

# Staff Report 76

## **APPLICANT:**

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San Joaquin River Parkway and Conservation Trust, Inc.

## **PROPOSED ACTION:**

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Issuance of a General Lease – Other

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

Sovereign land located in the San Joaquin River, from Friant Dam to the confluence of the Merced River, including Mendota Pool, and the East Side and Mariposa bypasses, Fresno, Madera, Merced, and Stanislaus Counties.

## **AUTHORIZED USE:**

Removal of invasive weeds and restoration of natural riparian habitat.

## **TERM:**

10 years, beginning November 25, 2022.

## **CONSIDERATION:**

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.

## **SPECIFIC LEASE PROVISIONS:**

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

## **BACKGROUND:**

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The San Joaquin River Parkway and Conservation Trust, Inc. (Applicant) is a private 501 (c)(3) nonprofit, public benefit corporation that was created in 1988. It is not affiliated with the [San Joaquin River Conservancy](#), which is a state agency. The Applicant's mission is to preserve and restore San Joaquin River lands having ecological, scenic, or historic significance; educate the public on the need for

stewardship; research issues affecting the river; and promote educational, recreational, and agricultural uses consistent with the protection of the river's resources. Since the inception of the San Joaquin River Parkway Plan (Plan), the Applicant has been a driving force in the Plan's implementation.

In 1992, the Legislature adopted legislation creating the San Joaquin River Conservancy Act. The San Joaquin River Conservancy (Conservancy) was designated as the managing entity to implement the San Joaquin River Parkway Master Plan and to operate and maintain the San Joaquin River Parkway.

In September 2006, a settlement was reached in an 18-year old lawsuit brought by a coalition of conservation and fishing groups led by the Natural Resources Defense Council against the United States Bureau of Reclamation (Reclamation) and the Friant Water Users Authority (*Natural Resources Defense Council, et al. v. Rodgers*, [Notice of Lodgment of Stipulation of Settlement \(Sept. 13, 2006\)](#) Civ. No. S-88-1658 LKK/GGH (E.D. Cal.)). The San Joaquin River Restoration Program (Program) is a direct result of the settlement. Federal legislation was passed in March 2009 authorizing federal agencies to implement the settlement. There are two primary goals of the settlement:

1. Restoration Goal – To restore and maintain fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish; and
2. Water Management Goal – To reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in the settlement.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On February 22, 2013, the Commission authorized a General Lease – Riparian Habitat Restoration to the Applicant for removal of non-native, invasive plants, and native plant revegetation ([Item C57, February 22, 2013](#)). On August 9, 2016, the Commission authorized a correction of the prior authorization to replace the lease exhibits with all the counties involved in the authorized use ([Item C29, August 9,](#)

[2016](#)). The lease expired on November 24, 2022. The Applicant is now applying for a General Lease – Other for the removal of invasive weeds and restoration of natural riparian habitat.

The Applicant submitted a grant proposal to the Program and to Reclamation for the removal of non-native, invasive plants, and native plant revegetation in the San Joaquin River between Friant Dam and the confluence of the Merced River, which implements one element of the Program. Restored riparian habitat lowers water temperatures, making the river suitable habitat for salmon. The Program approved the proposal, and the grant agreement was signed in 2011. The current grant continues through March 2025 and is expected to continue for many more years. The proposed project implements the Program's Invasive Vegetation Monitoring and Management Plan. The project is funded by a grant from Reclamation.

There is no construction associated with this project and no existing improvements. Prior to invasive plant removal, an analysis of native versus non-native plants and their habitat suitability will be evaluated by a biologist. The scope and timing of the invasive plant removal will be determined so that sites with existing high quality of wildlife habitat would have minimal temporary loss of habitat quality during removal.

The Applicant and its partners will remove invasive plants primarily by hand removal methods which include using tools such as weed wrenches, weed eaters, loppers, chainsaws, hand picks, and shovels. In some cases, mechanical equipment will be used to remove large areas of invasive plants. The mechanical equipment proposed will include flail mowers, sickle-bar mowers, masticators, and chippers, which will cut or reduce invasive plants and chip material for removal or mulch. Mounting equipment, like a backhoe or excavator and other vehicles for the mechanical equipment, will be restricted to existing roads and access paths. Smaller compact tractors with rubber tracks or tires and front-mounted masticators will also use existing roads and access paths.

