

# Staff Report 64

**APPLICANT:**

Eric Keating and Melissa Keating

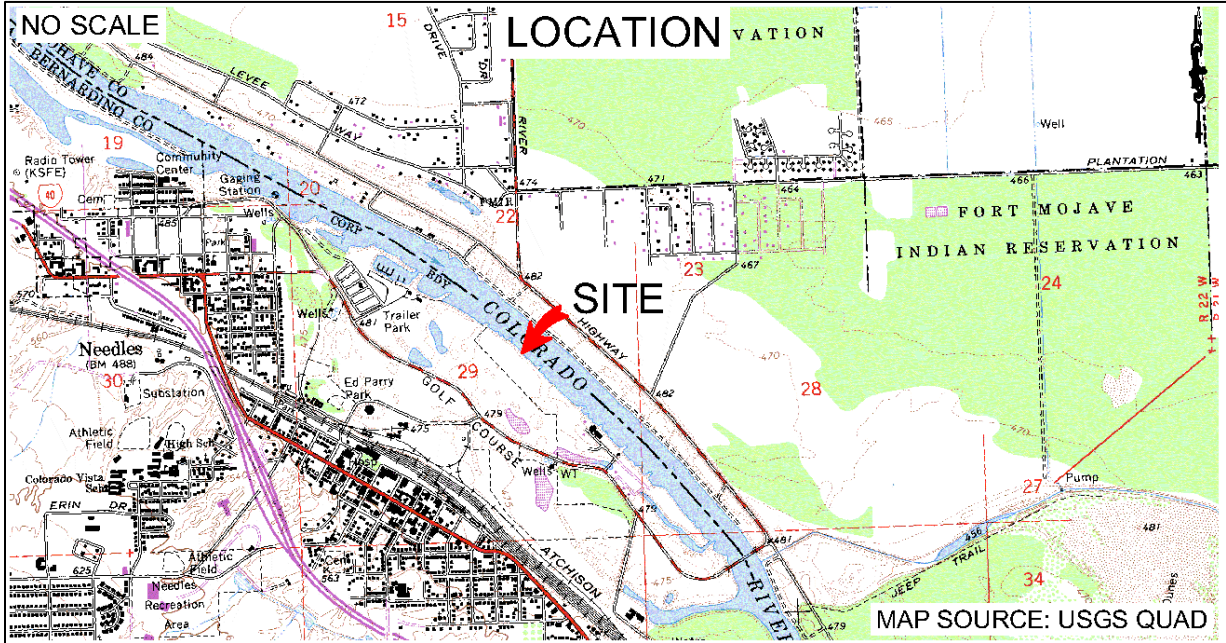
**PROPOSED ACTION:**

Issuance of a General Lease – Recreational and Protective Structure Use

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

Sovereign land located in the Colorado River, adjacent to 1170 Beach Drive, Needles, San Bernardino County (as shown in Figure 1).

