

Staff Report 81

LESSEE:

Western Mesquite Mines, Inc.

PROPOSED ACTION:

Issuance of Mineral Extraction Lease No. 8039 for minerals, other than oil, gas, or geothermal resources

AREA, LAND TYPE, AND LOCATION:

Approximately 657.87 acres of State fee-owned school land located in Lots 1-10, inclusive, of Section 5, and Lots 1-10, inclusive, of Section 6, all in Township 13 South, Range 19 East, San Bernardino Base & Meridian, Imperial County, and situated about 6 miles northeast of the unincorporated community of Glamis (see Exhibits A and B, attached). Mining within the Leased premises is restricted to the boundary of Conditional Use Permit No. 15-0018, issued to the Lessee by Imperial County.

AUTHORIZED USE:

Extraction of precious metals, sand, gravel, clay and any other minerals and mineral deposits except oil, gas, and geothermal resources.

TERM:

10 years, retroactively beginning on October 1, 2022.

CONSIDERATION:

- **Royalty:** The lease provides for a sliding scale royalty for gold ore, silver ore, and minerals processed by smelting or refining as a percentage of the Net Smelter Return (NSR). The NSR is the gross value of products that are sold or otherwise disposed of less allowed expenses for sampling and transportation. Such expenses are not to exceed 1 percent of the gross value of products sold. The proposed sliding scale royalty is as follows:
 - 6 percent of NSR when the price of gold is \$1,300 per ounce or lower;

- 7 percent of NSR when the price of gold per ounce, is between \$1,301 and \$1,800 per ounce;
- 8 percent of NSR when the price of gold per ounce, is between \$1,801 and \$3,600; and
- 9 percent of NSR when the price of gold per ounce, is \$3,601 or higher.

The London Precious Metal Fix Prices (www.kitco.com/gold.londonfix.html) (Kitco) will be used as the reference for the average price per month. Kitco was launched in the late 1970s as an international precious metals supplier that also began providing price distribution services throughout the world in 1995. It has become the world's standard source for precious metal pricing in the mining industry and serves as an objective index for market value. No royalty is provided for the sand, gravel, clay, and other aggregate products because they are the byproducts of this mining operation and will not be sold.

- **Minimum Annual Royalty:** \$5,000 minimum annual royalty due on October 31, which is 1 month after the end of the lease year. In the event the surface mining discontinues due to an economic downturn, the Minimum Annual Royalty will be reduced to \$2,500 after an interim management plan, pursuant to Public Resources Code section 2770(h), is approved by Imperial County (County) and submitted to Commission staff.
- **Annual Rent:** \$3,290 (\$5 per acre), which is due and payable on each anniversary of the effective date of the lease, except for the last year's rent which was paid in November 2022.
- **Compensation for Occupation During Holdover:** Royalties shall be increased by 25 percent (of the current percent of NSR at the start of any holdover period) following the September 30, 2032, lease expiration.
- **Bond:** Lessee will provide and maintain a financial security of \$75,000 to guarantee Lessee's performance of the lease terms and conditions.
- **Lease Management Fee:** A \$5,000 annual lease management fee, with a 3 percent annual increase, shall be paid by the Lessee to the Commission to cover staff costs associated with lease administration, including but not limited to field inspections.

SPECIFIC LEASE PROVISIONS:

- Lessee shall provide liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee expressly acknowledges that compliance with the Surface Mining and Reclamation Act of 1975 (SMARA) and fulfillment of all obligations arising under SMARA and enforced by the County is required and failure to maintain compliance with SMARA and County requirements will constitute a breach of the lease.
- Lessee expressly acknowledges that compliance with SMARA and County requirements includes maintenance of a financial security device in favor of the County in an amount sufficient to cover the costs of reclamation of the mined lands. The amount of this financial security device is currently \$29,651,020 and is adjusted by the County on an annual basis. Lessee expressly acknowledges that failure to maintain this financial security device will constitute a breach of the lease. This financial security requirement is separate from and in addition to the \$75,000 performance bond required by the Commission as part of this proposed lease.

BACKGROUND:

The Mesquite Gold Mine is an open pit cyanide heap leaching operation that has been operating since the mid-1980s. The Commission issued State Mineral Extraction Lease No. PRC 8039 to Newmont Mining Corporation, on October 1, 2002, for a primary term of 10 years ([Item 61, October 1, 2002](#)). On April 5, 2004, the Commission approved the lease assignment to Western Mesquite Mines, Inc. ([Item 58, April 5, 2004](#)).

On August 14, 2012, the Commission issued a 10-year renewal and amendment of the lease ([Item 90, August 14, 2012](#)). In 2014, the Lessee ceased mining ore from the State lease area; however, gold ore from past mining, which was placed on the heap leach pad, has been recovered and sold during the 10-year renewal period that expired on September 30, 2022. As monthly sales are made, the Lessee pays the State royalty in proportion to its ownership of the ore in the heap leach pad. The State ownership share is declining over time as less of the stored ore remains. It is estimated that the State will receive full compensation for the remaining State ore on the leach pad by 2026. There are currently about 31 ounces of recoverable gold from the State's ore remaining on the leach pad for sale.

On April 26, 2022, the Lessee applied to continue extracting precious metals, sand, gravel, clay, and any other minerals and mineral deposits from the leased land. The Lessee proposes to continue extracting precious metals and other mineral deposits from lands that were previously mined during the prior lease but had ceased in 2014. The prior Lease No. 8039 expired on September 30, 2022, and now the Lessee

seeks consideration of a new lease with a 10-year term, retroactive to October 1, 2022.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Codes sections 6895 and 6898; California Code of Regulations, title 14, section 15096, California Code of Regulations, title 2, section 2200 et seq.

