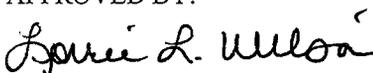


R/W MANUAL CHANGE

RWMC- 184

PROCEDURAL HANDBOOK
 (1984 Edition)

RWPH-____-____
 TRANSMITTAL#____

TITLE: UTILITY RELOCATIONS	APPROVED BY:  LORRIE L. WILSON	DATE ISSUED: JAN 22 2009 Page 1 of 1
SUBJECT AREA: CHAPTER 13 – UTILITY RELOCATIONS	ISSUING UNIT: OFFICE OF UTILITIES AND ORGANIZATIONAL DEVELOPMENT	
SUMMARY OF CHANGES: Revises 13.11.00.00 and Tables of Contents for sections and exhibits. Adds new Exhibit 13-EX-31.		

PURPOSE

This manual change establishes a new procedure for billing Utility Companies when State has purchased an easement and there is no Utility Agreement due to 100% Owner Liability. Where applicable, typographical errors were corrected.

PROCEDURES

- | | |
|-------------|--|
| 13.11.04.00 | Table 13.11-2 - Minor wording change |
| 13.11.07.01 | Easement Billing with Right of Way Contract (No Utility Agreement) - New procedure |
| 13.11.07.02 | “Acquired in Owner’s Name” - Renumbering only |
| 13.11.07.03 | “Acquired in State’s Name” - Renumbering only |
| 13-EX-31 | New Exhibit 13-EX-31, “Memorandum for Utility Easement Billing with Right of Way Contract” |

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
13 - Sections	Table of Contents (REV 8/2008) 13.11.00.00 (REV 12/2007)	Table of Contents (REV 1/2009) 13.11.00.00 (REV 1/2009)
13 - Exhibits	Table of Contents REV 1/2003 -----	Table of Contents REV 1/2009 13-EX-31 (NEW 1/2009)

CHAPTER 13

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13.11.00.00 - PROPERTY RIGHTS CONVEYANCES

13.11.01.00 General

This section explains usage, preparation, and processing of Joint Use Agreements (JUA), Consent to Common Use Agreements (CCUA), and easement (replacement right of way) conveyances to the utility owner.

The Utility Coordinator is responsible for preparing JUA and CCUA on Form RW 13-1 and Form RW 13-2 respectively, except for Southern California Edison Company's JUA and CCUA, which are prepared on Form RW 13-8 and Form RW 13-9 respectively.

13.11.02.00 Requirements for JUA/CCUA

JUA and CCUA are documents that perpetuate the Owner's rights of way that are within the State's highway right of way. Both documents place limiting restrictions on the Owner's use to ensure the Owner's utility use is compatible with highway traffic safety. The Owner otherwise retains all their original easement use rights. The fact that the State is obligated to pay the cost of relocating the utility facility does not, in itself, entitle the Owner to such an agreement. The documents may be entered into only where the Owner's original easement:

- Possessed prior rights in the right of way acquired by the State.
- Did not contain termination or relocation clauses that were enforceable by the State.

These documents are used only for the portion of the Owner's utility easement that is within the State's highway right of way. The State may own the right of way either in fee (JUA or CCUA) or in easement (CCUA only).

In the case of an easement, the Owner's prior rights must be carefully checked for unusual conditions. For example:

- The Owner may have an easement that requires relocation at the Owner's expense but obligates the landowner (State) to issue a new easement (JUA or CCUA) for the newly relocated facilities.
- The Owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on the specified date. Following termination, the utility facility is considered as being under an Encroachment Permit.

NOTE: A JUA cannot be used where the State only possesses an easement right of way. The State as an easement holder has no legal right to grant a utility easement in a new location.

13.11.02.01 Joint Use Agreements

A JUA (Form RW 13-1 or RW 13-8) is used when the Owner's facility will remain on lands used for highway purposes but will be relocated to a position outside, or partly outside, the Owner's existing right of way where the Owner had prior rights. It is also used where the Owner's right of way is not occupied by any existing utility facilities but the Owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the highway right of way and outside the right of way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the highway right of way. The easement area outside the highway is covered by acquisition on the Owner's easement form or conveyed by State Director's Easement Deed (DED) if acquired in the State's name.

13.11.02.02 **Consent to Common Use Agreements**

A CCUA (Form RW 13-2 or RW 13-9) is used when all of the Owner's facilities, whether rearranged or not, will remain within the highway area covered by the Owner's existing easement area.

13.11.02.03 **Water Code 7034 and 7035**

Water Code Sections 7034 and 7035 specify the rights and obligations of each party regarding water facilities that fall under these statutes. A JUA or CCUA will be issued only for Section 7035. No JUA/CCUA shall be issued for Section 7034.

