

Staff Report 67

PARTY:

California State Lands Commission

PROPOSED ACTION:

Approve the 2023 Category 1 Colorado River Benchmark rental rate.

LAND TYPE AND LOCATION:

Sovereign land in the Colorado River, San Bernardino, Riverside, and Imperial Counties.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

The California Constitution specifically prohibits the Legislature from making or authorizing any gift of public money or thing of value to any individual, municipality, or corporation (Cal. Const., art. XVI, § 6). A “thing of value” includes the use of State-owned land for private benefit.

The Commission has broad discretion in all aspects of leasing state lands, including the method or amount of rent that is most appropriate, and how rent should be adjusted during the term. (Pub. Resources Code, §§ 6501.1, 6503, 6503.5; Cal. Code Regs., tit. 2, §§ 2000, 2003.) Rents must be in the best interests of the State, and may be based on one or more of the following methods, including, but not limited to:

- 9 percent of the appraised value of the leased land.
- A percentage of annual gross income, where the percentage is based on an analysis of the market for like uses and other relevant factors.
- A comparison to rents for other similar land or facilities.

- Benchmarks for regions with large concentrations of similar facilities, with benchmark rental rates to be based on analysis of similar or substitute facilities in the local area.
- Other such methods or information that are based on commonly accepted appraisal practices and principles; and for leases for recreational piers or buoys, rent shall be based on local conditions and local fair annual rental values. (Cal. Code Regs., tit. 2, § 2003; Pub. Resources Code, §§ 6503, 6503.5.)

The Commission may consider the amount of rent the State would receive under various rental methods, and whether relevant, reliable, and comparable data are available concerning the value of the leased land in determining which rent method should apply (Cal. Code Regs., tit. 2, § 2003, subd. (d)(1), (2).)

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Benchmarks are used to establish uniform rental rates in specific geographic regions with large concentrations of similar facilities, mostly private recreational improvements within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) The use of benchmarks improves the consistency, transparency, and efficiency in how the Commission establishes rent for large numbers of similar leases, saving time, resources, and money for both the applicant and the State. Periodic benchmark adjustments ensures that the people of the State are fairly compensated according to current market rates for the private use of State-owned land, consistent with the California Constitution. Generally, staff recommends updates to the benchmarks every 5 years.

The Commission has two types of benchmarks for rental rates:

- Category 1, which is generally applied to water-dependent encroachments (e.g., private docks and piers).
- Category 2, which is generally applied to non-water dependent encroachments (e.g., shoreline protective structures and other residential-related improvements).

This staff report addresses the Category 1 benchmark for the Colorado River in San Bernardino, Riverside, and Imperial Counties.

METHODOLOGY:

The Colorado River benchmark was last updated in 2017, when the Category 1 rate was set at \$0.171 per square foot.

Category 1 Colorado River Benchmark

Leases are issued by the Commission for private recreational facilities – such as docks and piers – located on sovereign lands. These facilities offer a substitute for the essential functions of a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment. In a market where there is significantly more demand than supply, these private structures afford the upland owners guaranteed access to mooring facilities that they may not otherwise be able to obtain from commercial marinas. In this manner, these privately-owned facilities represent a substitute for a commercial marina slip. Accordingly, the method of valuation used in estimating a fair rental value in this analysis is based on what an individual would pay for a similar substitute site in a commercial marina.

The first step in setting a Category 1 berthing rate benchmark is to survey local marinas to determine their rental rates. Marinas usually rent their berths on a per-linear-foot basis, based on the length of the berth or vessel. For benchmark purposes, the average surveyed rental rate is used. The rate is multiplied by the average or typical berth length as indicated in the survey data. Based on these inputs, the annual gross income is calculated. For Category 1 benchmarks the State's rent is based on a 5 percent rate of return of this annual gross income, which represents a comparable fair market compensation rate for the use of State-owned sovereign land. The State's rent is then converted to a per-square-foot basis using a table calculated by the California State Parks Division of Boating and Waterways 2005 publication titled "Layout and Design Guidelines for Marina Berthing Facilities" (DBW berthing publication). This publication provides formulas and tables for calculating the submerged land area needed to accommodate various sizes and layouts of berths in marinas. Among other variables, the formulas account for the berth length, berth layout (single or double), and the type of vessel (powerboat or sailboat). The publication can be requested from the Department of Boating and Waterways through their website: dbw.parks.ca.gov.

