



RAILROAD TITLE RESEARCH ALONG THE INLAND FEEDER PROJECT

By Gerald L. Van Gompel, PLS

The Metropolitan Water District of Southern California (Metropolitan) provides approximately 60 percent of the water used by over 16 million people in Southern California. To ensure adequate supplies of water well into the next century, Metropolitan has embarked on a multibillion-dollar capital improvement program. A major component of this program is the \$1.2 Billion Inland Feeder, a 12-foot diameter tunnel/pipe-line currently under construction.

When completed in 2004, the Inland Feeder will consist of four tunnels totaling 18 miles, and 25.7 miles of cut and cover pipeline, stretching for 43.7 miles from the foothills of the San Bernardino Mountains southerly to the small town of San Jacinto where it will connect to Metropolitan's Colorado River Aqueduct. The real estate acquisition phase will consist of acquiring 249 parcels of Fee, Temporary Easement, Permanent Easement, License or Permit from 192 separate property owners.

As with any project of this size, the title research, legal description preparation, appraisal, and land acquisition phases are costly and time-consuming tasks. Using the preliminary alignment the Metropolitan Right of Way & Title Engineering Section set out to determine the parcels and ownerships that might be impacted. Using such record information as Assessor Maps, Parcel Maps, and Records of Survey, CAD-generated strip maps were prepared to show land status, ownerships, major roads, freeways, and railroad crossings. The strip maps were found to be very useful as a planning tool for estimating and tracking parcels and were used extensively in coordination meetings.

Once the strip maps were completed for the 43.7-mile corridor, the Right of Way & Title Engineering team drove through the project and video taped the alignment. We find that site visits prove to be a good investment by building team support, ownership, and an interest in the project. From the site visit and study of the video, we saw unusual field conditions, structures, types of businesses, and land use. Such potential problem areas would have gone unnoticed by just looking at Assessor Maps and land records. From this data we prepared a

priority list, which from a right-of-way and title engineering perspective, represent anticipated problem parcels:

Priority List

1. Fee acquisition of portal site, permanent easement, temporary easement and tunnel easement over church-owned property.
2. Fee acquisition of portal sites.
3. Permanent easement within Flood Control District property.
4. Acquisition of abandoned Atchison Topeka & Santa Fe Railway Company right of way.
5. Permanent easement or license across Southern Pacific Transportation Company railroad.
6. Tunnel easement within the San Bernardino National Forest.
7. Tunnel easements within the Crafton Hills residential subdivision.
8. Santa Ana River crossing.
9. California Department of Transportation [CALTRANS] crossings; five major highways.
10. Remaining miscellaneous parcel

Determining the width of the Southern Pacific Transportation Company railroad right of way was probably the most interesting title problem we encountered for the Inland Feeder. This parcel along the Inland Feeder alignment is within San Timoteo Canyon, which is halfway between State Highway 60 and Interstate 10. Metropolitan would need to acquire a permanent tunnel easement or at the least a license from Southern Pacific Transportation Company to accommodate the pipeline approximately 70 feet below existing ground level in this area.

Approximately 800 feet to the east of the tunnel easement crossing, a temporary surface access right across the railroad right of way would also need to be acquired. Because several railroad cross-

ings would be involved in this project, the Right of Way & Title Engineering team ordered limited title reports for all railroad parcels that would be impacted.

A reputable right-of-way firm with extensive railroad title research experience provided us valuable title documents and the limited title reports. Concurrently, we ordered preliminary title reports and chains of title from a title company for the private ownerships adjoining the Southern Pacific Transportation Company railroad. For the railroad parcels, it was decided that a second opinion would be worth the investment; therefore, preliminary title reports were ordered in addition to the limited title reports.

Further, we contracted with four land surveying firms to prepare Records of Survey over the entire alignment for the parcels we would be impacting. This data was needed for solving right-of-way title matters, calculating accurate areas, and preparing legal descriptions, as well as for the preliminary alignment design.

A review of the Assessor's Map showed the Southern Pacific Transportation Company railroad right of way to be 200-feet wide, while a Record of Survey filed November 1919 in Book 5 page 71 in Riverside County showed the right of way to be 100-feet wide. This was the first hint that there were differences of opinion as to the width of the Southern Pacific Transportation Company railroad right of way. By now, investigative instincts were being stimulated. Metropolitan Right of Way & Title Engineering team leader, Peter G. Wiseman PLS, began to study all available title documentation in an effort to determine the width of this railroad right of way.

The vesting deeds for the adjoiners to the Southern Pacific Transportation Company were aliquot descriptions that basically quoted the parcel lying north-easterly of the railroad right of way. There is nothing wrong with this type of description; it is clear, concise, and there is only one interpretation. However, the challenge arises when the property lines have to be staked in the field so a real estate appraiser can view the property, and when a surveyor must calculate the exact "take" areas within the railroad right



Union Pacific Railroad right of way looking east at approximately crossing of the Inland Feeder. San Timoteo Canyon road is on the right.