13.11.02.04 **Local Agency Owned Facilities Within Highways and Frontage Roads**

A JUA/CCUA is not required for facilities relocated to frontage roads to be relinquished to the local agency, as the local agency will be vested with all the title the State previously held.

In those cases where the local agency's facilities remain within the highway right of way and not in a frontage road and the facilities were installed in local agency streets prior to inclusion in the highway system, the practice is to enter into a JUA/CCUA only if the local agency so demands.

If the local agency's facilities exist upon a recorded easement, a JUA/CCUA with the local agency covering these facilities is in order.

13.11.02.05 **Prescriptive Rights**

It is appropriate to perpetuate the Owner's rights established under prescription with a JUA/CCUA. The extent of a prescriptive right, however, must be measured by the Owner's use during the period the Owner occupied the site under prescriptive right (not less than 5 years). Granting any rights greater, or specifying a dimension to the easement where none is documented, is a betterment and constitutes a gift of public funds. Accordingly, the precise extent of the prescriptive right, e.g., "a single line of poles with one crossarm and three 200 pair telephone cables," should be set out in any JUA/CCUA.

A prescriptive right cannot be established over land owned by any governmental entity.

13.11.03.00 **JUA/CCUA Preparation**

Following are guidelines for preparing JUA/CCUAs:

- The State normally prepares JUA/CCUA, and coordination between the Utility Coordinator and R/W Engineering is essential.
- To the extent practicable, a single JUA/CCUA document is used covering each location or related series of the Owner's easements for either a conventional highway or freeway transaction.
- Since the document must be returned to the State to allow for documenting the recording information on State Record Maps, the State's return address must be shown in the upper left-hand corner of the document.
- The document shall have the same number as the Utility Agreement with another numerical digit after the Utility Agreement number, e.g., Utility Agreement No. 01-UT-1234 corresponds to JUA/CCUA Document No. 1234-1.

13.11.03.01 Description of Owner's Rights

The "Owner's easement" portion of the JUA/CCUA document is described by reference to the document and recording information, if any, by which the Owner acquired the utility easement. If the document is unrecorded, language shall be inserted in the JUA/CCUA description stating that a copy of the unrecorded document is attached and made a part of the JUA/CCUA. (The unrecorded document is then attached.) In the case of Pacific Gas and Electric Company, a copy of the unrecorded document should not be attached to the JUA/CCUA to be recorded. A copy is retained and attached to the R/W Utilities file copy only.

When the Owner's easement rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, the "Owner's easement" must be described in precise terms using one of the following clauses as appropriate:

- A. "The easement for a (voltage) electric distribution line consisting of a single line of poles with (number) conductors suspended therefrom and appurtenant thereto, together with a right of way along said pole line, acquired by (occupancy, etc., as appropriate to the circumstances)."

NOTE: If a telephone facility is involved, this clause should be modified to describe the number of circuits instead of voltage. It should also include the number of poles erected within the area being described.

- B. "The easement for a (size) inches or feet (gas, water, steam, oil, etc.) pipeline with valves and other appurtenances, fittings and connections thereto, together with a right of way along said pipeline acquired by (occupancy, etc., as appropriate to the circumstances)."
- C. "The easement for a canal or ditch and pertinent structures within a strip of land (number) feet in width, together with a right of way along said strip acquired by (occupancy, etc., as appropriate to the circumstances)."

13.11.03.02 Vicinity Description

The "highway right of way" portion of the JUA/CCUA document is described by reference to the vicinity of a city, town, or other commonly recognized locality, the county, and the State Route.

13.11.03.03 Location Description

R/W Engineering prepares the description of the "new location" or "area of common use." The description is included in the JUA/CCUA in accordance with the following requirements:

- A. In some instances, the Owner's existing facility will be located partially within an easement and partially under permit or other lesser right. In those cases, the "new location" or "area of common use" must be apportioned so the Owner has the same ratio of ownership and rights in the new location as were held in the old location. The Owner must not receive a betterment by a grant of an easement for the portion that was previously held under permit or lesser right.
- B. The foregoing rule applies notwithstanding the fact that the existing facilities may leave the highway right of way for a portion of their length, so there is in effect more than one crossing of the highway or right of way line.
- C. The description preferably should be by attached map, provided the map can be reduced to the size of a recordable document without being illegible.

