

MINUTE ITEM

This Calendar Item No. C101 was approved as Minute Item No. 101 by the California State Lands Commission by a vote of 3 to 0 at its 12/16/98 meeting.

**CALENDAR ITEM
C101**

A 80
S 37

12/16/98
W 25222
AD 347
Trout
Fossum

CONSIDER APPROVAL OF A TITLE SETTLEMENT AGREEMENT INVOLVING CERTAIN REAL PROPERTY IN YUMA COUNTY ARIZONA PURSUANT TO THE KAPILOFF LAND BANK ACT, PUBLIC RESOURCES CODE SECTION 8600, ET SEQ.

APPLICANT:

Arlin Dulin and Sharen Dulin
c/o John Meerchaum
Branson, Brinkop, Griffith & Strong LLP
P. O. Box 2519
Redwood City, CA 94064 -2159

BACKGROUND:

The property involved in this settlement is located in Yuma County Arizona, and is a portion of the former, now abandoned bed of the Colorado River. The river currently flows to the southeast of this location, exclusively in Arizona. The river was subject to an avulsive change on June 8, 1920 when, during a period of extreme high water, the Colorado River at the subject location broke through its existing channel into that of the Gila River, thereby cutting off the existing oxbow and shortening that stretch of the river from approximately 11 miles to 4 miles. Portions of the 11 mile cut-off loop are entirely in California and other portions are entirely in Arizona, with the western half of the abandoned channel being owned by California and the eastern half by Arizona.

As a result of the 1963 Colorado River Boundary Compact between California and Arizona, approved by the United States Congress on April 11, 1966 [P. L. 89-531; 80 Stat. 340], the boundary between the two states at this location was moved from the center of the former river to a fixed line across uplands to the west. Thus, the California half of the abandoned riverbed became physically within the political boundaries of the State of Arizona. The reverse is true in some other locations to the north and west where Arizona owned abandoned river channel is within California.

In 1966, Arizona sold some of its uplands and a portion of the abandoned riverbed to private parties, a total of about 66 acres. When the time came for Arizona to issue its

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patent for this sale it discovered that it had mistakenly included roughly 41 acres of California's west one-half of the riverbed in the sale. The Arizona State Land Department has requested that the Commission help in clearing up this problem and provide clear title to the purchasers of the property.

The Dulins assert that the property is in the State of Arizona and that their predecessors in interest paid for and purchased the property in reliance on Arizona's purported title and that they and their predecessors have openly occupied and farmed the property, have installed improvements thereon in such reliance, and that the State of California up to this time has not asserted a conflicting claim of ownership. The Dulins claim they own the property and that it is entitled to evidence of such ownership thereto.

Staff has reviewed the situation and believes the best solution in this situation is to enter into a settlement with the purchasers of Arizona's purported sale. The parcel is now dry and used for growing dates and cotton. It is no longer suitable for or susceptible to use for public trust purposes. The surrounding property is entirely held in private hands and used for agricultural purposes.

The settlement proposed is for the State of California to quitclaim to Arlin Dulin and Sharen Dulin, husband and wife, all right, title and interest to and within the property, including but not limited to, any and all public rights or interests of the State of California under the jurisdiction of the Commission in exchange for an amount of money equal to the fair market value of the property. Proceeds from the settlement would be deposited in the Kapiloff Land Bank Fund and used to purchase other property along the Colorado River for trust use at a later time.

An appraisal of the property has been made by an accredited appraisal firm and reviewed by staff. Staff has determined that the appraisal meets appropriate standards of appraisal and its conclusion is a reasonable value supported by the data presented. The appraisal indicates a fair market value of \$33,000 for the parcel. The Dulins have agreed to the settlement amount. The Arizona Land Department will refund to the Dulins that amount of the original purchase price attributed to the California portion of the sale.

EXHIBITS:

- A. Vicinity Map
- B. Site Map
- C. Legal Description

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IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS, AND PUBLIC RESOURCES CODE SECTION 8631, AN ACTION TAKEN PURSUANT TO THE KAPILOFF LAND BANK ACT, PUBLIC RESOURCES CODE SECTION 8600, ET SEQ.

