

Staff Report 46

APPLICANT:

Russell Joseph Chidley and Susan Elizabeth Chidley

PROPOSED ACTION:

Amendment of a General Lease – Protective Structure Use

AREA, LAND TYPE, AND LOCATION

Sovereign land in the Colorado River, adjacent to 1190 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of an existing riprap bankline protection.

TERM:

10 years, beginning April 26, 2013.

CONSIDERATION:

Proposed Floating Boat Dock, Walkway, Access Ramp, and Stairway: Annual rent in the amount of \$140 per year, effective April 26, 2021, with an annual Consumer Price Index adjustment.

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

PROPOSED AMENDMENT:

- Amend Section 1, Basic Provisions, Lease type from a General Lease – Protective Structure Use, to a General Lease – Recreational and Protective Structure Use.
- Amend Section 1, Basic Provisions, Land Use or Purpose, to include installation, use, and maintenance of a new floating boat dock, walkway, access ramp, and stairway.

- Amend Section 1, Basic Provisions, Consideration, to add a monetary rent for the new floating boat dock, walkway, access ramp, and stairway in the amount of \$140 annually, effective April 26, 2021, with an annual consumer price index adjustment.
- Amend Section 2, Special Provisions, to state that the installation of new improvements provided for in Section 1, Land Use or Purpose, must be completed no later than December 31, 2021, unless otherwise extended by Commission staff.
- Amend lease to remove and replace the current Exhibits A and B with the new Exhibits A and B (attached) to reflect the additional area for the dock, walkway, access ramp, and stairway occupying State lands; within 60 days of completing the installation of the new floating boat dock, walkway, access ramp, and stairway, Lessees will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessees, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.
- Amend lease to remove the current Section 3, General Provisions, and replace it with Section 3, General Provisions – Recreational Use.
- Due to the numerous and extensive changes included in the proposed amendment, the lease will be restated for clarity.

BACKGROUND:

The State of California's fee ownership of the sovereign land located in the Colorado River at this location was confirmed in 1991 by a Boundary Line Agreement and Compromise Settlement entered into between the Commission and Kahala Needles Partners, Ltd., a Nevada Limited Partnership, recorded as AD 134 dated January 1, 1991, and recorded on August 11, 1992, document No. 92-333250, Official Records, San Bernardino County, California (Agreement). Projects, including new development or maintenance of existing facilities, extending waterward of the ordinary high-water mark (OHWM) fixed in the Agreement require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.

Pursuant to the Agreement, the State of California was granted an easement running parallel to the fixed OHWM. The easement is intended to provide public

access to and along the bank of the Colorado River. The easement affects lots 1 through 40 of the Rio Buena Vista residential subdivision, one of which is the Applicant's property. Public access to the easement is from the northern or southern end of the subdivision, or from the Colorado River.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized the issuance of Lease No. PRC 9062.9, a 10-year General Lease – Protective Structure Use, for existing riprap bankline protection, to Russell Joseph Chidley and Susan Elizabeth Chidley (Lessee), beginning April 26, 2013 ([Item 82, April 26, 2013](#)). The lease will expire on April 25, 2023. The Lessee is now applying for an amendment to the lease to authorize the installation, use, and maintenance of a new floating boat dock, walkway, access ramp, and stairway.

The proposed new facilities would occupy approximately 452 square feet of sovereign land and consist of a floating boat dock and walkway, with three 3.5-inch galvanized guide poles; an access ramp with two 3-inch galvanized support poles; and a stairway. The proposed new facilities would require an expansion of the lease area within the Colorado River.

The proposed facilities would be constructed off-site and installed on-site once all approvals are complete. The on-site construction would include manually moving existing rocks as well as hand digging holes with shovels within the riprap bankline protection to install the support poles for the proposed walkway. Previously hand-mixed concrete would be used to fill the holes and concrete the upright supports. This concrete would be hand poured from wheelbarrows and buckets. Once the uprights have been installed, the walkway (built off-site and delivered by boat) would be lifted into place by a hydraulic crane from the boat. Once the walkway is secured, the floating portion of the project would be installed. The proposed floating dock (built off-site) would also be delivered by boat and the steel guide poles would be hydraulically pile-driven into the river bottom to resistance or sufficient depth using a pneumatic pile driver positioned on the boat. The approximate construction time is 2 weeks.

