

MINUTE ITEM

This Calendar Item No. C32 was approved as Minute Item No. 32 by the California State Lands Commission by a vote of 3 to 0 at its 04-05-04 meeting.

CALENDAR ITEM

C32

A 25, 29

S 14

PRC 8520

04/05/04
W 22507
J. Smith
C. Fossum

**AGREEMENT INVOLVING ISSUANCE OF A GENERAL LEASE - RIGHT OF WAY
USE FOR TWO RIVER CROSSINGS OF THE SAN JOAQUIN RIVER,
NORTHWEST OF PINEDALE, FRESNO AND MADERA COUNTIES**

PARTIES:

James and Carolyn Moen ("Moen")
Post Office Box 307
Pinedale, California 93650

Calaveras Materials Inc. ("Calaveras")
3451 West Shaw Avenue
Fresno, California 93711-3204

San Joaquin River Conservancy ("Conservancy")
5439 E. Olive Ave.
Fresno, CA 93727

California State Lands Commission ("Commission")
100 Howe Ave., Suite 100 South
Sacramento, CA 95825

AGREEMENT:

Resolution of certain issues between the Parties relating to two river crossings of the San Joaquin River and issuance of a Lease. Details of the Lease and other matters follow.

LESSEES:

Calaveras and Moen as co-lessees

AREA, LAND TYPE, AND LOCATION:

Sovereign public trust lands in the San Joaquin River, northwest of the community of Pinedale, Fresno and Madera Counties.

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AUTHORIZED USE:

Maintenance of the following existing structures: 1) one metal bridge, as shown on page 1 of Exhibit A, within the area described as Parcel 1 on Exhibit B; 2) one earthen dam including two corrugated metal pipe culverts and one metal bridge, as shown on page 2 of Exhibit A, within the area described as Parcel 2 on Exhibit B, 3) one earthen covered corrugated metal pipe culvert, as shown on page 2 of Exhibit A, within the area described as Parcel 3 on Exhibit B; and to conduct a study and prepare a work plan for potential remediation and/or removal of the above structures; and the installation of warning signs.

LEASE TERM:

Twenty-one months, beginning April 1, 2004.

CONSIDERATION:

The public health and safety

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance with coverage of no less than \$5,000,000.

Expenses:

Co-lessees shall enter into an agreement to provide reimbursement to the Commission for its direct expenses assuring compliance with removal or remediation activities related to the crossings and as lead agency to conduct California Environmental Quality Act (CEQA) review.

Bond:

As the result of a pending land transaction for the Moen property, Moen is required to provide surety or other guarantees to the Conservancy for completion of removal and/or remediation of the crossings to be determined by the Commission following review of the work plan and subsequent to CEQA compliance and a decision on remediation or removal.

OTHER PERTINENT INFORMATION:

1. Parties each own or have rights to use certain uplands adjoining the lease premises.
2. Moen owns property on the Madera side of the San Joaquin River that is leased to Calaveras, which has operated a sand and gravel extraction business, in and adjacent to the San Joaquin River. Moen entered into a lease with Wyoming Construction Company in 1960. That lease was

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amended in 1962 and terminated in 1981 when Moen entered into a new lease with Stewart & Nuss, Inc. Calaveras is the successor in interest to Stewart & Nuss, Inc. In the late 1980s, Stewart & Nuss received approval from Madera County to expand its mining operation to include the 383 acre site owned by Moen on the north side of the San Joaquin River, northwest of the community of Pinedale in Fresno County. Stewart and Nuss installed bridges and culverts across the San Joaquin River, primarily to serve as haul roads in conjunction with their mining operations. Madera County approved the expansion on April 10, 1989. The Department of Fish and Game (DFG) approved Streambed Alteration Agreement 4-048-88, which authorized the southerly structures at the Nees Avenue extension. The Commission's files contain correspondence dating from 1989, advising Stewart & Nuss of the need for Commission authorization of the structures located on the River. Active extractive mining operations have ceased on the Moen property and Calaveras is in the process of completing operations under its reclamation plan with Madera County. Calaveras anticipates completion of its reclamation by May 31, 2004, which is when the lease between Moen and Calaveras is set to expire.

