

Pak/Young Landon Blake Rebuttal Testimony

(P1) I have been told a boundary surveying issue of importance in this hearing is the location of the easterly boundary of the Pak and Young Parcel. I was directed to examine the necessary deeds to determine the correct location of this boundary. After a careful review of the evidence, it is clear the easterly boundary of the Pak and Young Parcel is located at the centerline or thread of Duck Slough as it existed immediately before it was filled in, but after January 17, 1877, the date of the conveyance from JP Whitney to MC Fisher containing the current Pak and Young Parcel. As a consequence, I conclude the Pak and Young Parcel was directly connected to Duck Slough from the time of the January 17, 1877 conveyance until the slough may have filled in.

(P2) I will now explain how I reached this conclusion. To determine the location of the easterly boundary of the Pak and Young Parcel it is necessary to examine deeds from the time of patent on both sides of the boundary. I will now list Transfers from the time of patent on both sides of the boundary line and explain how the language in the deeds created by these Transfers supports my previously stated conclusion.

Transfer #1 State of California to JP Whitney 1/24/1876

(P3) The patent from the State of California to JP Whitney includes lands on both sides of the easterly boundary of the Pak and Young Parcel, as well as the parcel itself. The patent does not contain a controlling call along or to Duck Slough or High Ridge Levee that would determine the location of the easterly boundary. As a consequence, it was not a material transfer for the purposes of determining the location of the easterly boundary.

Transfer #2 and Transfer #3 JP Whitney to MC Fisher 1/24/1876

(P4) There were two (2) deeds from JP Whitney to MC Fisher recorded on January 24, 1876. In the first of these two deeds I will discuss, hereafter designated as the "West Fisher Deed", a large portion of the area currently known as Lower Roberts is transferred by JP Whitney to MC Fisher. This deed contains a controlling call that helps to establish

the location of the easterly boundary of the Pak and Young Parcel. The controlling call describes portions of Sections 13, 14, 22, and 27 "lying west of High Ridge Levee which extends from Burns Cut Off to Middle River". The Pak and Young Parcel is contained in Section 22 of the sections listed in the controlling call listed above. This controlling call is located at the top of the second page of the West Fisher Deed marked as Exhibit Pak/Young 3C.

(P5) In the second of these two deeds from JP Whitney to MC Fisher recorded on January 24, 1876 that I will discuss, hereafter designated as the "East Fisher Deed", a large portion of the area currently known as Middle Roberts is transferred by JP Whitney to MC Fisher. This deed is for the adjoining parcel on the east side of the West Fisher Deed and the current Pak and Young Parcel. This deed also contains a controlling call that helps to establish the easterly boundary of the Pak and Young Parcel. The controlling call describes portions of Sections 12, 13, 14, 22, 23, 27 and 34 lying south and east of the levee constructed along High Ridge and Duck Slough". This controlling call is located on the 19th line of the East Fisher Deed marked as Exhibit Mussi 3C in the Mussi matter before the board. I will note that the call to Duck Slough in the East Fisher Deed is associated with 7 public land survey system sections, a clear indication to me that Duck Slough extended from Middle River to Burns Cut Off with no interruptions, and the location of this slough controlled the boundary between the two (2) parcels conveyed to MC Fisher, one by the West Fisher Deed and the other by the East Fisher Deed.

(P6) A person unfamiliar with boundary surveying principles, especially as they apply to water boundaries in the Sacramento-San Joaquin Delta, may assume the call contained in the Fisher Deed West would locate the easterly boundary of the Pak and Young Parcel at the westerly toe or centerline of High Ridge Levee. This is clearly not a correct interpretation of the West Fisher Deed when two (2) important factors are considered.

(P7) The first factor is the importance of examining all deeds involved in the subdivision of property that create the boundary line. In this case, we must consider the West Fisher Deed and the East Fisher Deed to locate the boundary line they share. The East Fisher Deed clearly does not convey property to the centerline or west toe of High Ridge Levee, as it directly excludes any property west and north of Duck Slough.

(P8) The second factor is the consideration of the standard practice of boundary surveyors when dealing with water boundaries, especially those in the Sacramento-San Joaquin Delta. Boundary surveyors typically survey and use the centerline of a levee in a legal descriptions or maps as an approximation of the actual fee ownership which would extend to the low water mark or centerline of the adjacent slough, stream, or river. Boundary use surveys of levee centerlines or other meander lines as approximations of the true water boundary for a number of reasons. These reasons include the following:

(1) The levee is a prominent topographic feature providing a good approximation of the actual water boundary. It was typically much easier to survey along the levee, which was clear of vegetation and a higher elevation, than it was to survey along a low water mark or center of channel.

(2) The levee centerline was more permanent and fixed in location than a water boundary, which is subject to gradual movement over long periods of time.

(3) The physical location of the levee typically controlled the location and amount of the land suitable for agriculture and protected from flooding.

(P9) The practice of using a meander line of a prominent topographic feature like a levee, top or bottom of a bank, or the limits of water vegetation, to approximate an actual water boundary is also common boundary surveying practice outside of the Sacramento-San Joaquin Delta. For example: Government Land Office boundary surveyors were instructed to meander all navigable bodies of water encountered during the Public Land Surveys. These instructions can be found from Page 81, Section 3-158 to Page 88, Section 3-207 of the 2009 Edition of the Manual of Surveying Instructions published by the Bureau of Land Management. I will briefly quote one short excerpt of these instructions, from Section 36-176, on Page 84 in the Manual of Surveying Instructions. In this section the Manual of Surveying Instructions quotes a United States Supreme Court decision. It states: "Meander lines are run in surveying fractional portions of public lands bordering upon navigable rivers, not as the boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, as shows, to a

demonstration, the watercourse, and not the meander line, as actually run on the land, is the boundary.”

