

**STAFF REPORT
C83**

A 33
S 16

04/19/18
W 40990
V. Perez

**CONSIDER APPLICATION FOR ISSUANCE
OF A MINERAL EXTRACTION LEASE FOR
MINERALS OTHER THAN OIL, GAS, OR
GEOTHERMAL RESOURCES**

APPLICANT:

County of San Bernardino

AREA, TYPE LAND AND LOCATION:

Approximately 80 acres of State 100 percent reserved mineral interest, school land, (State Parcel Number 195-522; Assessor's Parcel Number 552-141-17), located within the W/2 of the SW/4 of Section 36, Township 8 North, Range 7 East, SBM, San Bernardino County. This State parcel is situated near Ludlow, approximately 45 miles east of Barstow and immediately north of Interstate 40 (Exhibits A and B, attached).

AUTHORIZED USE:

Extraction of rock, sand, and gravel (aggregate), and any other mineral deposits except oil, gas, other hydrocarbons, and geothermal resources.

LEASE TERM:

The primary term of the proposed State mineral extraction lease (Lease) is 10 years with an effective date of May 1, 2018, through April 30, 2028, with a preferential right to renew for one successive term not to exceed 10 years upon such reasonable terms and conditions as may be prescribed by the Commission.

CONSIDERATION:

1. For all aggregate extracted and used by the County (known as inside use) royalty is \$0.90 per short ton aggregate and escalates or de-escalates each Lease year, starting May 1, 2019, by the Bureau of Labor Statistics, Producer Price Index by Commodity for Special Indexes: Construction sand, gravel, and crushed stone (WPU1321).
2. For all aggregate extracted and sold from the State parcel to third parties, royalty is 10 percent of the gross sales price with no deductions of any kind.

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3. Annual rent of \$1 per acre or \$80 for a total of 80 acres.

INSURANCE:

The County is self-insured.

BACKGROUND:

On February 5, 2001 ([Item C68, February 5, 2001](#)), the Commission approved issuance of Lease No. PRC 8272.2 to Washington Group International, Inc., authorizing the mining of 13 acres within the 80 acres of State 100 percent reserved mineral interest school lands (State parcel) in the County of San Bernardino near Ludlow. This lease's effective date was March 2, 2001, and the primary lease term was for 2 years and 4 months. The site is identified as the Ludlow Pit (California Mine ID No. 91-36-0113).

On November 26, 2001 ([Item C84, November 26, 2001](#)), the Commission approved a lease amendment and extension following staff's review of the Mitigated Negative Declaration (State Clearinghouse No. 2001071107) and Mining and Reclamation Plan No. 2001M-04 approved and adopted by the County on October 4, 2001. The County approved the expansion of the mining area from 13 acres to 64 acres within the 80 acres of the project area. The amendment also extended the primary lease term to 10 years, beginning March 1, 2001, and expiring on February 28, 2011.

On August 8, 2005 ([Item C56, August 8, 2005](#)), the Commission approved the assignment of 100 percent of the lessee's right, title and interest, of Lease No. PRC 8272.2, from Washington Group International, Inc. to Granite Construction Company (Granite). Granite held this lease for the remainder of the lease term, to the February 28, 2011 expiration date, but did not conduct any mining or stockpiling activities after 2004 and did not elect to renew for an additional 10-year term as allowed in the lease.

On April 19, 2016, Granite sold its surface interest to San Bernardino County. The existing Conditional Use Permit and Mining and Reclamation Plan (No. 2001M-04) remains valid until October 15, 2026, and the Commission still retains the mineral interest. Production on the parcel remains idle, but may resume in the future.

Pursuant to the Surface Mining and Reclamation Act (SMARA), counties or cities are the lead agency for a Conditional Use Permit and Mining and Reclamation Plan that provides for how mining is to occur and how and when the land will be reclaimed to a usable form. Under the SMARA, annual inspections are required to be performed by the lead agency to determine the progress of mining and reclamation and to ensure that the permittee complies with all terms and

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conditions of the Conditional Use Permit. In this case, the County will be performing inspections of their own mine property under the oversight of the Department of Conservation, Division of Mine Reclamation.

On May 1, 2017, the County applied for a lease to extract aggregate on the State's RMI parcel. If the proposed Lease is approved (Exhibit D, attached) the County will use (known as inside use) the aggregate for the County's maintained roads and appurtenant facilities. Examples of this use include product for shoulder washouts, bridge damage, and roadway asphalt damage. The greatest need for aggregate typically occurs during big storms, and could include repairs for large sections of asphalt roadway surface and heavily eroded road shoulders. The aggregate could also be used for replacing earth material behind bridge abutments and wing walls washed away by storms. The County may also sell the aggregate to third parties, also known as outside sales.

The County also plans to stockpile excess aggregate material on the surface that may accumulate on the County's maintained roads, following storms or other rain events. Such aggregate will be removed from the County's roads and transported to the State parcel and stockpiled for future use. The County will segregate its stockpile from the State's mineral resource to allow for the accurate accounting of all mined aggregate and commensurate royalty owed to the Commission. The County will not commingle its aggregate with the State's aggregate until it leaves the State parcel, or the appropriate royalty has been paid pursuant to the terms of the proposed Lease.

STATE'S BEST INTERESTS ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6501.1, 6890, 6898, and 6899; California Code of Regulations, title 2, section 2200 et seq.

The proposed Lease would allow the County to mine aggregate for needed construction and maintenance of public roads to improve public safety. Without a local source of aggregate, the County may face shortages and need to import aggregate, increasing delivery costs and air emissions. Additionally, the County can properly operate and maintain the State parcel while protecting public health and safety. The County approved a Mitigated Negative Declaration, a Mitigation Monitoring and Compliance Program for implementation of the mitigation measures. The Mitigation Monitoring Program imposes feasible measures to avoid or substantially reduce any significant environmental impacts.

The proposed Lease provides that the County shall deliver to the Commission quarterly royalty statements showing the work performed,

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including the amount and location of the outside aggregate stockpiled upon the State parcel, a site map of the location of the stockpiles, and the amount, quantity and value of all mineral resources produced, extracted, shipped, used or sold therefrom during the prior 3-month period. The County submitted proof of self-insurance on December 26, 2017. This information is on file at the Commission's Long Beach office. The proposed Lease will also generate royalty revenue for the California State Teachers' Retirement System. For these reasons, staff believes that issuance of the proposed Lease is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. A Mitigated Negative Declaration, State Clearinghouse No. 2001071107, and Mitigation Monitoring and Compliance Program were prepared by the County of San Bernardino and adopted on October 4, 2001, for this project. Commission staff has reviewed such documents.
2. The County proposes to mine aggregate under the operation conditions approved in the Mitigated Negative Declaration (State Clearinghouse No. 2001071107) and the Mining and Reclamation Plan No. 2001M-04 approved by the County of San Bernardino pursuant to the California Surface Mining and Reclamation Act of 1975 (SMARA; Pub. Resources Code, §§ 2710-2796).
3. The State parcel is also listed by the Division of Mine Reclamation on the Assembly Bill (AB) 3098 List (dated March 29, 2018), which means that the mine currently has an approved reclamation plan, approved financial assurance, filed annual report, paid reporting fee, and is inspected annually by the lead agency.
4. Staff conducted a site inspection on April 12, 2017, and observed that some reclamation had occurred, such as spreading the stockpiles, and creation of furrows to encourage revegetation.
5. The County has submitted the required filling fee (\$25) and the approximate expense deposit.
6. This 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 2.1, to optimize returns for the responsible development and use of State lands and resources, both onshore and offshore.

