

**CALENDAR ITEM
C13**

A 3
S 4

02/09/16
PRC 5482.9
B. Terry

AMENDMENT OF LEASE

LESSEE:

U.S. Bureau of Reclamation
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Sacramento River, near the city of Redding, Shasta County.

AUTHORIZED USE:

Continued placement and maintenance of clean gravel for the rehabilitation and restoration of King Salmon and winter-run Chinook Salmon spawning grounds.

LEASE TERM:

20 years, beginning August 9, 2000.

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.

PROPOSED AMENDMENT:

Amend the lease to:

1. Delete Section 3, Upper Sacramento River Gravel Restoration Site drawing;
2. Include the attached Exhibit A, Land Description and the attached Exhibit B, Site and Location Map;
3. Revise Section 2, Special Provisions to address the proposed dredging/construction activity;
4. Include two additional sites in the Sacramento River known as North Cypress Side Channel and Kapusta 1a;
5. Dredging as needed to create side channels; and
6. Creation of nearshore benches.

CALENDAR ITEM NO. C13 (CONT'D)

All other terms and conditions of the lease shall remain in effect without amendment.

BACKGROUND:

On October 1, 2002, the Commission issued a General Lease – Public Agency Use, Lease No. PRC 5482.9, to the U.S. Bureau of Reclamation (BOR) for the placement of gravel at nine sites in the Sacramento River for the rehabilitation and restoration of King Salmon and winter-run Chinook Salmon. On October 8, 2015, Commission staff received an application from the BOR to amend its lease by adding additional sites in the Sacramento River for the rehabilitation and restoration project including the restoration and dredging of numerous side channels along the Sacramento River near and around Redding, California. In November 2015 the BOR released a Draft Environmental Assessment for the Upper Sacramento River Anadromous Fish Habitat Restoration Program analyzing the impacts of the proposed project under the National Environmental Policy Act. Staff understood at the time that the project would require additional compliance with the California Environmental Quality Act (CEQA).

In mid-November 2015, BOR contacted Commission staff to request Emergency Authorization to proceed with the restoration project at two of the proposed sites, known as North Cypress Side Channel and Kapusta 1a, prior to formal consideration by the Commission at its February meeting. As staff understands, due to the ongoing drought these two sites have been deemed to have immediate benefit to winter-run Chinook Salmon, a State and Federal listed Endangered Species. Staff was informed of the urgency of beginning work on the two side channel projects in order to take advantage of low flow conditions in the Sacramento River in the vicinity of Redding. Any delay risked missing these low flow conditions.

On December 28, 2015, the California Department of Fish and Wildlife (DFW), a partner in collaboration with BOR on this habitat restoration project, sent a letter to the Commission (attached as Exhibit C) confirming that the proposed actions of BOR are related to the continuing drought emergency in California and for the purpose of restoring habitat for an endangered species harmed by the drought. DFW's letter affirmed that the proposed activities are consistent with the Governor's Declaration of Emergency Proclamation No. 1-17-2014, Proclamation of a Continued State of Emergency, dated April 25, 2014, and Executive Order B-36-15, dated November 13, 2015 (Emergency Declarations), providing regulatory relief to rapidly approve the work to benefit certain species. More specifically, the Proclamation of April 25, 2014, provisions 6, 7, 8, and 19, suspend the requirements of CEQA for State actions required to protect threatened or endangered species harmed by the drought emergency.

CALENDAR ITEM NO. **C13** (CONT'D)

On the basis of BOR and DFW's recommendation and pursuant to the Commission's Comprehensive Delegation of Authority, as amended March 20, 2015, on January 20, 2016, Commission staff issued an emergency authorization to allow restoration work on the two channels intended to address the continuing drought emergency. This authorization was issued with the understanding that the lease would be formally amended at the Commission's February 9, 2016 meeting to include the two channels. Additionally, on the basis of DFW's letter and the Emergency Declarations, staff believes that CEQA is suspended for both the emergency authorization and proposed lease amendment.

