

Staff Report 36

LESSEE:

James and Tyree T. Hunter

APPLICANT:

George Porter, Renee Widmann, and Lisa Widmann

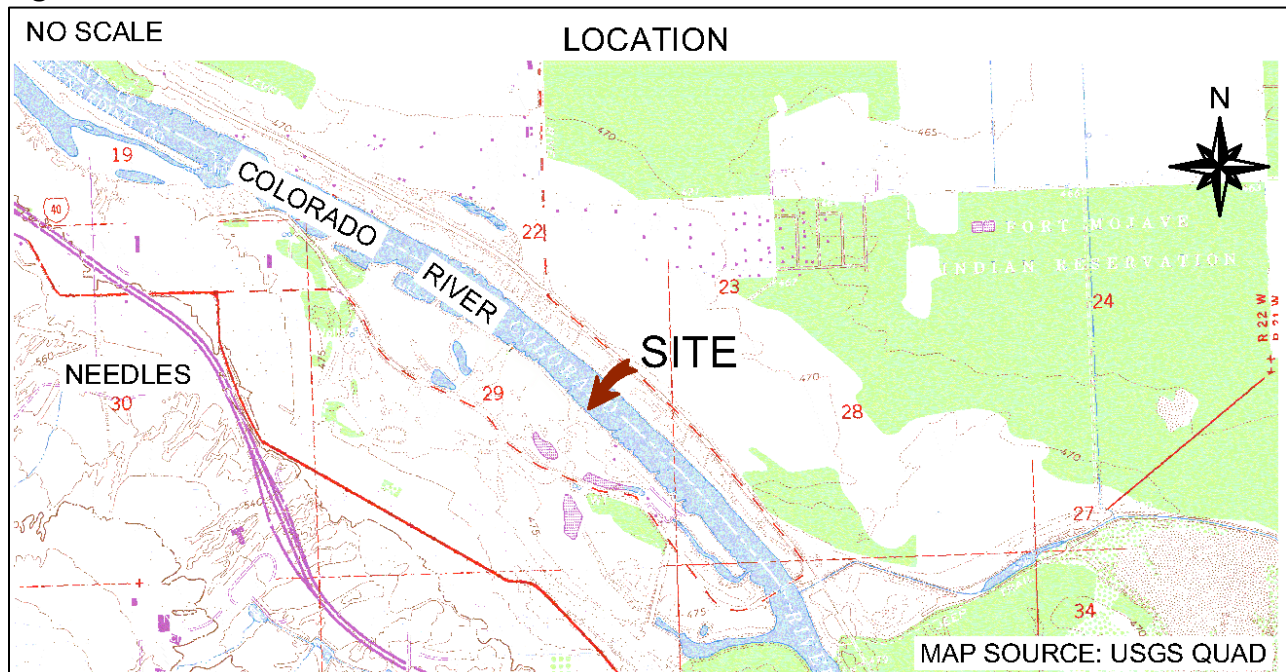
PROPOSED ACTION:

Termination of a General Lease – Protective Structure Use and Issuance of a General Lease – Recreational and Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Colorado River, adjacent to 1108 Beach Drive, Needles, San Bernardino County (as shown in Figure 1).