2. FIND THAT, WITH RESPECT TO THE PROPOSED TITLE SETTLEMENT AGREEMENT, INCLUDING THE EXCHANGE OF THE STATE'S INTEREST WITHIN THE LANDS DESCRIBED IN EXHIBIT C OF THIS CALENDAR ITEM FOR \$33,000 IN FUNDS WITH WHICH TO ACQUIRE LAND, OR OTHER INTERESTS IN REAL PROPERTY OF BENEFIT TO THE PUBLIC TRUST:
 - A. THE AGREEMENT IS IN THE BEST INTERESTS OF THE STATE AND CONSISTENT WITH PUBLIC TRUST NEEDS.

 - B. THAT THE \$33,000 TO BE PLACED IN THE KAPILOFF LAND BANK FUND IS EQUAL TO, OR GREATER THAN, THE VALUE OF THE INTEREST IN THE LANDS DESCRIBED IN EXHIBIT C BEING RELINQUISHED BY THE STATE.

 - C. THE AREA OF INTERESTS IN LANDS OF THE STATE BEING RELINQUISHED, WHICH IS A RELATIVELY SMALL AREA (APPROXIMATELY 41 ACRES) HAS BY AN AVULSIVE ACTION OF THE RIVER IN 1920 BEEN EXCLUDED FROM THE PUBLIC CHANNELS, AND IS NO LONGER AVAILABLE OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING OR OTHER PUBLIC TRUST PURPOSES AND IS NO LONGER IN FACT SUBMERGED LANDS IN THE PRESENT BED OF THE COLORADO RIVER AND IS NO LONGER IN CALIFORNIA.

 - D. THE CONVEYANCE PROPOSED BY THE AGREEMENT WILL NOT INTERFERE WITH BUT RATHER ENHANCE THE PUBLIC'S RIGHTS OF ACCESS TO AND NAVIGATION IN THE COLORADO RIVER, BY THE FUNDING OF PURCHASES OF ADDITIONAL LANDS FOR PUBLIC TRUST USES ALONG THE COLORADO RIVER.

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- E. THE PARTIES HAVE A GOOD FAITH AND BONA FIDE DISPUTE AS TO THEIR RESPECTIVE INTERESTS AND CLAIMS WITHIN THE AGREEMENT AREA.
 - F. THE PROPOSED SETTLEMENT CONSTITUTES A COMPROMISE OF THE CONTESTED ISSUES OF LAW AND FACT UPON WHICH THE DISPUTE IS BASED.
 - G. THE AGREEMENT IS IN LIEU OF THE COSTS, DELAYS, AND UNCERTAINTIES OF TITLE LITIGATION, AND IS CONSISTENT WITH AND IS AUTHORIZED BY THE REQUIREMENTS OF LAW.
 - H. ON THE DATE PROVIDED FOR IN THE AGREEMENT AND CONSISTENT WITH ITS TERMS, THE PARCEL, DESCRIBED IN EXHIBIT C, WILL BE FOUND TO NO LONGER BE NECESSARY OR USEFUL FOR THE PURPOSES OF THE PUBLIC TRUST AND THE PUBLIC TRUST EASEMENT WILL BE TERMINATED.
3. APPROVE AND AUTHORIZE THE EXECUTION, ACKNOWLEDGMENT, AND RECORDATION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION OF THE DULIN SETTLEMENT AGREEMENT IN SUBSTANTIALLY THE FORM OF THE COPY ON FILE WITH THE COMMISSION.
4. AUTHORIZE AND DIRECT THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE CALIFORNIA ATTORNEY GENERAL TO TAKE ALL NECESSARY OR APPROPRIATE ACTION ON BEHALF OF THE CALIFORNIA STATE LANDS COMMISSION, INCLUDING THE EXECUTION, ACKNOWLEDGMENT, ACCEPTANCE, AND RECORDATION OF ALL DOCUMENTS AND PAYMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE TITLE SETTLEMENT AGREEMENT; AND TO APPEAR ON BEHALF OF THE COMMISSION IN ANY LEGAL PROCEEDINGS RELATING TO THE SUBJECT MATTER IN THE AGREEMENT.

This Exhibit is solely for purposes of generally defining the lease premises 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.

