

# Staff Report 33

## **LESSEE/APPLICANT:**

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Davis Hunter Doty and Danielle Marie Doty; David Hunter Doty and Ann-Gerete Doty; Bradley Olson and Genevieve Olson

## **PROPOSED ACTION:**

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Termination of Lease No. PRC 9281.9, a General Lease – Protective Structure Use; Issuance of a General Lease – Recreational and Protective Structure Use

## **AREA, LAND TYPE, AND LOCATION**

Sovereign land in the Colorado River, adjacent to 1207 Beach Drive, Needles, San Bernardino County.

## **AUTHORIZED USE:**

Use and maintenance of existing riprap bankline protection; and the installation, use, and maintenance of a floating boat dock, walkway, access ramp, and stairway.

## **TERM:**

10 years, beginning February 23, 2021.

## **CONSIDERATION:**

**Existing Riprap Bankline Protection:** The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

**Proposed Floating Boat Dock, Walkway, Access Ramp, and Stairway:** \$154 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Monetary rent is due and payable on or before April 23, 2021, for the first lease year. All subsequent rent payments shall be paid on or before the lease anniversary date.
- The Lessee acknowledges that the public pedestrian access easement shall remain open to the public and that no structures or improvements shall be erected, and no personal property placed so as to obstruct or prevent public access in and along the easement. Such improvements include, but are not limited to, fences, gates, walls, railings, or landscaping. Lessee further acknowledges that they shall not place signs or advocate in any other manner in such a way as to prevent or discourage public use of the public pedestrian access easement.

## **BACKGROUND:**

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On December 12, 1990 ([Item 8, December 12, 1990](#)), the Commission authorized a Boundary Line Agreement and Compromise Settlement (AD 134) which confirmed the State's fee ownership of sovereign land located in the Colorado River at this location. Pursuant to Public Resources Code section 6501.1, projects in this location, including new development or maintenance of existing facilities, extending waterward of the ordinary high-water mark (OHWM) fixed by AD 134 require a lease from the Commission. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.

Pursuant to AD 134, the State of California was granted a Public Pedestrian Access Easement (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. The Easement can be accessed by the public from the northern or southern end of the subdivision, from the Colorado River, and provides access to the Colorado River.

The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) conducted a review by boat of the riprap bankline on March 27, 2002, and conducted a site visit on April 10, 2002. The inspection revealed that the bankline was cleared of vegetation and that the federally constructed riprap and jetties were undisturbed and in good condition.

By letter dated April 23, 2002, Reclamation declared that it would not place additional riprap on the bankline because of interference from the upland residential development. Reclamation stated that the upland homeowners would be responsible for maintaining protection of their own bankline in the future, subject

to the homeowners seeking approval and permitting of their riprap or bankline construction work from the U.S. Army Corps of Engineers.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 23, 2014, the Commission authorized the issuance of Lease No. PRC 9281.9, a 10-year General Lease - Protective Structure Use, for existing riprap bankline protection, to Brett and Kathleen Fowler and Terry N. and Jeanette D. Fowler, beginning April 23, 2014 ([Item 56, April 23, 2014](#)).

On October 16, 2015 the Commission authorized the assignment of the Lease from Brett and Kathleen Fowler and Terry N. and Jeanette D. Fowler to Davis Hunter Doty and Danielle Marie Doty; David Hunter Doty and Ann-Gregrete Doty; and Bradley Olson and Genevieve Olson (Applicant), effective August 5, 2015 ([Item 40, October 16, 2015](#)). The lease will expire on April 22, 2024. The Lessee/Applicant is requesting termination of the existing lease, and the issuance of a new 10-year lease for the use and maintenance of existing riprap bankline protection and for the installation, use, and maintenance of a floating boat dock, walkway, access ramp, and stairway.

The proposed new facilities would occupy approximately 512 square feet of sovereign land, along with an impact area of approximately 387 square feet where watercraft will be moored, and will 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 providing public access to the beach. The proposed new facilities will 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 riprap 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. Furthermore, the bankline protection mutually benefits both the public and the Applicant because the bank of the Colorado River will have additional protection to maintain the integrity of the river channel and the riprap bankline will be maintained by the Applicant.

Staff believes that the Public Trust needs, values, and uses of the two identified nearby public beach areas along the Colorado River will not be impacted by the proposed lease and continued use of the lease facilities. As an additional measure to ensure that the proposed use does not impair public access, the lease includes provisions protecting public use of the proposed lease area.