- D. For the purpose of the referenced apportionments, distances are determined by measurement on a scaled map that is an accurate horizontal plan of the affected easements. To the extent possible, the new easement location is described as a continuous strip even though the original easement locations may not have been continuous and abutting. The description for a new longitudinal location generally commences opposite the lowest highway engineer's station and is measured in the direction of increasing stations. In the case of perpendicular crossings, it commences at the right of way line, right or left of the highway station.
- E. If two or more of the Owner's original easements are being combined into a single JUA, the following statement is added to the end of the description of the "new location":
- "For the purpose of determining the position and length of each of Owner's easements in the new location, said easements shall be deemed to be located in the same sequence as is set forth above, and the length of each easement in the new location shall bear the same proportion to the entire length of the new location as the length of such easement in the old location within the right of way of the highway bore to the entire said length, all lengths to be measured on a scaled map which is an accurate horizontal plan of the affected easements."
- F. Where practical, more than one crossing of the highway right of way may be covered in a single JUA/CCUA.
- G. When the Owner's rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, "Owner's easement" must be described in precise terms in the form as shown in Section 13.11.03.01.

13.11.03.04 Access Control Clauses

The JUA or CCUA specifies any limitations on the Owner's right to cross access control lines or fences erected across the new location of the Owner's easement or the area of common use. If the highway is not a freeway, the words "conventional highway, not applicable" are inserted as Paragraph 4 of the JUA or Paragraph 3 of the CCUA. If the Owner's facilities in the new location or area of common use do not cross a freeway access control line or fence, the following provision is inserted:

"State's access control line does not intersect Owner's easement; not applicable."

If the State highway involved is a freeway and the Owner's facilities in the new location or area of common use will cross the freeway access control line or fence, the parties must enter into a specific understanding on how the Owner will access their right of way along the easement portions at each crossing of the freeway fence. Usually, the JUA/CCUA uses one of the clauses in Table 13.11-1, "Clauses - Access Control Across Freeway Fence," for the situations presented. If none of the clauses fits the situation, the parties will agree upon the manner in which the Owner is to exercise their rights. The clause negotiated shall be subject to Headquarters R/W and Legal review and approval.

Table 13.11-1

CLAUSES - ACCESS CONTROL ACROSS FREEWAY FENCE (Section 13.11.03.04)	
Situation	Clause
The Owner needs (a) gate(s) in the freeway fence, and the State accepts the need.	“Owner shall exercise its rights of way solely by use of the gate installed in the freeway fence (right or left) of Engineer’s Stations _____ (Insert as necessary: “together with the road approach thereto constructed within the freeway”). The said gate (and road approach) shall not be used for any purpose other than construction, reconstruction, operation, inspection, repair or maintenance of Owner’s facilities now or hereafter installed pursuant to Owner’s easement. Owner shall close and lock said gate after each use thereof by Owner.”
The Owner agrees that it can adequately maintain the facilities installed on their easement by traveling over city streets, county roads, or State highways that are not planned to be closed, or a private easement owned by the utility.	“Owner shall not, in the exercise of its rights under its easement, pass through or over the freeway fence(s) constructed by State across Owner’s easement (right or left) of Engineer’s Station _____ except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner’s facilities.”
If neither clause above is applicable, the State shall provide a substitute route (or means) for the Owner’s use for accessing the easement areas at each crossing of a freeway fence or access control line. In each case, the substitute route (or means) shall be fully described in the document.	“So long as Owner shall have a right to exercise its right of way along its easement by the means hereinafter described, or a reasonable substitute therefore, provided by State, Owner shall not pass through or over the freeway fence constructed by State across Owner’s easement except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner’s facilities. Said route (or means) is described as follows: (Provide description of route or means.)”
The Owner’s easement does not cross the freeway access control line, or the Owner can only adequately reach their facilities from the freeway. NOTE: This situation also requires Division of Design encroachment exception approval.	“Owner shall enter and leave said (new location or area of common use) only by way of said freeway.”
The Owner’s facilities in the new location are entirely outside of the freeway fence and the Owner can adequately reach their facilities without crossing the fence.	“Owner’s facilities in the new location are located entirely outside the freeway fence. This paragraph is therefore not applicable.” or Clauses in the four sections above, as applicable, plus: “The foregoing is not applicable to that portion of the new location within a frontage road outside of the freeway in which the Owner’s rights can be exercised by entry from such frontage road.”

13.11.04.00 **JUA/CCUA Processing**

The Utility Coordinator processes the JUA/CCUA as shown in Table 13.11-2, “JUA/CCUA Process.”

