

**CALENDAR ITEM
C59**

A 34
S 18

01/26/12
W 26493
S. Paschall

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

APPLICANT:

Randy A. Baker, Trustee or his Successor(s), for the benefit of the TCOB Trust under declaration of trust dated December 29, 1999

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Colorado River, adjacent to 1218 Beach Drive, city of Needles, San Bernardino County.

AUTHORIZED USE:

Construction, use, and maintenance of a boat dock and gangway, and use and maintenance of an existing fire pit and riprap bankline located on State sovereign land.

LEASE TERM:

10 years, beginning January 26, 2012.

CONSIDERATION:

Boat Dock, Gangway, and Fire Pit: Annual rent in the amount of \$187, with the State reserving the right to fix a different rent periodically during the term of the lease, as provided in the lease.

Riprap Bankline: Public use and benefit, with the State reserving the right to set a monetary consideration if it is determined to be in the best interest of the State.

SPECIFIC LEASE PROVISIONS:

Insurance: Combined single-limit liability coverage not less than \$1,000,000.

Other: Lessees acknowledge that the Public Access Easement shall remain open to the public and that no structures or improvements shall be erected and no personal property placed so as to obstruct or prevent public access in and along the Easement. Such improvements include, but are not limited to, fences, walls, railings, or landscaping. Lessees further acknowledge that they shall not

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place signs or advocate in any other manner in such a way as to prevent or discourage public use of the Public Access Easement.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the Lease Premises.
2. The State of California had its fee ownership of the sovereign land located in the Colorado River at this location confirmed in 1991 as a result of a Boundary Line Agreement and Compromise Settlement entered into between the Commission and Kahala Needles Partners, Ltd., a Nevada Limited Partnership, recorded as AD 134 dated January 1, 1991 and recorded on August 11, 1992, document No. 92-333250, Official Records, San Bernardino County, California. Projects, including new development or maintenance of existing facilities, extending waterward of the Ordinary High Water Mark (OHWM) fixed in the abovementioned Agreement (AD 134) require obtaining a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.
3. On May 24, 2011, the Department of the Army, Los Angeles District, Corps of Engineers, issued a response to the Applicant's request for a Letter of Permission (LOP) to place a floating dock and gangway in the Colorado River. The Corps of Engineers requested that the Applicant establish legal rights to the property by way of a lease agreement with the State. The Applicant is now applying for a new General Lease – Recreational and Protective Structure Use from the Commission.
4. The Applicant has submitted to the California Department of Fish and Game (CDFG) a Notification of Lake or Streambed Alteration. On September 23, 2011, CDFG issued a list of potential mitigation measures for a Streambed Alteration Agreement (SAA).
5. Construction of the floating boat dock and gangway will begin after June 1, 2012 and be completed by September 31, 2012.
6. Pursuant to the abovementioned Boundary Line Agreement and Compromise Settlement, the State of California was granted a perpetual public pedestrian access 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 Applicants' property. Public access to the easement is from the northern or southern end of the

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subdivision, or from the Colorado River. Because the easement is on private property, the Commission has no leasing jurisdiction over it.

7. The United States Department of the Interior, Bureau of Reclamation (Reclamation), Yuma Area Office conducted a review by boat of the riprap bankline on March 27, 2002 and also conducted a site visit made on April 10, 2002. The inspection revealed that the bankline had been 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 that its capacity to apply additional riprap to the bankline at this location in the future was compromised due to the pending development of the upland residences and subsequently declared that Reclamation would not provide additional riprap to the bankline at this location in the future. Consequently, Reclamation decreed that the upland homeowner (Applicant) was to be responsible for maintaining protection of their own banklines in the future, subject to the homeowner seeking approval and permitting of their riprap or bankline construction work from the Corps of Engineers under Section 10 of the River and Harbors Act of 1899.
8. The riprap bankline mutually benefits both the public and the Applicant, and will be maintained by the Applicant at no cost to the public.
9. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
 - B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

The proposed lease does not meet either of the statutory exceptions and is thus subject to rent.

