

MINUTE ITEM
This Calendar Item No. C54 was approved as
Minute Item No. 54 by the California State Lands
Commission by a vote of 3 to 0 at its
4-26-05 meeting.

**CALENDAR ITEM
C54**

A 25, 29

04/26/05
PRC 8520 WP 8520.9
J. Smith
C. Fossum
E. Gillies

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**CONSIDER APPROVAL OF A PURCHASE MONEY HOLDBACK AGREEMENT AND
CONSIDER AMENDMENT TO GENERAL LEASE - RIGHT OF WAY USE FOR TWO
RIVER CROSSINGS OF THE SAN JOAQUIN RIVER, NORTHWEST OF PINEDALE,
FRESNO AND MADERA COUNTIES**

PARTIES TO PURCHASE MONEY HOLDBACK AGREEMENT:

James and Carolyn Moen, et al. ("Moen")
Post Office Box 307
Pinedale, California 93650

Calaveras Materials, Inc. ("Calaveras")
3451 West Shaw Avenue
Fresno, California 93711-3204

San Joaquin River Conservancy ("Conservancy")
5439 E. Olive Ave.
Fresno, California 93727

The Trust for Public Land
116 New Montgomery Street, Suite 300
San Francisco, California 94105

San Joaquin River Parkway and Conservation Trust
1550 E. Shaw Avenue, Suite 114
Fresno, California 93710

State of California, acting by and through the
Wildlife Conservation Board
1807-13th Street
Sacramento, California 95814

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California State Lands Commission ("Commission")
100 Howe Ave., Suite 100 South
Sacramento, California 95825

PURCHASE MONEY HOLDBACK AGREEMENT

In its action on April 5, 2004, the Commission approved Lease No. PRC 8520.9. The Commission additionally approved an agreement between the Moens, Calaveras, the Conservancy, and the Commission, which would provide the conditions for carrying out a remediation or removal project involving the existing river crossings. The agreement, authorized on April 5, 2004, has since been the subject of a number of drafting modifications. That agreement is now in the form of a Purchase Money Holdback Agreement (Agreement). Staff believes that a new authorization of the modified Agreement is therefore appropriate.

On March 10, 2005, the San Joaquin River Conservancy Board agreed to the acquisition of the Moen's property, subject to the modified Agreement, which authorizes the amount of \$500,000 to be withheld (holdback funds) from the purchase price as surety for completion of the project. The \$500,000 is to be released to the Moens upon removal or remediation of the existing river crossings.

Some of the major provisions of the modified Agreement are:

- ° On or about April 26, 2005, Lessees shall submit an application to the Commission for the prompt removal or remediation of all crossings constructed by Calaveras Materials, Inc. or its predecessors.
- ° Lessees shall enter into a reimbursement agreement with the Commission, which will act as CEQA Lead Agency, agreeing to reimburse Commission staff for the cost to prepare an Environmental Impact Report (EIR).
- ° Commission staff will request certification of the Final EIR and approval of the subject project by the Commission.
- ° The project that is approved by the Commission shall be implemented by the Lessees pursuant to a Remedial Action Agreement (future Lease Amendment) with the Commission.

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- ° Partial release of the holdback funds to the Moens, upon completion of certain elements of the Removal/Remediation Project.
- ° Any and all remaining holdback funds will be released to the Moens if they have acted in good faith and the Commission fails to certify a Final EIR and approve a project within two years of when the application is deemed complete by Commission staff.
- ° If the Commission finds that the Lessees have both ceased to work in good faith, the balance of the holdback funds shall be released to the Wildlife Conservation Board and the San Joaquin River Conservancy.
- ° If the cost of the project exceeds the amount of holdback funds released to the State, the Moens shall provide sufficient funds to complete the project. If the cost to the State is less than the amount released to the State, the State shall release the unused balance to the Moens.
- ° If the Remedial Action Agreement provides for cost sharing, the Moens shall only be obligated to provide their share.
- ° If the Project is completed by the Lessees, then the Commission shall not be entitled to take any action against the Lessees, including but not limited to, litigation related to their alleged occupation, use and conversion of State property.

The Agreement resolving the Lessee's respective responsibilities for the river crossings includes a provision for release by the Commission against Moen for any claims of past trespass damages upon compliance with the terms of the Lease and remediation and/or removal of structures. The Conservancy governing board has approved, upon the Lessees' completion of the removal/remediation project, to take over responsibility pursuant to a lease from the Commission for any structures that should remain.

