

DERRYBERRY & ASSOCIATES LLP

ATTORNEYS AT LAW
41240 11th Street West, Suite A
Palmdale, CA 93551
(661) 945-6115; FAX (661) 948-4772

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/5/2023 2:10 PM
Reviewed By: R. Walker
Case #2005-1-CV-049053
Envelope: 10856541**

R. Steven Derryberry
State Bar No. 245234
Kimberly R. Rose-McCaslin
State Bar No. 248428
Alexander L. Massari
State Bar No. 307111

Attorneys for CARUSO INVESTMENTS, LLC, a California limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))

**Judicial Council Coordination Proceeding
No. 44008**

**ANTELOPE VALLEY GROUNDWATER
CASES**

**Santa Clara Case No.: 1-05-CV-049053
Assigned to the Honorable Jack Kumar
Department 17C**

Including Consolidated Actions:

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.; Superior Court of
California, County of Los Angeles, Case No.
BC325201;

**NOTICE OF MOTION AND MOTION
TO INTERVENE IN JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JOHN A. CALANDRI IN SUPPORT
THEREOF**

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.; Superior Court of
California, County of Kern, Case No. S-1500-CV-
254348;

Date: February 17, 2023

Time: 9:00am

Judge: Hon. Jack Kumar

Wm. Bolthouse Farms, Inc. v. City of Lancaster;
Diamond Farming Co. v. City of Lancaster;
Diamond Farming Co. V. Palmdale Water Dist.;
Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353840, RIC 344436, RIC 344668;

AND RELATED ACTIONS.

DERRYBERRY & ASSOCIATES LLP
Attorneys at Law

1 TO THE HONORABLE JACK KOMAR, JUDGE OF THE SUPERIOR COURT, ALL
2 INTERESTED PARTIES, ALL PERSONS REQUESTING NOTICE, AND THEIR
3 RESPECTIVE ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on February 17, 2023 at 9:00 a.m. or as soon as the Santa
5 Clara County Superior Court [for above-entitled Court located at 111 N Hill St Los Angeles CA]
6 may hear the matter, Moving Party CARUSO INVESTMENTS, LLC, a California limited liability
7 company ("Caruso"), will and hereby does move the Court for an order granting them leave to
8 intervene in this Action and thereby become Parties to the December 23, 2015 Judgment and
9 Physical Solution ("Judgment") in the above-captioned Antelope Valley Groundwater
10 Adjudication.

11 The general grounds for granting this Motion are as follows:

12 1. Section 20.9 of the Judgment provides that "[a]ny Person who is not a Party or
13 successor to a Party and who proposes to ... acquire a Production Right ... is required to seek to
14 become a Party subject to this Judgment through a noticed motion to intervene in this Judgment
15 prior to commencing Production." This language applies to Movant because it is not presently a
16 named Party, and they seek to acquire Production Rights;

17 2. Movant has entered into an agreement to acquire 1,332 acre feet of Permanent
18 Production Right from the following Parties to this Action as follows (the "Calandri Group"):

- 19 i. Calandri Water Company, LLC, a California limited liability company
- 20 ii. John A. Calandri as trustee of The John and Shannon Calandri 1992 Trust
- 21 iii. Katherine J. Calandri Nelson, Trustee of The Katherine J. Calandri Nelson
22 2008 Trust

23 3. The Watermaster Engineer has confirmed that no Material Injury will result to the
24 Basin from any of these transactions; and that a Material Injury analysis will be conducted once a
25 new point of extraction is identified for the transfers;

26 4. The Antelope Valley Watermaster Board has unanimously approved this
27 transaction and has required Movant intervene and become a Party to the Judgment; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. The Watermaster has stipulated to entry of an Order granting this Motion to Intervene;

6. In addition to the above-noted reasons and procedures that were anticipated and incorporated into the Judgment itself; all of the requirements for both mandatory and permissive intervention (as set forth in Code of Civil Procedure Section 387) are also present in this case; thereby providing triplicate cause to grant this Motion to Intervene.

