

Staff Report 54

Consent to Encumber Leases, and Encumbrance Agreement

APPLICANTS:

Geysers Power Company, LLC

CPN Wildhorse Geothermal, LLC

SECURED-PARTY LENDER:

MUFG UNION BANK, N.A., as First Lien Collateral Agent and as Second Lien Collateral Agent

AREA, LAND TYPE, AND LOCATION

Seven geothermal leases (Leases 4596, 4597, 5206, 6422, 7845, 8556, 8844) covering approximately 7,247 acres of State school land (also referred to as lieu land and leased land), and four right-of-way leases (Leases 6793, 8090, 8337, and 8610) covering approximately 6.6 acres of State school land in the Geysers geothermal field near Healdsburg, Middletown, and Cloverdale; Lake, Mendocino, and Sonoma counties.

AUTHORIZED USE:

The Geysers Power Company, LLC (Leases 4596, 4597, 5206, 6422, and 7845) and CPN Wildhorse Geothermal, LLC (Leases 8556 and 8844) are State lessees and have the continued right to drill for, produce, utilize, save, and sell geothermal resources from the leased land. The Applicants also have the exclusive right to inject geothermal fluids and conduct surveys, tests or experiments using any geological, geochemical, geophysical or other exploratory method, including exploratory drilling, for determining the presence of geothermal resources in the leased land.

The Geysers Power Company, LLC, is also the lessee for the four right-of-way leases included in this action and described below:

- Lease 6793, a General Lease – Right-of-Way Use, of State indemnity school land located in Section 6, Township 11 North, Range 8 West, MDM, east of Cloverdale, Sonoma County, for an above-ground 12-inch-diameter steam pipeline and an unimproved access road.

- Lease 8090, a General Lease – Right-of-Way Use, of lieu land located in Section 33, Township 11 North, Range 8 West, MDM, near Middletown, Lake County, for an unpaved access road known as Pine Flat Road.
- Lease 8337, General Lease – Right-of-Way Use, of State indemnity school land located in a portion of Section 33, Township 11 North, Range 8 West, MDM, near the city of Healdsburg, Sonoma County, for an existing non-potable water pipeline.
- Lease 8610, a General Lease – Right-of-Way Use, of State indemnity school land located in portions of Sections 3 and 4, Township 11 North, Range 9 West, MDM, near Cloverdale, Sonoma County, for a 6 to 8-inch-diameter water transportation line.

All rent and royalties from the leases of State school land goes to the California State Teachers' Retirement System.

BACKGROUND:

The Applicants are wholly owned subsidiaries of Calpine Corporation (Calpine). Calpine is one of the largest generators of electricity from natural gas and geothermal resources in the United States and is the largest operator at the Geysers geothermal field. In 1999, Calpine provided a parental guaranty to the State for Leases 4596, 4597, 6422, and 7845 ([Item C58, April 13, 1999](#)). Lease 5206 ([Item C58, November 27, 2000](#)) was added to the parental guaranty in 2000, and Leases 8556 and 8844 ([Item C50, April 6, 2010](#)) were added in 2010 as part of the approval of assignment from Calpine to CPN Wildhorse Geothermal, LLC. The parental guaranty unconditionally guarantees the performance of Calpine's subsidiaries (the Applicants) under the geothermal leases.

Each of the four right-of-way leases described previously authorizes improvements appurtenant to the geothermal leases, including steam and water pipelines, and various access roads.

The Geysers is the largest geothermal field in the world and has operated commercially for more than a half century. The field typically generates approximately 700 megawatts of electricity annually from roughly 28,000,000 pounds of steam, which is enough to supply electricity to over 700,000 homes for a year. Steam production has been stable since the mid-1990s as a result of consolidated field operations and increased water injection into the reservoir. Nearby reclamation plants in Lake County and the city of Santa Rosa provide supplemental injection water to the field.

The Applicants are seeking Commission approval to use their State assets as part of the collateral offered in a \$1.1 billion refinancing package, which will repay existing debt,

replace existing high-interest debt with lower interest financing, and fund ongoing operations, maintenance, and capital expenditures. The Applicants' assets include but are not limited to the subject leases, wells, power plants, and processing equipment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6902, 6904 and 8701.

STATE'S BEST INTERESTS ANALYSIS:

The Applicants are seeking two actions by the Commission. The first is an approval to encumber their State geothermal and right-of-way leases with a mortgage. The Applicants are in the process of obtaining a rate-and-term refinance in favor of MUFG UNION BANK N.A., as First Lien Collateral Agent and as Second Lien Collateral Agent, with a loan amount not to exceed \$1,100,000,000. Under the terms of the loan, the Secured-Party Lender is requiring the Applicants to pledge their interest in geothermal Leases 4596, 4597, 5206, 6422, 7845, 8556, 8844 and right-of-way Leases 6793, 8090, 8337, and 8610 as additional security. Secondly, and as a condition of the financing, the Secured-Party Lender seeks to enter into an encumbrance agreement that will allow it the option to cure defaults in the leases, if they were to occur, in order to protect the value of the collateral.