The structures consist of:

- A. One steel bridge across the San Joaquin River, as shown on Page 1 of Exhibit A, located approximately 1 1/2 miles downstream of the Highway 41 Bridge. The steel bridge, prior to floods in 1997, connected the former Spano property in Fresno County, recently acquired by the Conservancy (the state agency created to develop a parkway along the San Joaquin River between Friant Dam and Highway 99) , with the Moen property in Madera County. The Trust for Public Land and the San Joaquin River Parkway and Conservation Trust (private non-profit organizations) are currently negotiating to purchase the Moen property with the intent of selling it to the Conservancy. The Conservancy governing board has authorized purchase of the Moen property through the Wildlife Conservation Board, subject to specific conditions, including executing the subject lease and completing removal and/or remediation as directed by the Commission. If the Conservancy purchases the Moen parcel, this bridge, if repaired, would connect with the former Spano parcel at the location identified on the maps included in the recompiled San Joaquin River Parkway Master Plan adopted by the Conservancy on July 20, 2000, reflecting the December 1997 Master Plan approval by the Conservancy. The

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plan identifies seven bridge crossings between Highways 41 and 99. The only proposed crossing with an existing bridge is at this site. The bridge's connection to land on the east washed out during floods several years ago. Therefore staff believes it prudent to determine the viability of the existing structure for future use as part of a public trail system along the San Joaquin River to be implemented pursuant to the Master Plan.

- B. One earthen dam (land bridge crossing) with two 8' diameter corrugated metal culverts underlying it, located at the northwesterly extension of Nees Avenue in the main channel and one earthen covered land bridge with one 8' diameter corrugated metal culvert located in the northerly channel, as shown on Page 2 of Exhibit A.
- C. A steel bridge, which is not currently being used, located immediately upstream of the land bridge at the Nees Avenue extension across the main channel, which extends onto lands owned in fee by Moen, subject to the public trust easement, and as shown on Page 2 of Exhibit A. The northerly half of the steel bridge is connected to this section of the bridge, but is located on lands owned in fee by Moen, subject to the public trust easement.

Early in 2003, Commission staff contacted Calaveras advising them that the structures are in trespass on sovereign public trust lands, and that Calaveras is liable for any and all claims that may arise as a result of this trespass. Commission staff also advised Calaveras of the need to apply for a lease to remedy the trespass.

Commission staff has been in discussions with various agencies and non-governmental organizations to determine the ultimate disposition of these structures. Those agencies include Madera County, the city of Fresno, the DFG, the Trust for Public Land, the Conservancy, the San Joaquin River Parkway and Conservation Trust, and the Department of Water Resources.

The Madera County Planning Department has approved a modification to Calaveras' existing reclamation plan. The DFG Streambed Alteration Agreement has expired and the DFG has determined that it will need to enter into a new Streambed Alteration Agreement.

Staff has also been in discussions with representatives of Calaveras and Moen in an effort to resolve the issue of these structures prior to the

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expiration of the Applicant's lease with Moen on May 31, 2004. Staff believes that it is appropriate for the Commission to determine and the Lessees to implement a plan for the final disposition of the crossings prior to the Commission's termination of the Lessees' responsibilities for the crossings.

To enable the Commission to determine the final disposition of the affected crossings, the lease provides that the Lessees will submit, within 90 days of the execution of the proposed lease, a work plan that will enable the Commission to make its determination. Such workplan shall address, at a minimum:

1. A structural evaluation of the safety of the northern bridge for its intended use and a recommendation of whether to repair the northern bridge crossing, including the approach that was washed out in 1997, or to remove the bridge and restore the area of the crossing; and,
2. The modification or removal of all or portions of the southern crossings. Regardless of whether modification or removal of the southern crossings is proposed, the plan shall also provide for modification to the main channel crossing to allow for safe navigation by canoes and other recreational craft.