Figure 1. Location

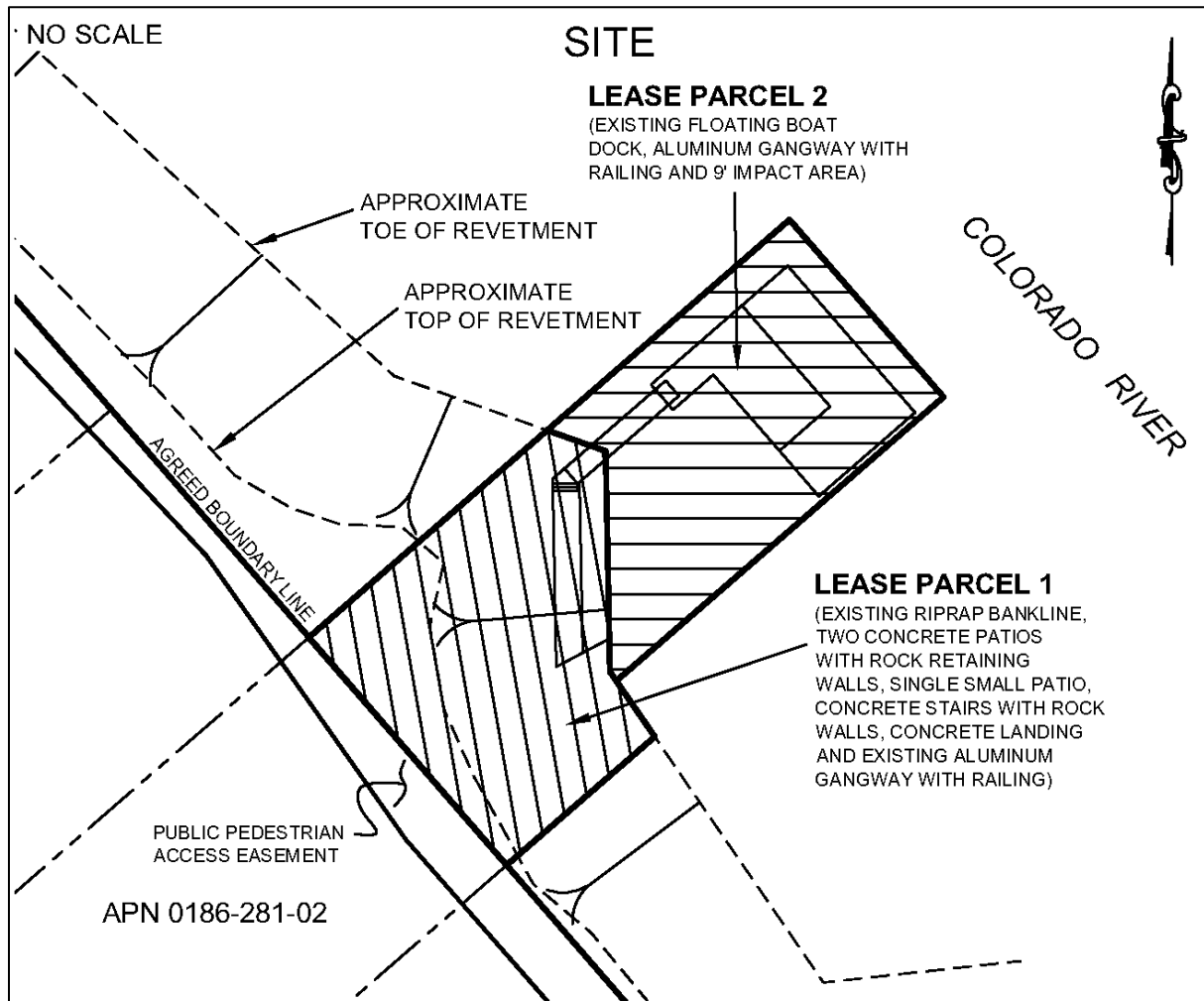


**AUTHORIZED USE:**

Use and maintenance of an existing boat dock, gangway with railing, two large concrete patios with rock retaining walls, small concrete patio with railing and planter area, electrical and irrigation appurtenances, concrete stairs with rock

walls, concrete landing, gangway with railing, and riprap bankline protection (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:**

\$843 per year, with an annual Consumer Price Index adjustment.

**SPECIFIC LEASE PROVISIONS:**

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Applicant acknowledges that the public pedestrian access easement shall remain open to the public and that no structures or improvements shall be erected, and no personal property placed so as to obstruct or prevent public access in and along the easement. Such improvements include, but are not limited to, fences, walls, railings, or landscaping. Applicant further acknowledges that they shall not place signs or advocate in any other manner in such a way as to prevent or discourage public use of the public pedestrian access easement.