For some researchers this might have been the end of due diligence, but there was still much to be learned. Record Maps showed that existing San Timoteo Canyon road appeared to be within the 200-foot wide railroad right of way. We asked our excellent contacts at the Riverside County Surveyor's office to research how they acquired title to the county road. This was a dead-end; the county could not come up with a dedication, easement, or resolution without further archive research.

The time had come to speak with someone in the real estate department of the railroad, conveniently located just minutes from us in Monterey Park, California. The railroad was very cooperative and provided us a copy of their Right of Way and Track Map, which showed the right-of-way width to be 200 feet. The Railroad Right of Way and

of way and within the adjoining parcels.

Further review of the title documents revealed that the Southern Pacific Railway Company, predecessor in interest to the Southern Pacific Transportation Company, acquired title by an Act of Congress dated March 3, 1871. Further verification of the Act showed that the railroad acquired a 200-foot wide strip. Another document in the chain of title showed that the Southern Pacific Railroad Company acquired a 100-foot wide strip of land from a J. R. Frink by deed recorded February 16, 1875 in Book "N" page 614 of Deeds, San Bernardino County. (Riverside County did not exist at this time.)

This 100-foot wide strip was within the existing 200-foot wide strip acquired by the railroad under the 1871 Act. One can only surmise that Mr. Frink might have had a prior claim and the railroad settled for a nominal fee rather than pursue the matter in the legal arena. On February 13, 1884, recorded in Book "C" page 446 of Patents, the United States conveyed aliquot parcels to the railroad by patent, all within Section 19, T2S, R2W, SBM, which falls within the area that Metropolitan's Inland Feeder alignment crosses.

