

# Staff Report 38

**APPLICANT:**

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FISHBIO, Incorporated

**PROPOSED ACTION:**

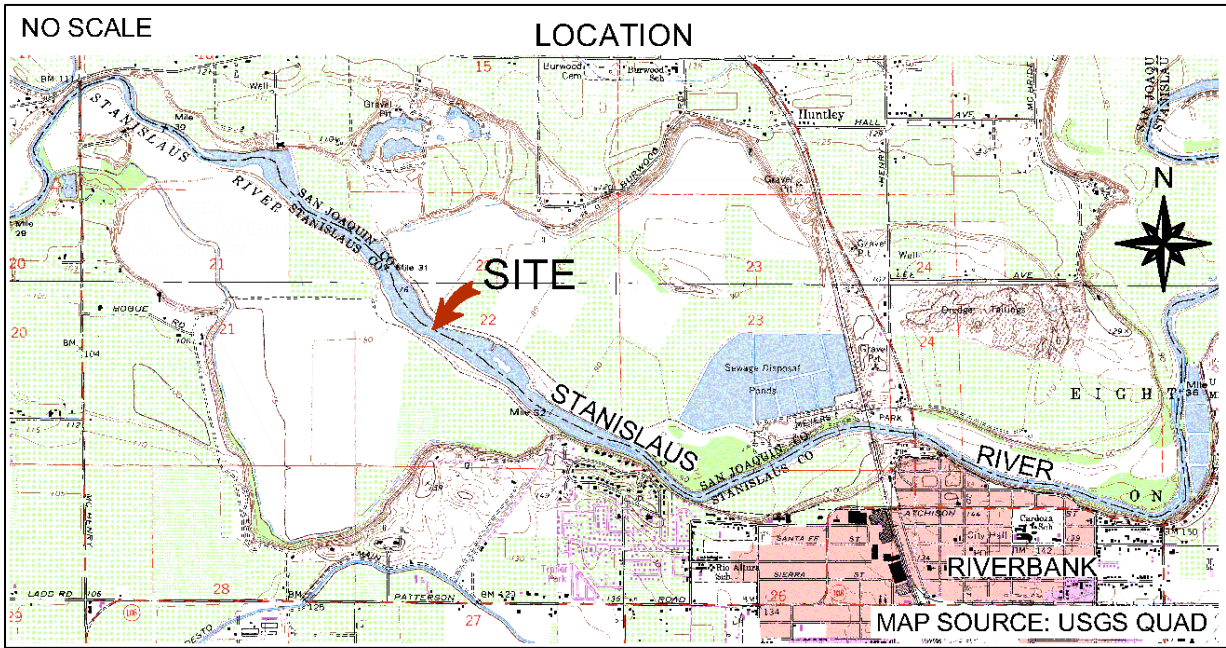
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Issuance of a General Lease – Other

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

Sovereign land in the Stanislaus River, adjacent to Assessor's Parcel Numbers 074-003-022 and 247-250-120, near Riverbank, Stanislaus and San Joaquin Counties (as shown in Figure 1).