Staff recommends that the Commission approve the Purchase Money Holdback Agreement, substantially in the form on file in the Sacramento Office of the Commission.

EXISTING LEASE

CURRENT LESSEES:

Calaveras Materials, Inc. and James and Carolyn Moen, as co-lessees

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ROPOSED LESSEES:

Calaveras Materials, Inc.
James and Carolyn Moen
Paul C. Moen
Susan E. Moen
Elizabeth M. Voge
Mark A. Voge

AREA, LAND TYPE, AND LOCATION:

Sovereign public trust lands in the San Joaquin River, northwest of the community of Pinedale, Fresno and Madera Counties.

AUTHORIZED USE:

Maintenance of the following existing structures: 1) one metal bridge, as shown on page 1 of Exhibit A, within the area described as Parcel 1 on Exhibit B; 2) one earthen dam including two corrugated metal pipe culverts and one metal bridge, as shown on page 2 of Exhibit A, within the area described as Parcel 2 on Exhibit B, 3) one earthen covered corrugated metal pipe culvert, as shown on page 2 of Exhibit A, within the area described as Parcel 3 on Exhibit B; and to conduct a study and prepare a work plan for potential remediation and/or removal of the above structures; and the installation of warning signs.

CONSIDERATION:

The public health and safety

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance with coverage of no less than \$5,000,000.

Expenses:

Co-lessees shall enter into an agreement to provide reimbursement to the Commission for its direct expenses assuring compliance with removal or remediation activities related to the crossings and as lead agency to prepare an EIR pursuant to the provisions of the California Environmental Quality Act (CEQA).

Bond:

As the result of a pending land transaction for the Moen property, Moen is required to provide surety or other guarantees to the Conservancy for completion of removal and/or remediation of the crossings to be determined by the Commission following review of the work plan and

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subsequent to CEQA compliance and a decision on remediation or removal.

CURRENT LEASE TERM:

Twenty-one months, beginning April 1, 2004 and ending December 31, 2005.

PROPOSED LEASE AMENDMENT:

1. Add additional lessees as outlined above.
2. Delete Section 2, paragraph 4 in its entirety and substitute a new paragraph 4 providing for tolling of any statute of limitations regarding any claims by Lessor against Lessees during the lease term, pending remediation or removal of the river crossing structures, and release of claims upon completion of the project.
3. Extend the expiration date of the lease to December 31, 2007.

All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. At its meeting on April 5, 2004, the Commission authorized the issuance of Lease No. PRC 8520.9 to the Moens and Calaveras, as co-Lessees, for maintenance of existing river crossing structures. Calaveras is the Lessee on property owned by the Moens in Madera County and successor to a gravel mining operation for which the river crossings were constructed. Active extractive mining operations have ceased on the Moen property and Calaveras is in the process of completing operations under its reclamation plan with Madera County.

The Lease required the Lessees to submit a plan regarding the removal/remediation of the river crossing structures pursuant to Section 2, Paragraph 4. The project described in such plan would be subject to compliance with all applicable laws, rules and regulations, including the preparation by the Commission, at Lessees' expense, of the required environmental documentation under the provisions of the CEQA and subsequent authorization by the Commission. The Lease also required the Lessees to enter into an agreement to provide reimbursement to the Commission for costs incurred to complete the CEQA process and direct expenses in assuring compliance with removal/remediation of the river crossings.

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The Agreement, which is also the subject of this calendar item, contains a provision requiring the Lessees to submit a formal application to the Commission for the removal/remediation project on or about April 26, 2005. At such time as the Commission approves a removal/remediation project, the Lease will be amended.

Certain provisions of the Lease relating to activities that were to take place as a precursor to a project application are no longer appropriate and staff is therefore recommending that Section 2, paragraph 4, be deleted in its entirety and substituted with a tolling provision. In addition, staff is recommending that the term of Lease No. PRC 8520.9 be extended to December 31, 2007.

3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that the modification of the Agreement and amendment of the existing lease are not subject to the provisions of the CEQA because they are not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the lease, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Location and Site Maps

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE MODIFICATION OF THE AGREEMENT AND AMENDMENT OF THE EXISTING LEASE ARE NOT SUBJECT TO THE

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REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060 (c)(3) BECAUSE THE ACTIVITIES ARE NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

APPROVE A MODIFIED PURCHASE MONEY HOLDBACK AGREEMENT AMONG THE PARTIES SUBSTANTIALLY IN THE FORM OF THE AGREEMENT ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION TO PROVIDE SURETY OR OTHER GUARANTEES FOR COMPLETION OF THE REMOVAL/REMEDATION PROJECT AND RELEASE OF CLAIMS AGAINST THE MOENS AND CALAVERAS UPON COMPLETION OF THE REMOVAL/REMEDATION PROJECT BY THE MOENS AND CALAVERAS TO THE SATISFACTION OF THE COMMISSION.