The proposed lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and protects public access to the Colorado River. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

**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 floating boat dock, walkway, and access ramp are not likely to be damaged by either storm-created flooding or prolonged droughts due to their floating nature. However, the riprap bankline protection and the stairway 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 lease 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:**

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1. Approval or denial of the termination of the lease and issuance of a new lease are discretionary actions by the Commission. Each time the Commission approves or rejects a use of sovereign land, 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; and Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

4. **Existing Riprap Bankline Protection:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

5. **New Floating Boat Dock, Walkway, Access Ramp, and Stairway:** Staff recommends that the Commission find that this activity is exempt from the requirements of 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:**

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

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

**CEQA FINDING:**

**Existing Riprap Bankline Protection:** 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**New Floating Boat Dock, Walkway, Access Ramp, and Stairway:** 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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the riprap bankline protection; and the installation of a 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
2. Find that termination of Lease No. PRC 9281.9 and issuance of Lease 9281 are in the best interests of the State.

**AUTHORIZATION:**

1. Terminate, effective February 23, 2021, Lease No. PRC 9281.9, a General Lease – Protective Structure Use, issued to Davis Hunter Doty and Danielle Marie Doty; David Hunter Doty and Ann-Gerete Doty; and Bradley Olson and Genevieve Olson.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 23, 2021, for a term of 10 years, for the use and maintenance of existing riprap bankline protection; and for the installation, use, and maintenance of a floating boat dock, walkway, access ramp, and stairway on sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$154 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 9281**

**LAND DESCRIPTION**

Two parcels of State owned land adjacent to Lot 13 of Tract No. 15640 as shown on Tract Map recorded in Book 261, Pages 88 through 94, inclusive of Maps, in the Office of the County Recorder of San Bernardino County, State of California, described as follows:

**PARCEL 1**

BEGINNING at the easterly corner of said Lot 13; thence northwesterly along the northeasterly line of said lot, said 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 45.02 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, along the northeasterly prolongation of the northwesterly line of said lot N 33° 18' 50" E 55.00 feet; thence S 55° 01' 49" E 45.02 feet to the intersection with the northeasterly prolongation of the southeasterly line of said lot; thence southwestward along said northeasterly prolongation S 33° 18' 50" W 55.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 13.

**PARCEL 2**

BEGINNING at the easterly corner of said Lot 13; thence northwesterly along the northeasterly line of said lot, said 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 45.02 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, along the northeasterly prolongation of the northwesterly line of said lot N 33° 18' 50" E 108.00 feet; thence S 55° 01' 49" E 45.02 feet to the intersection with the northeasterly prolongation of the southeasterly line of



said lot; thence southwesterly along said northeasterly prolongation  
S 33° 18' 50" W 108.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying within above described PARCEL 1.