The new facilities would be privately owned and maintained and located within the Colorado River. The boat dock, walkway, and access ramp would facilitate

recreational boating because they would be used for the docking and mooring of recreational boats. Recreational boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The existing bankline protection has already been authorized by the Commission and is consistent with the Commission's leasing practices for inland waterways and the Public Trust needs and values that have been identified at this location; the bankline protection provides additional protection for the integrity of the Colorado River channel from wave action, at no cost to the public. Consequently, staff believes that the Public Trust needs, values, and uses of the recognized beach areas will not be impacted by the continued use of the bankline protection or the proposed new facilities.

The proposed lease amendment and restatement does not alienate the State's fee simple interest or permanently impair public rights. The lease also requires the lessee to maintain insurance for the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon; and requires the payment of annual rent as compensation for the use of State lands. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

CLIMATE CHANGE:

The lease area in the Colorado River is not tidally influenced and therefore would not be subject to sea-level rise. The water level near the existing improvement is regulated primarily by water released upstream from the Davis Dam. As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, extreme heat, drought, and storms. Droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and runoff by likely increasing scour and decreasing bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from floods or droughts during the term of the lease. The access ramp, walkway, and floating boat dock are not likely to be damaged by either storm-created flooding or prolonged droughts due to their floating nature. However, the stairway, rock retaining walls, and riprap bankline protection may need reinforcement to withstand higher levels of flood exposure or drought. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

CONCLUSION:

For all the reasons above, staff believes the issuance of this amendment will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application to amend the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land or a revision of rent, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to construct the proposed floating boat dock, walkway, access ramp, and stairway. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. 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.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
U.S. Bureau of Reclamation

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that this activity is exempt from the requirements of CEQA pursuant to the California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the existing and, for a limited period, continuing use and maintenance of the riprap bankline protection and the installation, use, and maintenance of a new floating boat dock, walkway, access ramp, and stairway will not substantially interfere with Public Trust needs and values at this location; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 9062, a General Lease – Protective Structure Use, to a General Lease – Recreational and Protective Structure Use of sovereign land, effective December 17, 2020; to include the installation, use, and maintenance of a new floating boat dock, walkway, access ramp, and stairway; to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); to replace the current Section 3, General Provisions, with a new Section 3, General Provisions – Recreational Use; and to set annual rent for the new recreational facilities in the amount of \$140, effective April 26, 2021, with an annual Consumer Price Index adjustment; authorize restatement of the lease for clarity due to the number and extent of amendments.

EXHIBIT A

PRC 9062

LAND DESCRIPTION

A parcel of State owned land adjacent to Lot 16 of Tract No. 15640 as shown on Tract Map filed in Book 261, Pages 88 through 94, inclusive of Maps, in the Office of the County Recorder of San Bernardino County, State of California, more particularly described as follows:

BEGINNING at the easterly corner of said Lot 16; thence northwesterly along the northeasterly line of said Lot, said northeasterly line also being the Agreed Boundary Line as described in Exhibit A of Document Number 92-333250, recorded on August 11, 1992, Official Records of said County, N 55°01'49" W 50.76 feet to the northerly corner of said Lot; thence leaving said line, along the northeasterly prolongation of the northwesterly line of said Lot 16 N 33°18'50" E 90.04 feet; thence S 55°01'49" W 56.87 feet to the intersection with the northeasterly prolongation of the southeasterly line of said Lot 16; thence southwesterly along said northeasterly prolongation 90.07 feet to the POINT OF BEGINNING.