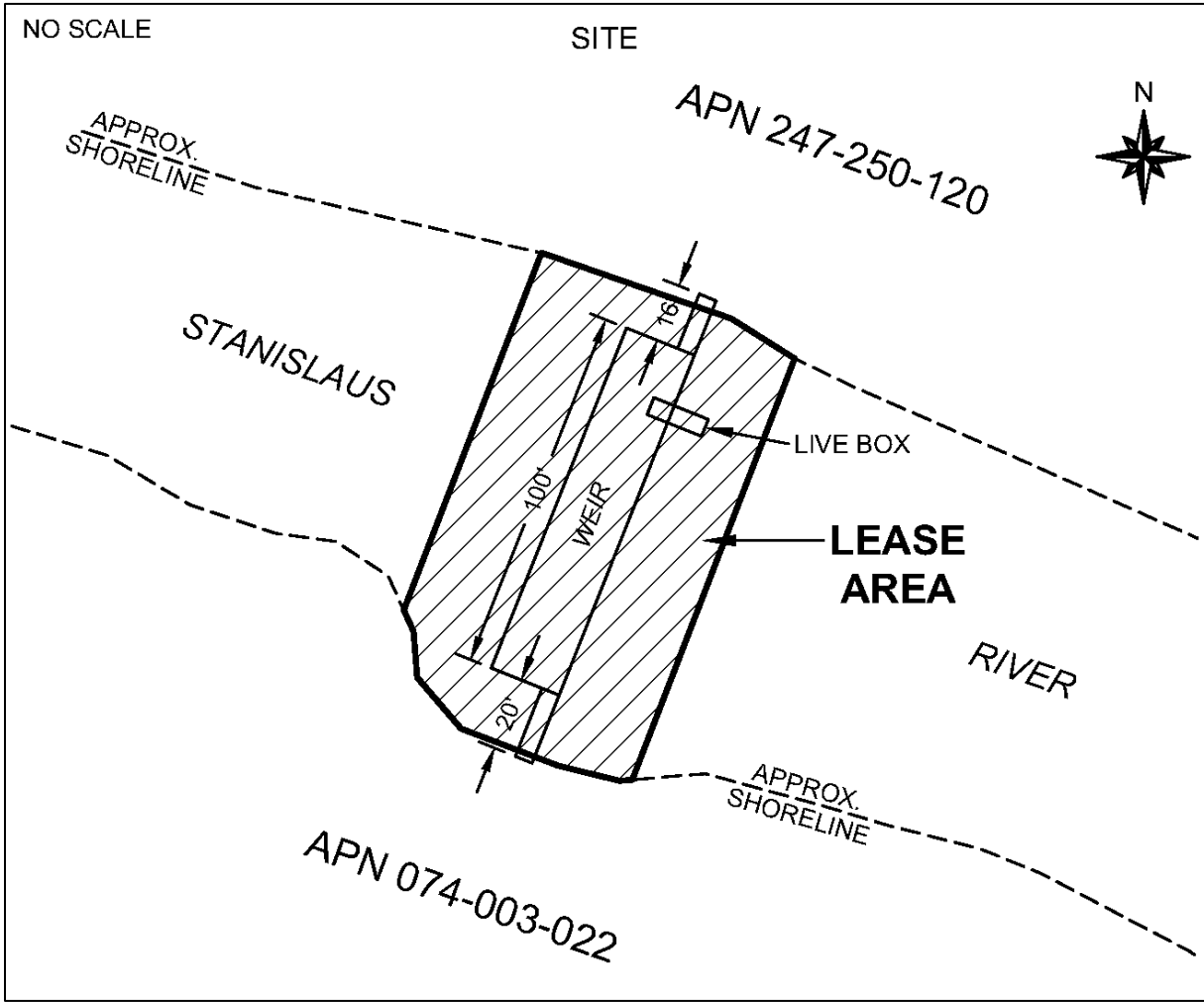
**Figure 1. Location**



**AUTHORIZED USE:**

Seasonal installation and use of a resistance board fish counting weir and temporary placement of warning buoys (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

10 years; beginning February 22, 2023.

**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 interest.

### **SPECIFIC LEASE PROVISIONS:**

- Lessee acknowledges that the Lease Premises and adjacent upland are located in an area that may be subject to effects of climate change. To prepare for the potential effects, including but not limited to flood damage, erosion damage, and damage from waves and storm-created debris.
- At least 24 hours prior to and during the authorized activities, the Lessee agrees to install and maintain, at all times during operation of the weir, precautionary signage or warning buoys upstream and downstream of the Lease Premises to provide adequate warning notices to recreational users.
- Authorized activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other regulatory agencies.

### **BACKGROUND:**

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On February 22, 2013, the Commission authorized a 10-year General Lease to the Applicant for seasonal installation and use of a resistance board fish counting weir, and temporary placement of warning buoys in the Stanislaus River ([Item 54, February 22, 2013](#)). That lease expired on February 21, 2023. The Applicant is applying for a new General Lease – Other, for the seasonal installation and use of a resistance board fish counting weir used to conduct research and collect data on upstream migrating adult Chinook Salmon and Central Valley Steelhead, and temporary placement of warning buoys in the Stanislaus River.