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7. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Mineral Extraction Lease

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDINGS:

1. Find that a Mitigated Negative Declaration, State Clearinghouse No. 2001071107, and a Mitigation Monitoring and Compliance Program were prepared by the County of San Bernardino and adopted on October 4, 2001, for this project and that the Commission has reviewed and considered the information contained therein; that in the Commission’s independent judgement, the scope of activities to be carried out under the Lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.
2. Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.

STATE’S BEST INTERESTS:

Find that the proposed Lease is in the best interests of the State.

STAFF REPORT NO. **C83** (CONT'D)

AUTHORIZATION:

Authorize the issuance of a Mineral Extraction Lease to San Bernardino County, for a primary term of 10 years beginning May 1, 2018, for all minerals other than oil, gas, other hydrocarbons, or geothermal resources on the State parcel described in Exhibit A and shown on Exhibit B (for reference purposes only).

EXHIBIT A

W 40990

LAND DESCRIPTION

That certain parcel of State School Land in San Bernardino County, State of California, more particularly described as follows:

West ½ of Southwest ¼ of Section 36, Township 8 North, Range 7 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved July 23, 1856.

END OF DESCRIPTION

Prepared 05/30/2017 by the California State Lands Commission Boundary Unit.



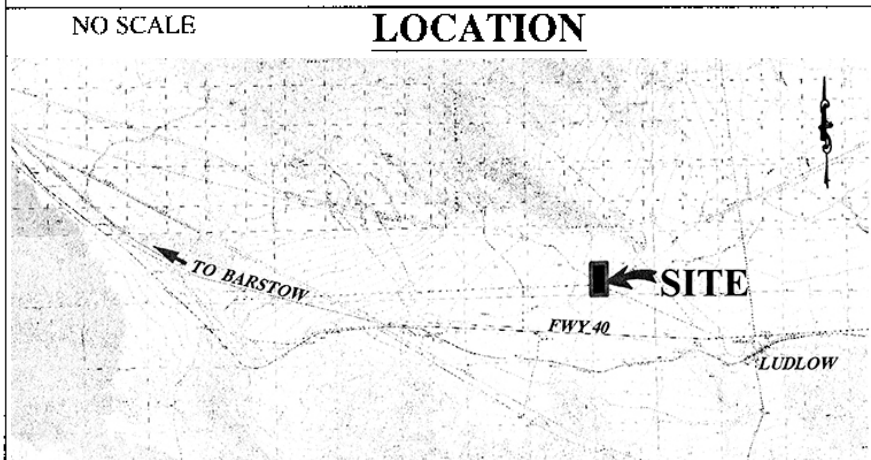
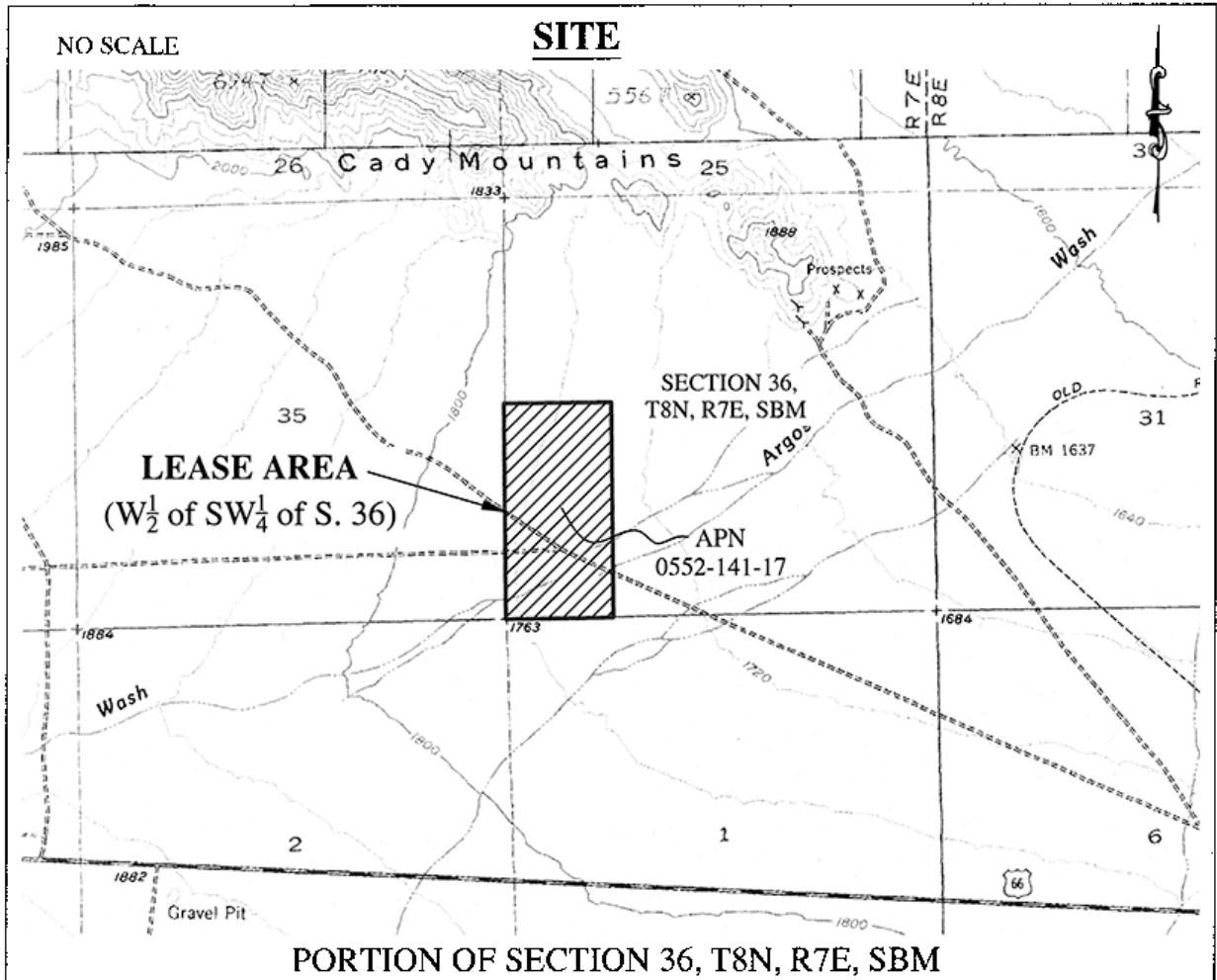


Exhibit B
W 40990
COUNTY OF SAN BERNARDINO
APN 0552-141-17
SOLID MINERAL EXTRACTION LEASE
SAN BERNARDINO COUNTY



MAP SOURCE: USGS QUAD

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.