The encumbrance of the Applicants' State assets will allow the Applicants to pay down higher interest debt which will improve the Applicant's ability to reinvest into its operations within the Geysers geothermal field. Currently, the Applicants are in good standing with the Commission and have not had any major incidents that caused harm to life, property, or the environment. The most recent incidents that Applicants endured were the wildland fires (most recently the Kincade Fire in 2019) that caused significant damage to parts of the Geysers. Even with the fires, the Applicants continued to operate by redirecting steam to undamaged power plants. Historically low interest rates are prompting the Applicants to encumber their assets, which could help fund projects that could maximize royalties to the California State Teachers' Retirement System. The leases generally provide that a lessee must seek Commission authority prior to mortgaging a lease, however, requests "should not be unreasonably denied."

The encumbrance agreement, titled "Agreement and Consent to Encumber Leases," (Agreement), includes protections for the State lands associated with the leases. This encumbrance will allow the Secured-Party Lender to step into the role of Lessee for the

lease premises under certain circumstances. These protections include the following requirements:

1. No subsequent encumbrance of the leases shall be allowed without prior written consent of the Commission.
2. Any transfer of the leases to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the leases, it shall be bound by all terms and conditions of the leases.
4. The term of the encumbrance agreement is limited to the expiration or termination of the leases, or until the expiration of the original or extended term of the indebtedness, or upon reconveyance from Secured Party-Lender, whichever comes first.

In approving the Agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the leases from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale. The existing leases require the Applicants to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The leases also require the payment of annual rent to compensate the California State Teachers' Retirement System for the occupation of the school lands involved.

CONCLUSION:

For all the reasons above, staff believes the consent to encumber the leases and execution of the Agreement and Consent to Encumber Leases is in the State's best interests and recommends approval.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school land, as authorized by law. If the Commission denies the application, the Applicants will not be able to use the State assets as collateral for a low interest loan that could hinder further lease development.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest level of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction; Strategy 2.1, to optimize returns for the responsible development and use of State school land and resources, both onshore and offshore.
3. Approving an agreement and consent to encumbrance is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Site and Location Map
- B. Agreement and Consent to Encumber Leases

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

Find that the proposed consent to encumber and authority to enter the Agreement and Consent to Encumber Leases will not substantially interfere with management of State school lands, at this time, and for the foreseeable term of the leases; and is in the best interests of the State.

AUTHORIZATION:

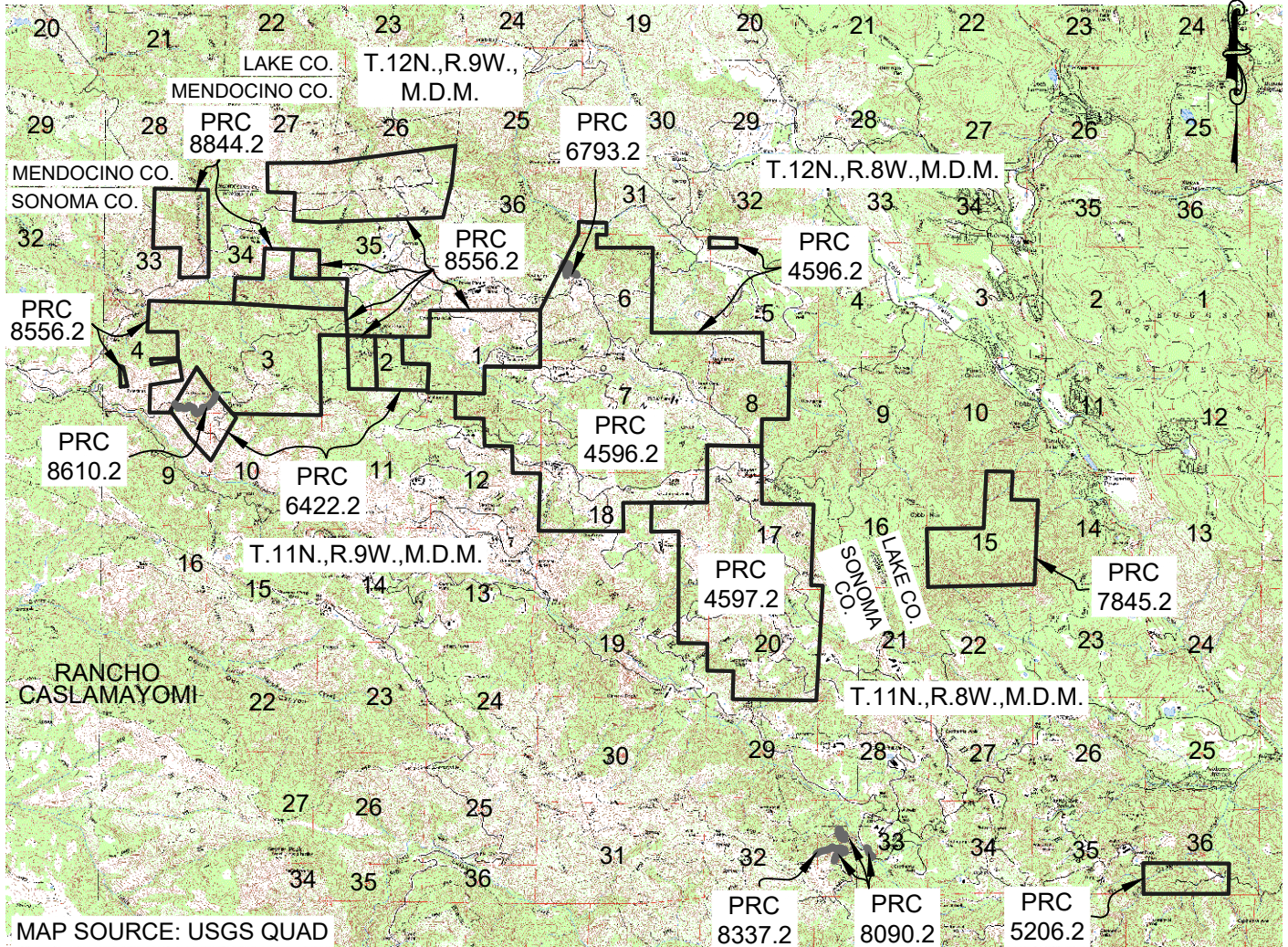
1. Authorize the encumbrance of geothermal Leases 4596, 4597, 5206, 6422, 7845, 8556, 8844, and right-of-way Leases 6793, 8090, 8337, and 8610, effective on August 20, 2020, or upon the close of escrow, whichever occurs first, but no later than March 31, 2021; all other terms and conditions of the leases will remain in effect.
2. Authorize the Executive Officer or designee to execute the document titled "Agreement and Consent to Encumber Leases" allowing the Applicants' right, title, and interest in geothermal Leases 4596, 4597, 5206, 6422, 7845, 8556, 8844 and right-of-way Leases 6793, 8090, 8337, and 8610 to be pledged as partial security for a loan in the principal amount not to exceed \$1,100,000,000 in favor of the Secured-Party Lender in substantially the same form as that set forth in the attached Exhibit B, effective upon signature by all parties, and to execute, acknowledge, accept,

and record all related documents as may be reasonably necessary to complete the transaction.

3. Authorize the Executive Officer or designee to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

NO SCALE

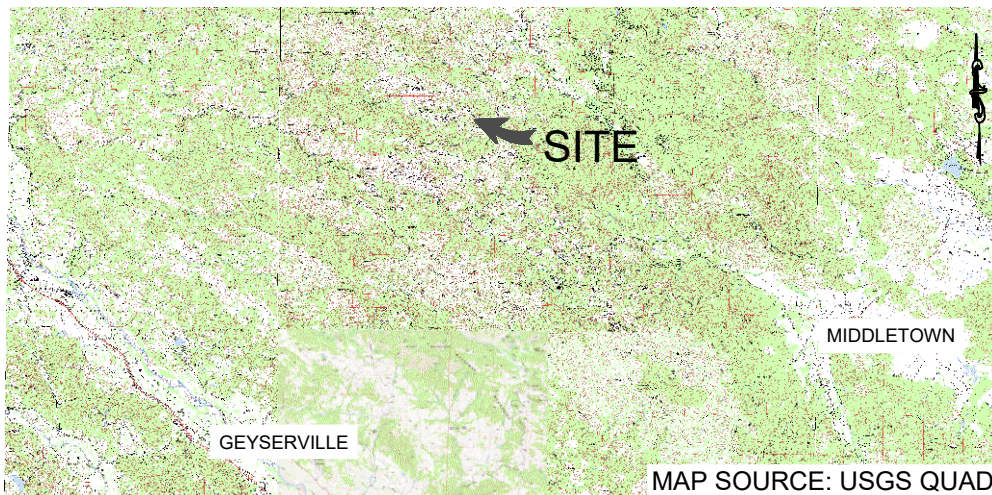
SITE



GEYSERS GEOTHERMAL FIELD

NO SCALE

LOCATION



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 A

A2690
GEYSERS POWER CO., LLC
CPN Wildhorse Geothermal, LLC
AREA FOR LEASE
ENCUMBRANCE
LAKE, MENDOCINO, AND
SONOMA COUNTIES