AUTHORIZE AMENDMENT OF A GENERAL LEASE - RIGHT OF WAY USE, TO JAMES AND CAROLYN MOEN AND CALAVERAS MATERIALS INC., AS CO-LESSEES, TO: 1) INCLUDE PAUL C. MOEN, SUSAN E. MOEN, ELIZABETH M. VOGEL AND MARK A. VOGEL AS CO-LESSEES; 2) DELETE THE PROVISIONS OF SECTION 2, PARAGRAPH 4 IN ITS ENTIRETY; AND SUBSTITUTE A NEW PARAGRAPH 4 PROVIDING FOR TOLLING OF ANY STATUTE OF LIMITATIONS REGARDING ANY CLAIMS BY LESSOR AGAINST LESSEES DURING LEASE TERM, PENDING REMEDIATION OR REMOVAL OF THE RIVER CROSSING STRUCTURES, AND RELEASE OF CLAIMS UPON COMPLETION OF THE PROJECT; AND 3) EXTEND THE EXPIRATION DATE OF THE LEASE TO DECEMBER 31, 2007. ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

NO SCALE

SITE



**CALAVERAS MATERIALS INC.
SAN JOAQUIN RIVER CROSSINGS**

NO SCALE

LOCATION

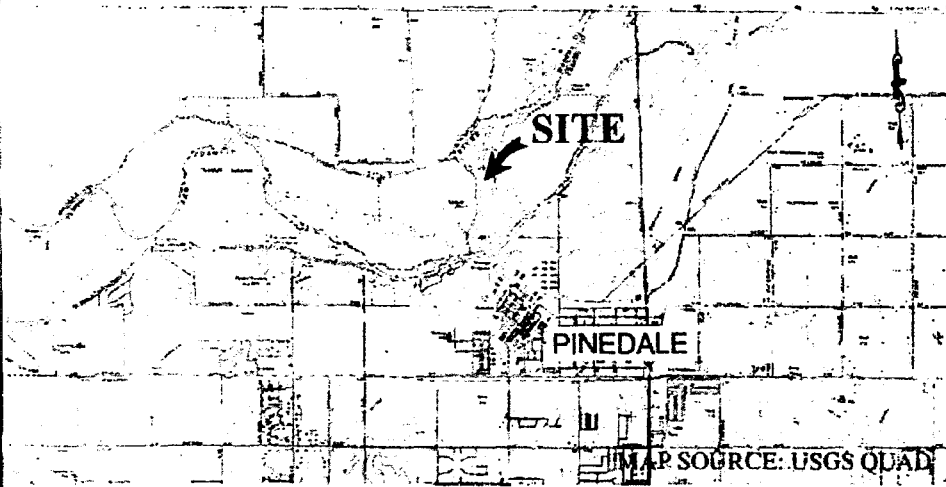


Exhibit A
PAGE 1
WP 8520.9
GENERAL LEASE
RIGHT OF WAY USE
FRESNO/MADERA CO.



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.