PUBLIC TRUST ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

Preservation of fish habitat is water-dependent and is generally consistent with the common law public trust doctrine. California courts have held that preservation of habitat is an authorized use of public trust lands. (See, for example, *Marks v. Whitney* (1971) 6 Cal. 3d 251, 260.) The proposed activity is designed to expand and restore spawning grounds for winter-run Chinook Salmon in response to the continuing drought emergency. The proposed activities are consistent with the public trust doctrine because habitat restoration to expand the spawning potential of winter-run Chinook Salmon will help to preserve this endangered species.

The proposed amendment and the underlying lease contain conditions designed to minimize potential impacts to the public trust values while the work is conducted. Commission staff believes the work authorized under the proposed amendment will not substantially interfere with public trust needs at this time and at this location. Based on the above analysis, staff believes issuance of this amendment is consistent with the common law public trust doctrine and in the best interests of the state.

OTHER PERTINENT INFORMATION:

1. Lessee has authorization to use the upland adjoining the lease premises.
2. The two sites known as North Cypress Side Channel and Kapusta 1a, are part of a larger project; however, they require immediate action due to the low water level in the Sacramento River. BOR will submit an application for the entire project at a later date. It is anticipated that the complete proposed project will be placed on the April 5, 2016 agenda for the Commission's consideration.

CALENDAR ITEM NO. C13 (CONT'D)

3. According to DFW, the North Cypress Side Channel and Kapusta 1a are emergency projects conducted pursuant to provisions 6, 7, 8, and 19 of the Governor's April 25, 2014 Proclamation of a Continued State of Emergency.

Pursuant to provision 19, staff shall maintain on the Commission's website, a list of the approvals for which CEQA is suspended under the declared state of emergency.

4. The staff recommends that the Commission find that, pursuant to the Emergency Declarations, for purposes of this activity CEQA is suspended with regard to this proposed authorization.

Authority: Executive Department, State of California, Declaration of Emergency Proclamation No. 1-17-2014; A Proclamation of a Continued State of Emergency, dated April 25, 2014, provisions 6, 7, 8, and 19; Executive Order B-36-15, dated 11-13-2015, provisions 1 and 6.

5. This action is consistent with Strategy 1.2 of the Commission's Strategic Plan to prioritize the use of sovereign lands where appropriate for open space, wetlands, riparian habitat and habitat preservation, restoration, and enhancement, including through habitat management plans, mitigation agreements with public agencies, private parties, and other conservation efforts, consistent with applicable law.
6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. 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 project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Letter from DFW dated December 28, 2015

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the requirements of CEQA are suspended for the proposed activity pursuant to Executive Department, State of California, Declaration

CALENDAR ITEM NO. **C13** (CONT'D)

of Emergency Proclamation No. 1-17-2014; A Proclamation of a Continued State of Emergency, dated April 25, 2014, provisions 6, 7, 8, and 19; and Executive Order B-36-15, dated 11-13-2015, provisions 1 and 6.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with the public's public trust needs and values at this location, is consistent with the common law public trust doctrine, and is in the best interests of the State.

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 section 6370 et seq.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 5482.9, a General Lease – Public Agency Use, effective February 9, 2016, to delete Section 3, Upper Sacramento River Gravel Restoration Site Drawing; include the attached Exhibit A, Land Description and the attached Exhibit B, Site and Location Map (for reference purposes only); revise Section 2, Special Provisions, to address the proposed dredging activity; include two additional sites in the Sacramento River known as North Cypress Side Channel and Kapusta 1a; dredging as needed to create side channels; and creation of nearshore benches; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 5482.9

LAND DESCRIPTION

Three parcels of State owned submerged lands lying in the bed of the Sacramento River, County of Shasta, State of California, described as follows:

Parcel 1 (North Cypress)

A parcel of State owned submerged lands lying in the bed of the Sacramento River, adjacent to Lot 33 as shown on the Redbanks Subdivision for Shasta Enterprises in the N ½ of Section 6, T 31 N, R4W, MDM, filed in Volume 15 of Maps at Page 36, Records of Shasta County, State of California, described as follows:

BEGINNING at the westerly corner of Parcel 5 as shown on said map of Redbanks Subdivision, thence along the southeasterly line of said Lot 33 the following seven (7) courses:

- 1) N 33°36'45" E 148.50 feet;
- 2) N 39°58'02" E 328.97 feet;
- 3) N 57°22'24" W 22.71 feet;
- 4) N 42°14'50" E 115.47 feet;
- 5) N 23°15'00" E 62.78 feet;
- 6) N 23°15'00" E 40.00 feet;
- 7) N 48°27'29" E 40.59 feet;

Thence leaving said southeasterly line of said Lot 33 N 41°32'29" W 266.95 feet; thence S 44°51'54" W 878.35 feet; thence S 65°16'02" E 411.40 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of Low Water of the left bank of the Sacramento River.