STATE'S BEST INTERESTS:

On March 27, 2002, the County approved a Conditional Use Permit (CUP) No. 98-0022 and Reclamation Plan (RP) No. 98-0004 for the Mesquite Mine project. On January 8, 2018, the County extended the CUP to 2034, noting that the Lessee has fully complied with all permit terms and conditions. The new CUP No. 15-0018 that was issued supersedes the previous CUP No. 98-0022. The boundary of the CUP authorizes the Lessee to only mine approximately 88 acres of the leased land, on which the last mining occurred in 2014.

Under the SMARA, annual inspections are required by the lead agency to determine the progress of mining and reclamation and to ensure that the permittee complies with all terms and conditions of the CUP and RP. The County's inspection process includes a review of the accuracy of the financial assurance estimate for the mine reclamation. The last County inspection was conducted on March 16, 2022, and no issues of concern were documented within the annual report and the County determined that the mine is operating within the terms of the CUP. Annual inspections, according to SMARA, will continue to be conducted every Spring during the term of the lease. Due to staff's financial audit, a lease inspection was conducted on September 18, 2018, by Commission staff, which concluded that the mine was operating responsibly per lease terms. Commission staff participated in a site tour on January 26, 2023, that enabled staff to obtain updated photos of the state parcel and observe that the mine operations were in compliance with all lease terms. Once the Lessee resumes mining, Staff plans to conduct another site tour.

The Lessee is now applying for a new lease to continue the extraction of precious metals, sand, gravel, clay, and any other minerals and mineral deposits from the leased land. Staff believes that approving a 10-year lease term is in the best interests of the State.

The footprint for potential mining authorized by the existing CUP includes approximately 88 acres of the leased land and is approved by the County until

2034, consistent with the program analyzed under the joint EIR/EIS, Mesquite Mine Expansion (SCH No. 1998121054) adopted by the Commission, as responsible agency, in 2002. The area planned for mining is the same area mined and disturbed between 2002 and 2014 and analyzed in the 2002 EIS/EIR. To the extent the Lessee seeks to develop and mine the leased land beyond the boundaries defined within the current CUP issued by the County, the Lessee will need to seek an amendment to the Lease after California Environmental Quality Act (CEQA) analysis and issuance of a new CUP by the County, as lead agency. Staff believes that it remains appropriate to issue an exclusive mineral lease over the entire 657.87 because those lands have been proven to likely contain minerals in commercial quantity, the leased lands contain infrastructure and access integral to Lessee's adjacent mined parcels, and the Lessee has expressed interest in expanding mining operations into the parcel (after subsequent CEQA review and consideration by the Commission of a lease amendment).

The Lessee continues to meet all terms and conditions of Lease No. 8039. In January 2019, staff completed a financial audit, and found no deficiencies in Lessee's royalty accounting. Staff evaluated the original \$50,000 bond amount and is increasing the bond requirement to \$75,000 to ensure that the Lessee will continue to meet all the lease terms. During the 2020-21 fiscal year, the lease generated about \$6,000 in royalty for the California State Teachers' Retirement System.

CLIMATE CHANGE:

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, drought, and storms. The lease area has been mined for many years and looks like a typical quarry mining site with sloped sides. This site can be vulnerable to the aforementioned events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased land and surrounding land may be vulnerable to these weather events; however, these projected climate change effects are not expected to affect the uses of the leased land for mining purposes.

CONCLUSION:

For all the reasons above, staff believes the approval of this 10-year lease for mineral extraction is in the best interests of the State and staff recommends that the Commission approve the lease.

OTHER PERTINENT INFORMATION:

1. This action is consistent with addressing the challenges and opportunities described in the Commission's 2021-25 Strategic Plan to "Embrace and safeguard multi-benefit School Lands and resource management stewardship that equitably balances responsible local and regional economic development, supports living wages, environmental protection, and revenue generation."
2. 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

EXHIBITS:

- A. Land Description
- B. Site Map
- C. Mineral Extraction Lease No. 8039

RECOMMENDED ACTION:

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 1, Existing Facilities; California Code of Regulations, title 2, section 2905.

STATE'S BEST INTERESTS:

Find that issuance of the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a Mineral Extraction Lease to Western Mesquite Mines, Inc., for the extraction of precious metals, sand, gravel, clay and any other minerals and mineral deposits on the fee-owned school lands described in Exhibit A and shown

on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, for a term of 10 years, commencing retroactively on October 1, 2022, and ending on September 30, 2032, with lease terms as reflected in Exhibit C.

EXHIBIT A

**A3463
LEASE 8039**

LAND DESCRIPTION

Two parcels of State School Lands located in the County of Imperial, State of California, and more particularly described as follows:

PARCEL 1

All those Lots 1 through 10, inclusive, of Section 5, Township 13 South, Range 19 East, San Bernardino Meridian, according to the Patent Number 04-97-0077, dated June 12, 1997 and recorded July 31, 1997 in Book 1899, at Page 987 in Official Records of said County.

PARCEL 2

All those Lots 1 through 10, inclusive, of Section 6 Township 13 South, Range 19 East, San Bernardino Meridian, according to the Patent Number 04-97-0077, dated June 12, 1997 and recorded July 31, 1997 in Book 1899, at Page 987 in Official Records of said County.