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM

W 40990

**MINING CONDITIONAL USE PERMIT/RECLAMATION PLAN FOR SAND AND GRAVEL PIT
ON 64 ACRES WITH ASPHALT, CONCRETE AND PROCESSING PLANTS**
(W40990, State Clearinghouse No. 2001071107)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Mining Conditional Use Permit/Reclamation Plan for Sand and Gravel Pit on 64 Acres with Asphalt, Concrete and Processing Plants (Project). The CEQA lead agency for the Project is San Bernardino County.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency adopted an MND, State Clearinghouse No. 2001071107, adopted a Mitigation Monitoring and Compliance Program (MMCP) as presented in the *Mining and Reclamation Plan for the Ludlow Pit*, for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMCP adopted by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact ²	Mitigation Measure (MM) ³	Difference Between CSLC MMP and Lead Agency MMP
Air Quality (c)	MMs 42 and 43	None
Biological Resources (a)	MMs 41, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56	See #44 below.
Biological Resources (e)	MM 14	None
Cultural Resources (c)	MMs 53 and 61	See #53 below.
Geology and Soils (b)	MMs 60 and 62	None
Hydrology and Water Quality (c)	MMs 40 and 55	None

44. The applicant shall install small terrestrial wildlife barrier (tortoise-proof fencing) around the perimeter of the permitted area prior to initiating any expanded land disturbance activities. This installation shall be monitored by a qualified wildlife biologist. The fencing shall be placed in locations shown on the approved Mining Plan map, and shall be regularly inspected and maintained. A desert tortoise resurvey shall be conducted within the confines of the newly installed fencing once it is complete. A copy of this resurvey shall be provided to State Lands Commission staff within 30 days of completion.
53. In the event paleontologic resources are encountered during operation of this facility, the site operator shall stop work in the area of the find and a qualified paleontologist shall be brought to the site to evaluate the resource and the appropriate recovery measure shall be implemented, if necessary, by the paleontologist. State Lands Commission staff shall be notified of any fossils discovered on lands under the jurisdiction of the Commission. The final disposition of fossils from such lands must be approved by the Commission.
- 19⁴. Finished quarry slopes shall be graded to achieve a maximum slope ratio of 2:1 (horizontal to vertical) and finished quarry slopes shall not exceed a maximum depth of 50 feet.

² Impacts were taken from the Project’s Initial Study Checklist.

³ See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

⁴ Taken from the Initial Study, Section XVIII. *Mitigation Measures*, but not included in the Reclamation Plan.

ATTACHMENT C-1

**Mitigation Monitoring Program Adopted by the
San Bernardino County**

WASHINGTON GROUP INTERNATIONAL

Ludlow Pit Sand and Gravel Mine

MITIGATION MONITORING AND COMPLIANCE PROGRAM

This mitigation monitoring and compliance program has been prepared for use in implementing certain of the conditions of approval for SA/DN 665-269N; a sand and gravel quarry with accessory processing, concrete and asphalt batching uses on 64 acres located approximately 2 miles west of Ludlow, on the north side of Interstate 40. The program has been prepared in compliance with State law and the conditions of approval applied to the project by San Bernardino County.

Assembly Bill 3180, effective January 1, 1989, requires adoption of a reporting or monitoring program for those conditions of approval placed on a project to mitigate or avoid adverse effects on the environment. The law states that the reporting or monitoring program shall be designed to ensure compliance during project implementation.

The monitoring program contains the following elements:

- 1) The conditions of approval that act as impact mitigation measures are recorded with the action and procedure necessary to ensure compliance. In some instances, one action may be used to verify implementation of several conditions of approval, such as grading plan review and erosion control plan review.
- 2) A procedure for compliance and verification has been outlined for each action necessary. This procedure designates who will take action, what action will be taken and when, and to whom and when compliance will be reported.
- 3) The program contains a separate Mitigation Monitoring and Compliance Record for each action. On each of these record sheets, the pertinent actions and dates will be logged, and copies of permits, correspondence or other relevant data will be attached. Copies of the records will be submitted to the Planning Department.
- 4) The program has been designed to be flexible. As monitoring progresses, changes to compliance procedures may be necessary based upon recommendations by those responsible for the program. As changes are made, new monitoring compliance procedures and records will be developed and incorporated into the program.

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MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Biological Resources

****14.** During the operation, revegetation efforts shall be implemented as soon as possible on mined areas to reduce exposed surface areas and potential blowing dust. Reclaimed areas shall be recontoured and reseeded with an appropriate mixture of native plant species according to BLM specifications.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION

- **25.** The applicant shall provide San Bernardino County with an acceptable form of financial assurance for the mining/ reclamation plan and mitigation measures. The financial assurance shall be available to both the County and the Department of Conservation. Any withdrawals made by the County or Department of Conservation for reclamation shall be redeposited by the applicant within 30 days of notification. The financial assurance shall be for \$50,718 for the existing permitted 13 acre site. Each year, as part of the annual mine site inspection program, the assurance amount shall be reviewed and, if necessary, adjusted to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.

The financial assurance is not established to replace the applicant's responsibility for reclamation or mitigation, but to assure funding for the Reclamation Plan and mitigation measures. Should the applicant fail to perform or operate within all of the requirements of the approved reclamation plan, the County or Department of Conservation will follow the procedures outlined in Sections 2773.1 and 2774.1 of the Surface Mining and Reclamation Act (SMARA), regarding the encashment of the assurance and applicable administrative penalties, to bring the applicant into compliance. The requirements for the assurance will terminate when the approved project, mitigation measures and final Mining/ Reclamation Plan have been completed.

Prior to land disturbance beyond the current 13 acre site, a revised estimate for the increased land disturbance anticipated through calendar year 2002 shall be submitted for review and approval. The increased amount of financial assurance shall be posted within 30 days of the revised amount approval.

IMPLEMENTATION AND VERIFICATION

Implementation shall be establishment of an acceptable form of financial assurance in the initial amount of \$50,718.00. Operator shall maintain the assurance thereafter in an

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the amount and form of the financial assurance by the Planning Department and Department of Conservation, Office of Mine Reporting and Reclamation Compliance.

COMPLIANCE RECORD

WHEN REQUIRED: Financial assurance shall be established and in place prior to initiating excavations on-site. Operator shall maintain the financial assurance thereafter for the life of the reclamation plan.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE:

CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION

- **37.** The operator shall abide by the terms of the Stipulated Judgment for the Mojave River Basin Adjudication and shall coordinate with the Mojave Water Agency staff, if necessary to ensure compliance with Exhibit F (Transfers of Base Annual Production Right).

IMPLEMENTATION AND VERIFICATION

Implementation shall be the operator's ongoing compliance with the Mojave Water Agency requirements for basin adjudication. Verification shall be by the SMARA annual inspection and field review of any onsite well constructed, in coordination with DEHS.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Biological Resources

****41.** Within six (6) months of project approval, the applicant, through a County approved Biologist or Botanist, shall complete a detailed Revegetation/Habitat Restoration Plan for reclamation of the site and submit it to the Planning Department for review and approval. The revegetation plan shall be incorporated into the final approved Mining/Reclamation Plan. The revegetation plan shall develop the goals and detailed procedures of the revegetation program to document that these goals have been achieved. The analysis shall include a plan for the re-establishment of vegetation, concurrent with mining, in disturbed areas detailing :

- A. The plant material, including all seedling and planting mixtures, sources, amount required and method of application - a seed mix of dominant perennial plants as listed in the biota report shall be used for revegetation along with at three annual species, early successional stage species shall be included in the mix.. Specifications in the analysis shall be provided on the use of any seedlings, including planting method, size and grazing protection measures, weed control and finally the type, grade and application rate of fertilizers, if any.
- B. The plan shall provide for sufficient lead time to collect and salvage plant propagules from on or near the site. All salvageable cacti shall be recovered and properly transplanted for future use in final revegetation of the site.
- C. A seed collection program to salvage propagules and important seed resources.
- D. The upper 6-12 inches of the ground surface shall be scraped off and pushed up in wind rows bordering the quarry perimeter for re-soiling following final slope/grade preparation.
- E. A revegetation test plot shall be utilized.
- F. A detailed monitoring/maintenance plan to monitor the success of the

requiring re-seeding/replanting. The monitoring/maintenance plan shall also include a methodology to determine how the financial assurance will be released back to the applicant once successful revegetation has been completed.

- G. The mine map shall be amended to show the location of topsoil stockpiles.

If deemed successful by the Planning Department, in consultation with the implementing Biologist/Botanist, this program will be continued for the entire life of the project. If not successful, the operator shall diligently explore for an acceptable alternative means of reclaiming the site. All alternatives shall be reviewed and approved the Planning Department prior to their implementation and shall be monitored by the applicant and consulting Biologist/Botanist to ensure success. Monitoring shall be conducted until the revegetation goals have been met.