PARCEL 2 (North Cypress)

A parcel of State owned submerged lands lying in the bed of the Sacramento River, adjacent to Lot 33 as shown on the Redbanks Subdivision for Shasta Enterprises in the N ½ of Section 6, T 31 N, R4W, MDM, filed in Volume 15 of Maps at Page 36, Records of Shasta County, State of California, described as follows:

BEGINNING at a point lying distant S 77°20'18" W 118.37 feet from the northerly corner of Lot 29, as shown on said map of Redbanks Subdivision; thence along the southerly line of said Lot 33 the following ten (10) courses:

- 1) N 77°20'18" E 118.37 feet;
- 2) S 60°32'49" E 238.17 feet;
- 3) S 74°38'29" E 50.00 feet;
- 4) N 80°36'40" E 99.00 feet;
- 5) N 23°22'54" E 73.05 feet;
- 6) N 35°14'42" E 104.72 feet;
- 7) N 42°42'23" E 86.27 feet;
- 8) N 32°00'58" E 99.76 feet;
- 9) N 18°55'51" E 91.86 feet;
- 10) N 37°56'14" E 129.48 feet to the northwesterly corner of Lot 7 as shown on said map of Redbanks Subdivision.

Thence leaving said southeasterly line of said Lot 33 N 28°33'29" W 204.88 feet; thence S 61°26'31" W 877.23 feet; thence S 28°55'08" E 184.97 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of Low Water of the left bank of the Sacramento River.

Parcel 3 – (Kapusta)

A parcel of State owned submerged lands lying in the bed of the Sacramento River, adjacent to Lot 37 as shown on the Map of the Rancho Buenaventura, approved July 18, 1856, County of Shasta, State of California, described as follows:

Commencing at the northeasterly corner of Lot 16 as shown on Unit No. 1 River Ranch Subdivision in Section 34 P.B. Reading Grant of the Rancho San Buenaventura, filed in Book 8 of Maps, Page 34, Records of Shasta County; thence S 84°03'15" E 110.00 feet to the POINT OF BEGINNING; thence S 84°03'15" E 225.00 feet; thence N 5°56'45" E 240.00 feet; thence N 84°03'15" W 225.00 feet; thence S 5°56'45" W 240.00 feet to the POINT OF BEGINNING.

The basis of bearings of this parcel is identical to that shown on Unit No. 1 River Ranch Subdivision in Section 34 P.B. Reading Grant of the Rancho San Buenaventura, filed in Book 8 of Maps, Page 34, Records of Shasta County.

EXCEPTING THEREFROM any portion lying landward of Low Water of the right bank of the Sacramento River.