Any proposed project described in such plan or as approved by the Commission will be subject to compliance with all applicable laws, rules and regulations, including the preparation by the Commission, at the Lessees' expense, of the required environmental documentation under the provisions of the California Environmental Quality Act (CEQA) and subsequent authorization by the Commission.

Within 90 days of the Commission's approval of the proposed project, or as it may be determined by environmental considerations, the Lessees will begin the approved project. Should project related construction not be completed by December 31, 2005, the lease will be extended on a month-to-month basis to accommodate completion of approved activities.

As an interim measure, the lease provides that within 45 days following Commission authorization, the Lessees will post signs, acceptable to Commission staff, warning those who recreate and navigate on the River of the existence of the culverts and identifying the location of an appropriate portage site.

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3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that the proposed Agreement is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that the proposed lease is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 3, Construction or Conversion of Small Structures; Title 14, California Code of Regulations, section 15303.

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

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the lease, as proposed, is consistent with its use classification.
6. The Agreement resolving the Parties' respective responsibilities for the river crossings includes a provision for release of claims by the Commission against Calaveras and Moen for past trespass damages upon compliance with the terms of the Lease and remediation and/or removal of structures. The Conservancy governing board has approved, upon the Lessees' completion of the removal/remediation, to take over responsibility pursuant to a lease from the Commission for any structures that should remain.

EXHIBITS:

- A. Location and Site Maps
- B. Land Descriptions

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE PROPOSED AGREEMENT IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

FIND THAT THE PROPOSED LEASE IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061, AS A CATEGORICALLY EXEMPT PROJECT, CLASS 3, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15303.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

APPROVE AN AGREEMENT AMONG THE PARTIES SUBSTANTIALLY IN THE FORM OF THE AGREEMENT ON FILE IN THE SACRAMENTO OFFICE OF THE COMMISSION TO PROVIDE SURETY OR OTHER GUARANTEES FOR COMPLETION OF REMEDIATION OR REMOVAL OF STRUCTURES AND RELEASE OF CLAIMS AGAINST MOEN AND CALAVERAS UPON COMPLETION OF THE REMEDIATION OR REMOVAL AS MAY BE DETERMINED THROUGH THE PLAN DESCRIBED BELOW.

AUTHORIZE ISSUANCE OF A GENERAL LEASE - RIGHT OF WAY USE, TO JAMES AND CAROLYN MOEN AND CALAVERAS MATERIALS INC., AS CO-LESSEES, FOR A TERM OF TWENTY-ONE MONTHS, BEGINNING APRIL 1, 2004, FOR TWO METAL BRIDGES, TWO EARTHEN DAMS AND THREE CORRUGATED METAL PIPE CULVERTS AND THE INSTALLATION OF WARNING SIGNS ON THE LANDS DESCRIBED ON EXHIBIT B ATTACHED AND AND BY THIS REFERENCE MADE A PART HEREOF.