END OF DESCRIPTION

Prepared 05/18/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

**LEASE
PARCEL 2**

**LEASE
PARCEL 1**

LOTS 1-10
(Parcel 243-013)

LOTS 1-10
(Parcel 243-012)

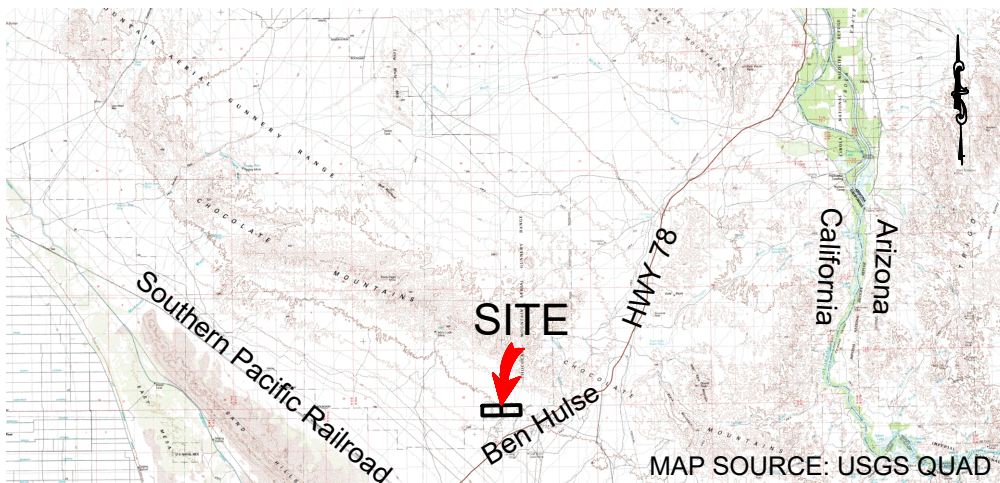
SECTION 6
T13S, R19 E,
SBM

SECTION 5
T13S, R19 E,
SBM

PORTIONS OF SECTIONS 5 & 6 T13S, R19 E, SBM

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 B

A3463
LEASE 8039
WESTERN MESQUITE
MINES INC.
GENERAL LEASE-
MINERAL EXTRACTION
IMPERIAL COUNTY



TS 05/18/2022

EXHIBIT C

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California State Lands Commission
301 East Ocean Blvd. Suite 550
Long Beach, CA 90802-8833

STATE OF CALIFORNIA OFFICIAL BUSINESS

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 04-97-0077

County: Imperial

A3463
Lease 8039

MINERAL EXTRACTION LEASE

This lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map

SECTION 1 BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as the Commission, acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (301 East Ocean Blvd. Suite 550, Long Beach, California 90802-8833), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this lease, does hereby lease, demise, and let to **WESTERN MESQUITE MINES, INC.**, hereinafter referred to as Lessee, those certain lands described in Exhibit A, hereinafter referred to as Leased Land, subject to the reservations, terms, covenants, and conditions of this lease.

MAILING ADDRESS: **WESTERN MESQUITE MINES, INC.**
6502 E. Hwy. 78
Brawley, CA 92227
Attn: Legal Department

LEASE TYPE: Mineral Extraction Lease

LAND TYPE: Fee-owned School Land

LOCATION: Approximately 657.87 acres, identified as Lots 1-10 of
Section 5, and Lots 1-10 of Section 6, all in Township
13 South, Range 19 East, San Bernardino Base &
Meridian, Imperial County. (The "Leased Lands").
Mining and extraction within the Leased Lands is
restricted to the boundary of Conditional Use Permit
No. 15-0018, issued to the Lessee by Imperial County.

SECTION 2 SPECIAL PROVISIONS

1. LAND USE OR PURPOSE

- a. The Commission leases the Leased Land to Lessee with the right to explore for, develop, mine (by open pit, strip, underground or any other method, including any method hereafter developed), extract, mill, store, remove and market all ores, minerals, and materials and to use and consume so much of the surface as may be necessary, useful, or convenient for the rights granted by this lease. These uses are limited to those lands embraced within the boundary of Conditional Use Permit No. 15-0018 (the "CUP"), issued to the Lessee by Imperial County.
- b. In conformance with the bounds and limitations of the CUP, Lessee shall have the right to remove from the Leased Land precious metals, sand, gravel, clay and any other minerals and mineral deposits except oil, gas, other hydrocarbons, and geothermal resources.
- c. Lessee is granted the right to use water removed by Lessee in conjunction with Lessee's exploration, development, mining, or processing operations to the extent the Commission can grant such right.
- d. Lessee shall obtain in Lessee's name all permits, licenses and other approvals required by applicable regulatory agencies and authorities. The Commission shall not object to the filing of such permits, licenses, and other approvals. However, obtaining all necessary permits, licenses and other approvals shall be the sole

responsibility of Lessee, and the Commission shall have no obligation to do so unless otherwise mandated by law.

- e. Lessee's lease operations and its mining of adjoining or nearby lands may be conducted upon the Leased Land and upon such other lands as a single tract of land. After ores, minerals and materials from the Leased Land have been sampled and weighed or measured by volumetric survey, truck factors or any other manner as will permit the computation of royalty to be paid under this lease, and upon approval of the procedure by the Commission, Lessee may mix these ores, minerals and materials with ores, minerals, or materials from other lands.
- f. Lessee shall have the right, at any time during the term of this lease, to stockpile any material mined or produced from the Leased Land at such place or places as Lessee may elect, either upon the Leased Land or upon any other lands owned or controlled by Lessee. The rights of the State in and to any such material stockpiled on other lands shall not be divested by their removal from the Leased Land but shall be the same in all respects as though such materials had been stockpiled on the Leased Land. If Lessee does not own such other lands, Lessee shall obtain from the owners of such other lands a properly executed instrument under which these owners agree to recognize the interest of the Commission in materials stockpiled on such other lands. The stockpiling of materials from the Leased land on other lands shall not be deemed a removal or shipment requiring payment of royalty.
- g. This lease does not confer upon Lessee any other privilege or right not expressly given, and this lease shall become binding on the State only when approved by Commission and executed on its behalf.
- h. Notwithstanding any other provision of this lease, Lessee shall not use the Leased Land for leaching, milling, treating, or otherwise processing ores, minerals and materials utilizing cyanide or other chemicals without the prior written consent of the Commission.

2. TERM

10 years, beginning retroactively on October 1, 2022.

3. CONSIDERATION

Royalty, Lease Management Fee, and Bond shall be provided as set forth below in paragraphs 6 through 10.

4. AUTHORIZED IMPROVEMENTS

Lessee shall have the right to install equipment necessary for mining pursuant to applicable authorizations.