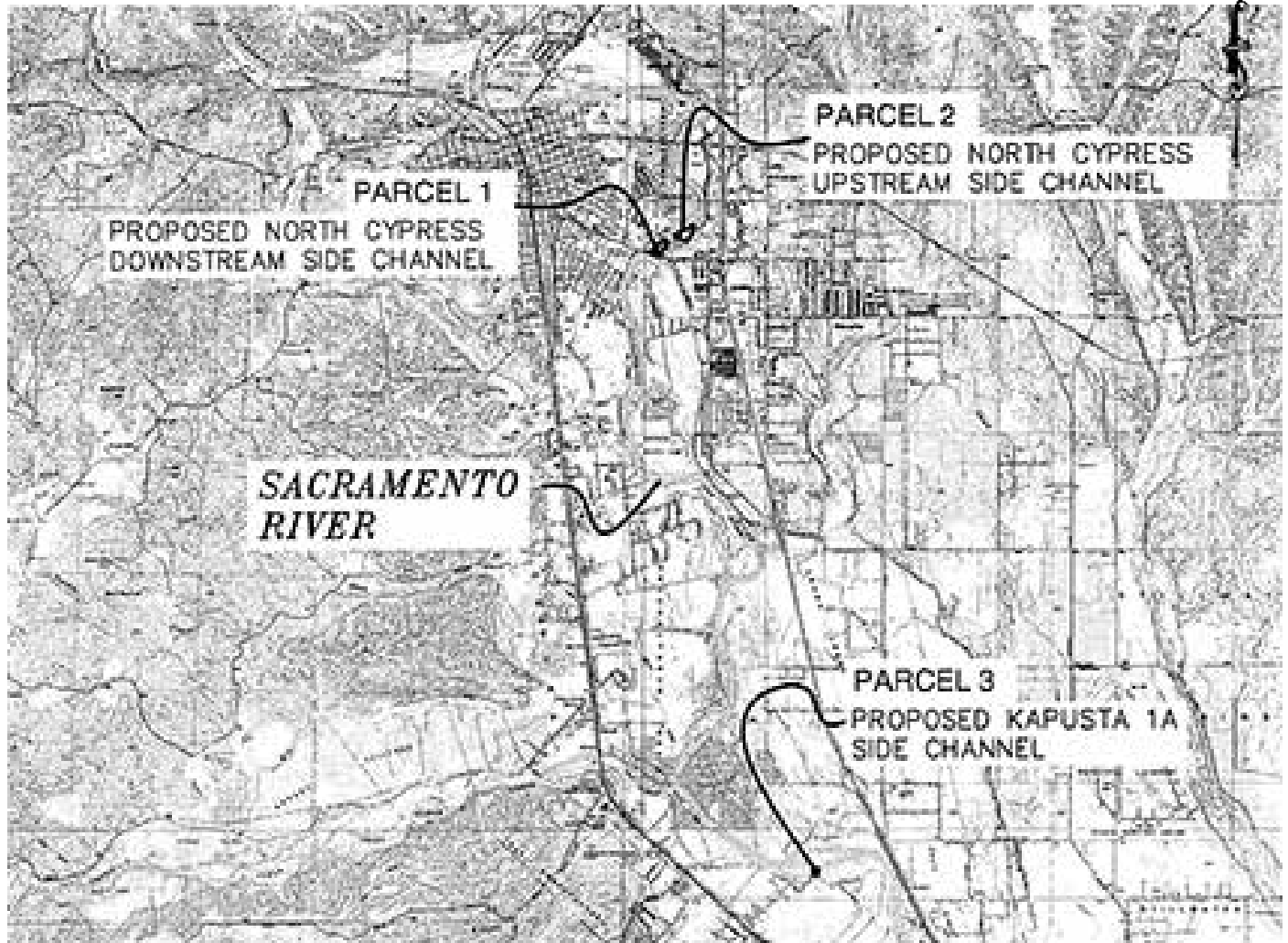
END OF DESCRIPTION

Prepared 1/13/2016 by the California State Lands Commission Boundary Unit.



NO SCALE

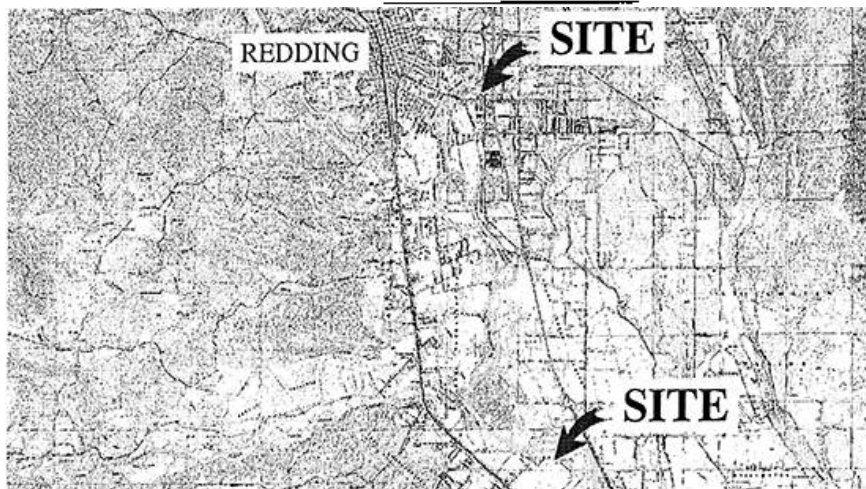
SITE



SACRAMENTO RIVER, NEAR REDDING

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5482.9
 BUREAU OF
 RECLAMATION
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SHASTA COUNTY