This Motion is based on the Declaration of John A. Calandri and the Memorandum of Point and Authorities, all of which are attached hereto; the Judgment itself (which specifically authorizes the filing of this Motion); all other pleadings and documents filed in this Action; together with any additional evidence and legal argument which may be presented at or prior to the hearing of this Motion.

Respectfully Submitted,

DERRYBERRY & ASSOCIATES LLP



Dated: 12/27/2022

R. STEVEN DERRYBERRY
KIMBERLY R. ROSE-McCASLIN
Attorneys for Caruso Investments, LLC, a California limited liability company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion stems from a routine agreement for the transfer of Production Rights¹. The transfer has been approved by the Watermaster, subject to the parties intervening into this Action and becoming Parties to the Judgment.

This Motion is filed pursuant to Section 20.9 of the Judgment, which specifies that “[a]ny Person who is not a Party or successor to a Party and *who proposes to ... acquire a Production Right* ... is required to seek to become a Party subject to this Judgment through a noticed motion to intervene in this Judgment prior to commencing Production.” The foregoing language is applicable in the instant case, because Caruso Investments, LLC, a California limited liability company, (hereinafter “Caruso”) proposes to "acquire a Production Right" thereby placing them neatly into the category of persons that were specifically expected to intervene into this Action, and thereby become Parties bound by the Judgment.

II. STATEMENT OF FACTS

A. Identity of the Moving Party.

Pursuant to the Judgment members of the Calandri family were awarded 1,776 acre feet of water. The family elected to receive the water rights through the trusts and entity that comprise their allocation as the Calandri Group without designation or separation of their allocation. Subsequent to the Judgment the Calandri Group has settled the ownership of 1,332 acre-feet of permanent production rights by the proposed transfer to Caruso². The current members of Caruso are John A. Calandri and Katherine J. Calandri Nelson, or various Trusts controlled or for their benefits and is intended to be the successor in interest to the Calandri Group’s water rights.

B. Procedural Background.

On December 3, 2015, this Court entered Judgment in the Antelope Valley Groundwater Cases; Judicial Council Coordination Proceeding No. 4408. The Judgment incorporates by

¹ All capitalized terms in this Motion and supporting documents have the same meanings as those set forth in the Judgment and/or the Physical Solution.

² The remaining 444 acre-feet of permanent production rights are being disposed of via transfer to Calandri Farms, Inc., an entity already a Party to the Judgment by order of this Court.

1 reference the "Physical Solution"; which sets forth the factual and procedural history of this case,
2 and a comprehensive ruling for allocation and administration of water and water rights in the
3 Antelope Valley. The Court adopted the Physical Solution "as the Court's own physical solution"
4 and declared that it is binding upon all parties as part of the Judgment.

5 Among the many parties to the Judgment is the Calandri Group who owns Overlying
6 Production Rights as set forth in the Physical Solution, Section 5.1.1.1. Exhibit 4. Pursuant to
7 Section 5.1.1.3 said Overlying Production Rights may be transferred pursuant to the provisions of
8 Paragraph 16 of the Judgment.

9 **C. Factual Background.**

10 Given the Calandri family's desire to settle the ownership interests of their allocation, the
11 Calandri Group tendered a joint Transfer Request Form to the Antelope Valley Watermaster,
12 requesting its approval of the proposed transaction.

13 During the course of its standard due diligence, the Watermaster and its Engineer
14 confirmed that the Calandri Group possesses the right to use or transfer Permitted Volume in the
15 amount of 1,332 acre-feet per year.

16 Full and proper notice of the foregoing Transfer Request was provided to all Parties via: (i)
17 email from the Watermaster to all Parties that have provided an email address, plus all non-parties
18 that have requested notice of applications and proceedings: (ii) posting the Watermaster Board
19 Agenda, which included the subject Transfer Request, on the Watermaster website; and (iii)
20 posting the Watermaster Board Agenda on the bulletin board in the lobby of the Watermaster
21 offices. No objections to this Transfer Request were filed by any Party to the Adjudication, nor by
22 any other member of the public.

