SWRCB Decision 1590 regarding diversions from the Colusa Basin Drain approximately one mile downstream of the Davis Weir Bladder Dam include a Term that expressly recognizes instream beneficial rights established in the California Constitution. The Board expressly conditioned the permits to require that diversions cause “no interference with other vested rights and instream beneficial uses” and that “all terms or conditions protecting instream beneficial uses be observed.” (See Paragraph 5 Page 7) Sites Water must also be used to protect the recognized instream beneficial uses in the Colusa Basin Drain downstream of the Davis Weir Bladder Dam.

For your reference State Water Resources Control Board Decisions 683 and 1590 have been attached. We have also attached the Grant Easement from Alva King to RD 2047 and Colusa County on August 12, 1920, as recorded in Book 90 Page 293 of the Colusa County Book of Records.

As you may have seen, based on our oral and written comments, we are fighting as hard as we can to preserve the ecological habitat that has been in our family for over 160 years. We believe the CAPB as currently drafted will lead to the destruction of this habitat once the Sites Reservoir becomes operational primarily because the CDFW did not seem to care about prioritizing this habitat in its negotiations with the Sites Authority. Once the Sites Reservoir becomes operational the criteria for allocating flows will be only within the scope of what the CDFW required, and all other flows will be governed exclusively by profitability and optimal economics for the Sites Authority Participants.

Thank you for your time and consideration

Sincerely,

Ben King

Manager – T&M King Farms, LLC

~~EXHIBIT B-2~~

See WR 83-6

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23945)
and 23946, and Petitions to Change)
Application 23945 and License 4334)
(Application 11881))
WILLIAM P. AND ROBERT L. WALLACE)
DBA WALLACE BROTHERS)
Applicant and Petitioner)

Decision: 1590
Source: Reclamation
District No. 2047
Main Drain Canal
County: Colusa

DECISION APPROVING APPLICATIONS 23945 AND 23946, AND PETITIONS
TO CHANGE APPLICATION 23945 AND LICENSED APPLICATION 11881

BY THE BOARD:

William P. and Robert L. Wallace dba Wallace Brothers having filed Applications 23945 and 23946 for permits to appropriate unappropriated water; protests having been received; a hearing having been held; petitions for change having been filed; protests having been resolved; the Board having considered all available information, finds as follows:

Substance of Applications 23945 and 23946

1. Applicants propose under each of the two applications to divert 17 cubic feet per second (cfs) from RD 2047 Main Drain Canal (aka Colusa Basin Drainage Canal) for irrigation purposes. Application 23945 is limited to 4100 acre-feet per annum (afa) to irrigate a net area of 852 acres owned by applicant. Application 23946 is limited to 6600 afa for a net area of 1883 acres leased by applicant. The diversion season for both applications

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is from April 1 to June 30 and September 1 to September 30. The applications have a common point of diversion within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T14N, R1W, MDB&M.*

Substance of Petition to Change Application 23945

2. The proposed change to Application 23945 is the addition of a second point of diversion on the west bank of the canal (currently the point allowed under licensed Application 11881), directly across from the existing point on the east bank, and a change in the place of use to 852 acres net within a gross area of 1458 acres. The location of the new point of diversion is within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 6, T14N, R1W. There is no change in source or increase in appropriation. The new point of diversion would allow irrigation of the land lying west of the canal.

Substance of Petition to Change Licensed Application 11881

3. It is proposed under licensed Application 11881 to change the point of diversion from the old point on the west bank of the canal to a point directly opposite on the east bank. The authorized place of use consists of 206.3 acres lying west of the canal. It is also proposed to change the place of use to a net 206.3 acres within a gross area of 1458 acres. The location of the new point of diversion is within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T14N, R1W. There is no change in source or increase in appropriation. Approval of the petition would permit irrigating land on both sides of the canal. The license allows diversion of 13 cfs from about April 15 to October 1 of each year.

Applicants' Project

4. The applicants' project is located about 30 miles north of Knights Landing and about 10 miles south of Colusa within the flood plain of the Sacramento River. The canal is an artificial channel constructed by

*All references to Township and Range indicate Mount Diablo Base and Meridian (MDB&M).

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Reclamation District 2047, in the 1920's, to collect and convey irrigation drainage flows. It originates near Willows and flows in a southerly direction for about 70 miles to Knights Landing where it empties into the Sacramento River through controlled gates or into the Knights Landing Ridge Cut which leads to the Yolo Bypass. Wallace Brothers irrigate a total of 2,735 acres, both owned and leased.