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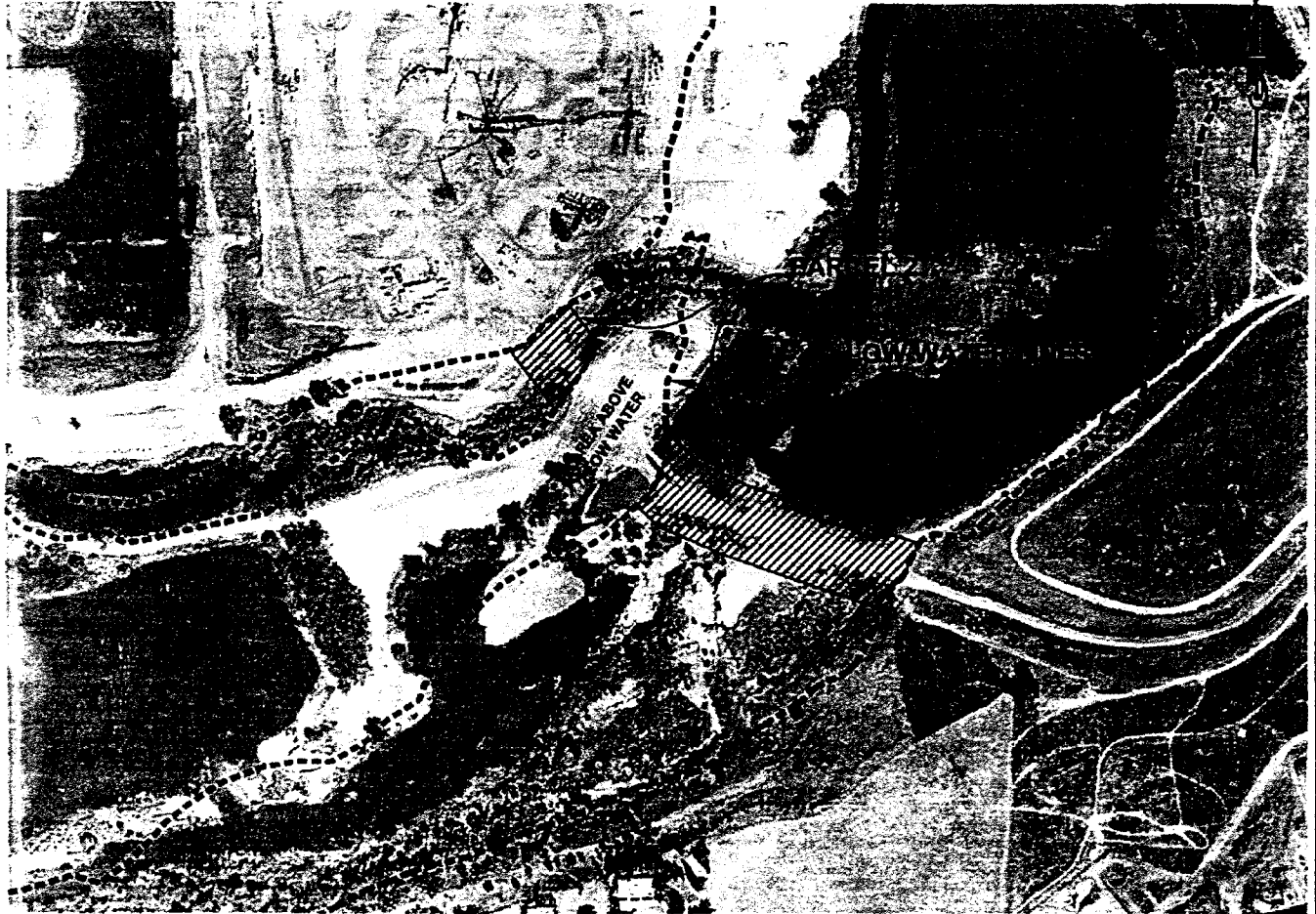
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NO SCALE

SITE



**CALAVERAS MATERIALS INC.
SAN JOAQUIN RIVER CROSSINGS**

NO SCALE

LOCATION

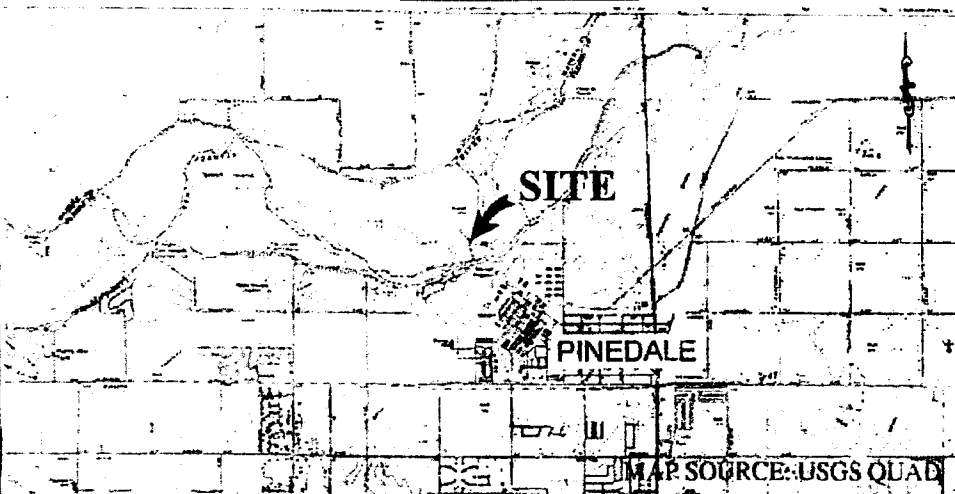


Exhibit A
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