Lessee is also granted the exclusive right to construct and use structures, facilities, equipment, roadways and haulage ways, and all other appurtenances installed on the Leased Land ("Production Facilities") for the purpose of producing, removing or transporting metals, ores, minerals or materials from the Leased Land or from adjoining or nearby property owned or controlled by Lessee, and the right to mine and remove all ores, minerals and materials from the Leased Land through or by means of shafts, openings or pits which may be made in or upon adjoining or nearby property.

5. LIABILITY INSURANCE

- a. Lessee shall procure and maintain personal liability and property damage insurance (combined single limit) for the benefit of the Commission in an amount not less than \$1,000,000.
 - i. Insurance policy(ies) shall insure the Commission and Lessee against any and all claims or liabilities arising out of the ownership, use, occupancy, condition or maintenance of the Leased Lands and the improvements on the Leased Lands.
 - ii. The insurance policy(ies) shall name the Commission, its officers, employees, and volunteers as insureds as to the Leased Lands and shall identify the lease by its assigned number. Lessee shall provide the Commission with a certificate of insurance and shall keep the certificate current. The policy(ies) or endorsement must provide that the insurer will not cancel the insureds' coverage without 30 days prior written notice to the Commission. The Commission will not be responsible for any premiums or other assessments on the policy(ies). The coverage provided to Lessee shall be primary and non-contributing.
 - iii. The insurance coverage specified in this lease shall be in effect at all times during the term of this lease and until all of the Leased Lands have been restored by Lessee as required in this lease.
 - iv. The Commission may require an increase in the amount of the insurance to cover any additionally authorized

improvements, alterations, changes to authorized use, modifications of considerations or inflationary impacts on costs during the seven-year lease.

v. In the event the Lessee is self-insured, a certificate of self-insurance in the amounts required, under this section, shall meet the requirements of this section.

b. Workers' Compensation Insurance: At all times in all operations under this lease and in all work in and upon the Leased Lands, Lessee shall carry full workers' compensation insurance covering all employees.

6. SURETY BOND OR OTHER SECURITY

Lessee shall furnish within 30 days of the date this lease is approved by the Commission, and shall maintain throughout the term of this lease, a bond or other security device in favor of the Commission in the amount of \$75,000 to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond shall be maintained throughout the life of this lease.

7. SURFACE MINING AND RECLAMATION ACT OF 1975

- a. Lessee expressly acknowledges that compliance with the Surface Mining and Reclamation Act of 1975 (SMARA) and fulfillment of all obligations arising under SMARA and enforced by the County of Imperial, as lead agency under SMARA, is required and failure to maintain compliance with SMARA and County of Imperial requirements will constitute a breach of this lease.
- b. Lessee expressly acknowledges that compliance with SMARA and County of Imperial requirements includes maintenance of a financial security device in favor of the County in an amount sufficient to cover the costs of reclamation of the mined lands. The amount of this financial security device is currently \$27,728,804 and is adjusted by the County of Imperial on an annual basis as part of the annual inspection requirement under SMARA, as required to accurately cover estimated reclamation costs. Failure to maintain this financial security device will constitute a breach of this lease.

8. PLAN OF DEVELOPMENT

- a. Lessee shall develop the Leased Lands in accordance with all

mining conditional use permits and reclamation plans submitted to and approved by Imperial County. Any modifications to the Mining Conditional Use Permit/Reclamation Plan (CUP/RP) after issuance of this lease, which modifications are subject to environmental documentation prepared and circulated by Imperial County through the State Clearinghouse, shall be submitted to Commission staff for review prior to implementation. Failure to develop the Leased Lands according to the Mining CUP/RP, or any modifications of the Mining CUP/RP as pre-approved by the County and Commission, shall be considered a default of this lease.

- b. The reclamation plan currently applicable to the Leased Lands is Reclamation Plan No. 98-0004 and Conditional Use Permit No. 15-0018 issued by the County of Imperial and approved on January 8, 2018 (the "Reclamation Plan"). Lessee acknowledges and agrees that its reclamation of the Leased Lands shall be in compliance with the Reclamation Plan (as that plan may be amended or subsequently issued) and SMARA.
- c. Lessee shall conduct all operations authorized under this lease in a safe, miner-like manner, according to accepted industry methods and practices, and in conformance with such equipment modifications and operating procedures as may be established by the State to ensure the protection of life and property, the protection and preservation of the environment, and the conservation of its natural resources including, but not limited to, wildlife and mineral resources.

9. STATE LEASE MANAGEMENT FEE

Upon Commission approval of the Lease, the Lessee shall execute a separate Standard Reimbursement Agreement (State of California Standard Form 213) with the Commission for the administration of this lease, subject to a \$5,000 per annum cap to start retroactively on October 1, 2022, with automatic annual renewals increasing the cap 3 percent per year thereafter. The Lessee shall be billed for reimbursement of Commission staff time incurred for the reasonable and necessary costs of field inspections; the administration and implementation of the terms of the lease, including, but not limited to, engineering review, royalty verification, audit, reservoir and/or geologic review, annual lease reviews; and any other staff time or expenditures to ensure lease operations conform to all the terms of the lease and to the rules and regulations of the Commission.

10. ROYALTY

Lessee shall pay to the Commission the following royalty and rental, without deduction, delay or offset. Royalties shall be due quarterly and payable not later than the 25th day of the calendar month following the last calendar month of the quarter. This lease requires the payment of a Minimum Annual Royalty and Quarterly Royalty as described below.

Royalty payable as an equivalent Net Smelter Return under this lease shall be paid at a sliding scale of royalty calculated as follows:

a. Net Smelter Returns:

The term "Products" shall mean the gold and silver ores, minerals or beneficiated products of these ores and minerals produced from the Leased Land. The term "Net Smelter Returns" ("NSR") shall mean the gross value of Products sold or otherwise disposed of by Lessee or other operator of the Property, less the following expenses actually incurred and borne by Lessee or other operator, such expenses to be limited to 1 percent of the gross value of products sold:

- i. Charges and costs, if any, for transportation from the mine or mill to places where Products are smelted, refined and/or sold; and
- ii. Charges, costs, including assaying, sampling and umpire costs specifically related to smelting and/or refining, and all penalties, if any, for smelting and/or refining.