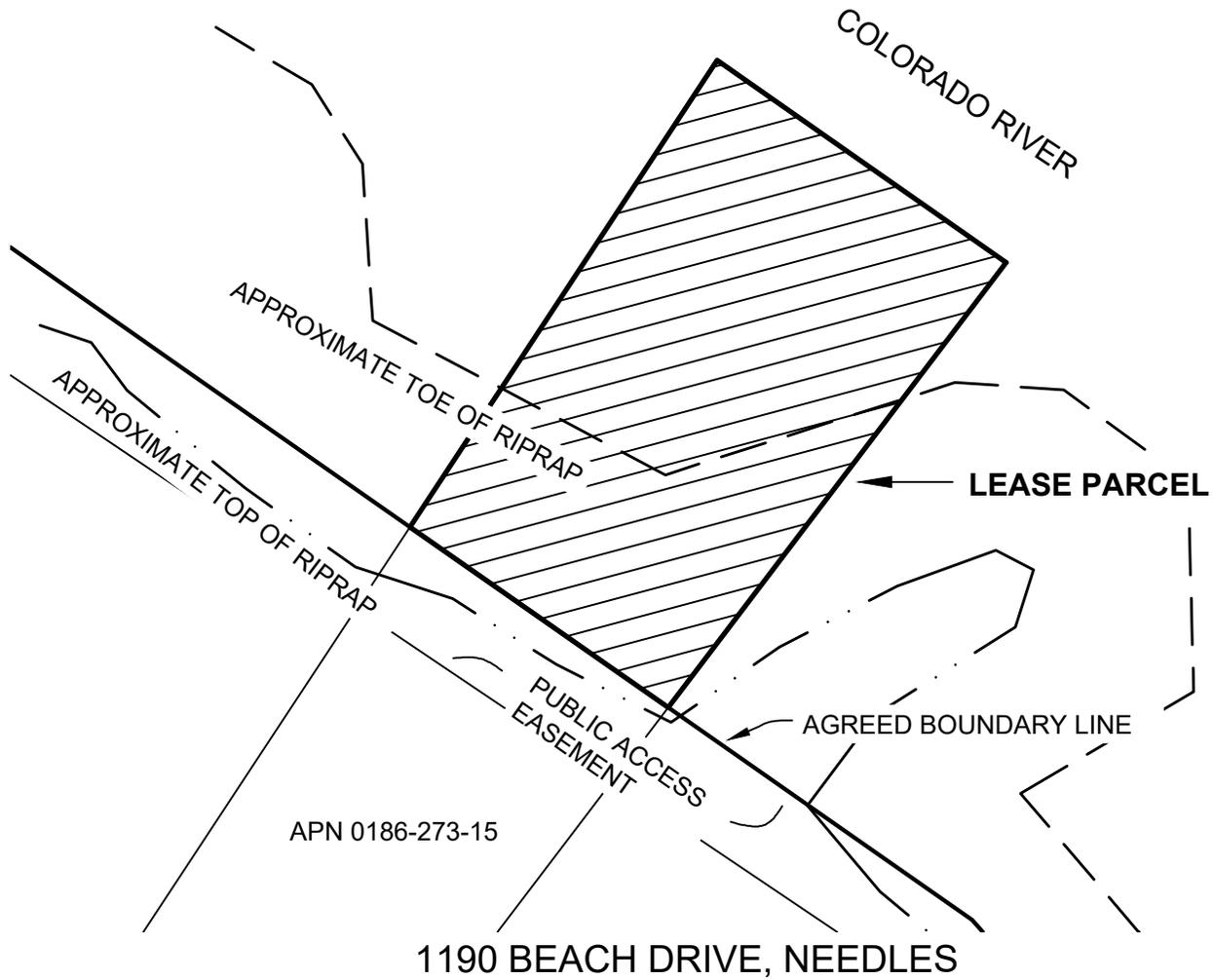
END OF DESCRIPTION

Prepared 11/4/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



NO SCALE

LOCATION

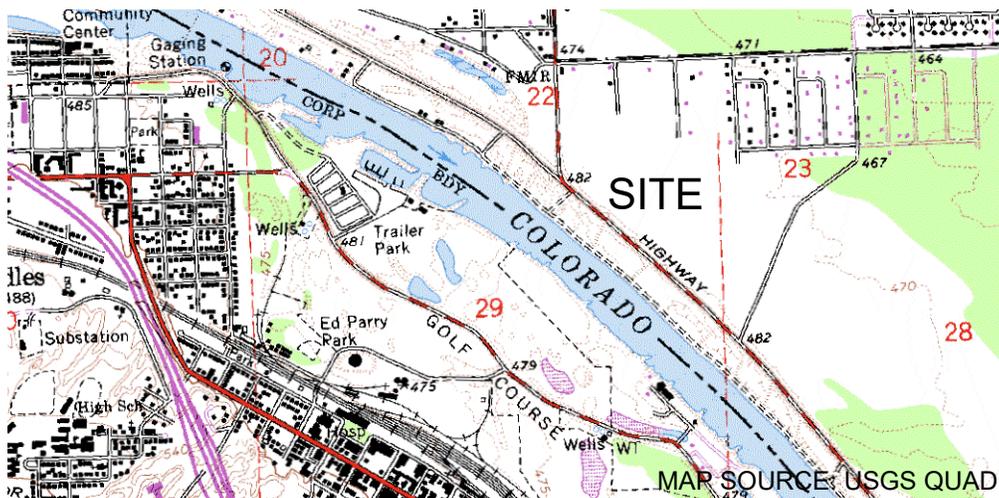


EXHIBIT B

PRC 9062
 CHIDLEY
 APN 0186-273-15
 GENERAL LEASE -
 RECREATIONAL AND
 PROTECTIVE STRUCTURE USE
 SAN BERNARDINO COUNTY



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.

DJF 11/4/2020