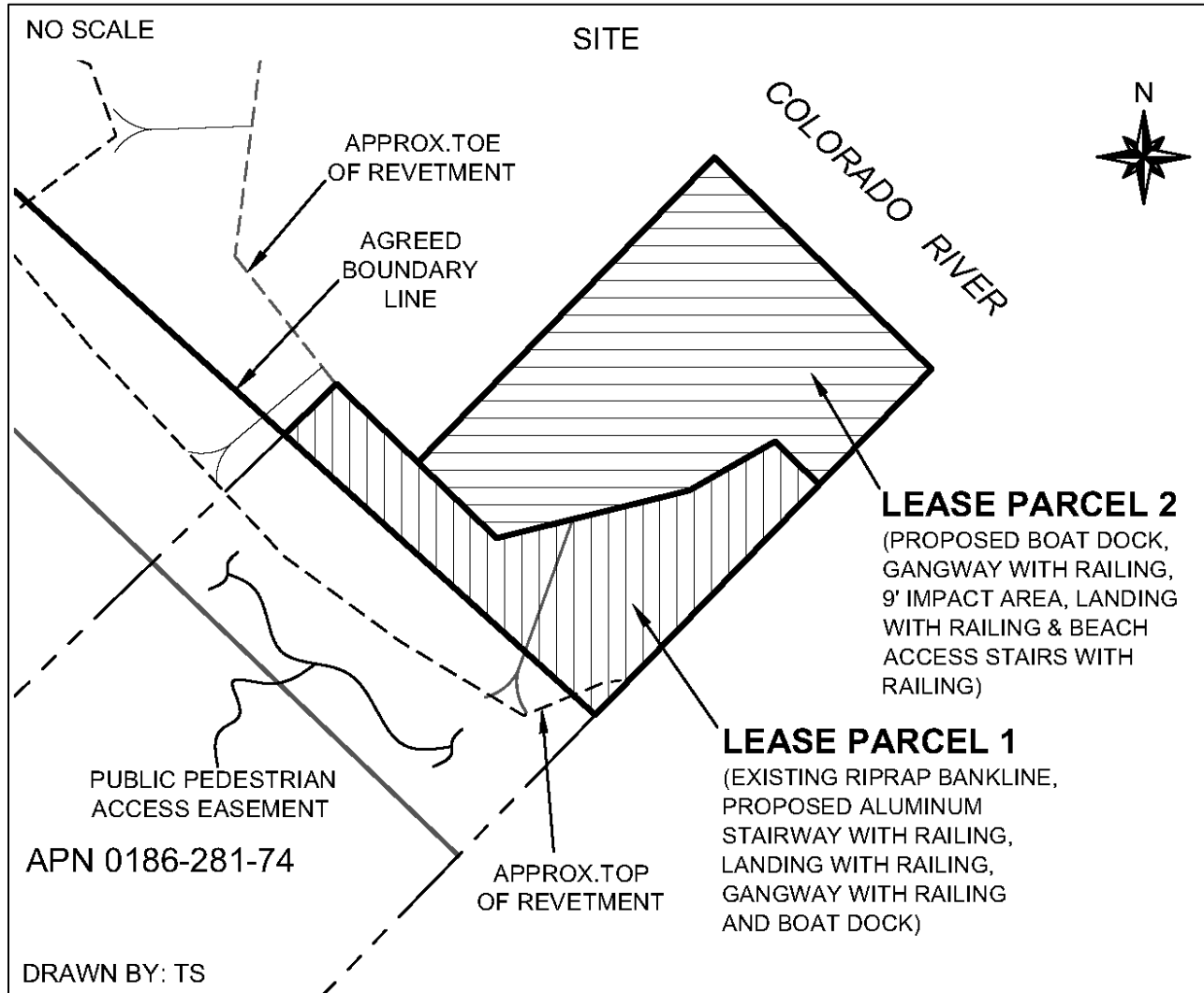
Figure 1. Location



AUTHORIZED USE:

Use of an existing riprap bankline, and construction and use of a stairway, landing with stairway, gangway, and boat dock (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 December 5, 2023.