- H. Recommendations as contained in the Department of Conservation/Office of Mine Reclamation letter, dated 8/28/01 shall be considered.

IMPLEMENTATION AND VERIFICATION

Implementation shall be the submittal for review and approval the required plan. Once approved, the Revegetation Plan as required above shall be incorporated into the approved Mine/Reclamation Plan. Verification shall be review and approval of the revised plan by the Planning Department and annual on-site inspections by a County representative.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to land disturbance for Phase I.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE:

CHECK NO.

APPROVED BY:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Air Quality

- **42.** Prior to further land disturbance in Phase I, the applicant shall prepare a Dust Control Plan and submit it to the Mojave Desert AQMD for review and approval, if not already in place. The plan shall identify and implement the following measures as recommended in the Air Pollutant Emissions Inventory prepared for the project:
- a. Water spray and/or the use of chemical palliatives or other surface binding agents on all unpaved access roads, the process area, active mining level(s) and dust prone stockpiles as necessary to reduce PM₁₀ emissions so as not to exceed the Mojave Desert AQMD's threshold of emissions.
 - b. Grade and top the main access road with an appropriate depth of coarse granite and fine aggregate to alleviate road degradation and reduce dust.
 - c. Installation of a spray bar system and/or other dust suppression systems on all screening and processing facilities.
 - d. Limit speed of all project haul trucks on unpaved access roads to 15 miles per hour.
 - e. Blasting shall not occur during periods of high wind (sustained winds greater than 20 miles per hour).
 - f. Clear areas to be mined only as needed to reduce exposed surface areas.
 - g. Tune and maintain all equipment and use Mojave Desert AQMD required low sulfur fuel. Also, maintain six (6) inches of freeboard on all haul trucks.

IMPLEMENTATION AND VERIFICATION

Implementation shall be an ongoing condition of operation. Verification shall be by County staff.

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COMPLIANCE RECORD

WHEN REQUIRED: This is an ongoing condition of approval.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE:

CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Air Quality

**43. Prior to use or occupancy of the expanded site, applicant shall obtain all necessary permits from the Mojave Desert AQMD, including Permits to Construct and Operate, or provide evidence that said permits are not required.

IMPLEMENTATION AND VERIFICATION

Implementation shall be the acquisition of the MDAQMD permit or providing written confirmation that a permit is not required. Verification shall be review by the Planning Department of the submitted document.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to land disturbance for Phase I.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Biological Resources

****44.** The applicant shall install small terrestrial wildlife barrier (tortoise-proof fencing) around the perimeter of the permitted area prior to initiating any expanded land disturbance activities. This installation shall be monitored by a qualified wildlife biologist. The fencing shall be placed in locations shown on the approved Mining Plan map, and shall be regularly inspected and maintained. A desert tortoise resurvey shall be conducted within the confines of the newly installed fencing once it is complete.

IMPLEMENTATION AND VERIFICATION

Implementation shall be the contracting for and installation of the Desert Tortoise fencing. Verification shall be submittal of a copy of the contract for the installation and written verification along with written verification of the approved installation to the Planning Department.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to commencement of operations for Phase I.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE:

CHECK NO.:

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Biological Resources

- **47.** On a daily basis, prior to the onset of mining activities, the project boundaries shall be checked on foot for tortoises between the months of March and October (or earlier in the year if unseasonably warm weather occurs in February), before equipment start-up.

IMPLEMENTATION AND VERIFICATION

Implementation shall be by accomplishment of the daily inspections. Verification shall be submittal of a written declaration that this mitigation measure is being accomplished.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to disturbance of the site.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

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MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Biological Resources

****48.** All vehicle operators shall check underneath their vehicles for wildlife before equipment start-up and after breaks of 15 minutes or more, to reduce inadvertent injury or mortality to wildlife during the life of the project.

IMPLEMENTATION AND VERIFICATION

Implementation shall be the accomplishment of this inspection requirement. Verification shall be.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to land disturbance for Phase I. Implementation of the revegetation , once approved, is an on-going condition of approval.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

APPROVED BY:

DATE APPROVED:

FEE:

CHECK NO.

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION Biological Resources

****50.** All vehicular traffic shall be confined to established routes of travel and shall utilize existing roads within the boundary of the mine site. Excluding the actual mining activities, off-road use by any vehicle shall be prohibited beyond the boundary of the mine site.

IMPLEMENTATION AND VERIFICATION

Implementation shall be an ongoing condition of operation. Verification shall be an on-site inspection.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

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MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Biological Resources

****52.** At the conclusion of mining activity the Operator shall dismantle and remove all equipment, contour grade the site, and the wildlife barrier fence shall be dismantled or removed.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff at the conclusion of reclamation.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

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MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Cultural Resources

****53.** In the event paleontologic resources are encountered during operation of this facility, the site operator shall stop work in the area of the find and a qualified paleontologist shall be brought to the site to evaluate the resource and the appropriate recovery measure shall be implemented, if necessary, by the paleontologist.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Hydrology and Water Quality

- **55. Within six months of project approval the operator shall prepare a Plan to monitor potential degradation or lateral channel erosion of Argos Wash where it crosses under Interstate 40 caused by this mining operation. The Plan shall be submitted to the Department of Transportation, Division of Structures/Hydraulics for review and approval. Thereafter, an annual report, summarizing any effects the mining operation has had on the streambed under the bridge structures, shall be submitted to the Division of Structures/Hydraulics on or before October 18 for the life of the permit.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Six (6) months from the project approval date and annually thereafter on the anniversary of the permit approval (October 18th).

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

WASHINGTON GROUP INTERNATIONAL
SA/DN 665-269N/552-141-17
October 4, 2001

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Biological Resources

**56. Any cactus plants encountered within the permit boundaries shall be avoided where possible. If avoidance is not possible, the cactii should be relocated to an appropriate habitat or to a nursery location.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Prior to land disturbance for Phase I.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE:

CHECK NO.

APPROVED BY:

DATE APPROVED:

WASHINGTON GROUP INTERNATIONAL
SA/DN 665-269N/552-141-17
October 4, 2001

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Hazards and Hazardous Materials

****60.** Upon completion of the final mining operation, no waste material stockpiles are to be left standing above the final, reclaimed slopes.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: At final reclamation.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

WASHINGTON GROUP INTERNATIONAL
SA/DN 665-269N/552-141-17
October 4, 2001

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION: Cultural Resources

****61.** The operator shall immediately cease operations and notify the County/BLM of any paleontological or cultural resources discovered during reclamation activities. The County/BLM will, as appropriate, evaluate the significance of the site and determine the need for mitigation. The operator shall not proceed with potentially disturbing activities until authorized to do so.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

WASHINGTON GROUP INTERNATIONAL
SA/DN 665-269N/552-141-17
October 4, 2001

MITIGATION MONITORING AND COMPLIANCE PROGRAM

CONDITION:

**62. The permittee shall implement measures to stabilize and secure the site during periods of inactivity. An Interim Management Plan as detailed in the State Mining and Reclamation Act (SMARA) may be required if the period of inactivity exceeds 1 year.

IMPLEMENTATION AND VERIFICATION

Implementation will be an ongoing condition of operation. Verification shall be by Planning Department Staff.

COMPLIANCE RECORD

WHEN REQUIRED: Ongoing.

DATE COMPLETED:

SUBMITTED TO COUNTY BY:

FEE: CHECK NO.

APPROVED BY:

DATE APPROVED:

EXHIBIT D

PRC
W 40990

**CALIFORNIA STATE LANDS COMMISSION
STATE OF CALIFORNIA**

MINERAL EXTRACTION LEASE FOR ROCK, SAND AND GRAVEL

This non-exclusive lease (lease) is made and entered into pursuant to Division 6 of the California Public Resources Code by and between the State of California, acting by and through the California State Lands Commission (Commission), and the County of San Bernardino (Lessee).