The Colorado River Benchmark appraisal survey consists of five marinas located along the Colorado River. The northernmost boundary of the Colorado River Benchmark (Benchmark) is generally considered to be the Tri-State Area where California, Arizona, and Nevada meet in the Colorado River. The southernmost boundary of the Benchmark is generally considered to be where California, Arizona, and Mexico meet in the Colorado River. The survey found that the average berth/slip size in the coverage area is approximately 24 linear feet. A 24-foot length was also used in the 2017 benchmark. Staff believes that marina layouts have not changed significantly since the last benchmark.

Berthing rates are reported on a per linear foot basis. The berthing rate, based on survey data collected within the coverage area, ranged from \$5.67 to \$11.85 per linear foot with an average of \$8.90 per linear foot. The benchmark rental rate for berths is calculated by multiplying the average berth length by the average rental rate. This product is then multiplied by 12 months to arrive at the gross annual income. The gross annual income is then multiplied by 5 percent to arrive at the income attributable to the submerged land. That amount is then converted to a per square foot basis for rent-setting purposes using the DBW berthing publication described above. The submerged land area used in this benchmark analysis is based on a double berth layout (on the premise it is the most economically efficient for the marina operator) and represents an average of the powerboat and sailboat areas.

From DBW berthing publication data, a submerged area of 590 square feet is indicated as necessary to accommodate the 24-foot average slip length identified by the survey for this area. Taking all the previously described inputs into account, the rental rate for the proposed Colorado River Benchmark is calculated as follows:

24 linear feet (avg. length) x \$8.90 per lineal foot (avg. rent) = \$213.60 monthly rent

\$213.60 per month x 12 months = \$2,563.20 annual rent per berth

\$2,563.20/berth/year x 5 percent of gross income = \$128.16

\$128.16 ÷ 590 square feet = \$0.217/square foot

Proposed Category 1 Colorado River Benchmark Rental Rate = \$0.217 per square foot

The 2017 Benchmark was set at \$0.171 per square foot. As proposed, the new benchmark rate of \$0.217 per square foot represents an overall increase of just under 5 cents (\$0.046) per square foot.

IMPACT AREA:

The impact area is an additional area, beyond the physical footprint of a structure, where a lessee seeks authorization to conduct activities. For recreational structures used for the docking and mooring of boats within the benchmark’s coverage area, the impact area is generally a nine-foot-wide strip along the mooring areas or under a boat lift. Accordingly, these areas are included in a lease and rent is charged thereon. The Commission’s leasing regulations explicitly allow for this. (Cal. Code Regs., tit. 2, § 2003, subd. (e)(2).)

CONCLUSION:

Staff's methodology for setting the proposed Category 1 Colorado River Benchmark rental rate is consistent with the methodology used for the Commission's other similar benchmarks, as well as all the relevant statutes and regulations that govern the Commission's rent-setting authority. Staff's recommended benchmark rate represents a fair and equitable rate for the type of use based on the most current and relevant data available.

Approval of the new benchmark rental rate will not result in a change in the use of, or substantially interfere with or impact Public Trust resources. Staff believes that the benchmark provides a reasonable and consistent method for determining rent in its geographic coverage area and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. In 2011, Chapter 585, Statutes of 2011 became law and repealed Public Resources Code section 6503.5 that had allowed rent-free use of state land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the Commission "shall charge rent for a private recreational pier constructed on state lands."
2. In 2014, the Commission adopted amendments to Sections 1900, 2002, and 2003 under articles 1 and 2 of title 2, division 3, chapter 1 of the California Code of Regulations that included regulations on rent-setting methods approving the use of benchmarks and the application of the Consumer Price Index ([Item 5, January 23, 2014](#)).
3. This action is consistent with Goal 4 of the Commission's Strategic Plan "Meeting Evolving Public Trust Needs," specifically Section 3 – "Maintain fiscal integrity through transparency, accountability", and subheading 3.a. "Efficient and effective management of the revenue-generation portfolio."
4. Approval of the 2022 Category 1 Colorado River Benchmark rental rate 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. Benchmark Map
- B. Current Benchmark Rates
- C. 2023 Category 1 Colorado River Benchmark

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that approval of the benchmark will not result in a change in the use of, or impacts to, Public Trust resources; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Approve the 2023 Category 1 Colorado River Benchmark rental rate of \$0.217 per square foot, effective February 28, 2023.