23 On December 7, 2022, at its regular monthly meeting, the foregoing Transfer Request was
24 considered and unanimously approved by the Watermaster Board. In this regard, the Watermaster
25 unanimously adopted Resolution No. R-22-65, Approving Application/or Transfer Pursuant to the
26 Terms of the Judgment with Specified Conditions. Among other things, the Watermaster
27 determined in its Resolution that: (i) the Calandri Group has at least 1,332 acre-feet of unused
28 Production Rights available for use or transfer: (ii) the Calandri Group possesses the right and

1 power to transfer the Production Rights; and (iii) the transfer of Production Rights results in no
2 Material Injury to the Basin.

3 As a condition of final approval, the Watermaster also requested, and Caruso agreed, to
4 intervene as a party to the Judgment.

5 Prior to filing this Motion, Caruso consulted with the Watermaster Engineer and sought
6 and procured the Watermaster's stipulation to this proposed intervention.

7 Caruso has therefore filed the instant Motion to Intervene in the Judgment. As noted
8 above, the Watermaster has stipulated to Caruso's intervention into the Judgment.

9 **III. LEGAL ARGUMENT**

10 **A. The Judgment Specifically Provides for Intervention by Parties Who Propose**
11 **to Acquire a Production Right.**

12 When the Physical Solution was drafted and adopted, the Court anticipated that it would
13 inevitably be necessary to include additional persons as named Parties to the judgment. The Court
14 therefore provided the mechanism to achieve this result. via Section 20.9 of the Judgment, which
15 provides as follows:

16 "20.9 Intervention After Judgment. Any Person who is not a Party or successor to
17 a Party and who proposes to ... acquire a Production Right ... is required to seek to
18 become a Party subject to this Judgment though a noticed motion to intervene in this
19 Judgment prior to commencing Production. Prior to filing such a motion. a proposed
20 intervenor shall consult with the Watermaster Engineer and seek the Watermaster's
21 stipulation to the proposed intervention.... Thereafter, if approved by the Court. such
22 intervenor shall be a Party bound by this Judgment." (Emphasis added).

23 The foregoing language is applicable in the instant case because Caruso proposes to
24 "acquire a Production Right"; thereby placing them neatly into the category of persons that were
25 specifically expected to intervene into this Action, and thereby become Parties bound by the
26 Judgment. Additionally, the Watermaster requires Caruso's intervention into this Action.

27 Intervention is proper under Section 20.9 of the Judgment, because the Watermaster Board
28 has approved the subject transactions, the transactions cause no Material Injury. Additionally, the

1 Watermaster emailed notice of these Transfer Requests to all Parties and other interested persons
2 and posted said Requests on its website and bulletin board, and no Party nor any member of the
3 public objected thereto.

4 Since Movants are one of the exact categories of persons that the Court and all Parties
5 expected to intervene, and their proposed transactions are proper and have been approved by the
6 Watermaster. Movants respectfully request that this Court enter an order granting this motion to
7 intervene.

8 **B. Intervention is Necessary and Appropriate Under C.C.P. Section 387.**

9 Caruso's intervention is also necessary and appropriate under California Code of Civil
10 Procedure Section 387. Section 387 provides that a Court shall permit a nonparty to intervene in
11 an action or proceeding when that party claims an interest relating to the property that is the
12 subject of the action, when the disposition of the action may impair or impede that person's ability
13 to protect that interest, and when that interest is not adequately represented by an existing party. A
14 Court may also permit intervention upon timely application by nonparty that has an interest in the
15 subject matter of the litigation that may be affected, when the intervention will not enlarge the
16 issues in the litigation and when the reasons for the intervention outweigh any opposition by the
17 parties presently in the action. Cal Code Civ. Proc. § 387 subd. (d); *US Ecology, Inc. v. State of*
18 *California*, 92 Cal. App. 4th 113, 139 (2001); *Timberidge Enterprises, Inc. v. City of Santa Rosa*,
19 86 Cal. App. 3d 873, 881 (Cal. Ct. App. 1978).