SECTION 1

GRANT OF NON-EXCLUSIVE LEASE AND TERM

1. The Commission grants to Lessee a non-exclusive right to mine and remove rock, sand, gravel, products, and any other mineral deposits except oil, gas, other hydrocarbons, and geothermal resources under the terms and conditions specified in this lease for that certain parcel of land situated in San Bernardino County, California, described in Exhibit A, attached and made a part of this lease, and referred to as the leased lands.
2. This lease shall be effective on May 1, 2018, and shall continue for 10 years unless sooner terminated as provided in this lease. Lessee shall have a preferential right to renew this lease for 1 successive term not to exceed 10 years upon such reasonable terms and conditions as may be prescribed by the Commission including, but not limited to, a redetermination of rent and royalty.
3. This lease does not confer upon Lessee any privilege or right not expressly given in this lease.

SECTION 2

GENERAL COVENANTS

1. **Definitions:**
 - a. Rock: Stone, whether crushed or uncrushed

- b. Sand: Small grains or particles of rock, smaller than a pebble
- c. Gravel: Small stones and pebbles or a mixture of sand and small stones
- d. Product: One or more constituents of rock, sand and gravel
- e. Fair Market Value: The price for rock, sand and gravel measured at Lessee's scales or by each truckload when there is a willing seller and a willing buyer acting in their own best interests, neither being under any compulsion to buy or sell and both being prudent and reasonably knowledgeable, or if there is no such price at Lessee's scales, then the price representing the normal consideration for rock, sand and gravel sold where there is an open and competitive market and the price is unaffected by special or creative financing or sales concessions granted by anyone associated with the sale
- f. Inside Use: The use of rock, sand and gravel by Lessee for County maintained roads and appurtenant facilities. Examples of this use include, but are not limited to, product for debris cleanup, shoulder washouts, bridge damage and roadway asphalt damage. The most extensive damage would occur during big storms which would include repairs for large section of asphalt roadway surface and heavily eroded road shoulders. Product could also be used for replacing earth material behind bridge abutments and wing walls washed away by storms
- g. Outside Sales: Sale of products to third parties
- h. Quarterly Royalty: The royalty due to the Commission for each lease quarter for rock, sand and gravel mined or otherwise removed from the leased lands
- i. Gross sales price: For Outside Sales, the gross sales price shall be the actual sales price to third parties. Charges for transportation beyond the valuation point shall not reduce the gross sales price
- j. Valuation point: Lessee's scales or measurement from each truckload on or adjacent to the leased lands

2. Royalty:

This lease will require a Royalty as described below.

- a. Royalty:
 - i. For all products used by Lessee, i.e. Inside Use, Lessee shall pay a royalty of \$0.90 per short ton of rock, sand and/or gravel, escalated or deescalated each lease year, starting May 1, 2019, by the Bureau of Labor Statistics, Producer Price Index (PPI) by Commodity for Special Indexes: Construction sand, gravel, and

crushed stone (WPU1321). Beginning May 1, 2019, and on every lease anniversary thereafter, the royalty shall be adjusted according to the increase or decrease in the PPI by dividing the 2019 May PPI by the prior May 2018 PPI to establish a ratio by which to multiply and derive the currently royalty rate. For example, the 2019 May PPI value will be divided by the 2018 May PPI and multiplied by \$0.90 to establish new royalty. The royalty will be reestablished each May based on each year's PPI and reflected in the May through July quarterly statement, due August 25. In the event that the Bureau of Labor Statistics discontinues PPI for construction sand, gravel, and crushed stone (WPU1321), the Commission and Lessee shall use the PPI for commodity data for nonmetallic mineral products (WPU13). There shall be no deductions of any kind allowable against the royalty.

- ii. For all products extracted and sold from the leased lands to third parties, i.e. Outside Sales, Lessee shall pay to Commission, without deduction, delay, offset or credit of any kind, on or before the dates called for in this lease, a royalty equal to 10 percent of the gross sales price.
- iii. Royalties shall be paid quarterly commencing on the last day of the month following the end of the first lease calendar quarter and every three months thereafter.
- i. The valuation point for all transactions shall be at Lessee's scales or measurement from each truckload.
- iv. All Quarterly Royalties shall be reported on the "Lessee's Quarterly Report of Operations" form.
- v. Outside material brought to, or stored upon, the leased lands will not be subject to this Royalty.

3. **Rent:** Lessee shall pay an annual rental of \$1 per acre or \$80 for the 80 acres contained in the leased lands. The rental shall be due and payable on each anniversary of the effective date of the lease, except for the first year's rental which shall be due and payable 60 days after the effective date of this lease.

4. **Interest and Penalties:**

- a. Royalties and other monetary considerations that are not paid when due shall bear interest at the rate of 1½ percent per month from the due date until they are paid.

- b. Royalties and other monetary considerations that are not paid when due may be assessed a penalty of 5 percent of the amount overdue.

5. **Environmental Impact:** Lessee shall abide by the terms and conditions specified in or resulting from the Mitigated Negative Declaration (MND) SCH#2001071107 approved and adopted by the County of San Bernardino on October 4, 2001, including any amendments thereto. Lessee shall comply with the terms of the Mitigation Monitoring Program and such other measures as the Commission may reasonably require to restrict, limit, modify or minimize the environmental impact of Lessee's operations under the lease in accordance with the MND. Lessee shall promptly furnish the Commission with copies of any mitigation monitoring reports prepared for, by or on behalf of the County.

6. **Plan of Development:**

- a. Lessee shall develop the leased lands in accordance with any issued mining conditional use permit (CUP) and Reclamation Plan (RP) No. 2001M-04 submitted to and approved by the County Planning Commission. Any modifications to the Mining CUP/RP, after issuance of this lease, shall require notification to the Commission prior to implementation. Failure to develop the leased lands according to the Mining CUP/RP, or any approved modifications of the Mining CUP/RP, shall be considered a default of this lease.
- b. Lessee shall conduct all operations authorized under this lease in a safe, miner like manner, according to accepted industry methods and practices in order to ensure the protection of life and property, the protection and preservation of the environment, and the conservation of its natural resources including, but not limited to, wildlife and mineral resources.
- c. Lessor acknowledges that Lessee has purchased the surface of the leased lands and acquired this Lease with the intention of using the lands for three purposes. The first is to stockpile excess aggregate material that may accumulate on County roads following storms or other rain events. Such material will be removed from County roads and transported to the leased lands and stockpiled for future use to remediate County roads that have suffered washouts and other erosion of earthen material. The second purpose of obtaining a lease from the Commission is that in the event the County stockpiled material proves insufficient to meet County needs, then the County may mine the Commission's products to meet the County needs. In accordance with section 10b of this lease, the County shall segregate its stockpile material brought onto the leased lands from the Commission's product so as to allow for the accounting of all mined products and commensurate royalty owed to the Commission. The County shall not commingle County material from Commission product until it leaves the leased land, or the appropriate royalty has been paid pursuant

to the terms of this lease. The third purpose of this lease is for Outside Sales. The purposes of the lease, which are described in this section 6c, are not in any order of priority.

7. **Bond:** This lease does not require Lessee to post a bond or other financial security for the current leasing activities.