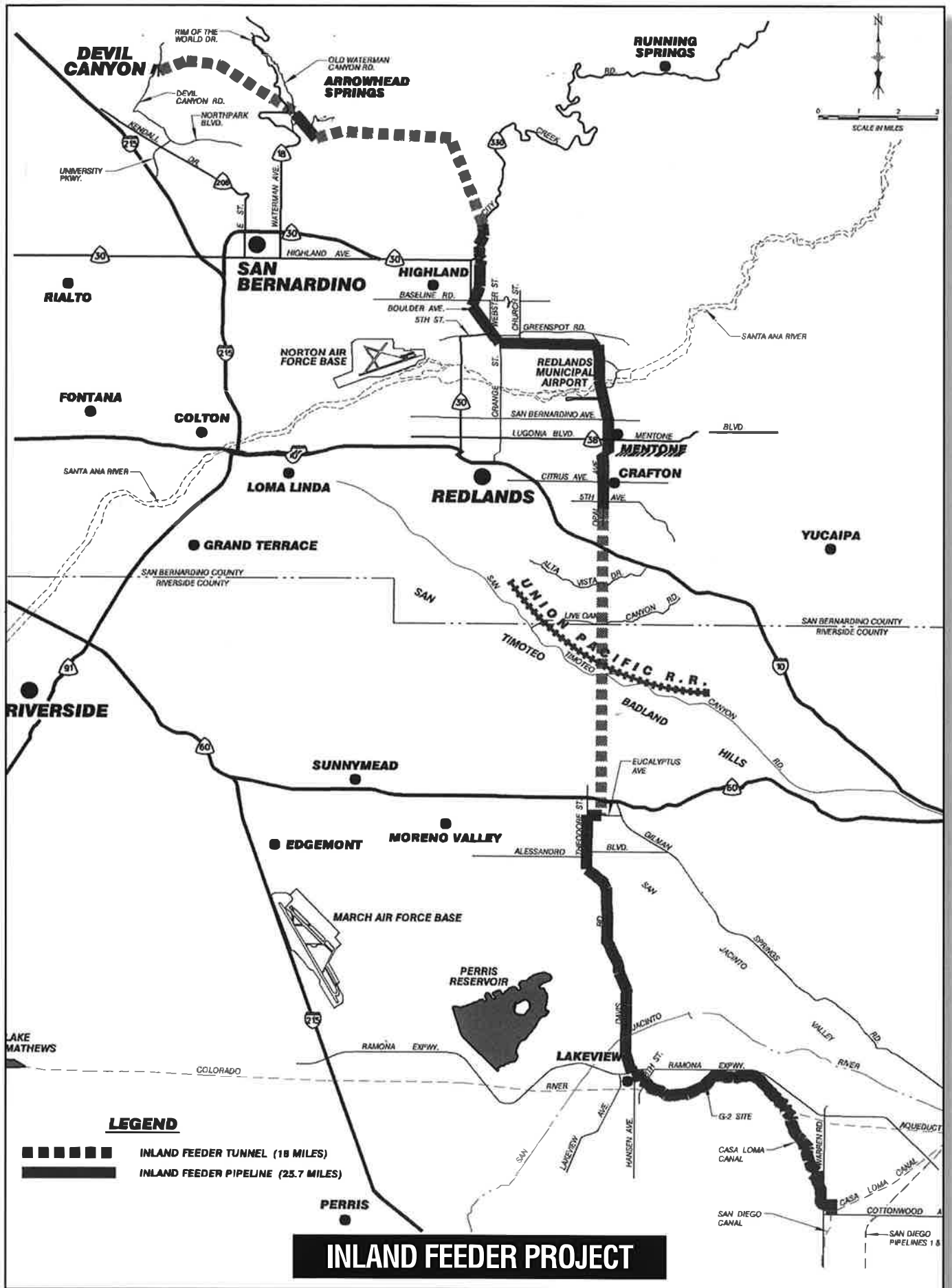


Union Pacific Railroad right of way at approximately Inland Feeder crossing looking west. Inland Feeder will cross from left to right and will be approximately 70 feet below ground surface. San Timoteo Canyon road is on the left.

The next important conveyance, aliquot parcels from the railroad to a G. Frink et al, was recorded July 23, 1887, in Book 51 page 64 of Deeds in San Bernardino County, in which the railroad reserved to itself a 100-foot wide strip. Many other deeds and maps were reviewed, but these were the key conveyances.

Track Map contained a very interesting note, which said that three parcels were omitted from the 1916 Right of Way and Track Map.

We were not able to obtain a copy of the 1916 map, but by eliminating the referenced parcels would mean that the railroad right of way was 100-foot wide.▶



One can only speculate that this was probably the basis for the 1919 Record of Survey. We also contacted the railroad real estate office in Denver, Colorado, which researched the right-of-way issue, and took the stance that it was 200 feet wide.

We then decided to go on site and take a close look at any evidence of occupation, fence lines, or anything that might be of value. The site area is rural; there was an old fence on the north side

of the railroad made of railroad ties, and some wire fences on the south side, which appeared to be fences of convenience. Since the distances between the fences were neither 100 nor 200 feet, the site visit proved fruitless.

About that time, Union Pacific Railroad Company acquired the Southern Pacific Transportation Company. We still did not have closure on this title issue and now it appeared

we would be dealing with new players. We met with little success on our initial contact with Union Pacific Railroad Company. All the right-of-way records for their new acquisition were boxed and they were busy with other pressing matters.

After a few months, on our third attempt, we were able to make contact with a key person in the Railroad Contracts and Real Estate Department in Omaha, Nebraska. We received a letter from the Union Pacific Railroad Company soon after this contact, basically saying that the railroad cannot divest itself by sale or abandonment of portions of the right of way granted under the Congressional Act of March 3, 1871. They also noted that title to the railroads are not of record in the usual places, that is the county recorder's offices, but can be found in the U.S. Land offices, which constitutes constructive notice.

We knew that the railroad conveyance under the Congressional Act would not be recorded in the local county; however, the fact that the railroad could not divest itself of title meant that the recorded deed from the railroad to a G. Frink et al in 1887 reserving a 100-foot wide strip was null and void for that portion acquired under the Act of 1871. That is, the railroad still owned the 200-foot wide strip they acquired under the Act of 1871. The railroad was so sure of their opinion, they quoted two Ninth Circuit Court of Appeal cases in which this issue had been raised before: *Barnes et al v. Southern Pacific Company* 16 F.2d 100, a November 22, 1926 case; and *H. A. & L. D. Holland Co. v. Northern Pacific Railway Company*, 214 F.920, dated May 18, 1914.

We obtained copies of these cases and met with Metropolitan's real estate attorney, who concurred that, in effect, the railroad had limited fee title for railroad purposes and if they ever ceased to use the 200-foot wide right of way for railroad purposes, the title must revert to the United States.

As a side note, Metropolitan also acquired limited title to about 200 miles of right of way acquired under a



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Congressional Act of 1932 for its Colorado River Aqueduct, which also is not recorded in the local counties and must revert to the United States if it ever ceases to be used for the purposes for which it was granted.

Summary

Due diligence in any title and boundary analysis requires knowing where to look, what to look for, and how much time and resources are available. We did some up-front planning on this project and identified the potential problem areas. The initial Inland Feeder study began in 1987 with the final environmental impact report being approved February 8, 1993.

The Right of Way & Title Engineering team pursued this title maze, on and off, from August 1993 until final preparation of the legal descriptions in October 1997. As it turned out Metropolitan was only able to acquire a License from the railroad with final documents being signed in the summer of 1998. Tunnel construction for this particular contract of the Inland Feeder is not scheduled to begin until late summer of 1998.

Other options were available to us, of course, but the team decided to stay the course so that, when everything was completed, they could have the confidence and satisfaction of knowing they had the correct answer. Some of the remaining 191 ownerships on this project had title and boundary issues to resolve, but none generated more interest than the railroad right-of-way issue. ■

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