D/F 01/13/16

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 C

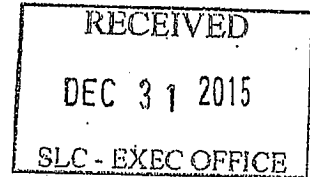


State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Fisheries Branch
830 S Street
Sacramento, CA 95811
(916) 327-8840
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 28, 2015



Ms. Jennifer Lucchesi
Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

Re: Bureau of Reclamation Upper Sacramento River Anadromous Fish Habitat
Restoration Program

Dear Ms. Lucchesi:

The California Department of Fish and Wildlife (Department) has been working over the past several years on several habitat restoration projects in collaboration with the U.S. Bureau of Reclamation. These projects are located in the Sacramento River in the vicinity of the City of Redding and are collectively under the umbrella of the Central Valley Project Improvement Act Anadromous Fish Restoration Program.

Due to the ongoing drought, a subset of these projects have been deemed to have immediate benefit to winter run Chinook salmon, a State- and Federal- listed Endangered Species. The two projects in question are the North Cypress Side Channel and Kapusta 1a projects. It is our understanding that the State Lands Commission has jurisdictional authority over these two projects and has requested a more thorough California Environmental Quality Act (CEQA) review than the project proponents have provided to your agency.

The Department has reviewed these projects and has determined that they are drought related and would provide immediate benefit to the winter run Chinook salmon in the spring of 2016. Over the last several years, the winter run Chinook salmon have been severely impacted (95 percent estimated loss of juvenile production in 2014 and 2015) by the ongoing drought due to low flows and high water temperatures in the Sacramento River. We have been working with our Federal partners to carry out actions that will assist this species and provide immediate relief due to exceptional drought conditions. The Governors Declaration of Emergency, Proclamation of Continued Emergency and Executive Orders direct the Department and other State departments to take emergency actions to benefit this critically endangered fish. Specifically the Department is treating implementation of these two projects under the

Ms. Jennifer Lucchesi
Executive Officer
December 28, 2015
Page 2

Governor's Declaration of Emergency Proclamation No. 1-17-2014: #14; Executive Proclamation of Continued State of Emergency – April 25, 2014, #'s 6, 7, 8, and 19 (CEQA Exemption); Executive Order B-36-15: #'s 1 & 6 (Continuation and expansion of CEQA exemptions for drought response projects). These directives provide us the regulatory relief to rapidly approve the work to benefit the species.

We believe that the time window to begin implementation of these two projects is urgent to provide benefit to winter-run Chinook salmon. Over the next several weeks the construction window can take advantage of low flow conditions in the Sacramento River in the vicinity of Redding. This facilitates heavy equipment work within the active channel without additional protective measures. Additionally, the Glenn-Colusa Irrigation District has offered equipment and personnel to implement these two restoration projects at no cost to State or Federal agencies. This aligns well with Federal, State, and local agencies developing partnerships to assist endangered species. Delay in implementing these two projects may eliminate the ability to take advantage of low flow conditions and Glenn Colusa Irrigation District's ability to provide equipment and labor due to other obligations.

We appreciate you and your staff's willingness to look into alternatives that may allow these two projects to proceed in the near future to benefit winter-run Chinook salmon. Should you or your staff have any questions please contact me at the above telephone number or via email at Stafford.lehr@wildlife.ca.gov.

Sincerely,



Stafford Lehr, Chief

cc: Craig Muehlberg
Acting Area Manager
Bay Delta Office
U.S. Bureau of Reclamation
801 I Street, Suite 140
Sacramento, CA 95814-2536

John Hannon, Fisheries Biologist
U.S. Bureau of Reclamation
Bay Delta Office, Science Division
801 I Street, Suite 140
Sacramento, CA 95814-2536