8. **Insurance:**

a. Liability Insurance: Lessee shall procure and maintain personal liability and property damage insurance (combined single limit) for the benefit of the Commission in an amount not less than \$1,000,000.

i. Insurance policy(ies) shall insure the Commission and Lessee against any and all claims or liabilities arising out of the ownership, use, occupancy, condition or maintenance of the leased lands and the improvements on the leased lands.

ii. The insurance policy (ies) shall name the Commission, its officers, employees and volunteers as insureds as to the leased lands and shall identify the lease by its assigned number. Lessee shall provide the Commission with a certificate of insurance and shall keep the certificate current. The policy (ies) or endorsement must provide that the insurer will not cancel the insureds' coverage without 30 days prior written notice to the Commission. The Commission will not be responsible for any premiums or other assessments on the policy (ies). The coverage provided to Lessee shall be primary and non-contributing.

iii. The insurance coverage specified in this lease shall be in effect at all times during the term of this lease and until all of the leased lands have been restored by Lessee as required in this lease.

iv. The Commission may require an increase in the amount of the insurance to cover any additionally authorized improvements, alterations, changes to authorized use, modifications of considerations or inflationary impacts on costs during the ten-year lease renewals.

i. In the event the Lessee is self-insured, a certificate of self-insurance in the amounts required, under this section, shall meet the requirements of this section.

b. Workers' Compensation Insurance: At all times in all operations under this lease and in all work in and upon the leased lands, Lessee shall carry full

workers' compensation insurance covering all employees.

9. Indemnification:

- a. Lessee shall indemnify, save harmless and, at the option of the Commission, defend, except in matters involving title, the Commission, its officers, agents and employees, against any and all claims, losses, demands, causes of action or liabilities of any kind which may be asserted against or imposed upon the Commission, or any of its officers, agents or employees, by any third person or entity arising out of or connected with operations under this lease, or the use by Lessee, or its agents, employees or contractors, of the leased lands. This provision shall not be construed to require Lessee to indemnify the Commission for any alleged acts of negligence or other wrongful act of the Commission, or its officers, agencies or employees, except to the extent that such negligence or other wrongful act is alleged to consist of the issuance of this lease, the adoption and enforcement of the provisions set forth in this lease, or any alleged failure of the Commission to enforce adequately any such provisions.
- b. The foregoing indemnity is not intended nor shall it be construed to require Lessee to defend the Commission's title to mineral resources. In the case of litigation involving the titles of Lessee and the Commission, Lessee and the Commission will join in defending their respective interests, each bearing the cost of its own defense.
- c. For the purpose of satisfying any judgments, settlements, claims or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that the Commission has no title to the land or mineral resources in the leased lands and that the owner thereof is entitled to payment for rock, sand and gravel mined under this lease, this indemnification will be limited to the Commission's liability in excess of the monies received by the Commission, as owner of the mineral resources, in the form of royalties or other payments, including any interest actually earned thereon.

10. Production Records and Reports:

- a. Lessee shall keep for a period of at least 5 years, accurate records of the operations under this lease, including all minerals produced or extracted from the leased lands, together with the cost of their milling and shipping, and shall file with the Commission copies of all contracts for the disposition of amounts in excess of 1,000 tons of all minerals produced or extracted from the leased lands. The Commission may inspect, at all reasonable times, all Lessee's books, records and accounts relating to operations under this lease.

- b. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission royalty statements in the form prescribed by the Commission showing the work performed including the amount and location of the outside products stockpiled upon the leased lands, a site map of the location of the stockpiles, and the amount, quality and value of all mineral resources produced, extracted, shipped, used or sold therefrom during the prior 3-month period. These statements shall be provided to the Commission regardless of whether any mineral resources were produced, extracted, shipped, used or sold, or whether any work was performed on the leased lands during the prior quarterly period. At the request of the Commission, Lessee shall provide more detailed statements and explanatory materials in order to aid in the Commission in interpreting and evaluating Lessee's royalty accounting statement. All statements are subject to audit by the Commission.
- c. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission copies of all physical and factual exploration results, logs, surveys and any other data in any form resulting from any surveys, tests or experiments conducted on the leased lands by Lessee or any person or entity acting with the consent of Lessee or with information or data provided by Lessee, conducted within the preceding quarterly period.
- d. The Commission shall have the right to inspect and review all books, records and logs of Lessee's production activities on lands adjoining or in proximity to the leased lands.
- e. The Commission may examine at reasonable times the books and records of any individual, association or corporation which has produced or extracted any minerals from the leased lands, and books and records of any such individual, association or corporation with respect to such individual's, association's or corporation's operations, improvements, machinery and fixtures used on or in connection with the leased lands. This paragraph shall not apply to individuals, associations, corporations or other entities that merely purchase or transport mined products from the leased lands.
- f. The Commission agrees that copies of all contracts and invoices for the sale of rock, sand and gravel submitted pursuant to this paragraph shall be deemed to have been "obtained in confidence." The Commission agrees not to disclose them pursuant to the Public Records Act (Government Code Section 6250 et seq.) unless the Commission first makes a finding that, on the facts of the particular case, the public interest

served by disclosing the records clearly outweighs the public interest served by non-disclosure of the record. However, such records may be disclosed upon issuance of a subpoena or court order requiring their disclosure or to other persons with the written consent of Lessee.

11. Waiver of Use of Data:

Lessee waives any statutory or other right or objection to prevent disclosure to the Commission, its employees or agents of any information, reports, data or studies of any kind, filed by Lessee with any federal, state or local agency relating to the leased lands, or any operations carried out in connection with this lease, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information, reports, data or studies filed by Lessee with any federal, state or local agency pursuant to this lease, shall be available at all times for the use of the Commission, its employees or agents for any purpose. Any information, reports, data or studies obtained by the Commission from any public agency which are not otherwise public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon a determination by the Commission that such disclosure is in the public interest or by court order.

12. Records and Reports:

Lessee shall supply to the Commission, within 30 days of Lessor's request, the results of all geological, geophysical and chemical experiments, tests, reports and studies, interpretive or factual, irrespective of whether the results of such tests, experiments, reports or studies contain sensitive, proprietary or confidential information or trade secrets. The Commission shall keep any information specified as "confidential" by the Lessee for the confidential use of the Commission and shall be disclosed in litigation only by court order or with the Lessee's written consent; provided, however, that the Commission may use any document or information in any format submitted by Lessee in any action, administrative or judicial, where the Commission and the Lessee are adverse parties. Routine correspondence and royalty reports shall not be considered submitted in confidence.

13. Preservation of Property and Environmental Impact:

- a. Lessee shall perform all work under this lease with due regard for the preservation of the leased lands and the environmental impact of its operations in accordance with the following terms and conditions:

- i. Pollution of rivers, lakes and other bodies of water and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize rock, sand and gravel screenings, from any mining or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by the Commission.
 - ii. Access to the leased lands by the public during mining operations shall be controlled by Lessee to prevent accidents and injury to persons and/or property.
- b. The above is in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigating measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out under this lease.

14. Waste of Resources. Damage. Loss and Liability:

Lessee shall use all reasonable precautions to prevent waste of, damage to or loss of mineral resources, fisheries and wildlife on or in the leased lands. Lessee shall be liable to the Commission for any waste, damage or loss to the extent that the waste, damage or loss is caused by Lessee's, or its employees', servants', agents' or contractors', negligence, breach of any provision of this lease, or noncompliance with applicable statutes or regulations. Nothing in this lease shall diminish any other rights or remedies that the Commission may have in connection with any such negligence, breach or noncompliance.

15. Suspension of Operations:

- a. Lessee shall temporarily suspend production or any other operation under this lease whenever the Commission finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property or natural resources. The suspension shall be effective immediately upon either oral or written notice by the Commission to Lessee. Any oral notice shall be followed by written confirmation. The Commission shall lift the suspension when the Commission finds, on the basis of credible evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations does not pose an immediate and serious threat to life, health, property or natural resources. If the Commission orders suspension of operations because their continuation may cause or aggravate erosion of the leased lands or other properties, the operations shall be resumed only in compliance with a Commission-approved program for erosion prevention.