EXHIBIT A

CALIFORNIA STATE LANDS COMMISSION BENCHMARKS

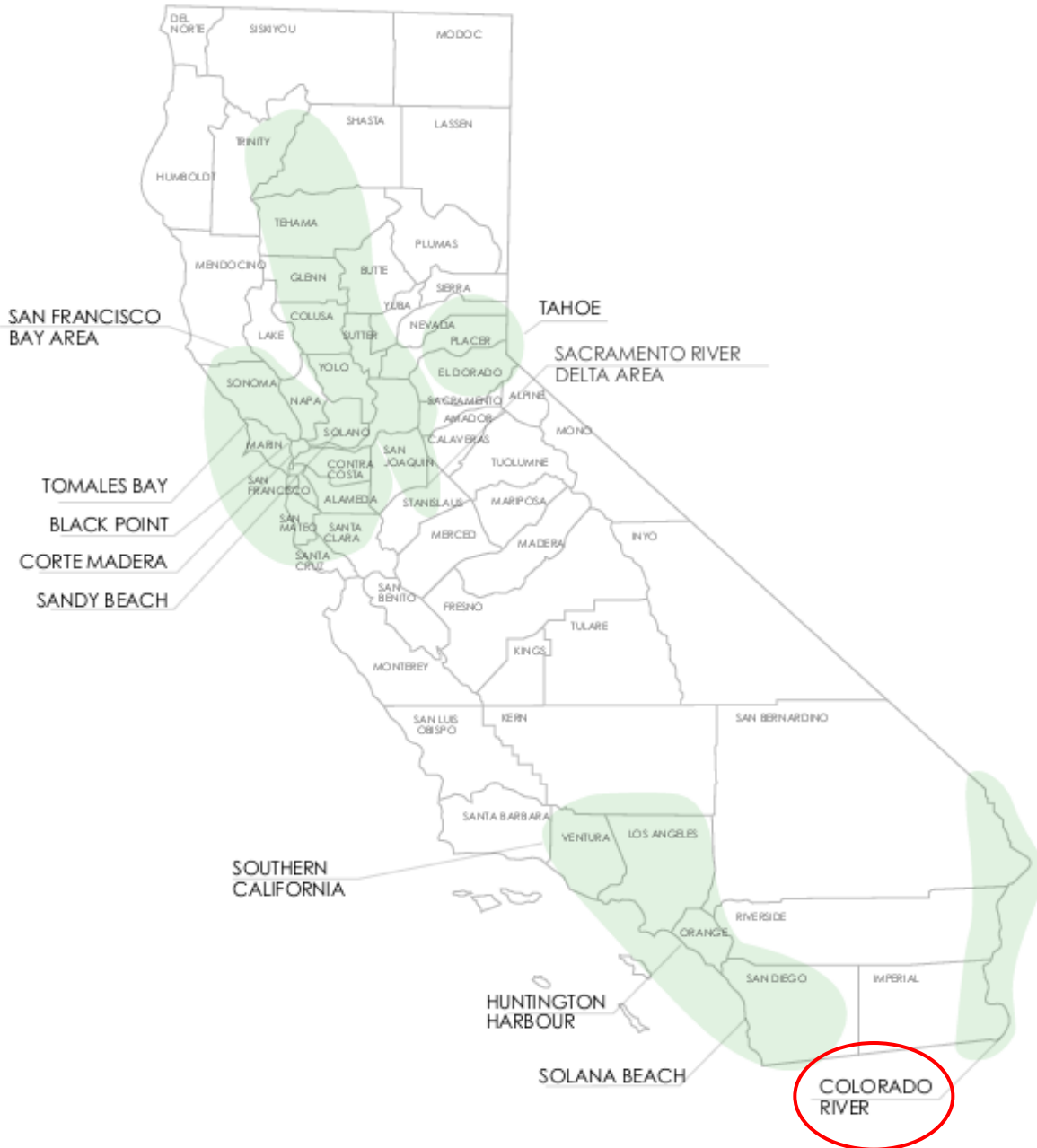


EXHIBIT B

Category 1

Location	Rental Rate (\$/SF)	Last Updated	Proposed Update
Colorado River	\$0.171	February 2017	2023
Sacramento River	\$0.214	April 2020	2025
Delta Area	\$0.168	April 2020	2025
Tomales Bay berths	\$0.133	December 2020	2025
Tomales Bay buoys*	\$140.00	December 2020	2025
Lake Tahoe berths	\$0.814	December 2021	2026
Lake Tahoe buoys*	\$273.00	December 2021	2026
San Francisco Bay Area	\$0.227	February 2022	2027
Southern California	\$0.451	June 2022	2027

*per buoy

Category 2

Location	Rental Rate (\$/SF)	Last Updated	Proposed Update
Solana Beach	\$46.80	October 2017	2023
Sandy Beach	\$3.69	August 2018	2023
Corte Madera	\$5.40	June 2019	2024
Black Point	\$0.47	June 2020	2025
Lake Tahoe	\$13.05	December 2021	2026
Huntington Harbour	\$41.22	June 2022	2027

** The Category 2 Benchmark may be discounted to reflect that the sovereign land being leased may not have the same utility as the upland property.