Protests

5. Applications 23945 and 23946 were protested by numerous appropriators represented by Knights Landing Ridge Cut Water Users and Drainage Association, by Reclamation District 108 and by H. H. Balsdon as an individual protestant. The protests were based on injury to vested rights due to insufficient water to satisfy all prior rights. At the hearing on October 18, 1977, the applicants and protestants entered into a stipulated agreement and the protests were withdrawn. The agreement, signed by representatives of the above protestants, requires the applicants to cease diverting when notified by one of the protestants that insufficient water exists in the canal. Protests against the petitions to change were not accepted since the protestants' dismissal conditions had already been met.

Availability of Water

6. During the irrigation season the U. S. Bureau of Reclamation (Bureau) and Glenn-Colusa Irrigation District divert water from the Sacramento River for irrigation purposes. Return flow enters the Colusa Basin Drainage Canal (Canal) and is available for diversion and use on lands adjacent to the Canal. Nearly all of the flow in the Canal is return flow or operating waste from use upstream, such as large areas planted in rice

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with resultant high return flow (Staff Exhibit 1). The Canal outlet to Sacramento River is controlled at Knights Landing to allow sufficient water to flow through Knights Landing Ridge Cut into Yolo Bypass to satisfy demands of users on that channel. The flow at the Knights Landing Outfall Gates has been measured by the Department of Water Resources and is published in Bulletins 23 and 130. Applicants' Exhibit 12 shows that for the period 1965 through 1975 during the months of April, May, June, and September water is physically present to supply the applications at least 86 percent of the time. The applicants' Exhibits 5 and 10 indicate the same thing in bar chart form (RT 22 and 23). During July and August there is no water available for appropriation in the Sacramento River and Delta to which the Canal is tributary. The flows in the Canal and Ridge Cut are usually adequate to supply requirements of all the diverters throughout each irrigation season except occasionally in April when rice checks are being filled.

Environmental Considerations

7. The Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) and the State Guidelines, and the Board determines that there will be no significant effect on the environment as a result of the project.

Discussion

8. The Board is the plaintiff in the litigation against the Wallace Brothers alleging illegal diversion of water during the drought in July and August of 1977. Wallace Brothers claimed they were

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taking water from the canal under riparian rights and/or prescriptive rights.

The California Supreme Court's decision in People vs. Shirokow, 26 Cal. 3d 301 (1980) made it clear that one cannot acquire prescriptive rights against the State for diversions initiated after 1914 as is the case here. It is also extremely unlikely that a riparian right exists to take water from the Canal during the mid-summer months since almost all the flow during that time is foreign (imported) water to which riparian rights do not attach.

9. The 2047 Drain Water Users Association is currently negotiating with the Bureau for a supplemental supply from Shasta Dam in July and August. This water would not be supplied directly to Wallace Brothers and other members of the Association through the canal since the Bureau has no conduits capable of getting the water there. Rather, the water would be released into the Sacramento River to flow into the Sacramento-San Joaquin Delta in exchange for water diverted from the Canal.

10. Prior to the Reclamation Reform Act of 1982, Wallace Brothers could not have obtained a satisfactory contract with the Bureau because they own more than 160 acres. The Reclamation Reform Act of 1982 increases the acreage limit to 960 acres and should make it possible to obtain a contract. Wallace Brothers have agreed to contract for an interim supply of water for July and August with Yuba County Water Agency (YCWA) or elsewhere, pending negotiation of a contract with the Bureau. YCWA has water available for sale for July and August of this year.

11. Previously, Wallace Brothers had proposed that 34 cfs could be supplied during July and August by wells. No recommendation was made to the Board for a decision on the applications and change petitions pending a showing by Wallace Brothers that they have operational wells capable of producing this supplemental water supply. As discussed above, Wallace Brothers now intend to purchase supplemental water for July and August. Any permits should be strictly conditioned upon the Wallace Brothers providing clear evidence to the Board that all diversions not authorized by appropriative permits or licenses are covered by water purchase contracts for the full amount of water diverted.