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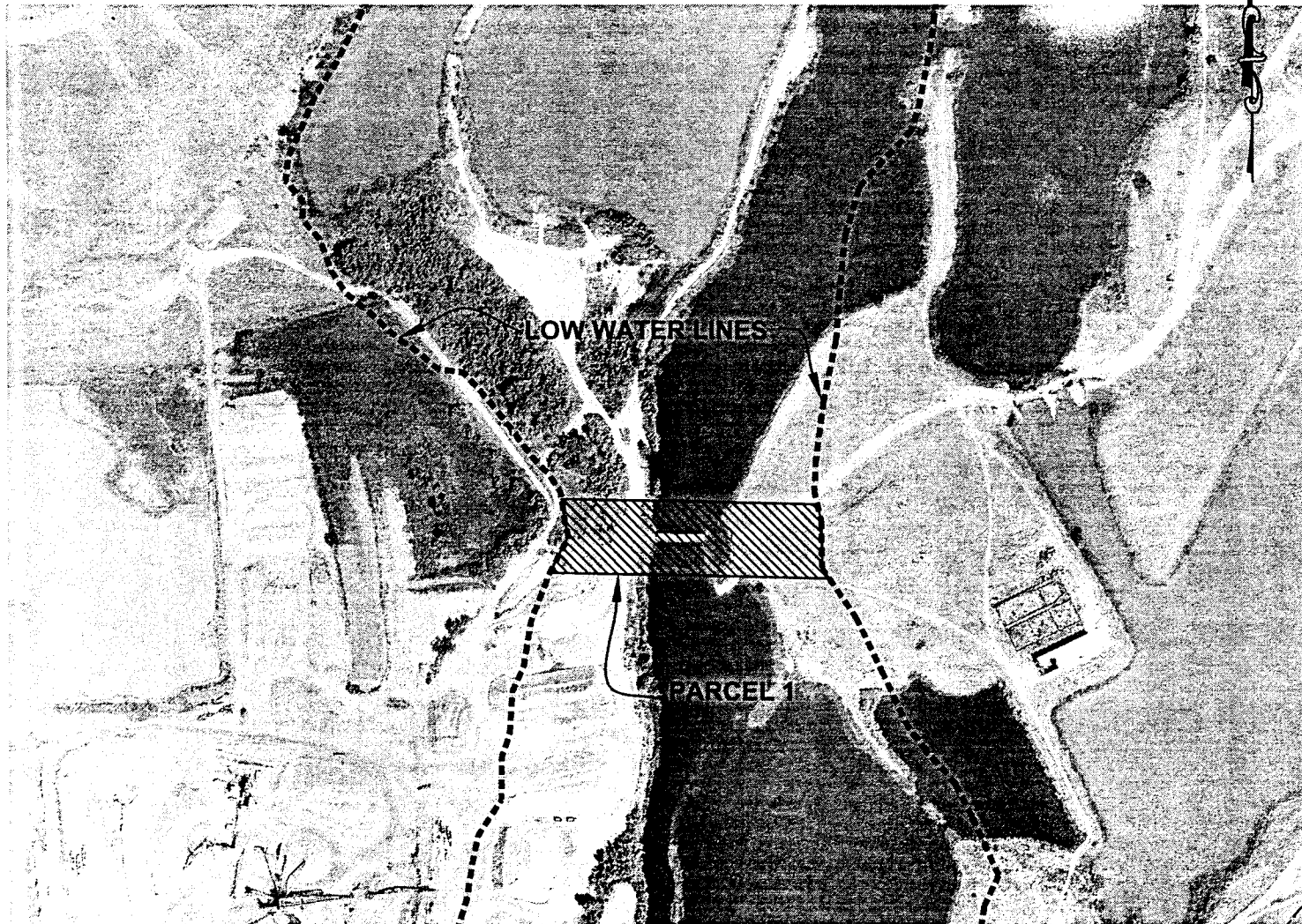
SAID LEASE REQUIRES THE LESSEES TO SUBMIT A PLAN THAT WILL ENABLE THE COMMISSION TO DETERMINE THE FINAL DISPOSITION OF THE STRUCTURES. ANY PROJECT DESCRIBED IN SUCH PLAN WILL BE SUBJECT TO COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS, INCLUDING THE PREPARATION BY THE COMMISSION, AT LESSEES' EXPENSE, OF THE REQUIRED ENVIRONMENTAL DOCUMENTATION UNDER THE PROVISIONS OF THE CEQA AND SUBSEQUENT AUTHORIZATION BY THE COMMISSION.

CONSIDERATION FOR THIS LEASE IS THE PUBLIC HEALTH AND SAFETY BASED ON THE INSTALLATION OF SIGNAGE AS REQUIRED HEREIN AND THE LESSEES' AGREEMENT TO IMPLEMENT THE PLAN TO BE ADOPTED BY THE COMMISSION; LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$5,000,000 PAST TRESPASS DAMAGES AND RENT TO BE WAIVED AS PROVIDED FOR IN THE AGREEMENT.