The proposed activities are coordinated by the Applicant and its team of environmental scientists. The Applicant specializes in monitoring, tracking, and analyzing trends in fish populations and habitats. It collects biological data from upstream migrating adult Chinook Salmon and Central Valley Steelhead. The data are analyzed and shared with public agencies such as the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Wildlife. The proposed use aligns with statewide goals and priorities associated with climate change and drought conditions by improving the sustainability of fish populations.

The proposed use involves a small area of state-sovereign land in the Stanislaus River near river-mile 31.4 and northwest of the City of Riverbank (City). The project is located downstream of Jacob Myers Park. Site access will be facilitated by coordination with the City's wastewater treatment facility. The portion which falls on state land will involve approximately 0.22 acre. "Resistance board weirs are portable and an alternative to other traditional rigid weirs. Resistance board weirs are more capable than traditional weirs of withstanding high and fluctuating flows

and will temporarily submerge when pressure created by debris loading reaches a point that would wash a traditional weir downstream" (FISHBIO, 2023). This improvement is key to the data collection process. In addition, the weir is designed to not interfere with vessel and recreational water dependent uses which can easily cross over the weir. The Applicant places temporary warning buoys around the seasonal weir to ensure public safety. The proposed work will occur during periods of low recreational use by the public and outside of spawning season to minimize any potential impact on salmonids.

## **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:**

The proposed activities will enhance knowledge about salmonid lifecycle trends, aquatic habitats, and wildlife sustainability, thereby contributing to healthier fish populations in the Stanislaus River and ecosystem. The proposed action is considered beneficial because it will enhance fisheries, which is a recognized Public Trust use. Furthermore, the action will not impede or impair any other Public Trust uses in the area. The activities are considered a water-dependent use that is consistent with the common law Public Trust Doctrine. Waterborne activities such as rafting, kayaking, and fishing are possible through nearby access points. The public can fish in the Stanislaus River using non-motorized watercraft, such as kayaks and canoes, when and where water conditions allow. The work area will contain warning buoys, to inform the public about project-related activities in the vicinity. The proposed activities are seasonal and occur during periods of low recreational use. Improvements will be installed no sooner than September 1 and removed by June 30 of each year. The public will have opportunities for fishing, recreational boating, rowing, and outdoor recreation at this location, during the summer months known as peak season. The public can enjoy the Stanislaus River through other access points, during the winter and spring months. The Applicant will maintain the seasonal improvements at no cost to the State. Recreational fishing is a water-dependent use that is generally consistent with the common law Public Trust Doctrine.

The proposed lease includes certain provisions protecting the public use of the lease area, including a limited lease term of 10 years and a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not

alienate the State's fee simple interest, nor permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, the proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

The proposed activities will have a beneficial impact on aquatic, terrestrial, and riparian species by improving knowledge about native species and the eco-system at large. The activities will enhance knowledge about fish migration and sustainability, thereby contributing to greater survival rates and larger fish populations. The public benefit will be a healthier fish population and habitat for years to come.

### **CLIMATE CHANGE:**

The project area is not tidally influenced and would not be subject to sea level rise. However, as stated in the [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. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

The weir is a seasonal and temporary fixture and unlikely to be damaged by climate change influenced conditions. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement during use. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

### **CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the 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. If the Commission denies the application, the Applicant will not be authorized to install and remove seasonal weirs. 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" and "Leading Climate Activism" Strategic Focus Areas 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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(5).

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

## **APPROVALS REQUIRED:**

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U.S. Army Corps of Engineers  
National Marine Fisheries Service (NOAA)  
California Department of Fish and Wildlife

## **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 6, Information Collection; California Code of Regulations, title 2, section 2905, subdivision (e)(5).

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

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce; 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 Public Trust; and is in the State's best interests.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Other to the Applicant beginning February 22, 2023, for a term of 10 years, for seasonal installation and use of a resistance board fish counting weir, and temporary placement of warning buoys; 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.