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Conclusions and Recommendation

12. From the foregoing findings, the Board concludes that water is available which can be appropriated without injury to downstream users, and that Application 23945 and 23946 together with pertinent changes as petitioned should be approved and that permits be issued. The Board also concludes that change petitions on licensed Application 11881 should be approved. The approvals should be subject to the conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that licensed Application 11881 be amended to change the point of diversion and place of use as requested. It is further ordered that Application 23945, as amended by petition, and Application 23946, be approved and that permits be issued subject to vested rights. Both permits shall contain all applicable standard permit terms (6, 9, 10, 11, 12, 13)* in addition to the following conditions:

Application 23945

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 4100 acre-feet per year.

Application 23946

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 17 cubic feet per second to be diverted from April 1 to June 30, and September 1 to September 30 of each year. The maximum amount diverted under this permit shall not exceed 6600 acre-feet per year.

*The Board keeps a list of standard permit terms. Copies of these are obtained upon request.

Both Applications

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2. This permit is subject to permittee obtaining an alternate water supply through a purchase contract or use of groundwater for July and August of each year for the place of use specified in this permit. Until a permanent contract for an alternate water supply is signed, permittee shall, prior to March 1 of each year, inform the Board of the source of alternate supply for the following July and August. No water may be diverted under this permit each year until the Board is so notified. If the alternate supply is to be provided by a water purchase exchange contract, the permittee shall, by March 1 of each year, provide the Board a copy of an executed contract covering all diversions from the Canal which are not covered by water right permits or licenses.

3. Permittee shall comply with the following provision which is included in the agreement between permittee, Reclamation District 108, Knights Landing Ridge Cut Water Users and Drainage Association, and H. H. Balsdon as an individual, executed on October 18, 1977:

"Permittee shall cease to divert water under this permit whenever any protestant, who is party to the above agreement, notifies permittee that insufficient water is available to satisfy prior rights. Permittee shall not recommence diverting until notified by the protestant that water is available for appropriation."

4. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue.

5. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other vested rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed.

6. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to the results of a comprehensive analysis of the availability of unappropriated water in the Sacramento River Basin. Action to change the season of diversion will be taken only after notice to interested parties and opportunity for hearing.

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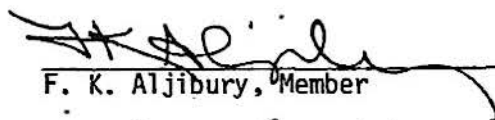
7. This permit is subject to prior rights. Permittee is put on notice that during some years water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that in any year of water scarcity the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing.

8. Permittee shall consult with the Division of Water Rights and the Department of Water Resources and develop and implement a water conservation program or actions. A progress report on development of the program shall be submitted to the Board within six months. The program or proposed actions shall be presented to the Board for approval within one year from the date of this order or such further time as may, for good cause shown, be allowed by the Board.

Dated: February 17, 1983



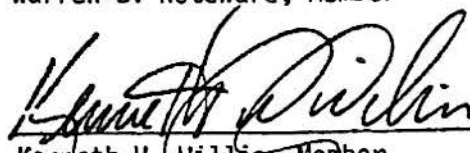
Carole A. Onorato, Chairwoman



F. K. Aljibury, Member



Warren D. Noteware, Member



Kenneth W. Willis, Member

WR EXHIBIT D
1920 EASEMENT DEED

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THIS INSTRUMENT, made the 12th day of August, in the year of our Lord 1920, between I.A.KING and J.S.KING, of the County of Colusa, State of California, the parties of the first part, and J.F.CAMPBELL and CHAS. DE ST. MAURICE, of the same County and State, the parties of the second part:

WITNESSETH: Said parties of the first part for and in consideration of the sum of \$10 gold coin, of the United States, of America, to them in hand paid by the said parties of the second part, the receipt thereof is hereby acknowledged, and by these presents do grant, bargain and sell, convey and confirm unto the said parties of the second part, and to their successors and assigns a right of way for the construction and maintenance of a canal and for the flow of water therein on, over and across, and all that certain lot, piece or parcel of land, situated, lying and being in the County of Colusa, State of California, and bounded and particularly described as follows, to-wit:

1. Commencing at a point which bears N. 89° 43' E. a distance of 861.5 feet from the $\frac{1}{2}$ corner between sections 20 and 19, T. 14 N. R. 1 W. M.D.B. & M., running from said point of beginning S. 5° 55' E. 479.6 feet, thence S 35° 06' E. 667.0 feet, to a point that bears N 0° 39' E. a distance of 301 feet from the center of the S.W. $\frac{1}{4}$ of section 20.