LESSEES SHALL ENTER INTO AN AGREEMENT TO PROVIDE REIMBURSEMENT TO THE COMMISSION FOR COSTS INCURRED IN CEQA COMPLIANCE AND DIRECT EXPENSES IN ASSURING COMPLIANCE WITH REMOVAL OR REMEDIATION OF THE CROSSINGS.

NO SCALE

SITE



CALAVERAS MATERIALS INC. SAN JOAQUIN RIVER CROSSINGS

NO SCALE

LOCATION

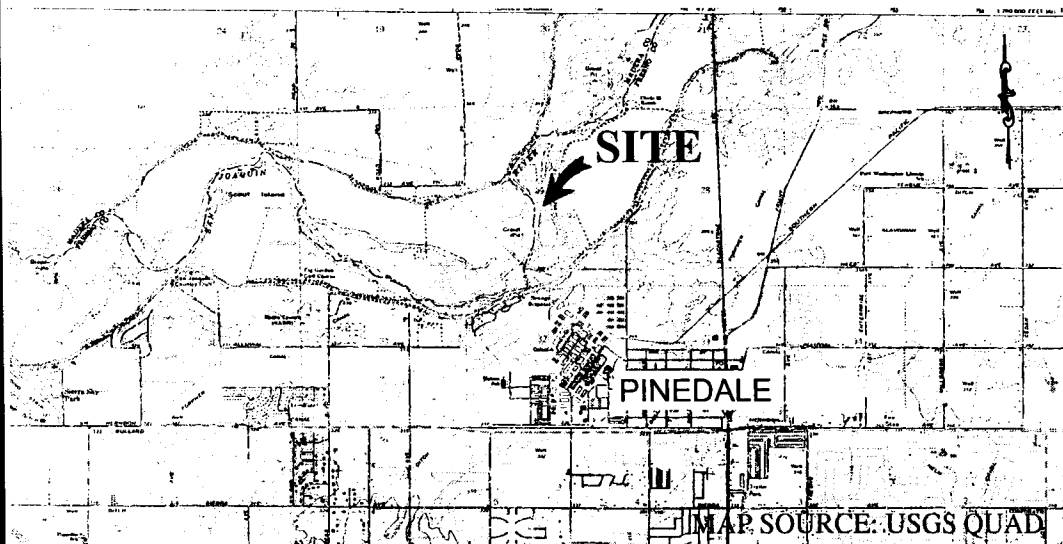


Exhibit A
PAGE 1
 W 25507
 GENERAL LEASE
 RIGHT OF WAY USE
 FRESNO/MADERA CO.



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.