JWP 07/23/2020

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Land Management Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Exhibit B

A2690

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

LEASE Nos. 4596, 4597, 5206, 6422, 7845, 8556, 8844, 6793, 8090, 8337, 8610

AGREEMENT AND CONSENT TO ENCUMBER LEASES

The Parties to this Agreement and Consent to Encumber Lease Nos. 4596, 4597, 5206, 6422, 7845, 8556, 8844, 6793, 8090, 8337, and 8610 (the Agreement) are:

1. The State of California, acting by and through the State Lands Commission, hereinafter referred to as LESSOR;
2. Geysers Power Company, LLC, a Delaware limited liability company and CPN Wildhorse Geothermal, LLC, Delaware limited liability company hereinafter referred to as LESSEES;
3. MUFG Union Bank, N.A., hereinafter referred to as SECURED PARTY-LENDER unless otherwise indicated;

RECITALS:

The State of California acting by and through the State Lands Commission as LESSOR did issue leases for the exploration and extraction of geothermal resource and right of way access as lease Nos. 4596, 4597, 5206, 6422, 7845, 8556, 8844, 6793, 8090, 8337, and 8610 (both individually and collectively, the "Lease" or "Leases") to LESSEES.

LESSEE requires and has obtained indebtedness pursuant to the terms and conditions of the Credit Agreement, dated as of June 9, 2020, between LESSEES, certain affiliates of LESSEES, SECURED PARTY-LENDER and the other agents and other

financial institutions from time to time party thereto and certain related financing documents to provide financing (including bank financing in an amount equal to \$1,100,000,000) to develop additional capital improvement projects, such as power plant improvements, steam field improvements, and other well drilling efforts and for other general corporate purposes. The indebtedness and financing are necessary to achieve the purposes and objectives of the Leases and are in the best interest of all parties.

SECURED PARTY-LENDER requires the execution of a security instrument in the form of a Deed of Trust, mortgage, or other security device encumbering the Leases to secure the financing required by LESSEES.

SECURED PARTY-LENDER has been designated as the lender and party to this Agreement by LESSEES and is acceptable to LESSOR.

AGREEMENT

A. NOW, THEREFORE, the State of California, acting by and through the State Lands Commission, as LESSOR, DOES HEREBY APPROVE AND CONSENT TO:

1. The SECURED PARTY-LENDER being designated as the lender and as a party to this Agreement; **and**
2. The mortgaging or encumbering of the Leases by a Deed of Trust and/or other security instrument being executed by LESSEE (TRUSTOR) for the benefit of SECURED PARTY-LENDER (BENEFICIARY) to secure indebtedness incurred for the purposes stated above, pursuant to the terms and conditions of the Loan Agreement, the Promissory Note, or other loan documents or debt instrument. The terms "security interest" or "security interests" shall be hereinafter used interchangeably with the terms "mortgage," "encumbrance," "Deed of Trust" or other security instrument used to encumber the Leases. The security interest may, at the option of SECURED PARTY-LENDER, be recorded in the Office of the County Recorder of Sonoma County, California and the Office of the County Recorder of Lake County, California. No additional or subsequent security interest concerning the Leases shall be executed by the LESSEE, SECURED PARTY-LENDER or other party without the prior written approval and consent of LESSOR; **and**

3. Any increases in, or modifications, extensions, or renewals of the financing or indebtedness by the SECURED PARTY-LENDER, provided, however, that any such increases, modifications or renewals shall not be deemed in any way to increase, modify, extend, renew or otherwise amend the Leases, and provided that LESSEE shall give LESSOR written notice of any of them having been made within 10 days of their execution; **and**

4. SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER acquiring the Leases by any of the means set forth in this Agreement; and

B. The parties do further agree as follows:

1. **Estoppel Certificate.**

As of the date of LESSOR's execution of this Agreement, the Leases are in full force and effect and no default, breach or other ground for termination exists.

2. **Lease Improvements.**

The proceeds of any loan procured in whole or in part for the purpose of permanent financing or refinancing of existing debt, constructing, maintaining, repairing or reconstructing improvements on the Lease Premises (for which a security interest in the Leases is required) shall be used for such purposes according to the objectives of the Leases and other general corporate purposes provided, however, that SECURED PARTY-LENDER shall have no obligation to take any action, other than disbursing loan proceeds pursuant to invoicing provided by LESSEE, to see or ensure that the loan proceeds or any part thereof are or were used to construct or improve the Lease Premises.