CONSIDERATION:

\$442 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee acknowledges that the Public Pedestrian Access Easement located on portions of Lessee's fee owned upland property shall remain open to the public and that no structures or improvements shall be erected, nor any personal property placed, that would obstruct or prevent public access in and along the Easement.
- Lessee acknowledges that they shall not place signs or advocate in any other manner to prevent or discourage public use of the Public Pedestrian Access Easement.
- Lessee assumes responsibility for the maintenance of the riprap bankline within the Lease Premises.
- Lessee and the public shall have equal rights to access the stairs on the lease premises and Lessee shall not exclude the public from use of the stairs, install any structures to prevent public use of the stairs, nor post signage or advocate in any manner against public use of the stairs.
- All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all agencies with legal jurisdiction over the proposed project.
- Any equipment to be used on the Lease Premises is limited to that which is directly required to construct or install the authorized improvements and does not include any equipment that may cause damage to the Lease Premises or surrounding waterway.
- All debris shall be promptly removed from the Lease Premises.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed or removed.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to December 5, 2023.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

BACKGROUND:

On December 12, 1990 ([Item C08, 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), as 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. These inspections 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:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 20, 2015, the Commission authorized a General Lease – Protective Structure Use to James and Tyree T. Hunter, for the use of a riprap bankline in the Colorado River, adjacent to 1108 Beach Drive, Needles, San Bernardino County ([Item C67, February 20, 2015](#)). This lease expires on February 19, 2025.

On March 17, 2022, following the death of James Hunter, ownership interest of the upland property was transferred to George Porter, Renee Widmann, and Lisa Widmann. Commission staff was not notified of this transfer of ownership, nor was an assignment of lease sought.

The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for use of the existing riprap bankline, and construction and use of a stairway, landing with stairway, gangway, and floating boat dock in the Colorado River, adjacent to 1218 Beach Drive, Needles, San Bernardino County.

As James Hunter is now deceased and ownership of the upland property has been transferred to the Applicant, staff recommends termination of Lease 9190, effective December 4, 2023, and issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, to take effect on December 5, 2023.

The Applicant has occupied State land without authorization since acquiring the upland property on March 17, 2022. However, the existing lease does not include any monetary consideration for the currently authorized use of the lease premises. As such, no compensation for the unauthorized occupation of State land will be due from the Applicant. However, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation prior to December 5, 2023 to ensure that the State is protected.

On December 5, 2012, the Commission identified two beach areas on the Colorado River fronted by lots 9 to 11 and 31 to 37 of the Rio Buena Vista Community where boat docks would interfere with recreational Public Trust uses ([Item 85, December 5, 2012](#)). Under Item 85, the Commission also directed staff to review all future applications for boat dock construction within the Rio Buena Vista community to ensure any proposed docks would be consistent with that staff report, the Commission's practices for leasing on inland waterways, and the Public Trust needs in the area. The upland property adjacent to the river at this location is identified as lot 40 of the Rio Buena Vista Community and is outside the two identified beach areas. Thus, this location is eligible for consideration to construct a dock.

The proposed stairway, landing with stairway, gangway, and dock will be fabricated offsite and transported to the Lease Premises for installation.

Construction on the Lease Premises will be relatively limited and will consist mostly of erecting and securing structures to which the prefabricated improvements will be affixed. The overall project is anticipated to be completed with two weeks of work.

The proposed dock, gangway, stairway, and landing with stairway will all consist of aluminum frames with polypropylene decking. The gangway, stairway, and landing with stairway will be transported to the Lease Premises on boats, with the gangway and stairway being unloaded onto shore by hand, and the landing with stairway being lifted into place via a boat mounted crane.

The proposed stairway will be anchored to the top of the riprap bankline, adjacent to the public access easement, via steel bolts that will be driven into concrete and secured with epoxy. This stairway will descend the riprap bankline and provide access to the landing with stairway located at the bottom of the bankline. The waterward terminus of the stairway will be secured directly to the aluminum frame of the landing.

The proposed landing with stairway will be placed atop eight 3.5-inch galvanized steel poles which will be pre-positioned in manually dug holes of approximately 2 feet in depth. These steel poles will be anchored with concrete mixed on-site that will be poured into said holes by hand. The landing will be secured to these poles via 0.5-inch steel bolts. A short set of stairs that are contiguous with the landing will descend from the landing to provide access to the shore of the river.