The removal of invasive species will also include focused herbicide applications in both aquatic and terrestrial formulations. All formulations have been approved for use by the United States Environmental Protection Agency. The herbicides are documented to be of low toxicity to fish, other aquatic organisms, and wildlife. The herbicides would be used in accordance with label directions and only by licensed applicators approved by the California Department of Pesticide Regulations. Herbicide application methods will include cut and paint stumps, foliar spray or spot spray, cut and paint of regrowth, prep-and-spray, and stem injection. All methods (hand bottles, backpack sprayers, or all-terrain vehicle sprayers) will be

low drift to reduce overspray. The application of the herbicide would be conducted between April 1 through October 30.

Following the herbicide applications, dead biomass would be left on site to decompose. If necessary, the biomass may be removed by hauling away the cut vegetation or chipping in place. Solarization techniques may be employed to destroy viable seeds by temporarily covering debris piles with clear plastic. Other debris could be piled and burned in place during the winter months, under appropriate permits. In-stream work involving hand methods or machinery would be performed during summer months and fall low-flow or dry periods. No herbicides would be transported across the San Joaquin River by boat or other floatable device.

The Project will enhance habitat restoration by lowering water temperatures, making the river suitable for salmon populations in the San Joaquin River system. Overall, the proposed action is considered beneficial because it will enhance the fish population for recreational fishing, which is a recognized Public Trust use. Additionally, the action will not impede or impair any other Public Trust uses in the area. The lease includes certain provisions protecting the public's use of the proposed lease area by requiring the Applicant to obtain necessary permits. The lease also has a limited term of 10 years that allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time. Furthermore, post-project monitoring will take place after project completion to evaluate project outcomes, implementation, and influences on habitat conditions.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with the Public Trust needs and values 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 application is a discretionary action 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. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.

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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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

## **APPROVALS OBTAINED**

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United States Bureau of Reclamation  
United States Fish and Wildlife Service  
California Department of Fish and Wildlife  
San Joaquin River Conservancy

## **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:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Other to the Applicant beginning November 25, 2022, for a term of 10 years, for removal of invasive weeds and restoration of natural riparian habitat, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being 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 interest; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8162**