(P10) It is understood by boundary surveyors that practice within the Sacramento-San Joaquin Delta that fee ownership extends to the adjacent water boundary when older deeds and maps locate the limit of ownership at the centerline of a levee. This practice of Delta boundary surveyors adheres to the principle that the intent of parties to a land transfer can clarify indeterminate or ambiguous references on a deed or map. This principle is clearly explained in the 5th Edition of *Browns Boundary Control and Legal Principles*, which cites three (3) different court decisions outlining the principle. The boundary surveying reference book entitled *Writing Legal Descriptions In Conjunction With Boundary Survey Control* also comments on this principle. It states on Page 7.28: “After finding items in land descriptions as insufficiency, ambiguity, conflicting elements, mistakes, indeterminate calls, etc., one should not overlook the avenue of qualitative analysis that seeks to solve the questionable matters by learning the intent of the parties involved.” *Writing Legal Descriptions In Conjunction With Boundary Survey Control* also states on Page 7.29 that: “It is a general application of the rule that course and distance give way to an adjoiner.” Our examination of the East Fisher Deed as a method to understand the controlling call for the easterly boundary of the Pak/Young Parcel is also in harmony with this additional boundary surveying principle.

A consideration of the two (2) factors described previously reveals the easterly boundary of the Pak and Young parcel as the centerline of Duck Slough as it existed immediately before it was filled in, but after January 17, 1877, the date of the conveyance from JP Whitney to MC Fisher containing the current Pak and Young Parcel. (FN1)

(P11) Any attempt to strictly interpret the calls in the East Fisher Deed and West Fisher Deed in a literal way would result in a strip of property between the west toe or centerline of High Ridge Levee and the east bank of Duck Slough. This would not be supported by the interpretation of the deeds when considering the intent of the original parties or of the parties’ subsequent actions. Applying this same strict interpretation throughout California would result in numerous “no man’s land” strips between the levees and the adjacent water bodies, a result clearly not intended when property in California was conveyed, and a conclusion that would not be reached by any competent boundary surveyor familiar with the survey of water boundaries in general or of boundary surveying in our state. Any competent

boundary surveyor would need to be faced with clear and overwhelming evidence that no reasonable alternative solution that avoided this type of no man's land strip was available before he recognized such a strip as part of his surveying work. In this case, and throughout the Delta, a reasonable alternative solution does exist, as I have described. This is the solution held by land surveyors practicing in the Delta as it is (1) the most reasonable, (2) the most faithful to the intent of the original parties to land transfers within the Delta, and (3) avoids the creation of "no man's land" strip or gaps in ownership that would cause great upheaval in the local land ownership system.

(P12) I have submitted along with this rebuttal testimony a copy of the Subdivision Map filed in Book 8 of Maps and Plats, at Page 32. This is the subdivision entitled "Banta Irrigated Farms". This subdivision map creates parcels from a larger tract in the Sacramento-San Joaquin Delta located along the San Joaquin River. You can see in the top-right corner of this map there is a meander line of the San Joaquin River run along the center of the levee. It is clear from the area label included in Lot 24 shown on the map that the limit of ownership in this case was the water boundary, and not the center of the levee. This is an example of a boundary surveyor using the levee as an approximation of the actual water boundary, along the low water mark of the San Joaquin River.

**Transfer #3 (East Side of Duck Slough and High Ridge Levee)
MC Fisher to Stewart, Bunten, and King
3/15/1877**

(P13) This transfer uses the same controlling call to describe the easterly boundary line of the Pak and Young Parcel as the West Fisher Deed.

**Transfer #4 (West Side of Duck Slough and High Ridge Levee)
MC Fisher to Glasgow Land Company
6/20/1877**

(P14) This transfer uses the same controlling call to describe the easterly boundary line of the Pak and Young Parcel as the East Fisher Deed.

**Transfer #5 (East Side of Duck Slough and High Ridge Levee)
Stewart, Bunten, and King to Vazquez
4/28/1891**

(P15) This transfer and subsequent transfers employ different controlling calls to describe the easterly boundary of the Pak and Young Parcel than the West Fisher Deed and East Fisher Deed. The controlling call for the easterly boundary line of the Pak and Young Parcel in this deed is the center of the High Ridge Levee. I will discuss the implication of this change in the controlling call for the easterly boundary of the Pak and Young Parcel after a brief description of Transfer #6.

**Transfer #6 (West Side of Duck Slough and High Ridge Levee)
Glasgow Land Company to Woods Brothers
11/06/1896**

(P16) This transfer and subsequent transfers employ different controlling calls to describe the easterly boundary of the Pak and Young Parcel than the West Fisher Deed and East Fisher Deed. The controlling call for the easterly boundary line of the Pak and Young Parcel in this deed is the center of the High Ridge Levee.

(P17) The change in controlling calls for the easterly boundary of the Pak and Young Parcel does not change the location of this boundary. A boundary surveyor must still interpret the calls to the centerline of the levee in deeds for parcels on both sides of the boundary line as actual calls to the water boundary between them. It would not be possible to "move" the boundary from the riparian location created by the East Fisher Deed and West Fisher Deed to this new location along the center of High Ridge Levee simply as a matter of deed interpretation. Although the deeds involved in Transaction #5 and #6 and subsequent deeds in their respective chains-of-title do not contain explicit language to this common water boundary, this was clearly the intent when the boundary line common to these parcels was created by the East Fisher Deed and West Fisher Deed.

FN1: I did not determine if Duck Slough was a navigable body of water where it is adjacent to the Pak and Young Parcel. The status of Duck Slough as a navigable body of water would not change my conclusion that the Pak and Young Parcel maintained a water boundary and connection to Duck Slough until it was filled in.