3. **Lease Termination.**

a. Except as stated below in Section B.4, LESSOR shall not terminate the Leases, individually or as a group, because of a default or breach of any of its terms, covenants or conditions by LESSEE if, within 60 days after service of written notice (the "Termination Notice") on the SECURED PARTY-LENDER of LESSOR'S intention to terminate the Leases for such default or breach, SECURED PARTY-LENDER shall:

(1) Cure any default or breach dealing with rental, a surety bond,

liability insurance and any other default or breach that can be cured by the payment or expenditure of money; **and**

(2) Keep the Leases free from any defaults or breaches of the kind described in the immediately preceding clause (1) occurring from and after the date that SECURED PARTY-LENDER receives the Termination Notice until the date all of the defaults and breaches described in the Termination Notice are cured; **and**

(3) Give notice to LESSOR and immediately commence and diligently pursue actions necessary for and leading expeditiously to:

(a) A transfer of the Leases to SECURED PARTY-LENDER or another party acceptable to LESSOR by any of the means mentioned in this Agreement; **and**

(b) The cure of any default or breach for which possession of the Lease Premises is necessary.

b. SECURED PARTY-LENDER shall not be required to continue to pursue actions necessary to effect a transfer of the Leases if all defaults or breaches of the Leases have been cured by LESSEE or SECURED PARTY-LENDER and LESSEE has demonstrated to the satisfaction of LESSOR that it is willing and able to resume satisfactory performance of all of its duties and obligations under the Lease. If SECURED PARTY-LENDER cannot effect a transfer of the Lease other than through foreclosure and is prohibited from commencing or continuing foreclosure as a result of a court order or provision of law, LESSOR shall not terminate the Lease, provided that SECURED PARTY-LENDER notifies LESSOR of its intent to foreclose when permitted to do so and shall keep and perform all other conditions of the Lease and this Agreement until such time that the Lease shall be sold upon foreclosure pursuant to the Deed of Trust, or shall be transferred upon judicial or nonjudicial foreclosure, by assignment in lieu of foreclosure or otherwise.

c. Except as stated below in Section B.4.c or as otherwise permitted under the applicable financing documents, LESSEE and LESSOR shall not seek to amend, modify, replace, terminate or surrender the Lease through

mutual assent or otherwise without first having obtained the written consent of SECURED PARTY-LENDER, unless, with respect to a termination by LESSOR, the foregoing provisions of Section B.3 of this Agreement would otherwise allow for such termination.

d. The leasehold under the Lease shall not merge with the fee interest in all or any portion of the Lease Premises notwithstanding the ownership of the leasehold and of the fee by the same person(s) or entity(ies).

e. Except as stated below in Section B.4.c, LESSOR shall, upon serving LESSEE with any demand, consent or other notice under the Lease, concurrently serve a copy of such demand, consent or other notice upon SECURED PARTY-LENDER. LESSOR shall not be obligated to serve such notice on a SECURED PARTY-LENDER other than to the original SECURED PARTY-LENDER unless LESSOR has received notice that the security interest has transferred to a new SECURED PARTY-LENDER.

4. **Lease or Security Interest Transfer.**

a. **Lease Transfer.**

(1) Any transfer of the Lease, with the exception of a transfer to SECURED PARTY-LENDER, or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER be it pursuant to judicial foreclosure, by way of a private sale under a Deed of Trust, an assignment from LESSEE in lieu of foreclosure to a party selected by the SECURED PARTY-LENDER, or an assignment by LESSEE pursuant to Paragraph 11 of Section 3 of the General Provisions of the Lease or otherwise, shall be subject to the prior written approval and consent of LESSOR. If SECURED PARTY-LENDER shall proceed with a foreclosure sale, it shall provide LESSOR with a minimum of 30 calendar days notice of the date and time of such sale. SECURED PARTY-LENDER shall inform prospective Lease purchasers in its notice of sale of the requirement that any prospective lessee of State lands under the jurisdiction of LESSOR must be approved by LESSOR prior to assumption of the Lease. If prospective purchasers wish to obtain