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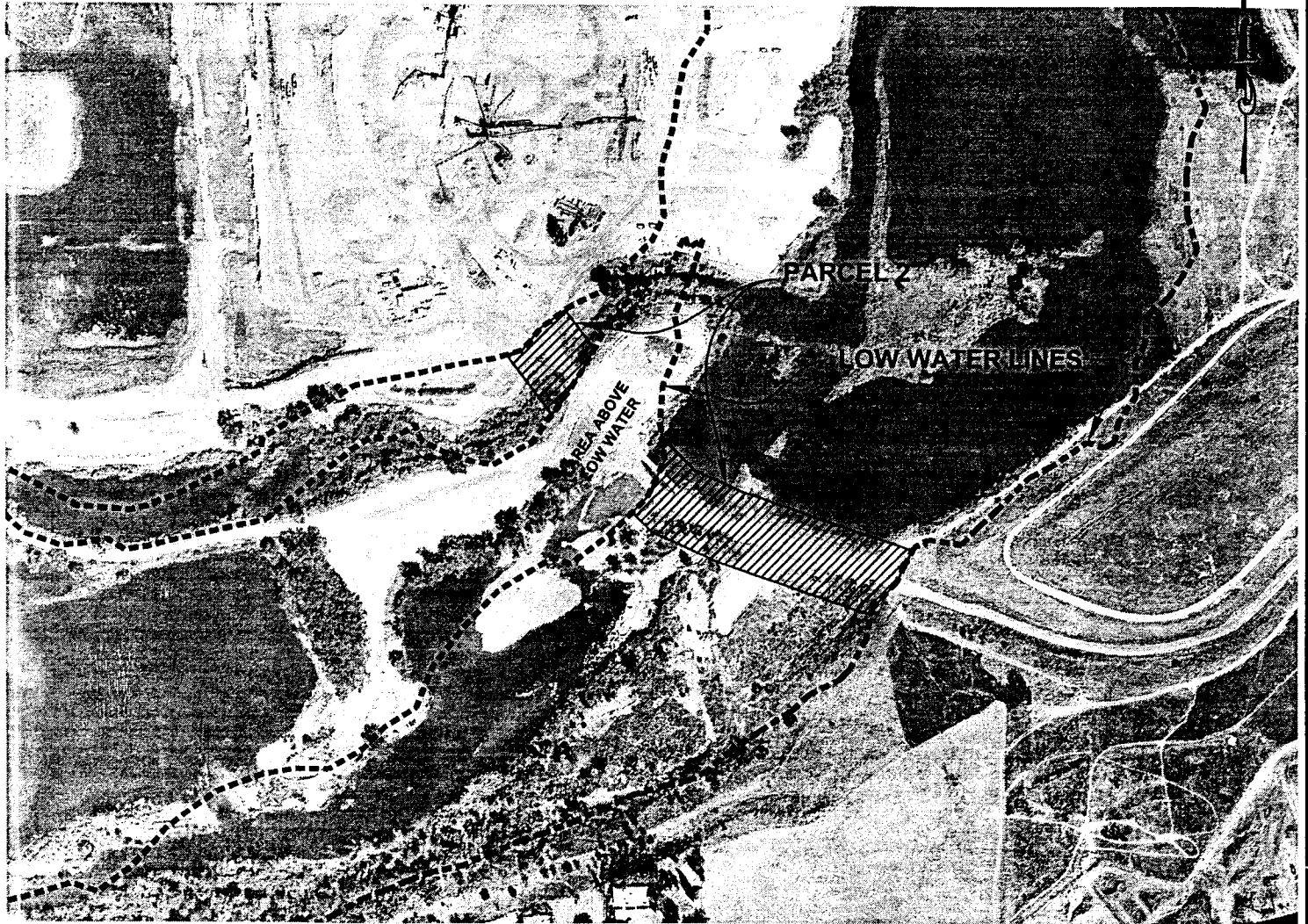
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NO SCALE