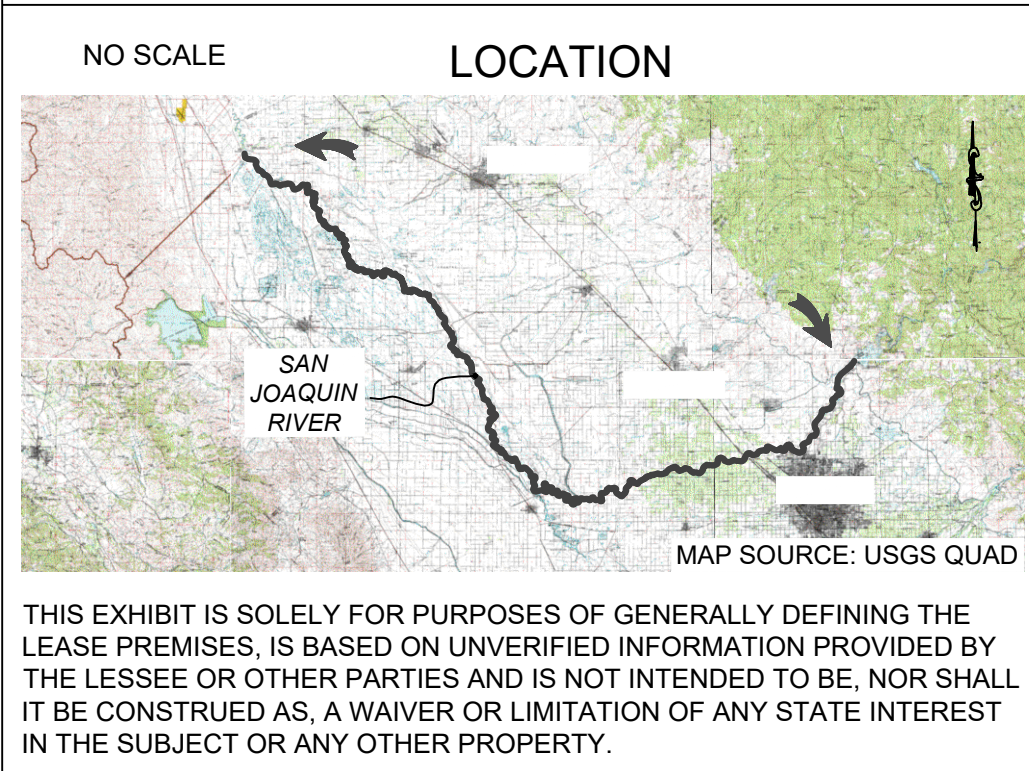
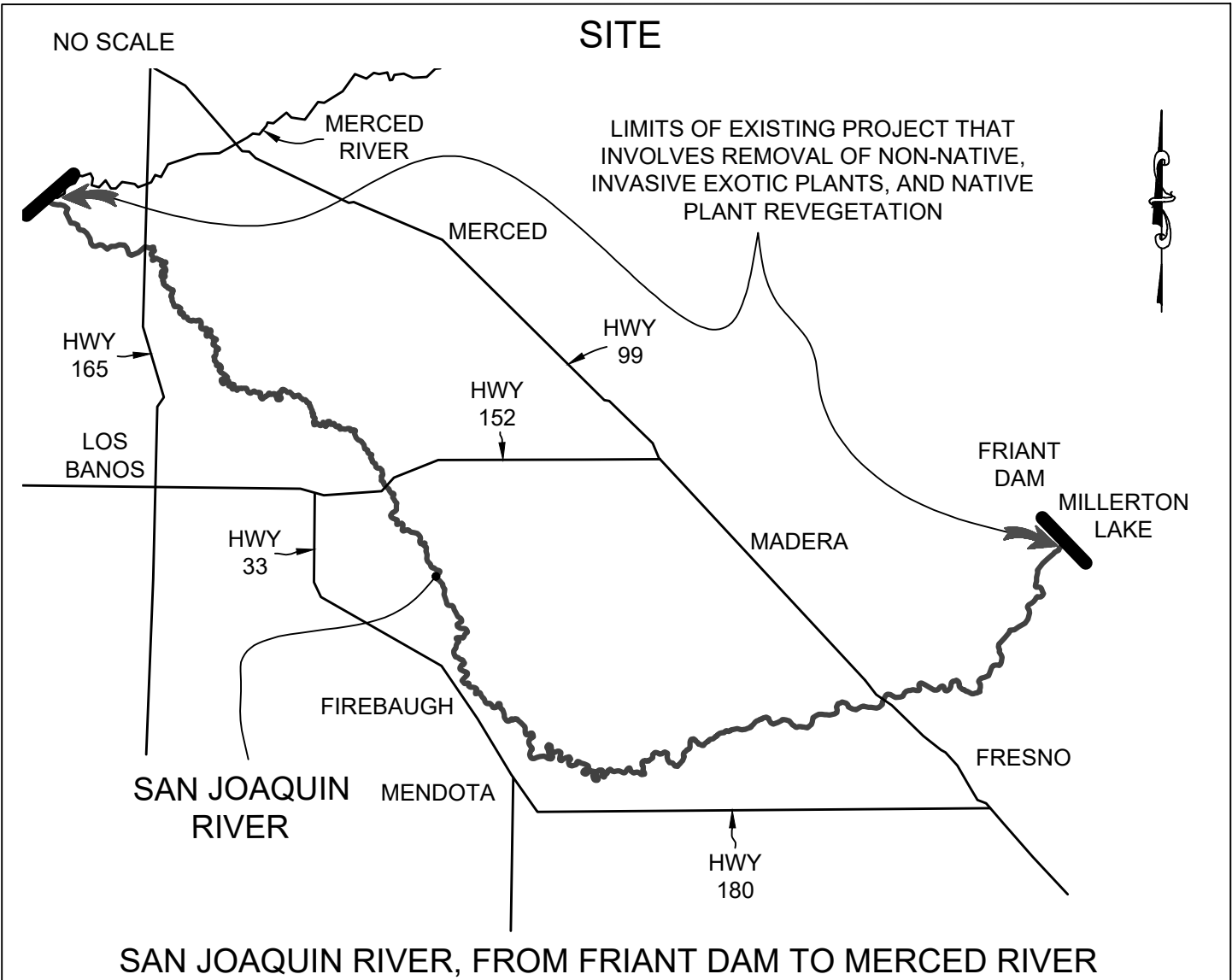
**LAND DESCRIPTION**

All those sovereign submerged lands of the State of California lying between the low water lines of the bed and historic bed of the San Joaquin River, situated in the counties of Merced, Madera, Stanislaus, and Fresno, and lying between the Friant Dam and the confluence of the San Joaquin River and the Merced River.

**END OF DESCRIPTION**

Prepared 12/22/2022 by the California State Lands Commission Boundary Unit.





**EXHIBIT B**

LEASE 8162  
 SAN JOAQUIN RIVER  
 PARKWAY AND  
 CONSERVATION TRUST, INC.  
 GENERAL LEASE - RIPARIAN  
 HABITAT RESTORATION USE  
 FRESNO, MADERA, MERCED,  
 & STANISLAUS COUNTIES

**SITE**

JWP 12/22/2022