20 In the instant case, both of the above tests are satisfied. Mandatory intervention is
21 applicable because: (i) both parties claim an interest in the water Production Rights which are the
22 subject of the Transfer Requests; (ii) intervention is presently deemed necessary by the
23 Watermaster for the parties to transfer, own, and/or use the Production Rights; and (iii) no current
24 party represents the interests of the Movant.

25 Permissive intervention is also applicable because: (i) both parties claim an interest in the
26 water Production Rights which are the subject of the Transfer Requests; (ii) intervention will not
27 enlarge, alter, impair, nor in any way affect the issues in the litigation (since the litigation is
28 entirely resolved); and (iii) the reasons for intervention are to comply with the Judgment (which

1 specifically contemplates that new parties would intervene), and to comply with conditions
2 required by the Watermaster (that the parties intervene).

3 The intervention statute is designed to promote fairness and to ensure maximum
4 involvement by all responsible, interested in affected parties. *Mary R. v. B. & R. Corp.*, 149 Cal.
5 App. 3d 308, 314 (Cal. Ct. App. 1983). The statute "should be liberally construed in favor of
6 intervention" *Lindelli v. Town of San Anselmo*, 139 Cal. App. 4th 1499, 1505 (2006). The
7 Judgment, which controls, recognizes these principles through Sections 20.9, which expressly
8 provide for intervention after entry of the Judgment in order to account for persons who "propose
9 to ... acquire a Production Right" after the elate of the Judgment.

10 **C. Movant Has Complied with the Requirements of the Judgment.**

11 As required by Section 20.9 of the Judgment, Movants have consulted with the
12 Watermaster Engineer and obtained the Watermaster's stipulation to Movants' proposed
13 intervention. Movants have also presented evidence that they propose to "acquire a Production
14 Right"; which is precisely one of the categories of persons contemplated to intervene into the
15 action and become a "Party" to the Judgment. Lastly, Movants have properly and duly served this
16 Motion in accordance with Section 20.7 of the Judgment by e-filing on the Court's website.

17 **IV. PRAYER**

18 Movant respectfully requests that this Court grant its Motion to Intervene and thereby
19 become a Party bound by the Judgment, pursuant to Section 20.9 of the Judgment.

20
21
22
23
24
25
26
27
28

Dated: 12/27/2022

DERRYBERRY & ASSOCIATES LLP



R. STEVEN DERRYBERRY
KIMBERLY R. ROSE-McCASLIN
Attorneys for Caruso Investments, LLC, a California
limited liability company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF JOHN A. CALANDRI

I, JOHN A. CALANDRI, declare as follows:

1. I am the Manager for Caruso Investments, LLC, a limited liability company, the Movant herein. I have personal knowledge of the matters set forth herein, and if called as a witness, I could competently testify thereto.

2. I hereby state that the documents attached hereto constitute writings complied and prepared in the regular and ordinary course of business.

3. On November 22, 2022, Calandri Water Company, LLC, a California limited liability company; John A. Calandri as trustee of The John and Shannon Calandri 1992 Trust; and Katherine J. Calandri Nelson, Trustee of The Katherine J. Calandri Nelson 2008 Trust (the "Calandri Group") collectively tendered a Transfer Request Form to the Antelope Valley Watermaster, requesting its approval of the transfer of 1,332 acre-feet of water to Caruso Investments, LLC, a California limited liability company. A true and correct copy of that Transfer Request Form is attached hereto as Exhibit "A" and is incorporated herein by this reference.

4. I am informed and believe that during the course of its standard due diligence, the Watermaster and its Engineer confirmed that the Calandri Group possesses the right to use or transfer Permitted Volume in the amount of 1,332 acre-feet per year.

5. I attended the December 7, 2022 Watermaster Board meeting via telephone conference call. After a thorough discussion and consideration of the matter, I personally heard the Board vote unanimously to approve the transfer request.