Table 13.11-2

JUA/CCUA PROCESS (Section 13.11.04.00)	
Step	Description
1	Request R/W Engineering to prepare the necessary maps and legal descriptions for the JUA/CCUA.
2	Review the JUA/CCUA for accuracy and compliance with policy.
3	Transmit the original, one counterpart, and one copy of the JUA/CCUA to Owner with the following instructions: <ul style="list-style-type: none">• Request Owner to execute and return the original and the counterpart. The copy is for the Owner’s records.• Request Owner to provide full organizational names and titles of the signing officers with their signatures acknowledged on the JUA/CCUA.• Advise that a fully executed and recorded original will be returned to Owner following State’s processing.
4	Upon receipt from the Owner, review the documents to ensure they have been properly executed and acknowledged and sign both the original and the counterpart under “Recommended for Approval.”
5	Forward the documents to the district person who is appointed as the Department’s Attorney in Fact to execute both the original and the counterpart of the JUA/CCUA on the State’s behalf.
6	Record the executed original JUA/CCUA. The State’s return address must be shown in the upper left-hand corner of the document.
7	Upon return of the recorded JUA/CCUA, the district will: <ul style="list-style-type: none">• Send the original recorded JUA/CCUA to the Owner with reference to County, Route, Post, EA, Utility Agreement No., Owner’s file reference, and any other information pertinent to the project and file.• Send a copy of the recorded JUA/CCUA to R/W Engineering for entering on the District’s Record Maps.• Retain the original, counterpart, and the copy of the recorded JUA/CCUA in the Utility File.

13.11.04.01 **Recording JUA/CCUA Prior to Relinquishment of Frontage Roads**

Occasionally, an Owner’s prior rights easement will impact both a State freeway and a frontage road that will be relinquished to a local agency. To protect the Owner’s prior rights, the JUA/CCUA must be recorded in advance of the relinquishment resolution.

13.11.05.00 **Special Clauses**

Where the Owner is in a prior right status to the State highway and is requesting a special clause in the JUA/CCUA, one of the following standard clauses may be used as appropriate to cover the Owner’s needs. Use of these clauses requires written approval from Headquarters R/W. The circumstances warranting use of these clauses shall be included in the transmittal memo to HQ R/W. Under no circumstances are these clauses to be modified without Legal’s prior approval.

13.11.05.01 **Conversion of Open Ditch to Conduit When Owner Has Prior Rights**

Where an open ditch exists under a granted easement, the highway is on a new alignment, and the State is changing the facility to a closed conduit within the highway right of way, the following clause may be added to the JUA/CCUA:

“Inasmuch as Water Code Section (7034) (7035) requires STATE to be responsible for the structural maintenance of the conduit portion of OWNER’s facilities which transports water under the highway at Engineer’s Station _____, STATE will repair or replace the conduit portion of OWNER’s facilities which lies within the STATE highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit.”

13.11.05.02 **Special Clause for Public Agencies**

Sometimes the standard form of JUA/CCUA cannot be used when dealing with another public agency, such as the federal government. To establish equal and concurrent rights to a common use area to be jointly used with the State, conveyances to another public agency may include the following clause with Headquarters R/W prior approval:

“This grant is subject to all valid and existing encumbrances of record, and is subject to the continuing right of the grantor and its successor to use the said land hereof, in common with the grantee and its successors, with the understanding that after completion of the highway construction work presently contemplated, whenever either party alters or improves its facilities within such common area, such party shall assume the actual and necessary costs, exclusive of betterments, of accommodating the other’s facilities located in such common use area and necessarily affected by the proposed alteration or improvement, and that neither party will undertake any such alterations or improvements without first submitting to and obtaining the written approval by the other of the plans and specifications thereof, which approval shall not be unreasonably withheld.”

This clause is readily adaptable where the State is either the grantor or the grantee. Inasmuch as the party initiating the work of altering their own facility within the common use area is liable for the cost of reconstruction and relocation of the other public facility, it is important to carefully consider respective rights of the parties before consenting to use of this clause, and then only after Headquarters R/W review and approval.

13.11.06.00 **Agreements With Public Agencies**

The Bureau of Reclamation and the Department of Water Resources have special agreements with the Department that provide instructions for preparation of a JUA/CCUA going to them.

13.11.06.01 **Bureau of Reclamation Agreements**

The State and the Bureau of Reclamation have entered into master contracts as shown in Table 13.11-3 below.