The proposed gangway will extend from the landing to the boat dock to provide access to the dock. This landing will be hinged where it meets the landing, and the waterward terminus will sit on rollers atop the decking of the dock; this will allow the gangway to move up and down in tandem with the boat dock in order to adapt to the fluctuating water levels of the river.

Finally, the boat dock will be towed into place by boat and secured with three steel pilings that will be driven into the riverbed via a pneumatic drop hammer to a depth of at least six feet or refusal. The dock will be constructed atop polycarbonate floats to provide proper buoyancy, and secured to the three pilings via guide holes passing through the dock; this will allow the dock to move up and down in response to the river's fluctuating water levels.

Potential environmental impacts from construction of the proposed improvements are significantly reduced by utilizing structures that are prefabricated offsite. No hazardous materials will be utilized for any construction occurring on the Lease Premises, and disturbances to the sediment of the waterway will be negligible. To further ensure that the proposed construction will have a minimal impact on the

environment, the lease will require that all construction activities be carried out in accordance with all applicable safety regulations, permits, and conditions of any agencies with legal jurisdiction over the proposed project. Additionally, the Applicant is required to limit equipment used on the Lease Premises only to that which is directly required to construct or install the proposed improvements, and which will not cause damage to the Lease Premises or the surrounding waterway.

The Applicant owns the uplands adjoining the lease premises. The existing improvements are located directly waterward of the upland property and the proposed improvements would be as well. The proposed stairway, landing with stairway, gangway, and boat dock would occupy a relatively small area and would facilitate recreational boating. 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).

Additionally, the proposed stairway and the stairs appurtenant to the proposed landing will provide access to the river for both the Lessee and the public. As such, these improvements provide a benefit to the public and do not negatively impact Public Trust uses in this location. To ensure that these stairs remain available for public use, the proposed lease includes provisions protecting the public's right to access the stairs.

The existing riprap bankline is maintained by the Applicant and serves to stabilize the bank and support the integrity of both the river and the upland property. Loss or degradation of this structure could result in property damage and adverse impacts to Public Trust resources in the lease area and the surrounding waterway. As such, the riprap bankline provides a benefit to both the public and the upland owner and does not negatively impact Public Trust uses in this location.

The proposed Lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

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. 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; likewise, runoff from more frequent and severe storm events will likely increase scour and lead to a more rapid decrease in bank stability.

The combination of these projected conditions could increase the likelihood of damage to the proposed structures within the lease premises from floods or droughts during the term of the lease. The proposed boat dock and gangway are not likely to be damaged by storm-created flooding due to their floating nature. However, the existing riprap bankline as well as proposed stairway and landing will not be able to shift in response to changing water levels and may need relocation or reinforcement in the future to withstand higher levels of flood exposure. During a severe drought, the boat dock may not be able to function due to low water levels in the river and could be damaged.

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 are in an area that may be subject to the effects of climate change.

CONCLUSION:

For all the reasons above, staff believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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 may be required to remove the improvements and

restore the lease premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing riprap bankline:** Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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).

Proposed stairway, landing with stairway, gangway, and floating boat dock:

Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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

APPROVALS OBTAINED:

- Army Corps of Engineers
- California Department of Fish and Wildlife

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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), and Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Find that the whole of the project is categorically exempt from the requirement for the preparation of environmental documents through the combination of categorical exemptions listed above.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the construction and, for a limited period, use of the proposed stairway, landing with stairway, gangway, and boat dock does not substantially interfere with Public Trust needs and values at this location and is consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for a limited period, continuing use of the existing riprap bankline is not inconsistent with the Public Trust Doctrine and does not substantially interfere with the trust.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination of Lease 9190, a General Lease – Recreational and Protective Structure Use issued to James and Tyree T. Hunter, effective December 4, 2023.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 5, 2023, for a term of 10 years, for the use of an existing riprap bankline, and construction and use of a stairway, landing with stairway, gangway, and boat dock; annual rent in the amount of \$442, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer, or designee, to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.