Above mentioned line is the center line of a strip of land 200 feet wide containing 5.26 acres running thru the N.W. $\frac{1}{4}$ of the SE $\frac{1}{4}$ of section 20 T. 14 N. R. 1 W. M.D.B. & M.

2. Commencing at a point which bears N. 89° 40' E. a distance of 1552.8 feet from the $\frac{1}{16}$ corner between S.W. $\frac{1}{4}$ of section 20 and SE $\frac{1}{4}$ of section 19 T. 14 N. R. 1 W., M.D.B. & M. running from said point of beginning:

S 35° 06' E	610.8
thence S 55° 55' E.	908.0
" S. 3° 17' E.	1228.5
" S. 50° 04' E.	798.8

to a point on the midsection line between the N.W. $\frac{1}{4}$ and the N.E. $\frac{1}{4}$ of section 29 which point bears N 0° 06' E. a distance of 251.8 feet from the corner at the center of section 29, T. 14 N. R. 1 W.

Above mentioned line is the center line of a strip of land 200 feet wide containing 18.55 acres, running thru the SE $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ of sec. 29 and thru the SE $\frac{1}{4}$ of section 29 T. 14 N. R. 1 W.

With the right to enter on the said lands with teams, dredgers, machinery and equipment for the purpose of constructing, repairing and improving said canal. Said right of way is granted on the condition that the grantee, or their successors or assigns, said Reclamation District No. 2047 shall construct a substantial bridge across said canal to be constructed sufficient in size and strength to cross with farming machinery of 10 tons in weight, at a point to be described by grantors.

TO HAVE AND TO HOLD all and singular of said premises together, with the appurtenances unto the said parties of the second part and their successors and assigns forever. This right of way is granted by the parties of the first part and accepted by the parties of the second part in behalf of and for the benefit of Reclamation District No. 2047, and said grant is made upon the condition that said District shall construct said canal within a reasonable time, and so construct the same so as to reasonably protect the remainder of the lands of grantor of which the contract over which said right-of-way is granted forms a part from overflow from drainage water from the lands of said District and this conveyance shall not be

WR EXHIBIT D

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constructed or construed as a waiver of any right of action against said District or any other person or persons as damages to the remainder of said lands of grantors by reason of overflow from drainage waters from the lands in said District.

The parties of the first part hereby reserve the right to drain into said canal all flood waters naturally flowing over their lands contiguous to said canal and also all waste water from irrigation used therein.

Said parties of the second part agree not to stop the natural drainage of said lands adjacent to the said right of way but are to leave openings in the said canal for the same.

It is further understood that the said parties of the first part reserve the right for stock to enter upon the right of way hereby granted, and water out of the same at any and all times, also the feed that grows upon said right of way and said second parties hereby agree that they will not in any manner fence said right of way so as to keep said first parties stock from entering upon the same.

Said parties of the first part reserve the right to use any or all waters that they can or may lawfully use that flow down said canal and this grant or right of way does not interfere with any of the original rights or water rights of the grantors to said lands adjacent to said right of way hereby granted.

IN WITNESS WHEREOF, the parties of the first part hereunto set their hands and seals the day and year first above written.

Alice A. King

J.S. King

By Alice A. King his attorney
in fact.

Subscribed and sworn to before me
this 10th day of August, 1900.

Mabel K. Atran

(Seal) Notary Public

State of California }
County of Colusa } ss

On this 10th day of August, 1900 A.D. before me Mabel K. Atran a Notary Public in said County of Colusa, duly commissioned and qualified personally appeared A.A. King, in person, and A.A. King as attorney in fact for J.S. King, known to me to be the person whose name is subscribed to the above and foregoing instrument and he acknowledged to me that he executed the same as A.A. King, and as A.A. King, as attorney in fact for J.S. King.

IN WITNESS WHEREOF, I have affixed my official seal the day and year first above written.

Mabel K. Atran

(Seal) Notary Public

RECEIVED FILED AND RECORDED at request of J.F. Whit Feb. 14 A.D., 1901 at 10 min.
past 2 o'clock P.M. in Book 90 of Deeds page 230 Records of Colusa County.

T. H. Cain, County Recorder.

Fee \$1.20

By Amy Clement, Deputy