If smelting or refining operations are carried out in facilities owned or controlled, in whole or in part, by another operator, then charges, costs and penalties for such operations shall mean the amount the other operator would have incurred if such operations were carried out at facilities not owned or controlled by the other operator then offering comparable services for comparable products on prevailing terms, but in no event greater than actual costs incurred.

b. Sliding Scale Royalty

A sliding scale rate of royalty as follows:

6 percent of NSR when the price of gold is \$1300 per ounce or lower; 7 percent of NSR when the price of gold is between \$1301 and \$1800 per ounce; 8 percent of NSR when the price of gold is between \$1801 and \$3600 per ounce, and 9 percent of NSR

when the price of gold is \$3601 per ounce or higher.

There is no inflation adjustment of the above gold prices. The NSR calculation for all products (gold and silver) will be based upon the price of such metals on the London Precious Metals fixed market.

c. Weights and Analyses

- i. Lessee shall measure ore, weigh other products, and take and analyze samples in accordance with sound mining and metallurgical practices and keep accurate records as a basis for computing royalty payments, which records shall be available for inspection by the State.
- ii. Lessee shall pay a royalty of ten percent of the gross value of all other minerals produced, extracted, shipped, used, or sold from the Leased Land, less any charges approved by the Commission that were made or incurred with respect to transporting or processing the Commission's royalty share of production.
- iii. Where the royalty is based upon "sales price, free On Board, mine, dry basis," the price shall not be less than the reasonable fair market value as fixed by the Commission for any mineral resources produced or extracted from the Leased Land and shall not be less than the amount received in an arms-length transaction for similar mineral resources.
- iv. No overriding royalty involving production from this lease shall be permitted without the written authorization of the State.
- v. If Lessee sells minerals produced or extracted under the lease to a related entity, the sales price of all such minerals, for royalty purposes only, shall be determined by the State based on arms-length transactions involving the same commodities in the same market.

- d. Rent: Lessee shall pay an annual rental of \$3,290, which equals \$5.00 per acre for the 657.87 acres of Leased Land, and shall be due and payable on each anniversary of the effective date of the lease, except for the first year's rental which shall be due and payable 30 days after the effective date of the lease.

- e. Minimum Annual Royalty: Lessee shall pay to the Commission a Minimum Annual Royalty for the preceding lease year of \$5,000,

due October 31 of every lease year. This Minimum Annual Royalty is due to the Commission even if there is no sale of Products during a lease year. The Minimum Annual Royalty will be reduced by the cumulative amount of Quarterly Royalties, as defined below, paid during the prior lease year. If the cumulative amount of Quarterly Royalties paid during the prior lease year exceeds \$5,000, there is no Minimum Annual Royalty owed. The Minimum Annual Royalty credit shall not be carried over from one lease year to another. This Minimum Annual Royalty is non-refundable and non-proratable. In the event of surface mining becoming idle due to an economic downturn, the Minimum Annual Royalty will be reduced to \$2,500 after an interim management plan pursuant to Public Resources Code section 2770(h) is approved by Imperial County and submitted to the Commission.

11. ENVIRONMENTAL IMPACT

The environmental document that allows continued mineral extraction activity after the issuance of this lease is the Environmental Impact Report (SCH# 1998121054) and the Conditional Use Permit No. 98-0022, (more recently amended to Permit No. 15-0018) originally approved and adopted by the Imperial County, Department of Planning and Land Use on March 27, 2002 (the "Final EIR"). Lessee shall abide by the restrictions and all other terms of this environmental document and shall comply with the terms of the mitigation measures and such other measures as the Commission may reasonably require to restrict, limit, modify or minimize the environmental impact of Lessee's operations under the lease in accordance with the Final EIR. Lessee shall promptly furnish the State with copies of any mitigation monitoring reports prepared for, by or on behalf of the County.

12. WASTE OF RESOURCES, DAMAGE, LOSS, AND LIABILITY

Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources, fisheries, and wildlife on or in the Leased Lands. Lessee shall be liable to the Commission for any waste, damage, or loss to the extent that the waste, damage, or loss is caused by Lessee's, or its employees', servants', agents' or contractors' negligence, breach of any provision of this lease, or noncompliance with applicable statutes or regulations. Nothing in this lease shall diminish any other rights or remedies that the Commission may have in connection with any such negligence, breach, or noncompliance.

13. INDEMNIFICATION

- a. Lessee shall indemnify, save harmless and, at the option of the Commission, defend, except in matters involving title, the Commission, its officers, agents and employees, against any and all claims, losses, demands, causes of action or liabilities of any kind which may be asserted against or imposed upon the Commission, or any of its officers, agents or employees, by any third person or entity to the extent arising out of or connected with operations under this lease, or the use by Lessee, or its agents, employees or contractors, of the Leased Lands. This provision shall not be construed to require Lessee to defend or indemnify the Commission for any alleged acts of negligence or other wrongful act of the Commission, or its officers, agencies, or employees, except to the extent that such negligence or other wrongful act is alleged to consist of the issuance of this lease, the adoption and enforcement of the provisions set forth in this lease, or any alleged failure of the Commission to enforce adequately any such provisions.
- b. The foregoing indemnity is not intended, nor shall it be construed, to require Lessee to defend the Commission's title to mineral resources. In the case of litigation involving the titles of Lessee and the Commission, Lessee and the Commission will join in defending their respective interests, each bearing the cost of its own defense.
- c. For the purpose of satisfying any judgments, settlements, claims or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that the Commission has no title to the land or mineral resources in the Leased Lands and that the owner thereof is entitled to payment for mineral resources mined under this lease, this indemnification will be limited to the Commission's liability in excess of the monies received by the Commission, as owner of the mineral resources, in the form of royalties or other payments, including any interest actually earned thereon.

