

**STAFF REPORT
C84**

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08/23/18
W 27139
R. Collins

**GENERAL LEASE –
RECREATIONAL AND PROTECTIVE STRUCTURE USE**

APPLICANT:

Ron DeQuillettes and Debra DeQuillettes

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Colorado River, adjacent to 1236 Beach Drive, City of Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of an existing raised beach area with rock retaining wall and shade umbrella, concrete and rock stairway, water pipeline, and riprap bankline; and the construction, use, and maintenance of an aluminum gangway with railing, and a floating walkway and boat dock.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

Raised Beach Area with Rock Retaining Wall and Shade Umbrella, Concrete and Rock Stairway, Water Pipeline, Aluminum Gangway with Railing, and a Floating Walkway and Boat Dock: \$399 per year, with an annual Consumer Price Index adjustment.

Riprap Bankline: Public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. The lease requires that the Public Pedestrian Access Easement remain open to the public with no structures, improvements, or

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personal property being placed to obstruct or prevent public access along the Easement.

3. The lease includes Special Provisions related to the construction of the improvements, including the type of equipment which may be used on the Lease Premises and prohibiting the refueling, repairing, and maintenance of vehicles or equipment on the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On December 12, 1990 ([Item 8, December 12, 1990](#)), the Commission authorized a Boundary Line Agreement and Compromise Settlement (AD 134) which confirmed the State's fee ownership of sovereign land located in the Colorado River at this location. Pursuant to Public Resources Code section 6501.1, projects in this location, including new development or maintenance of existing facilities, extending waterward of the Ordinary High Water Mark (OHWM) fixed by AD 134 require a lease from the Commission. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.

Pursuant to AD 134, the State of California was granted a Public Pedestrian Access Easement (Easement) running parallel to the fixed OHWM. The Easement is intended to provide public access to and along the bank of the Colorado River. The Easement affects lots 1-40 of the Rio Buena Vista residential subdivision, one of which is the Applicant's property. The Easement can be accessed by the public from the northern or southern end of the subdivision, from the Colorado River, and provides access to the Colorado River.

The U.S Department of the Interior, Bureau of Reclamation (Reclamation) conducted a review by boat of the riprap bankline on March 27, 2002 and also conducted a site visit on April 10, 2002. The inspection revealed that the bankline was cleared of vegetation and that the federally-applied riprap and federally-constructed jetties were undisturbed and in good condition. By letter dated April 23, 2002, Reclamation acknowledged its capacity to apply additional riprap to the bankline location in the future was compromised due to the pending development of the upland residences

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and subsequently declared that Reclamation would not provide additional riprap to the bankline location in the future. Consequently, Reclamation decreed that the upland homeowners would be responsible for maintaining protection of their own banklines in the future, subject to the homeowners seeking approval and permitting of their riprap or bankline construction work from the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899.

The Applicant has applied for a General Lease – Recreational and Protective Structure Use for use and maintenance of an existing raised beach area with rock retaining wall and shade umbrella, concrete and rock stairway, water pipeline, and riprap bankline; and the construction, use, and maintenance of an aluminum gangway with railing, and a floating walkway and boat dock. The riprap bankline mutually benefits both the public and the Applicant. The bank of the Colorado River will have additional protection for the river channel from wave action provided at no cost to the public and the riprap bankline will be maintained by the Applicant at no cost to the public.

The raised beach area with rock retaining wall, shade umbrella, and concrete and rock stairway are generally not Public Trust uses, but the Commission has issued leases on a limited basis for existing non-water dependent uses that encroach onto sovereign land where such encroachments do not significantly interfere with Public Trust needs and values.

The proposed boat dock lies outside the two sandy beaches which are used extensively throughout the year by both riverfront and inland residents of the community as well as members of the public. Staff believes the Public Trust needs, values, and uses of the recognized beach areas will not be impacted by the proposed boat dock, and its construction is consistent with the Commission's practices on leasing on inland waterways and the Public Trust needs that have been identified in the area. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The proposed improvements facilitate recreational boating because they are used for the docking and mooring of recreational boats.

The lease includes certain provisions protecting the public use of the proposed lease area, ensuring that public access is maintained. The improvements in the proposed lease do not significantly alter the land,

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they do not alienate the State's fee simple interest in the underlying land, nor do they permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and ensures public access to the Colorado. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

Climate Change Analysis:

The lease area in the Colorado River is not tidally influenced and therefore, would not be subject to sea-level rise. The water level near the existing improvements is regulated primarily by water released upstream from the Davis Dam. However, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, extreme heat, drought, and storms. The existing improvements (raised beach area with rock retaining wall and shade umbrella, concrete and rock stairway, water pipeline, and riprap bankline) or proposed new structures (aluminum gangway with railing, floating walkway, and boat dock) could be damaged from both storm-created debris or prolonged droughts. Droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and runoff by likely increasing scour and decreasing bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from floods or droughts during the next 10 years of the lease. The new adjustable aluminum gangway with railing, floating walkway, and floating boat dock could be adaptable to variable water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts. The fixed raised beach area with rock retaining wall and shade umbrella, concrete and rock stairway, water pipeline, and riprap bankline should always be maintained and operated complying with all health codes because regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement.

