

TRANSCRIPT OF AGREEMENT
DATED APRIL 23, 1894
RECORDED IN BOOK 67 OF DEEDS AT PAGE 489

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This Agreement, made the 23rd day of April 1894, by and between B. D. Murphy, F. A. Hyde, J. H. Schneider, James C. Smith, J. R. Spring, F. C. Bethell, A. Y. Bethell, N. R. Harris, Mary. E. Harris and J. B. Haggin and A. E. Davis, in the name of Haggin & Davis.

Witnesseth, whereas the above named parties are co-terminous owners of certain tracts of swamp and overflowed land in Township Two <2> North of Range Three <3> East of Mount Diablo Base and Meridian, in the County of Contra Costa, State of California, that is to say, the said B. D. Murphy as successor of the Commercial and Savings Bank of San Jose owns 400 acres of said land, the said F. A. Hyde and J. H. Schneider own 110 acres of said land J. C. Smith owns 485 acres of said land, J. R. Spring owns 500 acres of said land, F. C. Bethell owns 851 acres of said land,

A. Y. Bethell <widow> owns 555 acres of said land, N. R. Harris owns 263 acres of said land, Mary E. Harris owns 176 acres of said land, the said Haggin and Davis own 1311 Acres of said land.

And, Whereas, the parties hereto propose to reclaim and protect the said lands and the whole thereof from overflow by completing a certain new levee, hereinafter called a new levee, and by building up and repairing a certain old levee, and thereafter maintaining the entire levee system reclaiming and enclosing the lands hereinbefore designated.-

Now, Therefore, in consideration of the premises and of the benefits to accrue to each of the parties hereto, and of the mutual covenants herein contained, each party to this contract agrees and covenants with every other of the parties hereto, as follows, to wit: That, within thirty days after the execution of this agreement, three trustees shall be appointed by a majority of the owners in acreage of said lands, who shall hold their office during the will of such majority, provided that if a vacancy in the board of trustees occurs from any cause, the same shall be filled before the said trustees proceed to do any act hereunder. <The term "majority of owners in acreage of lands," is for the purposes of this contract defined to mean that each acre represents one vote. > It shall be the duty of said trustees any two of whom may act with like force and effect as if all concurred, to execute the objects and purposes of this contract, and, when they shall have accepted their appointment, they shall, by virtue of their office become and be agents and attorneys-in-fact of all the parties to this agreement, with power to act as herein provided, or as may be hereinafter directed by a majority of the owners in acreage of said lands.

It is further agreed that the trustees accepting and acting shall have power to select, appoint and control a superintendent of the work herein provided to be done, and they shall have authority to fix the compensation to be paid such superintendent, and the parties hereto agree and promise to pay the same. The trustees shall serve without compensation.

It is mutually agreed and understood by and between the parties hereto, that the said new levee has been partially constructed from a point on said lands known as and called "the dam," on Taylor's Slough, up and along, or near the easterly or northerly bank of said slough, to a point on the land of Hyde and Schneider, in Section 16 of said Township, where a certain dam has been constructed, and it is further understood and agreed between the parties hereto, that said new levee

shall be fully completed and built up where necessary, along that portion which has been partially constructed, and shall then be extended to and built from the point to which the same is now built, thence along the northerly bank of said Taylor's Slough in a southeasterly direction to a point on the west bank of Sand Mound Slough, where it shall intersect the old levee now constructed along said Sand Mound Slough.

The said new levee with necessary or proper flood gates shall be built up and fully constructed by the said trustees, or under their supervision, upon the said route and it shall be their duty and they shall have authority, which is hereby given them, to ascertain the cost of the work already done upon said new levee, and what it will cost to complete the same to the point of the terminus of the said route, with necessary and proper flood gates. Said old levee is described as follows, to wit: Beginning at a point where there is a dam in Taylor's Slough on the southerly line of the east half of Section Five <5>, in said Township, running thence easterly along the southerly bank of Taylor's Slough to the junction with Piper Slough, thence easterly and southerly along the southerly bank of Piper Slough to the end of the same, thence southeasterly across the south half of Section Eleven <11> to a point in the Northwesterly bank of Sand Mound Slough near its intersection with Taylor's Slough, and thence continuing in a south westerly direction to a point in Section Twenty-two <22> where it will form a junction with the new levee to be built on Taylor's Slough as aforesaid.

The said trustees shall assess the whole cost of the new levee both the part completed and the extension to be built as aforesaid, and also the cost of repairing the old levee and of maintaining all levees necessary to protect the entire body of land from overflow, upon each of the parties hereto in proportion of the number of acres owned by each as hereinbefore stated and set forth.

And each of the parties hereto agrees and covenants with all the other parties, and with said trustees, that he will, within thirty days after receiving notice in writing from said trustees of the sum or amount of money which has been by them assessed against him for account of said cost, pay the same to the said trustees or upon their joint order, and the said trustees shall have and they are hereby given and granted joint power and authority to make and enter into contracts and to let contracts for doing said

work, in the associate named of the parties hereto, and all the parties expenditures and outlays paid out or incurred for the purpose of keeping up the whole system of said levees and every part thereof, so as to protect the entire body of swamp and overflowed land mentioned herein, and every tract or parcel thereof from overflow, shall be borne and paid by all the parties thereto, and by their successors in interest in said lands in proportion to and pro rata the number of acres of land owned by each of them within the reclaimed and protected territory exclusive of the portions covered by the levees and by sloughs outside of the levees.-

And it is further agreed that when so built up and completed the said levee system, ditches and flood gates shall be under the control and management of said trustees.