**END OF DESCRIPTION**

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

Prepared 12/03/2020 by the California State Lands Commission Boundary Unit



NO SCALE

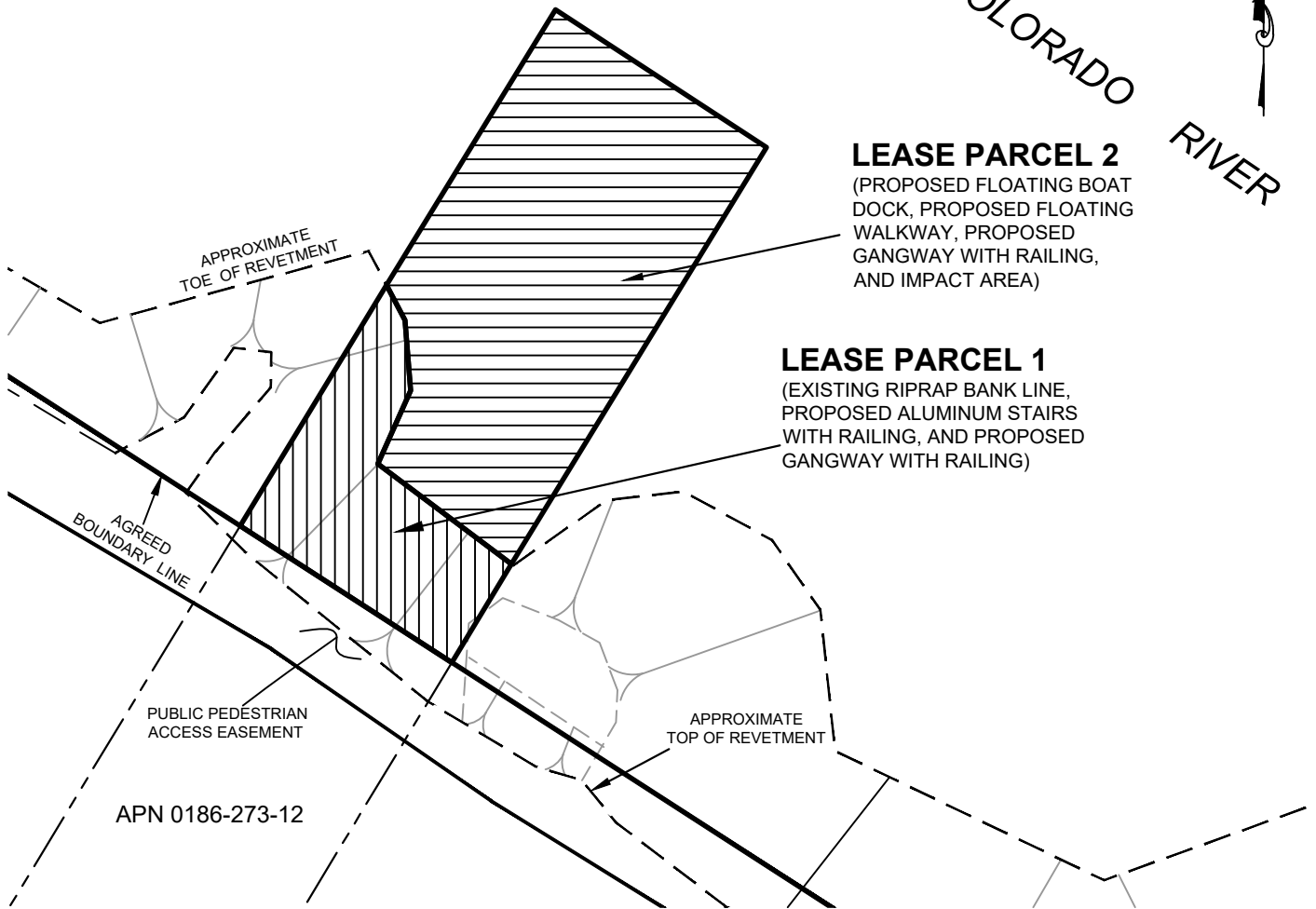
# SITE

COLORADO RIVER



**LEASE PARCEL 2**  
(PROPOSED FLOATING BOAT DOCK, PROPOSED FLOATING WALKWAY, PROPOSED GANGWAY WITH RAILING, AND IMPACT AREA)

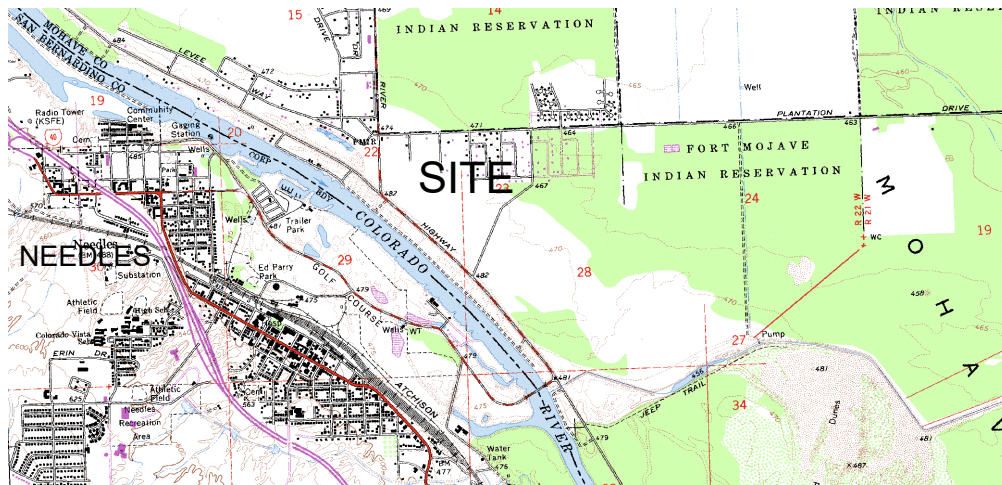
**LEASE PARCEL 1**  
(EXISTING RIPRAP BANK LINE, PROPOSED ALUMINUM STAIRS WITH RAILING, AND PROPOSED GANGWAY WITH RAILING)



1207 BEACH DRIVE, NEEDLES

NO SCALE

# LOCATION



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 B

LEASE 9281  
DOTY, ET. AL.  
APN 0186-273-12  
GENERAL LEASE -  
RECREATIONAL AND  
PROTECTIVE STRUCTURE USE  
SAN BERNARDINO COUNTY