SITE



CALAVERAS MATERIALS INC. SAN JOAQUIN RIVER CROSSINGS

NO SCALE

LOCATION

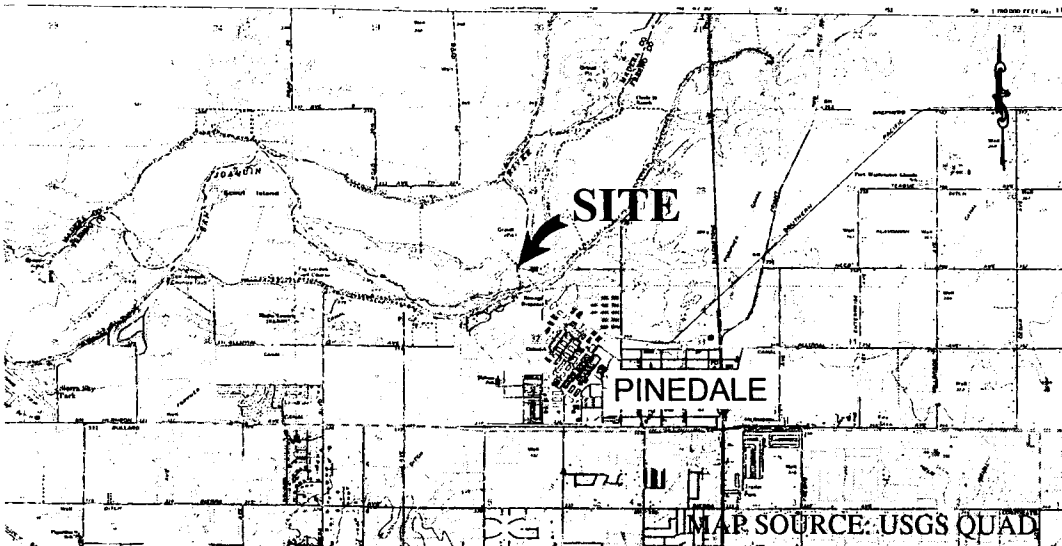


Exhibit A
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 GENERAL LEASE
 RIGHT OF WAY USE
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Exhibit B

W 22507

LAND DESCRIPTION

Three 200 foot wide strips of state sovereign land situated in Madera and Fresno Counties, State of California, being in and adjacent to the San Joaquin River, also lying within and adjacent to fractional Sections 29 and 32, T12S, R20E, MDM, according to the U.S. Government Township Plat approved June 26th, 1874 and lying 100 feet on each side of the following described centerlines:

Parcel 1 – Main Channel (Upper Crossing)

BEGINNING at a point on the low water line on the left bank of the San Joaquin River as shown on sheet 11 of Administrative Map San Joaquin River, dated April 1992, on file under W20473 in the office of the California State Lands Commission, said point being a distant S40°26'53"E 4372.44 feet from a found 2 1/8" O.D. Iron Pipe at the Northeast Corner of Section 30, T12S, R20E, MDM, as shown on Madera County Corner Record, said point having California Coordinate System 1983, Zone 4 grid coordinates of North = 2196238.103 feet, East = 6324578.591 feet; thence N88°49'36"W 686.95 feet more or less to the low water line on the right bank of the San Joaquin River as shown on said Administrative Map.

The sidelines of said strip shall be extended or shortened so as to terminate at said low water lines of said river.

Parcel 2 – Main Channel (Lower Crossing)

BEGINNING at a point on the low water line on the left bank of the San Joaquin River as shown on sheet 11 of Administrative Map San Joaquin River, dated April 1992, on file under W20473 in the office of the California State Lands Commission, said point being a distant S24°09'41"E 6045.58 feet from a found 2 1/8" O.D. Iron Pipe at the Northeast Corner of Section 30, T12S, R20E, MDM, as shown on Madera County Corner Record, said point having California Coordinate System 1983, Zone 4 grid coordinates of North = 2194049.540 feet, East = 6324216.445 feet; thence the following three (3) courses: (1) N71°17'03"W 473.64 feet, (2) N66°18'41"W 171.75 feet and (3) N44°42'23"W 70.03 feet more or less to the low water line on the right bank of the San Joaquin River as shown on said CSLC Administrative.

The sidelines of said strip shall be extended or shortened so as to terminate at said low water lines of said river.

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Parcel 3 – Secondary Channel (Lower Crossing)

BEGINNING at a point on the low water line on the left bank of the San Joaquin River as shown on sheet 11 of Administrative Map San Joaquin River, dated April 1992, on file under W20473 in the office of the California State Lands Commission, said point being a distant S17°48'39"E 5229.18 feet from a found 2 1/8" O.D. Iron Pipe at the Northeast Corner of Section 30, T12S, R20E, MDM, as shown on Madera County Corner Record, said point having California Coordinate System 1983, Zone 4 grid coordinates of North = 2194586.957 feet, East = 6323341.420 feet; thence N36°58'22"W 167.95 feet more or less to the low water line on the right bank of the San Joaquin River as shown on said Administrative Map.

The sidelines of said strip shall be extended or shortened so as to terminate at said low water lines of said river.

The Basis of Bearing for this description is California Coordinate System of 1983, Zone 4. All Bearings and Distances are Grid and in Feet.

END OF DESCRIPTION

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