notice of approval or disapproval before the foreclosure sale, their identity and intent to bid must be given to SECURED PARTY-LENDER at least 25 State business days prior to the date of sale. SECURED PARTY-LENDER shall in turn give to LESSOR 24-hour notice of the identity of such prospective lease purchaser(s). LESSOR shall have 15 State business days after receipt of written notice from SECURED PARTY-LENDER in which to approve or disapprove any prospective purchasers. LESSOR's approval or disapproval of a prospective purchaser may be given by the Executive Officer of the State Lands Commission. If the Executive Officer disapproves of the prospective purchaser, SECURED PARTY-LENDER may appeal that disapproval to the State Lands Commission at the Commission's next available noticed public meeting. LESSOR shall advise SECURED PARTY-LENDER of its approval or disapproval of prospective purchasers prior to the scheduled time of sale and the Lease shall be awarded to the highest bidder who has been approved by LESSOR. SECURED PARTY-LENDER shall indemnify, hold harmless and, at the option of LESSOR, defend LESSOR, its officers, agents, and employees against and for any and all liability arising out of, or alleged to arise out of, a failure to inform prospective Lease purchasers that they must be approved by LESSOR.

(2) Except SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER, all transferees, who succeed to the Lease whether by way of judicial foreclosure, private sale under a Deed of Trust or an assignment from LESSEE in lieu of foreclosure, or otherwise, must submit the following information in order to be considered for approval by LESSOR:

(a) The name and identification of the business organization and operational structure of the proposed transferee including certificate of good standing from the

office of the California Secretary of State; identification of all affiliated entities, including subsidiaries and parent corporations; identification of the nature of the use of and interest in the Lease Premises by the proposed transferee; and a copy of the entity's formation documents (i.e. articles of incorporation, articles of organization, partnership agreement, joint venture agreement, etc.); **and**

(b) A copy of the terms and conditions of the proposed transfer. (This requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale.); **and**

(c) Audited or unaudited profit and loss statements for the two most recently completed fiscal years of the proposed transferee demonstrating its solvency and sufficient capital to operate the Lease and meet its terms and conditions; **and**

(d) If available, pro forma financial statements showing the projected income, expense, and financial condition resulting from use of the Lease Premises. (This requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale.); **and**

(e) Evidence of ability to meet the insurance and bonding requirements required by the Lease; **and**

(f) Current credit report; **and**

(g) Demonstration of experience within the past ten (10) years in the type of business being conducted on the Lease Premises. (This requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale.)

(3) Any grantee, assignee, purchaser or other transferee of the Lease or any interest therein, be it SECURED PARTY-LENDER or another party acceptable to LESSOR, shall succeed to all of the rights, title and interest of LESSEE and shall be bound by all terms,

covenants and conditions of the Lease and by all of the provisions of this Agreement. Any such transferee shall, by the way of a written agreement with LESSOR, expressly assume and agree to perform all terms, covenants and conditions of the Lease and of this Agreement. SECURED PARTY-LENDER shall give written notice of the requirement of such assumption and agreement to any such transferee.

(4) If SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER becomes the lessee under the Lease and subsequently desires to sell, assign or otherwise transfer the Lease, it shall first seek the prior written consent of LESSOR.

b. **New Lease Following Termination of Lease in Bankruptcy.**

Except as stated below in Section B.4.c, in the event of the termination of the Lease as a result of LESSEE's rejection of the Lease in bankruptcy, LESSOR shall provide written notice to SECURED PARTY-LENDER of such termination ("Notice of Rejection of Lease in Bankruptcy") together with a statement of all sums which would be due at that time under the Lease but for such termination, and of all other defaults, if any, then known, to LESSOR. Subject to LESSOR'S prior written consent, which consent shall not be unreasonably withheld, LESSOR agrees to enter into a new lease ("New Lease") of the Lease Premises with SECURED PARTY-LENDER for the remainder of the term of the Lease, effective as of the date of termination, at the rent, and upon the terms and conditions (including all options to renew but excluding requirements which are not applicable or have already been fulfilled) of the Lease provided that the following conditions are met:

(1) SECURED PARTY-LENDER makes written request upon LESSOR for such new lease within 60 days after the date SECURED PARTY-LENDER receives the Notice of Rejection of Lease in Bankruptcy;

(2) SECURED PARTY-LENDER pays or causes to be paid to LESSOR at the time of the execution and delivery of the New Lease, any and all sums which would be due at the time of execution and delivery thereof pursuant to the Lease but for such termination and which have not otherwise been received by LESSOR from LESSEE or other party in interest.

(3) SECURED PARTY-LENDER agrees to remedy, within 45 days of issuance of the New Lease, any of LESSEE'S defaults of which SECURED PARTY-LENDER was notified by the Notice of Rejection of Lease in Bankruptcy and which are reasonably susceptible of being cured by SECURED PARTY-LENDER.

(4) Any New Lease made pursuant hereto shall have the same priority with respect to any other lien, charge or encumbrance on the fee of the Lease Premises, and the lessee under the New Lease shall have the same right, title, and interest in and to the Lease Premises as LESSEE had under the Lease.