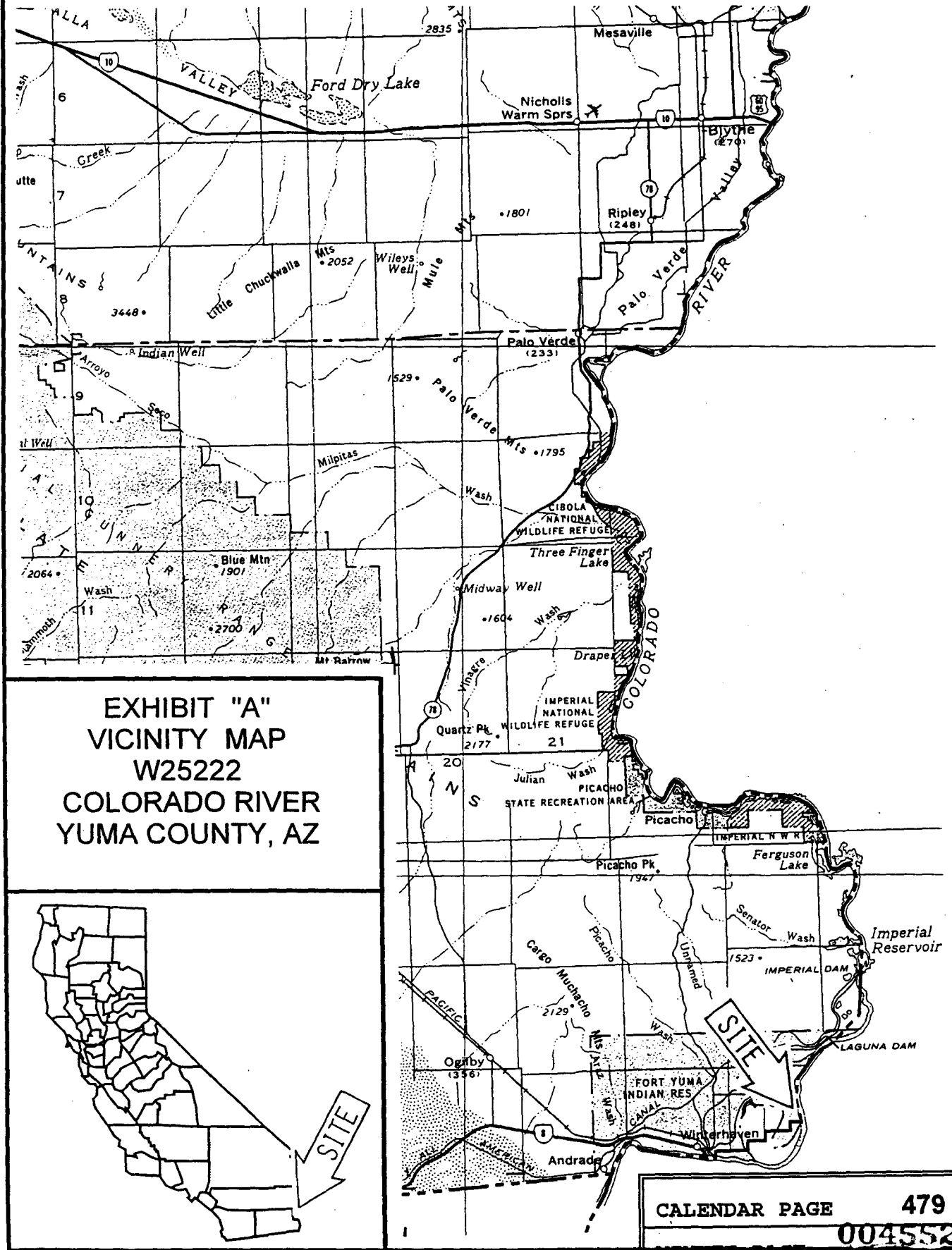
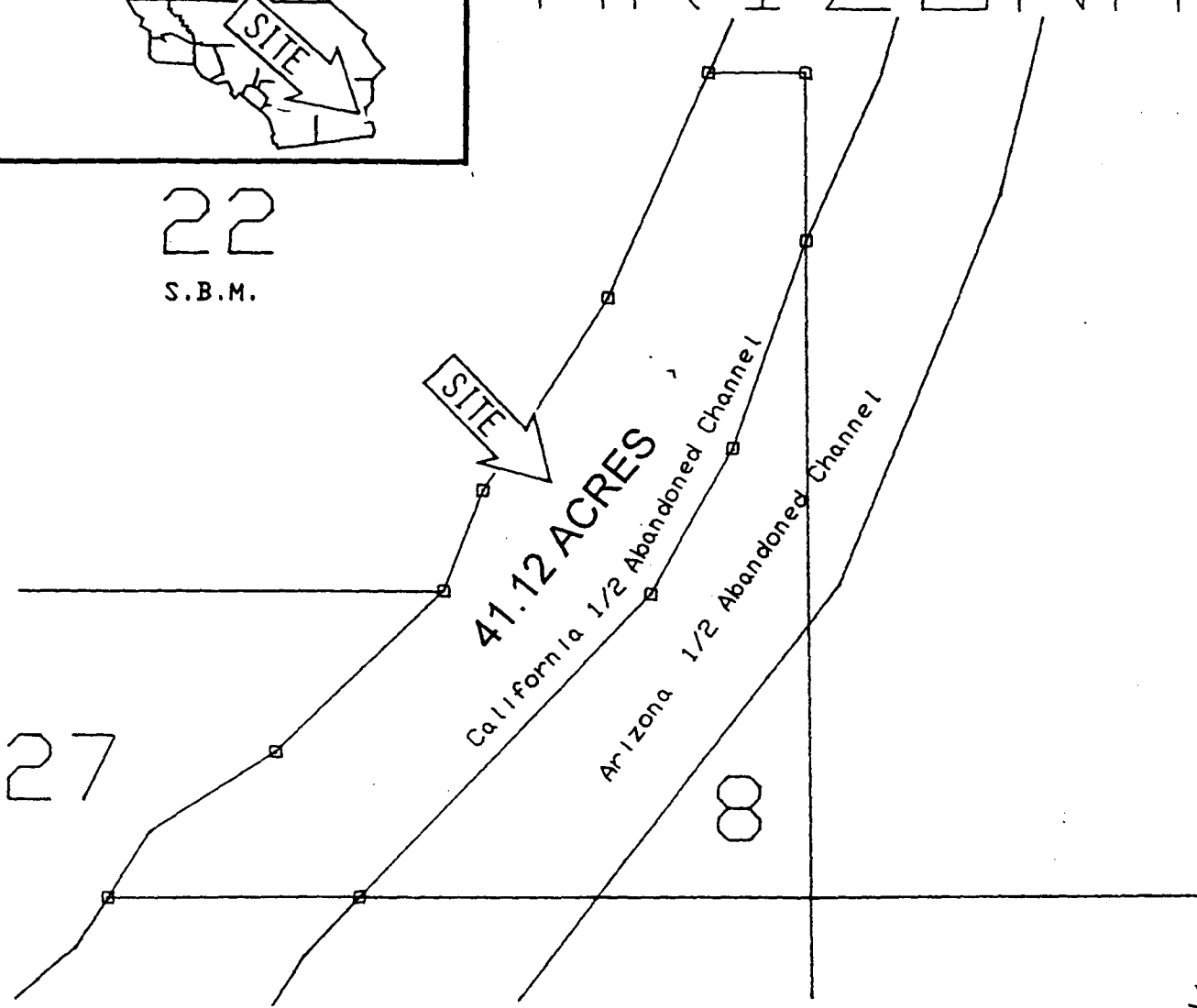


EXHIBIT "B"
SITE MAP
W25222
COLORADO RIVER
YUMA COUNTY, AZ



ARIZONA

22
S.B.M.



This Exhibit is solely for purposes of generally defining the lease premises and shall not be construed as a waiver or limitation of any State interest in the subject or any other property.

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EXHIBIT "C"
LAND DESCRIPTION

W 25222
AD 347

A parcel of sovereign land of the State of California, now situated in the County of Yuma, State of Arizona, more particularly described as follows:

All of that portion of the west one-half of the now abandoned bed of the 1920 Channel of the Colorado River lying southerly of the easterly prolongation of that certain course lying between Point No. 22 and Point No. 23 on the Arizona-California boundary, as defined in the Interstate Compact Defining the Boundary between the States of Arizona and California, executed by the respective Boundary Commissions on March 12, 1963 and northerly of the westerly of the prolongation of the south line of Lot 4 in Section 8, T. 8 S., R. 22 W., G. & S. R. M. as shown on the Supplemental Plat of said Section 8 accepted by the United States Department of the Interior, Bureau of Land Management on February 1, 1982.

END OF DESCRIPTION

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