- b. No suspension ordered or approved under this paragraph shall relieve Lessee from any obligation under this lease unless specifically provided in the terms of the suspension.

16. Assignment, Subletting, and Other Transfers:

- a. Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this lease and shall not sublet the leased lands, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the leased lands without the prior written consent of the Commission, which consent shall not be unreasonably withheld and as otherwise set forth in Public Resources Code Section 6804. The change in the ultimate indirect corporate parent is not an assignment for purposes of this lease.
- b. If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the lease, Lessee shall do all of the following:
 - i. Give prior written notice to the Commission.
 - ii. Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the lease proposed to be assigned, subleased, encumbered or transferred. If the proposed assignee, sublessee, secured third party or other transferee is a general or limited partnership or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.
 - iii. Provide the terms and conditions of the proposed assignment, sublease, encumbrance or other transfer.
 - iv. Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured third party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the leased lands.
 - v. Provide such additional or supplemental information as the Commission may reasonably request concerning the proposed assignee, sublessee, secured third party or other transferee.

- c. The Commission will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, its business experience and expertise, its personal and business reputation, its managerial and operational skills, the proposed use of the leased lands, the projected rental and royalties due under the lease and other relevant factors.
- d. The Commission shall have a reasonable time from the receipt of all documents and other information required under this provision to grant or deny its approval.
- e. The Commission may condition its consent to an assignment, transfer or sublease to require the assignee, transferee or sublessee to provide financial assurances demonstrating the assignee's, transferee's or sublessee's ability to perform the lease covenants. This may include, but shall not be limited to, an increase in or change to the bond and/or insurance requirements. The consent to any transfer of any interest in this lease shall not be deemed consent to any subsequent assignment, subletting or occupancy or use by another person. Any assignment, transfer or subletting without the Commission's consent, whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee, and any such attempted transfer shall be a breach of this lease entitling the Commission, at its option, to terminate this lease. Upon approval of any assignment, transfer or sublease, the assignee, transferee or sublessee shall be bound by the terms of this lease (as conditioned by the Commission) to the same extent as if such assignee, transferee or sublessee were the original Lessee, any conditions in the assignment, transfer or sublease to the contrary notwithstanding. Lessee shall not be released from any liability under this lease arising after the effective date of the assignment and not associated with Lessee's use, possession or occupation of or activities on the leased lands without the express written release of the Commission.
- f. Lessee's mortgage or hypothecation of this lease, if approved by the Commission, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrance of lease) available from the Commission upon request.
- g. Upon the express written assumption of all obligations and duties under this lease by an assignee or other transferee approved by the Commission,

the Lessee may be released from all liability under this lease arising after the effective date of assignment or other transfer and not associated with Lessee's use, possession or occupation of or activities on the leased lands; provided, however, Lessee shall not be released of liability for any hazardous wastes, substances or materials defined under federal, state or local law, regulation or ordinance, manufactured, generated, used, placed, disposed, stored on or transported on or off the leased lands.

- h. Subject to the provisions of any assignment or other transfer, the covenants and conditions of this lease shall apply to and bind all heirs, successors, executors, administrators and assigns of all of the parties.
- i. Notwithstanding subsections (a) through (h) above, Lessee's employment of contractors and/or subcontractors shall not be considered a sublease or assignment of this lease. In the event of any contracting and/or subcontracting, Lessee shall remain liable for such third party's activities including the payment of royalties. If such contracting and/or subcontracting is for amounts of 7,500 cubic yards or more of rock, sand and gravel or for periods in excess of 3 consecutive days, Lessee shall obtain the Commission's written consent prior to the commencement of work by the contractor and/ or subcontractor. This paragraph is to provide relief to Lessee for those times when Lessee experiences an unpredicted short term and minor shortage of rock, sand and gravel and is not intended to be applicable to regular and/or long term contracting and/or subcontracting of rock, sand and gravel mining.

17. Reservations to Commission:

- a. The Commission shall have the right to go upon the leased lands for the purposes of conducting surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the leased lands of any mineral resources, including but not limited to oil, gas, other hydrocarbons and geothermal resources, as well as other mineral deposits listed in Public Resources Code Section 6407, provided that such surveys, tests, or experiments do not unreasonably interfere with or endanger Lessee's operations under this lease.
- b. The Commission reserves the right to issue additional nonexclusive exploratory rights to conduct surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the leased lands of any mineral resource except rock, sand and gravel; provided that

operations conducted pursuant to such rights do not unreasonably interfere with or endanger Lessee's operations under this lease. Lessee shall allow all persons authorized by the Commission to enter upon the leased lands in order to conduct such surveys, tests or experiments.

- c. This lease is entered into with the understanding that its purposes are and its administration shall be consistent with the principle of multiple uses of public lands and resources. This lease shall allow coexistence of other permits or leases of the same lands for deposits of mineral resources other than rock, sand and gravel under applicable laws. However, operations under such other permits or leases shall not unreasonably interfere with or endanger operations under this lease, nor shall operations under this lease unreasonably interfere with or endanger operations under any other permit or lease. This lease shall not be construed as superseding the authority which any state department or agency has with respect to the management, protection, and utilization of the lands and resources under its jurisdiction. The Commission may prescribe those conditions it deems necessary for the protection of other mineral resources.
- d. The Commission, or persons authorized by the Commission, shall have the right to go upon the leased lands at all reasonable times for the purpose of inspecting and protecting the property and all equipment on it and inspecting all operations of Lessee. No entry by the Commission, or by persons authorized by the Commission, shall give Lessee any right to charge Commission or subject the Commission to liability for any loss of occupation or quiet enjoyment of the leased lands.
- e. The Commission reserves whatever right it may have to grant to any person, upon such terms as it may determine, easements, rights-of-way, permits, leases or other interests in the leased lands, including easements for tunnels or wells bored through or in the leased lands as the Commission may determine to be necessary or appropriate; provided that interests which unreasonably interfere with or endanger Lessee's operations shall not be granted.

18. Existing Rights:

This lease is issued subject to all existing rights in the leased lands at the effective date of this lease, and such rights shall not be affected by the issuance of this lease. If the surface estate of the leased lands has been sold by the Commission subject to a mineral reservation, Lessee shall comply with the conditions and limitations prescribed by law, including, but not limited to, those contained in Section 6401 of the Public Resources Code.

19. Breach, Right to Cure Breach and Cancellation:

If Lessee fails to comply with any of the provisions of this lease, or any applicable permit, regulation or law, Lessee shall have a 30-day period to cure the breach. Such period shall commence with a written notice and demand from Lessor to comply with the breached provision. If Lessee fails to cure the breach, Lessor reserves the right, following the 30-day period to cure, to declare forfeiture and cancel this lease and to pursue any remedy it has in equity and at law. If this lease is canceled, Lessee shall comply with the restoration, reclamation and removal conditions in this lease.

20. Waiver of Breach:

The waiver by the Commission of any default or breach of any term, covenant or condition of this lease shall not constitute a waiver of any other default or breach whether of the same or of any other term, covenant or condition, regardless of Lessor's knowledge of other defaults or breaches. The subsequent acceptance of monies by the Commission shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of Lessee to pay the particular monies accepted, regardless of the Commission's knowledge of any preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of this lease or revocation of any notice or other act by the Commission.