(5) The lessee under the New Lease shall have the same right to assign or transfer the Lease as provided in this Agreement had it become the lessee under the initial Lease.

(6) The liability of any lessee under the New Lease, including the limitations on liability of SECURED PARTY-LENDER as stated in Section B.5.b if it becomes the lessee under the New Lease, shall be the same as provided in this Agreement had it become the lessee under the initial Lease.

c. **Security Interest Transfer.**

Except as provided herein, any subsequent assignment or other transfer by the SECURED PARTY-LENDER of the security interest approved in paragraph A.2. shall be subject to the prior written approval and consent of LESSOR. Failure of SECURED PARTY-LENDER to obtain such approval and consent shall be a breach of this Agreement and failure to cure such breach shall relieve LESSOR of any and all obligations to give notice to and/or obtain SECURED PARTY-LENDER's approval and

consent to termination, amendment, modification, replacement, surrender or assignment or other transfer of the Lease.

d. **Security Interest Termination.**

Upon full payment of the indebtedness giving rise to the security interest herein, LESSEE shall provide LESSOR, within 30 days of its receipt, a copy of any reconveyance or other instrument from SECURED PARTY-LENDER showing that the indebtedness has been fully satisfied. LESSEE shall further actively work to obtain from SECURED PARTY-LENDER such reconveyance or other instrument, beginning no later than 30 days after LESSEE's final payment.

5. **Lessee and Secured Party-Lender Liability.**

a. Subject to the terms of Section B.5.b below, any encumbering, assignment, grant, purchase or other transfer of the Lease shall not release or relieve the current LESSEE, or a subsequent lessee from any obligations to LESSOR under the Lease or corporate guarantee and LESSOR may hold the current LESSEE or a subsequent lessee liable for the faithful performance of any and all terms, covenants and conditions of the Lease.

b. SECURED PARTY-LENDER shall have no obligations or liability under the Lease unless it shall become the lessee (and such obligations and liability shall only be for those obligations and liability arising during the period of time that SECURED PARTY-LENDER remains the actual lessee under the Lease), and provided further that, if SECURED PARTY-LENDER should become the lessee by any of the means mentioned in this Agreement, it shall have no further obligations or liabilities under the Lease after it has assigned or otherwise transferred the Lease to a party approved by Lessor. Unless SECURED PARTY-LENDER becomes the lessee under the Lease, termination of this Agreement shall be LESSOR'S sole remedy against SECURED PARTY-LENDER for its failure or refusal to comply with any or all of the provisions of this Agreement.

c. Notwithstanding any other provision of this Agreement, if SECURED PARTY-LENDER becomes a lessee by any of the means set forth in this Agreement, then, during the time of its occupancy of the Lease Premises,

it shall be bound by all of the terms and conditions of the Lease.

6. **Lessor Approval.**

a. Except as otherwise expressly provided for in section B.4.a.(1), whenever the approval and consent of LESSOR as required under this Agreement is requested by SECURED PARTY-LENDER or LESSEE, LESSOR shall have 10 State business days after receipt of written notice of such request to approve or disapprove it, unless an alternative specific time period is expressly set forth herein. LESSOR's approval, consent or disapproval may be given by the Executive Officer of the State Lands Commission. If the Executive Officer does not provide the requested approval or consent, SECURED PARTY-LENDER may appeal that disapproval or failure to consent to the State Lands Commission at the Commission's next available noticed public meeting.

b. The approval and consent of LESSOR whenever it is required by this Agreement shall not be unreasonably withheld and in the event of disapproval LESSOR shall inform LESSEE and SECURED PARTY-LENDER of the basis for such disapproval.

c. Any transaction for which the approval and consent of LESSOR is required by the terms of this Agreement shall be void in the absence of such approval and consent.

7. **Notices, Consents and Demands.**

a. Any notices, consents, or demands (hereafter collectively referred to as "notices") required under the Lease or this Agreement shall be in writing and shall be delivered personally, sent by telecopier, or email with the original notice sent by first class U.S. mail, registered or certified, return receipt requested, postage prepaid, and properly addressed as set forth in this Section provided that any party hereto may at any time change its address for such notices by giving to the other parties hereto a notice of such change. All notices to any and all of the parties shall be deemed effective when delivered at the party's address. The addresses of the parties at the time of this Agreement's execution for the purposes of such notice are:

LESSOR: STATE LANDS COMMISSION
Attn: Chief, Land Management Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

LESSEE: GEYSERS POWER COMPANY, LLC
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

SECURED PARTY-LENDER:

MUFG UNION BANK, N.A.
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

- b. LESSOR and SECURED PARTY-LENDER agree to inform LESSOR of any change in address for purposes of receiving any notices, as defined above, required by the Lease or this Agreement. Failure to do so shall relieve LESSOR of any and all obligations to give any notices other than to the last address of record prior to proceeding with amendment, modification, default, termination, surrender, replacement or assignment or other transfer of the Lease or other action under the Lease or this Agreement; and/or obtain SECURED PARTY-LENDER's approval and consent to any of them.