SECTION 3 GENERAL PROVISIONS

1. INTEREST AND PENALTIES

- a. Royalties and other monetary considerations that are not paid when due shall bear interest at the rate of 1.5 percent per month from the due date until they are paid.
- b. Royalties and other monetary considerations that are not paid

when due may be assessed a penalty of 5 percent of the amount overdue.

2. PRODUCTION RECORDS AND REPORTS

- a. Lessee shall keep for a period of at least 5 years, accurate records of the operations under this lease, including all minerals produced or extracted from the Leased Lands, together with the cost of their milling and shipping, and shall allow Commission staff to inspect and review all contracts for the disposition of all minerals produced or extracted from the Leased Lands. The Commission staff may inspect, at all reasonable times, all Lessee's books, records, and accounts relating to operations under this lease.
- b. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission staff royalty statements in the form prescribed by the Commission staff showing the work performed upon the Leased Lands, and the amount, quality and value of all mineral resources produced, extracted, shipped, used, or sold therefrom during the prior 3-month period. These statements shall be provided to the Commission staff regardless of whether any mineral resources were produced, extracted, shipped, used, or sold, or whether any work was performed on the Leased Lands during the prior quarterly period. At the request of the Commission staff, Lessee shall provide more detailed statements and explanatory materials in order to aid the Commission staff in interpreting and evaluating Lessee's royalty accounting statement. All statements are subject to audit by the Commission staff.
- c. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission staff copies of all physical and factual exploration results, logs, surveys, and any other data in any form resulting from any surveys, tests or experiments conducted on the Leased Lands by Lessee or any person or entity acting with the consent of Lessee or with information or data provided by Lessee.
- d. The Commission staff shall have the right to inspect and review all books, records, and logs of Lessee's production activities on lands adjoining or in proximity to the Leased Lands.
- e. The Commission staff may examine at reasonable times the books and records of any individual, association or corporation which has produced or extracted any minerals from the Leased Lands, and books and records of any such individual, association

or corporation with respect to such individual's, association's or corporation's operations, improvements, machinery, and fixtures used on or in connection with the Leased Lands. This paragraph shall not apply to individuals, associations, corporations, or other entities that merely purchase or transport mined Products from the Leased Lands.

3. SUSPENSION OF OPERATIONS

- a. Lessee shall temporarily suspend production or any other operation under this lease whenever the Commission staff finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property, or natural resources. The suspension shall be effective immediately upon either oral or written notice by the Commission to Lessee. Any oral notice shall be followed by written confirmation. The Commission shall lift the suspension when The Commission finds, on the basis of credible evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations does not pose an immediate and serious threat to life, health, property, or natural resources. If the Commission orders suspension of operations because their continuation may cause or aggravate erosion of the Leased Lands or other properties, the operations shall be resumed only in compliance with the Commission-approved program for erosion prevention.
- b. No suspension ordered or approved under this paragraph shall relieve Lessee from any obligation under this lease unless specifically provided in the terms of the suspension.

4. ASSIGNMENT, SUBLETTING, AND OTHER TRANSFERS

- a. Lessee shall neither voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this lease and shall not sublet the Leased Lands, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Leased Lands without the prior written consent of the Commission, which consent shall not be unreasonably withheld and as otherwise set forth in Public Resources Code Section 6804. The change in the ultimate indirect corporate parent is not an assignment for purposes of this lease.
- b. If Lessee desires to assign, sublet, encumber, or otherwise transfer all or any portion of the lease, Lessee shall do all of the following:
 - i. Give prior written notice to the Commission staff.

- ii. Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the lease proposed to be assigned, subleased, encumbered, or transferred. If the proposed assignee, sublessee, secured third party or other transferee is a general or limited partnership or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.
 - iii. Provide the terms and conditions of the proposed assignment, sublease, encumbrancing or other transfer.
 - iv. Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured third party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Leased Lands.
 - v. Provide such additional or supplemental information as the Commission may reasonably request concerning the proposed assignee, sublessee, secured third party or other transferee.
- c. The Commission will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, its business experience and expertise, its personal and business reputation, its managerial and operational skills, the proposed use of the Leased Lands, the projected rental and royalties due under the lease and other relevant factors.
 - d. The Commission shall have a reasonable time from the receipt of all documents and other information required under this provision to grant or deny its approval.
 - e. The Commission may condition its consent to an assignment, transfer, or sublease to require the assignee, transferee, or sublessee to provide financial assurances demonstrating the assignee's, transferee's, or sublessee's ability to perform the lease covenants. This may include, but shall not be limited to, an increase in the bond and/or insurance requirements. The consent to any transfer of any interest in this lease shall not be

deemed consent to any subsequent assignment, subletting or occupancy or use by another person. Any assignment, transfer or subletting without the Commission's consent, whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee, and any such attempted transfer shall be a breach of this lease entitling the Commission, at its option, to terminate this lease. Upon approval of any assignment, transfer or sublease, the assignee, transferee, or sublessee shall be bound by the terms of this Lease to the same extent as if such assignee, transferee, or sublessee were the original Lessee, any conditions in the assignment, transfer, or sublease to the contrary notwithstanding. Lessee shall not be released from any liability under this lease arising after the effective date of the assignment and not associated with Lessee's use, possession, or occupation of or activities on the Leased Lands without the express written release of the Commission.