Table 13.11-3

BUREAU OF RECLAMATION AGREEMENTS (Section 13.11.06.01)		
CONTRACT	COVERAGE	EXPLANATION
Bureau of Reclamation Contract No. 14-06-200-6020 (CVP) dated October 12, 1956	Joint use areas of State highways and facilities of the Central Valley Project.	Provides for perpetual joint use in common areas by either party on lands of the other party by means of a one-page form labeled "Exhibit 'C'" of the contract (Form RW 13-10). Each joint use is subject to the terms and conditions in the master contract.
Bureau of Reclamation Contract No. 14-06-200-503-A (Non-CVP) dated October 9, 1963	Joint use of State highways and Bureau of Reclamation facilities, other than those of the Central Valley Project (Contract No. 14-06-200-6020).	Provides for the form of "JUA" to be used when the State or the Bureau proposes construction on the other's property. The forms of "JUA" are: 1. "Exhibit 'B'" (Form RW 13-11) of the master contract provides for the form of JUA to be issued by the State when the Bureau proposes transverse construction on the State's property. 2. "Exhibit 'C'" (Form RW 13-12) of the master contract provides for the form of JUA to be issued by the Bureau when the State proposes construction on the Bureau's property.

13.11.06.02 **Department of Water Resources Agreement**

The Department and the Department of Water Resources entered into an agreement dated December 13, 1961 covering, among other things, the form of "Certificate of Common Use" to be used when the Department or the Department of Water Resources proposes construction on the other's property. The forms of "Certificate of Common Uses" are:

- Exhibit 'A' (Form RW 13-13) of the master contract is used when the Department proposes construction on the Department of Water Resources' property.
- Exhibit 'B' (Form RW 13-14) of the master contract is used when the Department of Water Resources proposes construction on the Department's property. Transverse crossings by the Department of Water Resources are the only permitted crossings under this agreement.

13.11.07.00 Easement Conveyance Processing

Conveyance of easements to Owners is by deed. To initiate this procedure, the Utility Coordinator must include a clause/clauses in the Utility Agreement for property rights to be conveyed and the form of conveyance. Clause(s) should also include credit to the State for the Owner's share of the cost or market value of easements conveyed, as applicable. The cost of State acquired utility easements is part of the cost of relocation and must be apportioned between the State and the Owner in accordance with the Utility Agreement. See Section 13.07.00.00 for standard Utility Agreement clauses.

NOTE: Easements to be conveyed across excess lands or developable airspace parcels must be located so as to minimize possible adverse conflicts to site development. Requests for easements across airspace or excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess or airspace procedures.

13.11.07.01 Easement Billing Process with R/W Contract (No Utility Agreement)

This process is used when there is no Utility Agreement because liability is 100% Owner expense, easements have been purchased for the Utility Owner with State funds through a R/W Contract, and the deed has been recorded. The Utility Owner must reimburse the State for this cost.

When Acquisition has acquired the easement(s), the Utility Coordinator is responsible to:

- Document the Owner's request for the State to purchase easements in the Utility Diary.
- Obtain a copy of the R/W Contract and Memorandum of Settlement (RW 8-12 or RW 8-13) from Acquisition.
- Highlight the easement description and settlement cost in Paragraph 8 of the Memorandum of Settlement.
- Verify with Planning and Management (P&M) that the payment has been made to the grantor of the property and the project EA is open. *
- Use Exhibit 13-EX-31 to request an abatement invoice from HQ Accounts Receivable. Transmit the original and a copy of this exhibit with a copy of the R/W Contract and Memorandum of Settlement to Accounts Receivable. Retain a copy in the Region/District's Utility File.

* If the project EA is not open, request P&M to supplement the EA for the purpose of processing the invoice for the easement.

13.11.07.02 Acquired in Owner's Name

Acquisition of easements in the Owner's name using their deed form is the preferred method since the procedure for transferring this easement deed is the simplest. When Acquisition has acquired the easement in the Owner's name, the Utility Coordinator is responsible to:

- Obtain the Owner's approval of the description in advance of execution.
- Collect money due the State from the Owner for their share of the easement costs, if applicable.
- Ensure the easement deed is recorded.
- Retain a copy of the easement deed along with a copy of the recording request to the County Recorder.

13.11.07.03 **Acquired in State's Name**

The process for conveying an easement acquired in the State's name is slightly more difficult than conveying an easement in the Owner's name. When Acquisition has acquired the easement in the State's name, the Utility Coordinator is responsible to:

- Transmit necessary maps and/or legal descriptions (taken from the State's Grant Deed) to Excess Lands with a request for Director's Easement Deed (DED) preparation.
- Review the prepared DED for accuracy and transmit a copy of the DED to the Owner for review and approval. Any money due the State should be requested pursuant to the Utility Agreement.
- Upon Owner approval and receipt of money due State, request Excess Land to process the DED as provided for in Section 16.07.02.00.
- Ensure receipt of a copy of the DED for the District's Utility files and follow up to make sure the DED was recorded and sent to the Owner.

CHAPTER 13

Utility Relocations Table of Contents

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