8. **Failure to Comply with Agreement and Consent to Encumber Lease.**

LESSOR, LESSEE and SECURED PARTY-LENDER agree that LESSOR may treat a violation of the terms of this Agreement and Consent to Encumbrance of Lease as a breach of the Lease or of this Agreement and that, after notice to LESSEE and SECURED PARTY-LENDER, LESSOR may exercise all remedies available to it under the Lease and at law and equity. All defaults of this Agreement must be cured within 45 days of service of notice of default on SECURED PARTY-LENDER unless LESSOR elects to treat a default of this Agreement as a default

of the Lease in which case the applicable cure period under the Lease shall apply. Failure of SECURED PARTY-LENDER to cure any default within the 45-day period shall immediately terminate this Agreement without further action of any of the Parties.

9. **Conflicts in Provisions.**

In the event of any conflict between the provisions of this Agreement and those of the Lease, the provisions of this Agreement shall take precedence and be controlling. Except as provided by this Agreement, the Lease shall remain in full force and effect as written.

10. **Non-Waiver of Lessee Default.**

Nothing contained herein nor any failure by the undersigned LESSOR to insist upon the strict performance of any provisions contained herein shall be construed as a waiver of any default of LESSEE under the Lease, or the waiver, modification or limitation of any remedy available to the undersigned LESSOR under the Lease or at law or equity.

11. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one and the same agreement. A photocopy or facsimile copy of a signature shall be deemed as an original with the parties waiving any objection requiring such original signature under California Evidence Code §1520, et seq.

12. **Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of LESSOR, LESSEE and SECURED PARTY-LENDER and their respective successors and assigns.

13. **Modification of Agreement and Consent to Encumber Lease.**

No modification of this Agreement shall be effective without the prior written consent of all parties to this Agreement.

14. **Acknowledgement, Release and Indemnity by Lessee.**

LESSEE hereby acknowledges that LESSOR is executing this Agreement and Consent to Encumber Lease in reliance on the terms of this Agreement, and LESSEE hereby releases, and agrees to indemnify, defend and hold LESSOR

harmless from any and all claims, losses, costs, liabilities, damages and expenses, including without limitation, attorneys fees and costs, incurred in connection with or arising from the exercise of SECURED PARTY-LENDER'S rights and obligations under this Agreement except to the extent caused by LESSOR's breach of this Agreement. LESSEE hereby agrees to pay all of LESSOR's attorneys fees incurred in connection with the preparation and negotiation of this Agreement and other agreements required in connection with it, or incurred with respect to any dispute arising out of this Agreement. This Section shall survive the expiration or earlier termination of the Lease.

15. **Severability.**

In the event of any conflict between any provision (or portion thereof) of this Agreement and any law, the latter shall prevail, but the provision (or portion thereof) of this Agreement which is affected shall be limited and curtailed only and to the least extent necessary to bring it within the requirements of the law, and no other provision (or portion thereof) of this Agreement shall otherwise be affected.

16. **Integration.**

This Agreement hereto contain and constitute the final and entire agreement of the parties relating to the subject matter of this Agreement and supersede all prior understandings, proposals, negotiations, or representations concerning the subject matter of this Agreement.

17. **Governing Law and Jurisdiction.**

This Agreement shall be governed by, and construed in accordance with, California law, without regard of the choice-of-law principles thereof. Any action seeking legal or equitable relief arising out or related to this Agreement or a breach thereof shall be brought in the courts of the State of California, County of Sacramento.

18. **Effective Date.**

This Agreement will become effective and binding on all parties when executed by all parties and it shall remain effective until the expiration or termination of the Lease, or until the expiration of the original or extended term of the indebtedness, or upon reconveyance from SECURED PARTY-LENDER, whichever comes first.

The parties hereto hereby execute this Agreement and Consent to Encumber Lease as of the date hereafter affixed.

LESSEE:

GEYSERS POWER COMPANY, LLC

DATED: _____

By: _____

Title:

SECURED PARTY-LENDER:

MUFG UNION BANK, N.A.

DATED: _____

By: _____

Title:

LESSOR:

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

DATED: _____

By: _____

Jennifer Lucchesi
Executive Officer

ALL SIGNATURES MUST BE NOTARIZED