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10. **Fire Pit and Riprap Bankline:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of 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).

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

11. **Boat Dock and Gangway:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of 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).

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

12. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. 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 project, as proposed, is consistent with its use classification.

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Department of Fish and Game

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Fire Pit and Riprap Bankline: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14,

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section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Boat Dock and Gangway: 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).

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 section 6370 et seq.

AUTHORIZATION:

Authorize Issuance of a General Lease – Recreational and Protective Structure Use to Randy A. Baker, Trustee or his Successor(s) for the benefit of the TCOB Trust under declaration of trust dated December 29, 1999, beginning January 26, 2012, for a term of 10 years, for the construction, use, and maintenance of a boat dock and gangway, and the use and maintenance of an existing fire pit and riprap bankline located on sovereign land, 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 boat dock, gangway and fire pit to be \$187 per year; consideration for the riprap bankline to be the public use and benefit, with the State reserving the right to set a monetary consideration if it is determined to be in the best interest of the State; combined single-limit liability coverage of not less than \$1,000,000.

EXHIBIT A

W 26493

LAND DESCRIPTION

A parcel of State owned land adjacent to Swamp and Overflow Survey 2168, patented June 12, 1891, lying in the bed of the Colorado River, County of San Bernardino, State of California, more particularly described as follows:

BEGINNING at the most northerly corner of Lot 8 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 said County; thence southeasterly along the northeasterly line of said Lot, said northeasterly line also being the Ordinary High Water Mark of the Colorado River as shown on said map, to the easterly corner of said Lot; thence continuing southeasterly along the northeasterly line of Lot 9 of said Tract, said northeasterly line also being the Ordinary High Water Mark of the Colorado River as shown on said map, to the easterly corner of said Lot 9; thence leaving said northeasterly line, northeasterly along the northeasterly prolongation of the southeasterly line of said Lot 9 95.04 feet; thence northwesterly along a line parallel with said Ordinary High Water Mark to the intersection with the northeasterly prolongation of the westerly line of said Lot 8; thence southwesterly along said northeasterly prolongation 95.02 feet to the POINT OF BEGINNING.

TOGETHER WITH a ten foot use area adjacent to the northeasterly and southeasterly sides of said dock and walkway.