- f. Lessee's mortgage or hypothecation of this lease, if approved by the Commission, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from the Commission upon request.
- g. Upon the express written assumption of all obligations and duties under this lease by an assignee or other transferee approved by the Commission, the Lessee may be released from all liability under this Lease arising after the effective date of assignment or other transfer and not associated with Lessee's use, possession or occupation of or activities on the Leased Lands; provided, however, Lessee shall not be released of liability for any hazardous wastes, substances or materials defined under federal, state or local law, regulation or ordinance, manufactured, generated, used, placed, disposed, stored on or transported on or off the Leased Lands.
- h. Subject to the provisions of any assignment or other transfer, the covenants and conditions of this lease shall apply to and bind all heirs, successors, executors, administrators and assigns of all of the parties.
- i. Notwithstanding subsections (a) through (h) above, Lessee's employment of contractors and/or subcontractors shall not be considered a sublease or assignment of this lease. In the event of any contracting and/or subcontracting, Lessee shall remain liable for such third party's activities including the payment of

royalties.

5. RESERVATIONS TO THE COMMISSION

- a. The Commission staff shall have the right to go upon the Leased Lands for the purposes of conducting surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the leased Lands of any mineral resources, including but not limited to oil, gas, other hydrocarbons and geothermal resources, as well as other mineral deposits listed in Public Resources Code Section 6407, provided that such surveys, tests, or experiments do not unreasonably interfere with or endanger Lessee's operations under this Lease.
- b. The Commission reserves the right to issue additional nonexclusive exploratory rights to conduct surveys, tests or experiments using any geological, geochemical, geophysical, or other method, including core drilling, for determining the presence on or in the Leased Lands of any mineral resource except minerals from gold and silver ores; provided that operations conducted pursuant to such rights do not unreasonably interfere with or endanger Lessee's operations under this Lease. Lessee shall allow all persons authorized by The Commission to enter upon the Leased Lands in order to conduct such surveys, tests, or experiments.
- c. This lease is entered into with the understanding that its purposes are, and its administration shall be consistent with the principle of multiple uses of public lands and resources. This lease shall allow coexistence of other permits or leases of the same lands for deposits of mineral resources other than minerals extracted from gold and silver ores under applicable laws. However, operations under such other permits or leases shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any other permit or lease. This lease shall not be construed as superseding the authority which any state department or agency has with respect to the management, protection, and utilization of the lands and resources under its jurisdiction. The Commission may prescribe those conditions it deems necessary for the protection of other mineral resources.

- d. The Commission, or persons authorized by the Commission, shall have the right to go upon the Leased Lands at all reasonable times for the purpose of inspecting and protecting the property and all equipment on it and inspecting all operations of Lessee. No entry by the Commission, or by persons authorized by the Commission, shall give Lessee any right to charge the Commission or subject the Commission to liability for any loss of occupation or quiet enjoyment of the Leased Lands.
- e. The Commission reserves whatever right it may have to grant to any person, upon such terms as it may determine, easements, rights-of-way, permits, leases, or other interests in the Leased Lands, including easements for tunnels or wells bored through or in the Leased Lands as the Commission may determine to be necessary or appropriate; provided that interests which unreasonably interfere with or endanger Lessee's operations shall not be granted.

6. EXISTING RIGHTS

This lease is issued subject to all existing rights in the Leased Lands at the effective date of this Lease, and such rights shall not be affected by the issuance of this lease.

7. BREACH, RIGHT TO CURE BREACH, AND CANCELLATION

If Lessee fails to comply with any of the provisions of this lease, or any applicable permit, regulation or law, Lessee shall have a 30-day period to cure the breach. The cure period shall commence with a written notice and demand from the Commission to comply with the breached provision. If the breach cannot be cured in 30 days, Lessee shall be afforded a reasonable period of time to cure the breach, with such reasonable period of time to be agreed to by Commission staff within the initial 30-day period. Such reasonable period of time shall not exceed 90 days without prior approval by the Commission at a regularly scheduled meeting. If Lessee fails to cure the breach, the Commission reserves the right, following the 30-day period to cure, or the reasonable period of time agreed upon to cure a breach that cannot be cured in 30 days, to declare forfeiture and cancel this lease and to pursue any remedy it has in equity and at law. If this lease is canceled, Lessee shall comply with the restoration, reclamation, and removal conditions in this lease.

8. WAIVER OF BREACH

The waiver by the Commission of any default or breach of any term,

covenant or condition of this lease shall not constitute a waiver of any other default or breach whether of the same or of any other term, covenant, or condition, regardless of the Commission's staff knowledge of other defaults or breaches. The subsequent acceptance of monies by the Commission shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of Lessee to pay the particular monies accepted, regardless of the Commission's knowledge of any preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of this lease or revocation of any notice or other act by the Commission.

9. SURRENDER OF PREMISES

Lessee shall surrender possession of the Leased Lands with all permitted or State-owned improvements, structures and fixtures in good order and condition unless inconsistent with SMARA, or the Commission may require Lessee, at its own cost, to remove, within 90 days, all or any designated improvements, structures and fixtures which were put on the Leased Lands by Lessee and restore the Leased Lands to the extent and in the manner specified by the Commission.

10. QUITCLAIM

The Lessee may make at any time a written quitclaim or relinquishment of all rights under this lease or of any portion thereof comprising a 10-acre parcel or multiple thereof in a compact form as provided in Public Resources Code section 6804.1. The quitclaim or relinquishment shall be effective when it is filed with the Commission, subject to the continued obligation of the Lessee and its surety to pay all accrued rentals and royalties, to abandon all mineral extraction sites into or through the Leased lands to be quitclaimed or relinquished in a manner approved in writing by the Commission and to restore such lands in accordance with the approved reclamation plan. The Lessee shall then be released from all obligations thereafter accruing under the lease with respect to the lands quitclaimed or relinquished.

However, the quitclaim or relinquishment shall not release the Lessee, or its surety from any liability for breach of any obligation of this lease with respect to which the Lessee is in default at the time of the Commission's acceptance of the quitclaim.

11. HOLDING OVER

Any holding-over by Lessee after the expiration of the lease term, with or without the express or implied consent of the Commission, shall constitute a tenancy from month to month and not an extension or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this lease. Upon request of Lessee, the Commission staff shall confirm in writing Lessee's holdover status. All royalties due under this lease shall be increased by 25 percent during the holdover period.