6. I am aware that the Watermaster's approval of these transactions is conditioned upon Caruso successfully intervening as a party to the Judgment.

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Caruso Investments, LLC, desires to intervene into this Action and become a Party to the Judgment herein, and I respectfully request that this Court enter an Order to that effect.

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

Dated: 1-5-23



JOHN A. CALANDRI

EXHIBIT A

TRANSFER REQUEST FORM

ANTELOPE VALLEY WATERMASTER

Please include an application fee according to the fee schedule posted on the Watermaster website:

<https://avwatermaster.net>. Make check out to: Antelope Valley Watermaster

Mail to: Antelope Valley Watermaster, 5022 West Avenue N, Suite 102, #158, Palmdale, CA 93551 OR email to: info@avwatermaster.net

Call Watermaster Administrative staff at 661-234-8233 with questions. *Transfer Requests review could take up to 60 days.*

PERMANENT TRANSFER? or No

TEMPORARY/ONE-TIME TRANSFER? Yes or

Permanent Amount 1,332 acre-feet Temporary/One-time Amount 0 acre-feet

IF TRANSFER DUE TO CHANGE IN LAND OWNERSHIP, PLEASE ATTACH DEED AS PROOF OF SALE OR A PRELIMINARY TITLE REPORT

Date Requested 11/22/2022

If Temporary, Calendar Year(s) to be Used n/a

Which Party will be paying the annual Administrative Assessment(s) for the transferred water? Transferee

Is either Party a member of the Antelope Valley United Mutuals Group? Yes or

TRANSFER FROM (SELLER/TRANSFEROR):

Name See Attached Schedule Street Address PO Box 8010

City Lancaster State CA Zip Code 93539

Phone 661-488-8073 email john.calandri@icloud.com

APN#(s) where transfer originates (i.e., production well location(s)) Kern Co. APNs: 375-010-002, 375-010-015, 375-010-016, 375-010-017, 375-010-018, 375-230-027, 375-230-028, 375-230-030; and LA County 3170-012-002

APN#(s) (or water supply service area) where groundwater was used Same APN#s as where transfer originates

TRANSFER TO (BUYER/TRANSFEEE):

Name Caruso Investments, LLC Street Address PO Box 8010

City Lancaster State California 93539

Phone 661-488-8073 email john.calandri@icloud.com

Note: Legal notices under the Judgment will be sent to the above email address. You are required to keep this information up to date. Please notify the Watermaster of any changes.

APN#(s) (or water supply service area) where transfer will be pumped and used Kern Co. APNs: 375-010-002, 375-010-015, 375-010-016, 375-010-017, 375-010-018, 375-230-027, 375-230-028, 375-230-030; and LA County 3170-012-002

Purpose of Transfer:

- Permanent Transfer resulting from Property Sale/Transfer [PLEASE ATTACH DEED OR PRELIMINARY TITLE REPORT]
- Additional Source of Water
- Other, explain Transfer of permanent rights to entity owned by principals of Transferors

Water is to be Transferred from/to: (transferred water retains its original water type):

- Current Year Production Right: amount _____ acre-feet
- Carry Over Water: amount _____ acre-feet
- Storage: amount _____ acre-feet
- Other, explain Permanent overlying production rights of 1,332 acre feet

(Transferred water retains its original water type – e.g., transferred Carry Over Water remains Carry Over water)

WATER QUALITY AND WATER LEVELS (not required if transfer is in association of change of land ownership)

Are Parties aware of any water quality issues that exist in either the area transferred from or to? Yes or No
If yes, please explain: _____

Please provide groundwater elevations in the areas affected by the transfer. _____

Are Parties aware of any water level issues that exist in either the area transferred from or to? Yes or No
If yes, please explain: _____

MAPS

➡ Please include a map of the area where the water was used by the Transferor and a map of the area where the water is intended to be used by the Transferee. Include locations of production facilities involved in or affected by the Transfer. This map can include all possible locations of past source and use and future source and use.