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

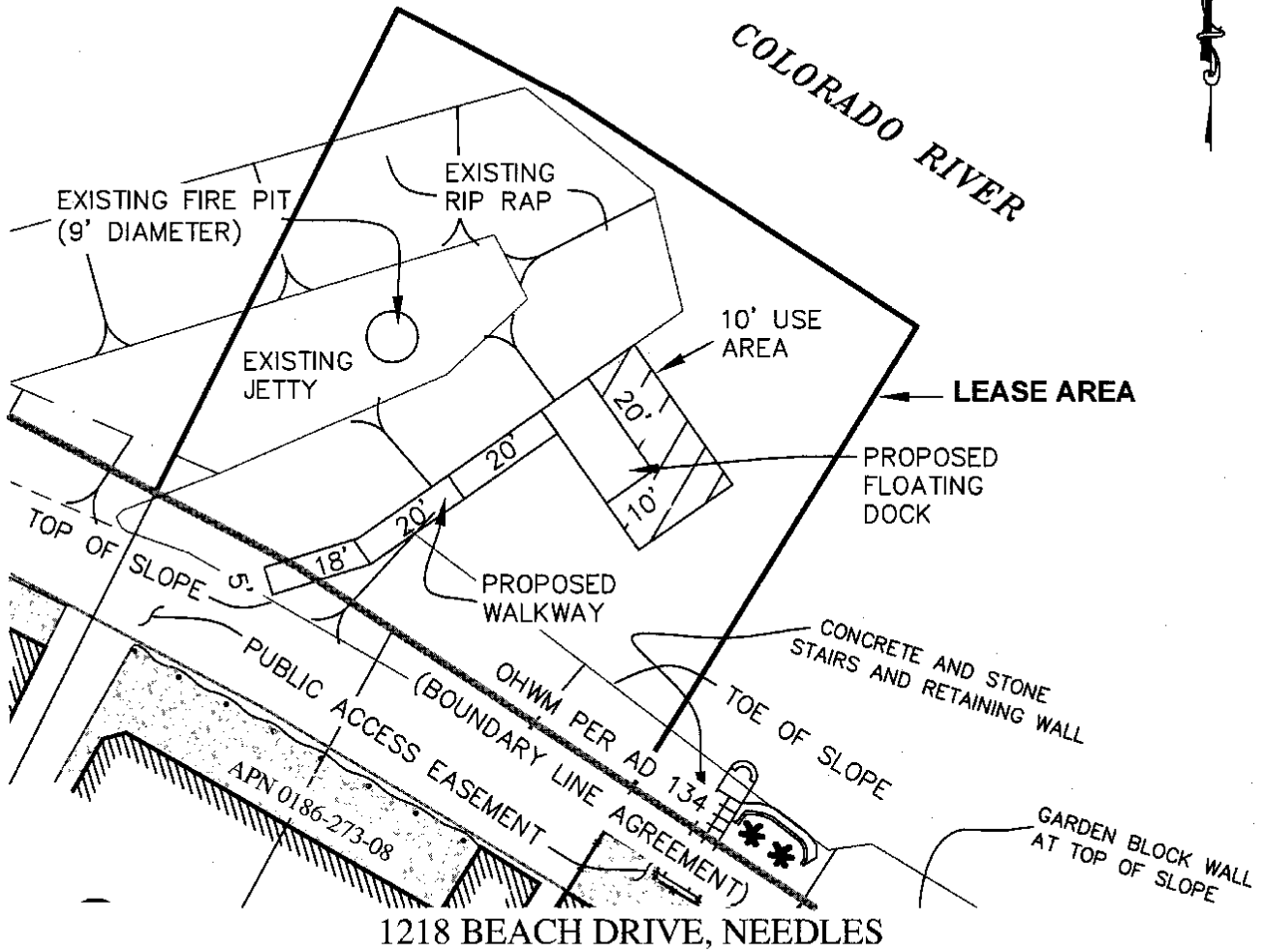
END OF DESCRIPTION

Prepared 1/9/2012 by the California State Lands Commission Boundary Unit.



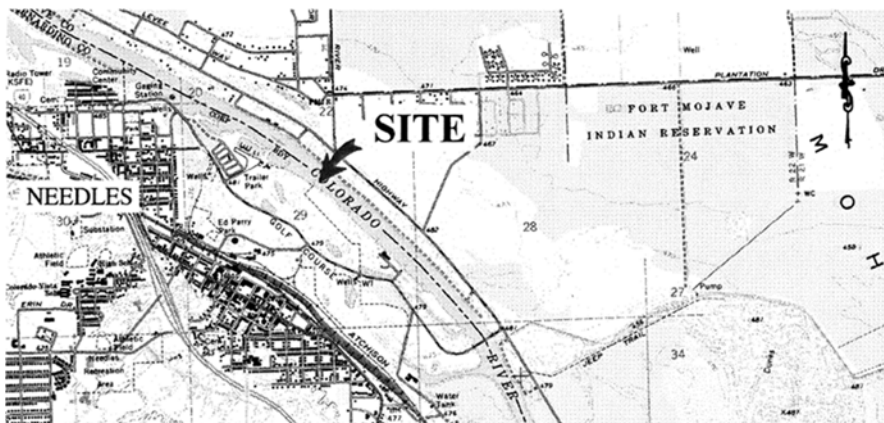
NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26493
 RANDY A. BAKER
 APN 0186-273-08
 GENERAL LEASE -
 RECREATIONAL AND
 PROTECTIVE STRUCTURE USE
 SAN BERNARDINO COUNTY



DJF 01/17/2012

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.