12. COMPLIANCE WITH LAWS AND RULES

- a. Lessee shall comply with and be bound by all rules, regulations, statutes, and ordinances, as they may be modified or amended, of the State Lands Commission and any other governmental entity having lawful authority and jurisdiction over Lessee's operations under this lease.
- b. In its employment practices, Lessee shall not discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status.

13. POSSESSORY INTEREST TAXES AND OTHER TAXES:

- a. Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State of California, any of its political subdivisions, or the United States of America, against any and all improvements, property or assets of Lessee situate upon the Leased Lands or other rights of Lessee arising out of this lease. The payment of any taxes by Lessee shall not reduce the amount of consideration due the Commission under this lease.
- b. The leasehold interest created by this lease may be a possessory interest subject to property taxation, and Lessee shall pay all property taxes levied on such possessory interest.

14. MODIFICATION OF LEASE:

The parties, by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate this lease, with any adjustments and for considerations as may be fair and equitable in the circumstances.

15. NOTICES:

All notices to be given under this lease shall be in writing and shall be deemed to have been fully given when deposited with the United States Postal Service, registered and with postage prepaid, or when deposited with a responsible private overnight mail delivery company and addressed to the parties as follows:

To The Commission: California State Lands Commission
Mineral Resources Management Division
301 East Ocean Boulevard, Suite 550
Long Beach, CA 90802-8833

To Lessee: Equinox Gold, LLC.
6502 E. Hwy. 78
Brawley, CA 92227
Attn.: Vice President

- c. The addresses to which the notices shall be sent may be changed by written notice given by one party to the other in any manner provided above.
- d. All notices to Lessee shall also be deemed to have been fully given if made in writing and personally served upon Lessee or any of its officers.
- e. All payments specified in this lease shall be made to the Commission at the address above.

16. PRESERVATION OF PROPERTY – WASTE DISCHARGE

Lessee shall perform all work with due regard for the preservation of the Leased Land and with due regard to the environmental impact of its operations in accordance with the following terms and conditions:

- a. Lessee shall remove equipment and facilities within 60 days after Lessee has stopped using them in its operations.
- b. All excavating and production operations shall be conducted in a manner that will eliminate, as far as practicable, dust, noise, vibration, and noxious odors. Operating sites shall be kept neat, clean, and safe. Operations shall be conducted so as to prevent widespread deposition of dust.
- c. Any operations disturbing the surface of the soil, including road building and construction and movement of heavy equipment, shall be conducted in a manner that will not result in unreasonable damage to trees and plant cover, in soil erosion or

in degradation of waters of the State.

- d. Lessee shall protect from damage and repair or replace, when damaged by Lessee, improvements, structures, telephone lines, trails, ditches, pipelines, water developments, fences, crops, and any other property of other persons, including the State, which are on or near the Leased Land.
- e. Lessee shall control access to production or extraction sites by the public to prevent accidents or injury to persons or property.
- f. Lessee shall keep to a reasonable number and size any areas to be cleared and graded for drill sites or production facilities. Any clearing and grading shall be subject to State and County approval.
- g. Lessee shall keep noise levels from any phase of operations to a minimum and at no time shall allow the noise level to exceed local standards.
- h. The above requirements are in addition to, and shall not be construed as limitations upon, all other regulations, restrictions and measures provided in this lease that are designed to restrict, modify, or minimize the environmental impact of operations under this lease.

17. FORCE MAJEURE

The obligations imposed upon Lessee by this lease may be suspended when Lessee is prevented from complying with them by wars, riots, acute and unusual labor, or material shortages, acts of God, laws, rules, and regulations of any federal, state, county, or municipal agency, or by other unusual conditions beyond the control of Lessee.

18. TIME OF ESSENCE

Time is of the essence in this lease.

19. RELATIONSHIP OF PARTIES

This lease does not constitute, and the parties do not intend it to create a partnership or joint venture or the relationship of master and servant or principal and agent.

20. CAPTIONS

The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the provisions of this lease.

21. SEVERABILITY

If any provision of this lease is judicially determined to be invalid, it shall be considered deleted from this lease and shall not invalidate the remaining provisions.

22. BINDING DATE

This agreement will become binding on the Commission only when approved by the State Lands Commission and when executed on its behalf.

23. WAIVER OF USE OF DATA

Lessee waives any statutory or other right to prevent disclosure to the Commission, or a duly authorized employee or representative of the Commission, of any information, reports, data or studies of any kind filed by Lessee with any federal, state or local agency relating to the Leased Land, the mineral resources thereunder or any operations performed on the Leased Land or lands unitized therewith, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information filed with the Commission as required by this lease shall always be available for any use of the Commission or its duly authorized representatives. Any information, reports, data, or studies obtained by the Commission from any public agency, and which are not public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of Lessee or upon the Commission's determination that their disclosure is in the public interest. For purposes of this lease in determining the public interest the State shall consider the interest of Lessee.

24. SOLVENCY

If at any time during the term of this lease, Lessee is insolvent under the federal bankruptcy laws, makes a voluntary assignment of its assets for the benefit of creditors, or is adjudged as bankrupt either upon Lessee's voluntary petition in bankruptcy or upon the involuntary petition of Lessee's creditors, the Commission shall have all the rights and privileges afforded it by federal bankruptcy laws to protect its interests under this lease.

[SIGNATURES ON NEXT PAGE]

CALIFORNIA STATE LANDS COMMISSION

Date: _____

By: _____

Name

Title

LESSEE*

Date: _____

By: _____

Western Mesquite Mines, Inc.
6502 E. Hwy. 78
Brawley, CA 92227
Attn.: Vice President

*In executing this document, the following are required:

Corporations:

1. Affix Corporate Seal.
2. Attach certified copy of the resolution or other document authorizing its execution on behalf of the corporation.

Individuals:

1. Attach acknowledgment of Signature.