SECURITY INTEREST OR LIENHOLDERS

For Permanent Transfers, please provide a list of all parties with a recorded security interest, deed of trust or a lien in such real property or in crops growing or to be grown thereon, and attach copies of written notices to such parties and copies of return receipts. _____

The transfer shall be conditioned upon:

1. Transferee shall succeed to the right of Transferor under the terms of the Judgment.
2. Transferee shall only use Transferred waters for reasonable and beneficial uses.
3. Any Transferee not already a Party to the Judgment must intervene and become a Party to the Judgment.
4. All applicable assessments (Administrative and Balance) and transfer fees are paid in full.
5. If the Watermaster determines that the transfer has resulted in a material injury, the parties will be required to work with the Watermaster Board to mitigate that material injury.
6. For Permanent Transfers, the Parties agree to duly record in the office of the appropriate County Recorder a document reflecting the Permanent Transfer reflected in this Transfer Form.
7. The Transfer Request Form must bear the notarized signatures of both the transferor and the transferee.
8. The Seller/Transferor must be the owner of the water rights pursuant to the Judgment. No Party may transfer water rights held pursuant to a lease agreement or other private contract with the actual water rights owner.

SIGNATURES

I understand and agree to abide by the terms of the Antelope Valley Adjudication Judgment. I swear under penalty of perjury that the information provided on this Transfer Request Form is correct to the best of my knowledge, that I am authorized to enter into this Transfer on behalf of the party indicated below and to bind that party on whose behalf I am signing, and that signing this Transfer Request Form is within the scope of my authority, and that the signature below, whether original, electronic, or photocopied, is authorized and valid, and is affixed with the intent to be enforceable. I understand that it is my responsibility to notify the Antelope Valley Watermaster of any changes in any of the information provided on this form within 15 days. I also understand that additional information may be required if there is a suspected potential for a material injury as defined in the Judgment.

Signature of Transferor See attached signature page Date _____

Signature of Transferee See attached signature page Date _____

To be completed by the Watermaster:	
Watermaster Engineer Approval <u>Katherine White</u>	Date <u>11/29/22</u>
Watermaster Board Approval <u>Robert Parry</u>	Date <u>12-7-2022</u>

ATTACHMENT TO TRANSFER REQUEST FORM
ANTELOPE VALLEY WATERMASTER

Transfer From (Seller/Transferor):

Name: Calandri Water Company, LLC, a California limited liability company, John A. Calandri, as trustee of "The John and Shannon Calandri 1992 Trust" and Katherine J. Calandri Nelson, Trustee of "The Katherine J. Calandri Nelson 2008 Trust"

SIGNATURES OF TRANSFEROR:

Dated: 11-9, 2022

CALANDRI WATER COMPANY, LLC


By: JOHN A. CALANDRI, Manager

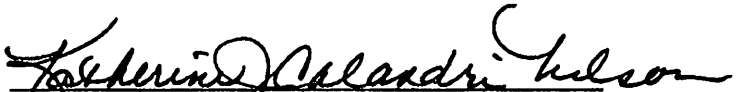
Dated: 11-9, 2022

The John and Shannon Calandri 1992 Trust


By: JOHN A. CALANDRI, Trustee

Dated: 11-10, 2022

The Katherine J. Calandri Nelson 2008 Trust


By: KATHERINE J. CALANDRI-NELSON,
Trustee

SIGNATURE OF TRANSFEREE:

Dated: 11-9, 2022

CARUSO INVESTMENTS, LLC


By: JOHN A. CALANDRI
Its. MANAGER

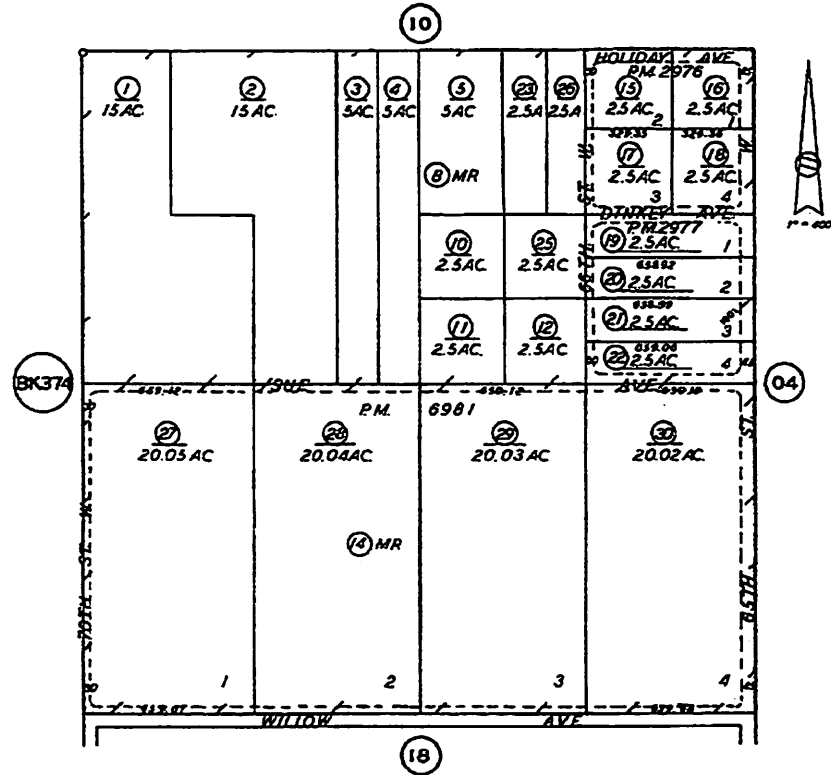
375-23

NW1/4 SEC.27 T.9N. R.13 W.

SCHOOL DIST 119-4

375-23

*Kern County
Trustee Property
+
Trustee Property*



Note: This map is for assessment purposes only. It is not to be construed as portraying legal ownership or divisions of land for purposes of zoning or subdivision law.

**ASSESSORS MAP NO. 375-23
COUNTY OF KERN**

Transfer Property/Transfer Property LA County

3170 ; 12

SCALE 1" = 800'

1989

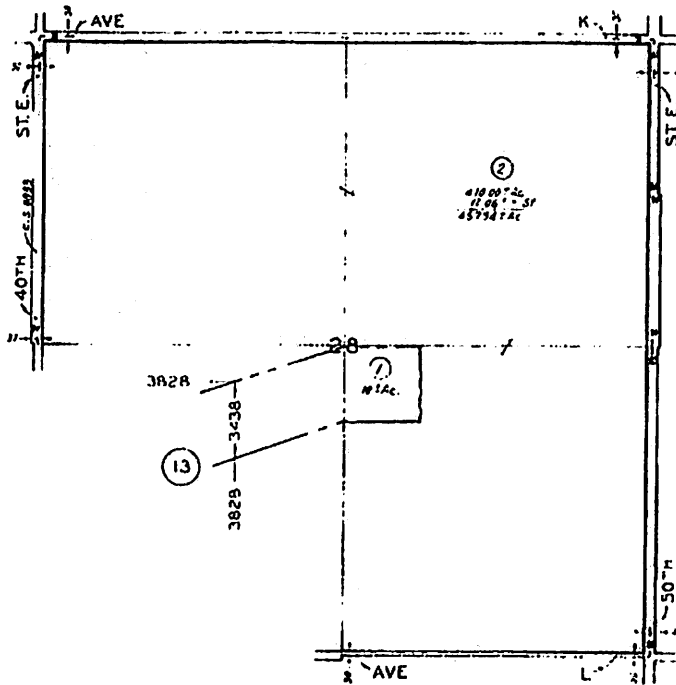
BK
3150

1077



33

9



BK
3386

ENDP
3138
3828

FOR PREV ASSM'T SET
3148 - 2

T. 7N, R. 11W

1989 SURV. MAP
LA. DIV. OF LAND MANAGEMENT, PA. 11