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Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

Conclusion:

For the reasons above, staff believes that the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The proposed action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and costal waterways.
2. **Existing Improvements:** Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).
3. **New Construction:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
U.S. Bureau of Reclamation
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Improvements: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

New Construction: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the water pipeline, riprap bankline; and the construction, use, and maintenance of an aluminum gangway with railing, a floating walkway, and boat dock will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of a raised beach area with rock retaining wall, shade umbrella, water pipeline, and concrete and rock stairway are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational And Protective Structure Use to Ron DeQuillettes and Debra DeQuillettes beginning August 23, 2018, for a term of 10 years, for use and maintenance of an existing raised beach area with rock retaining wall and shade umbrella, concrete and rock stairway, water pipeline, and riprap bankline; and the construction, use, and maintenance of an aluminum gangway with railing, a floating walkway, and boat dock as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the raised beach area with rock

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retaining wall and shade umbrella, concrete and rock stairway, water pipeline, aluminum gangway with railing, and floating walkway and boat dock: \$399 per year, with an annual Consumer Price Index adjustment; consideration for the riprap bankline to be the public use and benefit with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 27139

LAND DESCRIPTION

Two parcels of State owned land adjacent to Lot 3 of Tract No. 15640 as shown on Tract Map recorded in Book 261, Pages 88 through 94, inclusive of Maps, in the Office of the County Recorder of San Bernardino County, lying in the bed of the Colorado River, County of San Bernardino, State of California, described as follows:

PARCEL 1

BEGINNING at the easterly corner of said Lot 3; thence northwesterly along the northeasterly line of said lot, said line also being the Agreed Boundary Line as described in Exhibit A of Document Number 92-333250, recorded on August 11, 1992, Official Records of said County, N 60° 42' 46" W 44.37 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, northeasterly along the northeasterly prolongation of the northwesterly line of said lot N 32° 26' 33" E 30.00 feet; thence leaving said line S 60° 43' 38" E 44.16 feet to the intersection with the northeasterly prolongation of the southeasterly line of said lot; thence southwesterly along said northeasterly prolongation S 32° 01' 57" W 30.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 3.

PARCEL 2

BEGINNING at the easterly corner of said Lot 3; thence northwesterly along the northeasterly line of said lot, said line also being the Agreed Boundary Line as described in Exhibit A of Document Number 92-333250, recorded on August 11, 1992, Official Records of said County, N 60° 42' 46" W 44.37 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, northeasterly along the northeasterly prolongation of the northwesterly line of said lot N 32° 26' 33" E 115.00 feet; thence leaving said line S 60° 46' 07" E 43.55 feet to the intersection with the northeasterly prolongation of the southeasterly line of said lot; thence

southwesterly along said northeasterly prolongation S 32° 01' 57" W 115.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying within above described PARCEL 1.

END OF DESCRIPTION

This description is based on Applicant provided design drawings for a proposed floating boat dock, gangway, walkway together with any and all appurtenances pertaining thereto, to build at a later date within the Lease time frame. This description is to be updated once as-built plans are submitted.

Prepared 06/25/18 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

LEASE PARCEL 2
(PROPOSED ALUMINUM GANGWAY WITH RAILING, FLOATING WALKWAY, FLOATING BOAT DOCK AND 9' IMPACT AREA)

COLORADO RIVER

APPROXIMATE TOE OF REVETMENT

LEASE PARCEL 1
(EXISTING RIPRAP BANKLINE, CONCRETE & ROCK STAIRWAYS, RAISED BEACH AREA WITH ROCK RETAINING WALL AND SHADE UMBRELLA)

APPROXIMATE TOP OF REVETMENT

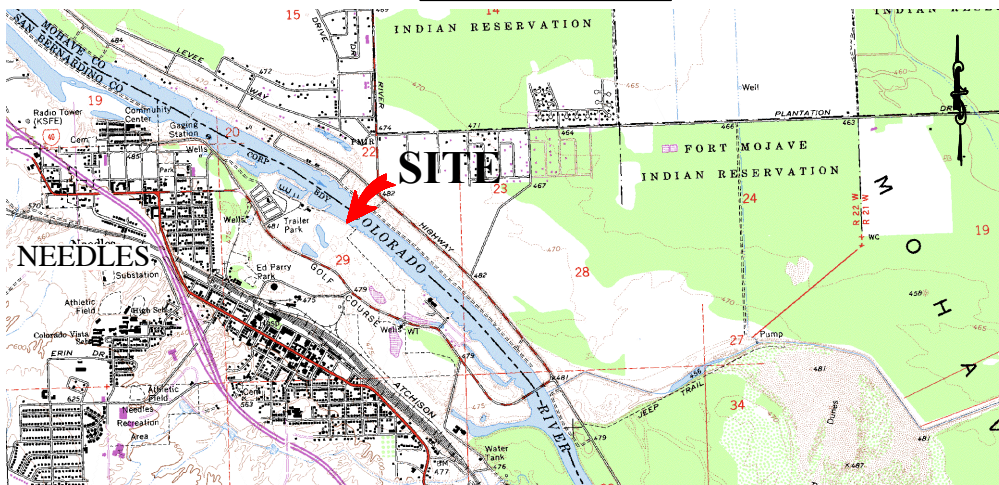
AGREED BOUNDARY LINE

PUBLIC PEDESTRIAN ACCESS EASEMENT
APN 0186-273-03

1236 BEACH DRIVE, NEEDLES

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 27139
DEQUILLETES
APN 0186-273-03
GENERAL LEASE -
RECREATIONAL AND
PROTECTIVE STRUCTURE USE
SAN BERNARDINO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.