Note: Benchmarks are generally updated every five years.

Exhibit C

State of California

State Lands Commission

Memorandum

Date: December 15, 2022

To: Brian Bugsch, Chief ^{DS} BB
Land Management Division

Grace Kato, Assistant Chief
Land Management Division

From: Chaun Wong ^{DS} CW
Associate Property Appraiser
Land Management Division

Subject: Colorado River Category 1 Benchmark 2022
San Bernardino, Riverside, and Imperial Counties

The Colorado River Category 1 Benchmark was last updated by staff of the California State Lands Commission (Commission) in 2016. The current update follows essentially the same methodology as used in the prior benchmark. Reference is made to the 2016 study for additional background material that may be needed for the reader to more fully understand what the benchmark is used for and how it is set.

The recommended benchmark is summarized in the following table with the 2016 benchmark.

Table 1. Colorado River Benchmark Summary

Benchmark Date	2016	2022
Rental Rate (Per Sq. Ft.)	\$0.171	\$0.217

An appraisal is the act or process of developing an opinion of value that must be numerically expressed as a specific amount, as a range of numbers, or as a relationship to a previous value opinion or numerical benchmark. This report constitutes an appraisal as defined by the Uniform Standards of Professional Appraisal Practice (USPAP). Accordingly, this appraisal has been performed and the report has been prepared in substantial compliance with USPAP. The compiled research, analyses, and conclusions presented in this appraisal represent a correlation of market rents into benchmark rental rates for private recreational facilities (e.g., docks and piers) located on Colorado River. The benchmark is intended to be used by Commission staff for rent setting purposes.

Benchmarks establish uniform rental rates in specific geographic regions with concentrations of similar facilities within the Commission's jurisdiction. (Cal. Code Regs., tit. 2, § 2003, subd. (a)(5).) For proposed leases involving certain types of

Colorado River Category 1 Benchmark

improvements or uses in regions where benchmarks have been approved, staff will recommend an annual rent based on the applicable benchmark and the lease area. Benchmark rental rates are based on an analysis of similar uses or substitute facilities in the local area. Generally, staff recommends updates to the benchmarks every 5 years. The use of benchmarks improves consistency and transparency throughout a geographic region, improves staff efficiency in setting and adjusting rent for large numbers of leases, and saves time and money for both the applicant and the State.

Introduction

Leases are issued by the California State Lands Commission for private recreational facilities – such as docks and piers – located on sovereign lands. These facilities offer a substitute for the essential functions of a commercial marina, such as a place for the docking and mooring of boats and the loading and unloading of passengers and equipment. In a market where there is significantly more demand than supply, these private structures afford the upland owners guaranteed access to mooring facilities that they may not otherwise be able to obtain from commercial marinas. In this manner, these privately-owned facilities represent a substitute for a commercial marina slip. Accordingly, the method of valuation used in estimating a fair rental value in this analysis is based on what an individual would pay for a similar substitute site in a commercial marina.

Since a Commission-leased site for a privately-owned pier or dock substitutes for the essential functions of a marina slip, a lessee of the state land should pay a similar amount for the leased site as the state would receive for leasing the land to a commercial marina.

Scope

The scope of the research included the following:

- Identifying marinas with boat slips in the Colorado River area.
- Surveying the number and type of moorings at marinas (berths / slips), occupancy rate, mooring sizes, and rates.
- Compiling the survey results into averages for slip size and rate.
- Using the “Layout and Design Guidelines for Marina Berthing Facilities” publication (last updated July 2005) from the State Department of Boating and Waterways to determine the amount of submerged land area necessary to accommodate a given mooring size.
- Calculating the annual rental rate(s) using the above information and State valuation guidelines.