21. Quitclaim of Mineral Lease:

The Lessee may make at any time a written quitclaim or relinquishment of all rights under this lease or of any portion thereof comprising a 10-acre parcel or multiple thereof in a compact form as provided in Public Resources Code section 6804.1. The quitclaim or relinquishment shall be effective when it is filed with the Commission, subject to the continued obligation of the Lessee and its surety to pay all accrued rentals and royalties, to abandon all mineral extraction sites into or through the Leased lands to be quitclaimed or relinquished in a manner approved in writing by the Commission and to restore such lands in accordance with the approved reclamation plan. The Lessee shall then be released from all obligations thereafter accruing under the lease with respect to the lands quitclaimed or relinquished. However, the quitclaim or relinquishment shall not release the Lessee or its surety from any liability for breach of any obligation of this lease with respect to which the Lessee is in default at the time of the Commission's acceptance of the quitclaim.

22. Surrender of Premises or Termination of Mineral Lease:

If the Lessee fails to exercise due diligence and care in the prosecution of the terms and conditions of this lease and if the default continues after 60 days

written notice to the Lessee, the Commission may terminate this lease. The waiver or failure of the State to act upon any particular cause of forfeiture herein set forth shall not prevent the termination or forfeiture of this lease for any other cause or forfeiture or for the same cause occurring another time. In the event of termination, the Lessee shall have the right to retain any lands as to which no default exists, together with the minimum acreage required to insure compliance with applicable mineral extraction requirements, facilities, and rights-of-way through the leased land that will enable Lessee to operate the retained land. If this lease is terminated, in whole or part, the Lessee shall have a reasonable time to remove any property, equipment and facilities used by the Lessee in operation under the terminated portion of this lease. Upon termination of this lease, the Commission reserves the right to require Lessee to abandon properly all mineral extraction sites on the leased lands and or lands serving the leased lands in a manner approved in writing by the Commission, but if the Lessee should fail to commence the work of abandoning within 10 days after such termination, and thereafter fail to diligently prosecute the same to completion, the Commission, or the nominee of the Commission, shall have the right to enter the lands of the Lessee as the agent of the Lessee, and to abandon said lands in such manner as the Commission shall deem proper for the protection of the property, at the risk of the Lessee, and all cost and expense of such abandonment, together with interest thereon at the rate of seven percent per annum, shall be paid by the Lessee, upon demand; and in case of suit to enforce or collect the same, the Lessee agrees to pay Lessor in addition reasonable attorneys' fees and costs to be fixed and allowed by the court. This lease may be terminated and any of its provision may be amended only upon the written consent of the parties.

23. Rights and Obligations upon Termination of Mineral Lease:

At the expiration of this lease or upon its sooner quitclaim or other termination, the Lessee shall surrender the leased lands free of contamination and all improvements, structures and fixtures on them in good order and condition, or the Commission may provide that the Lessee shall remove some or all of the structures and other fixtures placed upon the leased lands and restore the lands, in whole or in part, to their natural conditions at no cost to the Commission. The Lessee shall not be denied the right to remove any mining, development and production equipment having a reuse or salvage value. If the Lessee is not the surface owner of this lease, Lessee will indemnify the Commission from all liability from all actions or omissions of Lessee in connection with the abandonment and surrender of the surface estate; provided, however, the Commission reserves the right to require Lessee to abandon properly mineral extraction sites on the leased land or lands serving the leased lands in a manner approved in writing by the Commission and otherwise restore the premises and reclaim those areas designated by the Commission with due care to carry out all obligation imposed by paragraph 22 of this Lease. This paragraph shall survive the termination of the lease.

24. Holding Over:

Any holding-over by Lessee, after the expiration of the lease term, with or without the express or implied consent of the Commission, shall constitute a tenancy from month to month and not an extension or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this lease. This month to month tenancy may be terminated with 30 days' notice by either party. Upon request of Lessee, the Commission shall confirm in writing Lessee's holdover status. All royalties due under this lease shall be increased by 25 percent during the holdover period.

25. Compliance with Laws and Rules:

- a. Lessee shall comply with and be bound by all rules, regulations, statutes and ordinances, as they may be modified or amended, of the Commission and any other governmental entity having lawful authority and jurisdiction over Lessee's operations under this lease.
- b. In its employment practices, Lessee shall not discriminate against any person because of race, color, religion, sex, ancestry or national origin, physical disability, sexual orientation, AIDS or AIDS related condition, marital status or age.

26. Possessory Interest Taxes and Other Taxes:

- a. Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State of California, any of its political subdivisions, or the United States of America, against any and all improvements, property or assets of Lessee situate upon the leased lands or other rights of Lessee arising out of this lease. The payment of any taxes by Lessee shall not reduce the amount of consideration due to the Commission under this lease.
- b. The leasehold interest created by this lease may be a possessory interest subject to property taxation, and Lessee shall pay all property taxes levied on such possessory interest.

27. Modification of Lease:

The parties, by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate this lease, with any adjustments and for considerations as may be fair and equitable in the circumstances.

28. Notices:

- a. All notices to be given under this lease shall be in writing and shall be deemed to have been fully given when deposited with the United States Postal Service, registered and with postage prepaid, or when deposited with a responsible private overnight mail delivery company and addressed to the parties as follows:

To the Commission: California State Lands Commission
200 Oceangate, 12th Floor
Long Beach, CA 90802

To Lessee: San Bernardino County
Department of Public Works
825 East Third Street, Room 120
San Bernardino, CA 92415-0835

The addresses to which the notices shall be sent may be changed by written notice given by one party to the other in any manner provided above.

- b. All notices to Lessee shall also be deemed to have been fully given if made in writing and personally served upon Lessee or any of its officers.
- c. All payments specified in this lease shall be made to the Commission at the address above.

29. Force Majeure:

The obligations imposed upon Lessee by this lease may be suspended by the Commission when Lessee is prevented from complying with them by wars, riots, acute and unusual labor or material shortages, acts of God, laws, rules and regulations of any federal, state, county or municipal agency, or by other unusual conditions beyond the control of Lessee.

30. Time of Essence:

Time is of the essence in this lease.

31. Relationship of Parties:

This lease does not constitute, and the parties do not intend it to create, a partnership or joint venture or the relationship of master and servant or principal and agent.

32. Captions:

The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the provisions of this lease.

33. Severability:

If any provision of this lease is judicially determined to be invalid, it shall be considered deleted from this lease and shall not invalidate the remaining provisions.

34. Representations:

The Commission and the Lessee agree and acknowledge that this lease contains the entire agreement of the parties concerning the subject matter contained in this lease and that this lease supersedes any and all prior agreements, representations, warranties, negotiations, communications or other understandings between the parties concerning this subject matter. Lessee agrees that no representations have been made by the Commission or by any person or agent acting for the Commission to induce Lessee to sign this lease. The Commission and the Lessee, as a material part of the consideration of this lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this lease.

35. Binding Date:

This agreement will become binding on the Commission only when approved by the Commission and when executed on its behalf.

36. Counterparts:

This lease may be signed in counterparts, each of which shall constitute an original.

STATE LANDS COMMISSION

Date: _____

Marina Voskanian P.E.,
Division Chief, Mineral Resources Management Division

Approved as to form:
Xavier Becerra
Attorney General, State of California

By: _____
Andrew Vogel
Deputy Attorney General

Date: _____

LESSEE
COUNTY OF SAN BERNARDINO



Robert A. Lovingood, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____
Deputy

Approved as to form:
Michelle D. Blakemore
County Counsel, County of San Bernardino

Scott M. Runyan, Deputy County Counsel

EXHIBIT A

W 40990

LAND DESCRIPTION

That certain parcel of State School Land in San Bernardino County, State of California, more particularly described as follows:

West ½ of Southwest ¼ of Section 36, Township 8 North, Range 7 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved July 23, 1856.

END OF DESCRIPTION

Prepared 05/30/2017 by the California State Lands Commission Boundary Unit.