It is understood by and between the parties hereto, that the lands, or a large portion thereof, are now covered by and under overflowed waters, so that it is unpracticable at this time to survey the same to ascertain the exact number of acres owned by each; and the number of acres hereinbefore declared and recited to be owned by each party hereto is declared to be the approximate number of acres owned by each; and the assessment hereinbefore provided and directed to me made by the trustees, shall be made by them upon the basis of the number of acres hereinbefore declared to be owned by each. And every party hereto promises and agrees with every other party, and with said trustees, that he will pay the sum of money so assessed upon the basis of ownership so agreed upon as aforesaid; provided however, and it is herein and hereby further mutually agreed that the said Trustees shall, as soon as practicable after the said lands shall be in a condition therefor, determine the amount or number of acres owned by each of the parties hereto <exclusive of the land under the sloughs outside of the levee, and under the levee> by actual survey, and the return of the such survey shall determine conclusively the number of acres owned by each. and the proportionate amount of the assessment and expenses that are to be charged to and paid by each of the parties hereto; and the parties further agree that the said charge and assessment shall be equalized upon the basis of the said survey, and if it shall be then ascertained and found to be a fact that any one or more of the parties has been assessed or charges and shall have paid more than an exact proportionate assessment upon his or her number of acres, and that if any of he parties hereto have been assessed

and charged and shall have paid less than his or her exact and proper assessment then those who have been assessed and have paid to little shall be re-assessed for the deficiency, and those who have paid an excess shall be reimbursed the sum so paid in excess of their just proportion. And, in all cases where, by reason of any over payment, any party is entitled to recoup, or where, by reason of any re-assessment, any party or parties is or are found to be indebted to the common fund, or to one another, there shall be a mutual right of action between the parties to this agreement, for the establishment of right in accordance with the terms of this contract.-

It is further mutually agreed by and between the parties hereto that this agreement and contract and the covenants contained herein shall run with and attach to the lands of the several parties, and shall remain in full force and be binding upon each of the parties hereto and upon his or her heirs, personal representatives and successors in interest.-

And it is further expressly understood and notice is hereby given to all whom it may concern that the trustees acting for the parties hereto shall not be liable <except as owners and parties to this contract>, to any person upon any contract, verbal or written, which they may enter into for the doing of said work, or for doing any work under or by virtue of this contract.-

The debt of any party to this contract, accruing under or by virtue of its provisions, shall be a lien upon the lands owned by him within the reclaimed district, and shall continue so to be until such debt is paid, but no party to this contract shall be liable for any debt, incurred under its provisions, exceeding in amount the value of the land owned by him or her within the tract so to be reclaimed; and, if any part to this agreement shall fail to pay the assessment as aforesaid, the lien on the land owned by him, hereby created, may be foreclosed in the manner provided by law, but without further personal liability.

A certain agreement made and entered into on the 30th day of March 1882, by and between N. R. Harris, W. K. Bethell <predecessor in interest of A. Y. Bethell>, F. C. Bethell, James C. Smith, J. R. Spring, and the Commercial and Savings Bank of San Jose <predecessor in interest of B. D. Murphy>, which agreement was duly recorded in the office of the County Recorder of the County of Contra Costa, in Vol. 21 of miscellaneous records, page 583 and following, is hereby cancelled & terminated.

And, Whereas the 263 acres of land owned by the said N. R. Harris are now mortgaged to the said J. C. Smith to secure payment of the debt herein mentioned by that certain mortgage dated and enacted by, the said N. R. Harris to the said J. C. Smith on the 10th day of May 1888, and recorded in the office of the County Recorder in and for the County of Contra Costa, State of California, on the 15th day of May 1888, in Vol. 25 of Mortgages, page 322, to which reference is hereby expressly made; and whereas the debt described in said mortgage is past due and unpaid, and said mortgage is in process of foreclosure; now therefore, the said J. C. Smith in consideration of the premises does hereby agree to pay all assessments which may be levied by said trustees on said 263 acres of land, during the life of said mortgage; provided, however, that it shall in no wise prejudice the rights of said J. C. Smith to foreclose said mort[-]gage, and enforce the collection of the debt therein mentioned, provided that said Smith agrees, as such mortgagee, that the covenants of this contract running with the lands involved by this contract as hereinbefore expressed, shall extend to the said mortgage interest, and said mortgagee's interest in said mortgaged lands shall be subject to the like lien affecting all the lands involved as hereinbefore expressed.- Any controversy or dispute between any of the parties to this agreement which may arise by reason of any of the provisions hereof, in which the thing or amount involved shall not exceed in value one hundred dollars, shall be settled by the board of trustees and such decision shall be final and binding upon all the parties concerned, without further appeal. In Witness Whereof, the parties aforesaid have hereunto subscribed their names the day and year first above written.

J. B. Haggin.	F. A. Hyde.
By-Lloyd Tevis,	Jas. R. Spring.
his attorney in fact.	A. E. Davis.
N. R. Harris.	F. C. Bethell.
J. H. Schneider.	J. C. Smith.
Mary E. Harris.	B. D. Murphy.
	A. Y. Bethell.

[Notary acknowledgments not transcribed.]

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Recorded at Request of N. R. Harris, May 18, A.D. 1894, at
30 min. past 7 P. M.

C. S. Cousins,
County Recorder,
By A. E. Dunkel,
Deputy Recorder.