A total of 21 marinas were investigated. Of the 21 marinas, a total of five marinas were surveyed on the attached Marina Survey spreadsheet. The marinas excluded from the survey consist of four marinas which are rented on a daily or short-term basis only, six marinas which are only available to members/guests of private clubs or resorts, three

Colorado River Category 1 Benchmark

marinas which only have rent-free courtesy docks or mooring poles, two marinas which had been shut down, and one marina which did not return any phone calls or emails. The five marinas used in this analysis rent slips on a monthly basis, which is considered closest to the long-term use of a private dock by a Commission lessee.

Methodology

In order to determine the benchmark rent for a leased area (pier, dock, etc.), it is necessary to determine the income that can typically be generated by a commercial marina; the area occupied by the average or typical marina slip in a well-designed marina; and the rent for that average or typical sized boat. An annual rate of return is then applied to the product of the above.

The Commission typically charges 5 percent of gross income for boat berthing for sites leased to commercial marina operators.

Berth / Slip Rent

The northernmost boundary of the Colorado River Benchmark (Benchmark) is generally considered to be the Tri-State Area where California, Arizona, and Nevada meet in the Colorado River. The southernmost boundary of the Benchmark is generally considered to be where California, Arizona, and Mexico meet in the Colorado River.

Within these identified boundaries, the survey found that the average berth size was approximately 24 linear feet. Similarly, a 24-foot length was also used in the 2016 Benchmark.

The responding marinas reported a total of 1,665 slips, or an average of 278 slips per marina. The average occupancy was reported at 63.60%, a significant increase from the 40.00% reported in 2016.

Berthing rates are reported on a per linear foot basis. The berthing rate, based on data collected, ranged from \$5.67 to \$11.85 per linear foot and had an average rent of \$8.90 per linear foot. This represents a 26.78% increase over the \$7.02 per linear foot used in the 2016 Benchmark.

The benchmark rental rate for berths is calculated by multiplying the average berth length by the average monthly rental rate. This product is then multiplied by 12 months to arrive at the gross annual income. The gross annual income is multiplied by 5% to get the income attributable to the submerged land. The income attributable to the submerged land is then divided by the amount of submerged land needed to accommodate the average berth length within a marina.

The submerged land area needed to accommodate an average berth is found in a publication entitled "[Layout and Design Guidelines for Small Craft and Berthing Facilities](#)" by the California Department of Boating and Waterways last updated in 2005. This publication provides formulas and tables for calculating the submerged land area

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needed to accommodate various sizes and layouts of berths in marinas. Among other variables, the formulas take into account the berth length, berth layout (single vs. double), and the type of vessel (powerboat vs. sailboat). The submerged land area used in this benchmark analysis is based on a double berth layout (on the premise that it represents the typical marina berth layout in the area and is the most economically efficient for the marina operator) and represents an average of the powerboat and sailboat areas.

From the tables in the publication, a submerged area of 590 square feet is shown as being necessary to accommodate the 24-foot average slip length indicated by the survey for Colorado River. Taking all of the aforementioned into account, the current benchmark rental rate for Colorado River is calculated as follows:

- Average berth rate: \$8.90
- Average boat length: 24 linear feet
- Submerged land area necessary to accommodate a 24-foot boat slip: 590 SF
- Percent of income attributable to the submerged land: 5 percent

$$24' \times \$8.90/\text{linear foot} \times 12 \text{ months} = \$2,563.20$$

$$\$2,563.20 \times 5\% \text{ of gross income} = \$128.16$$

$$\$128.16 \div 590 \text{ square feet} = \$0.217 \text{ per square foot rental rate}$$

Benchmark Rental Rate = \$0.217 per sq. ft.

The indicated benchmark rental rate for Colorado River area is \$0.217 per square foot. In contrast, the 2016 benchmark was \$0.171 per square foot. The 2022 benchmark therefore represents an overall increase of \$0.046 (26.90%) from the 2016 benchmark.

Colorado River Category 1 Benchmark

Table 2.1. Marina Survey - Colorado River

Number	Name	Total Slips	Occupancy Rate	Occupied Slips	Average Length	Average Rate
1	Black Meadow Landing	102	65%	66	21	\$5.67
2	Lake Havasu Marina	1,016	100%	1,016	26	\$11.85
3	Havasu Landing Resort and Casino - Marina Boathouse and Fuel	140	33%	46	24	\$8.33
4	Havasu Landing Resort and Casino - New Marina and Mini-Market	85	30%	26	24	\$9.45
5	Havasu Springs Resort	322	90%	290	25	\$9.20
	Averages		63.6%		24	\$8.90