**BACKGROUND:**

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

Pursuant to AD 134, the State of California was granted a Public Pedestrian Access Easement (Easement) running parallel to the fixed OHWM. The Easement is intended to provide public access to and along the bank of the Colorado River. The Easement affects lots 1 through 40 of the Rio Buena Vista residential subdivision, one of which is the Applicant's property. The Easement provides access to the Colorado River and can be accessed by the public from the northern or southern end of the subdivision or from the Colorado River.

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

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

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

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

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

On April 26, 2013, the Commission authorized Lease Number PRC 9039, a General Lease – Recreational and Protective Structure Use, to Michael Shutt and Christine D. Shutt, as Trustees, or any successor Trustee, under that certain declaration of trust named Michael Shutt and Christine D. Shutt Family Trust, created by Michael Shutt and Christine D. Shutt, as Trustors, dated September 8, 2006, for the use of an existing concrete stairway with railing and appurtenances, rock retaining walls, concrete patios, and riprap bankline protection ([Item 78, April 26, 2013](#)).

On October 14, 2014, the Commission authorized an amendment of the lease to correct the description of existing improvements and allow for the construction and use of a landing, aluminum gangway with railing, and floating boat dock, effective October 14, 2014 ([Item 65, October 14, 2014](#)).

On June 29, 2021, the Commission authorized the assignment of the lease to Eric Keating and Melissa Keating ([Item 39, June 29, 2021](#)). The lease expired on February 21, 2023. The Applicant has applied for a new lease for the existing facilities.

The existing facilities within the lease area consist of a boat dock, gangway with railing, two large concrete patios with rock retaining walls, small concrete patio with railing and planter area, electrical and irrigation appurtenances, concrete stairs with rock walls, concrete landing, gangway with railing, and riprap bankline protection. The improvements are privately owned and maintained and have existed at this location for many years.

The boat dock and gangway with railing facilitate recreational boating because they are used for the docking and mooring of recreational boats. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

The upland area containing the concrete stairs with rock walls, planter area, concrete landing, and gangway with railing is generally not a Public Trust consistent use, but the Commission has issued leases on a limited basis for existing non-water dependent uses that encroach onto sovereign land where such encroachments do not significantly interfere with Public Trust needs and values.

Furthermore, the concrete stairs with rock walls, concrete landing, gangway with railing, and the riprap bankline protection mutually benefit both the public and the Applicant. The riprap bankline protection provides additional protection for the integrity of the river channel from high-flow events and water run-up, the concrete stairs, concrete landing, and gangway with railing facilitate access by the public to the beach area, and are maintained by the lessee, at no cost to the public.

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

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

### **CLIMATE CHANGE:**

The lease area in the Colorado River is not tidally influenced and therefore, would not be subject to sea level rise. The water level near the existing improvement is regulated primarily by water released upstream from the Davis Dam. As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, extreme heat, drought, and storms. The boat dock, and gangway would be able to move up and down as the water levels change during the next 10 years of the lease. The concrete stairs, rock retaining walls, concrete patios, and riprap bankline would not be able to move up and down as the water levels change. During a severe drought within the next 10 years,

the boat dock would not be functional since a boat would not be able to float to the boat dock due to low water levels in the River.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to the 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; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of a lease is 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 may be required to remove the improvements and restore the premises to their original condition. The lessee has no right to a new lease or to a renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and the "Meeting Evolving Public Trust Needs" 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 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.

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

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

1. Find that the existing and, for a limited period, continuing use and maintenance of the existing boat dock, gangway with railing, two large concrete patios with rock retaining walls, small concrete patio with railing, electrical and irrigation appurtenances, and riprap bankline protection will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the concrete stairs with rock walls, planter area, concrete landing, and gangway with railing are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the Trust; and
3. Find that issuance of the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

Authorized issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning February 22, 2023, for a term of 10 years, for the use of an existing boat dock, gangway with railing, two large concrete patios with rock retaining walls, small concrete patio with railing and planter area, electrical and irrigation appurtenances, concrete stairs with rock walls, concrete landing, gangway with railing, and riprap bankline protection; annual rent in the amount of \$843, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.