MINUTE ITEM

This Calendar Item No. 40. was approved as Minute Item No. 40 by the State Lands Commission by a vote of 3 to 0 at its 9.26.79 meeting.

CALENDAR ITEM

40.

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MEMORANDUM OF UNDERSTANDING BETWEEN
STATE LANDS COMMISSION AND
DEPARTMENT OF WATER RESOUCES

BACKGROUND AND PRESENT SITUATION

Pursuant to the provisions of Water Code Sections 11130, 11131, and 12931 the Commission staff and the Department of Water Resources have negotiated a Memorandum of Understanding. This Memorandum sets up the terms and conditions under which Water Resources may use State lands under the control of the Commission.

The agreement provides for a notice procedure whereby Water Resources furnishes information to the Commission staff regarding lands they wish to use. This will include a description of the proposed project, duration of use, and a description of the lands to be used. The agreement gives Commission staff the opportunity to respond and indicate if there are any conflicts between the proposed project and any current or pending uses of the same land. The Commission retains the power to lease the land thereafter for any purpose not inconsistent with the way in which Water Resources utilizes the land. The terms of the Agreement limit its application to the Central Valley Project and the State Water System.

EXHIBIT: A. Memorandum of Understanding.

IT IS RECOMMENDED THAT THE COMMISSION:

1. APPROVE THE MEMORANDUM OF UNDERSTANDING SUBSTANTIALLY IN THE FORM ON FILE WITH THE OFFICE OF THE COMMISSION.

2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT ON BEHALF OF THE COMMISSION.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
STATE LANDS COMMISSION
AND THE
DEPARTMENT OF WATER RESOURCES
FOR THE USE OF STATE LANDS
FOR FACILITIES OF
THE CENTRAL VALLEY PROJECT AND
THE STATE WATER RESOURCES DEVELOPMENT SYSTEM

The State Lands Commission (SLC) and the Department of Water Resources (DWR), in order to assure proper coordination in the process of DWR project formulation, authorization, construction and operation within the Central Valley Project (CVP) and the State Water Resources Development System (SWRDS), consider it desirable to agree upon a procedure to be followed when DWR facilities for said projects are proposed to be constructed on State lands. The parties therefore agree as follows:

I. General Understanding

Maximum coordination between SLC and DWR is necessary to achieve responsible management of the State's land and water resources.

II. Specific Objectives

SLC and DWR by this understanding will reduce potential conflicts between DWR activities in the CVP and SWRDS and other necessary uses of State lands in these areas.

III. Procedures

The following procedures will be followed by the parties to this memorandum with respect to DWR projects on State lands which are included in the scope of Water Code Sections 11130, 12931, and Public Resources Code Section 6327:

1. As provided by paragraph III, 4, below, DWR will involve SLC in the planning and project formulation process, along with representatives of other local, state, and federal agencies, within any administrative and legal constraints, in order to accomplish a total public involvement in DWR programs which affect State lands.
2. For activities undertaken pursuant to this Agreement, DWR will act as the lead agency and be responsible for coordinating all input required under NEPA or CEQA.
3. Comments prepared by SLC and other local, state, and federal agencies will be considered by DWR in the development of final plans for projects which will use State lands.
4. Except for emergency projects, DWR will submit to SLC, at least 90 days prior to use of State lands or the start of construction of a facility on State lands, a "Notice of Proposed Use of State Lands". This notice will include,

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(a) a general plan of the facility to be constructed; (b) if available, specific right of way maps and legal descriptions of State lands DWR proposes to use for the facility; (c) the proposed operational criteria for the project; and (d) the expected duration of the use of the State lands affected by the project. For emergency projects DWR will notify SLC of all emergency actions and, if feasible, such notice will be provided prior to such actions. Such notice will describe the nature of the emergency, the action to be taken, or the facility to be constructed, the State lands affected, and the expected duration of the emergency use. For the purposes of this Agreement "Emergency" is defined as an unforeseen condition or circumstance which calls for immediate action to protect life or property. It includes but is not limited to circumstances resulting from earthquake, flood, and drought.

5. SLC will review DWR's notices submitted pursuant to paragraph 4 above and within 30 days advise DWR of any known, existing, or proposed facilities which may be in conflict with DWR's planned use. SLC will also recommend to DWR any restrictions or limitations on

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DWR's use of the State land which it deems necessary for the health and safety of the public and preservation of the public trust or preservation of natural resource values and protection of the environment.

IV. Cooperation and Periodic Review

SLC and DWR agree that they will cooperate and mutually assist each other in all appropriate ways necessary to promote maximum effectiveness of the foregoing procedures. Periodically, the parties will review the procedures and consider revisions as desirable to promote the objectives identified in the memorandum.

V. Retained Leasing Power

DWR agrees that SLC may retain the authority to lease any land that is the subject of this agreement on the condition that said leasing is made after due notice to DWR and is not incompatible with the use to be made by DWR. DWR and its agents, contractors and cooperating entities may use the land as agreed but may not allow other public or private entities to use the land or facilities, described in this agreement, for purposes other than those included under Section 11130 and 12931 of the Water Code, without the consent of SLC.

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VI. Liability for Damages or Injury

DWR hereby agrees to indemnify and hold SLC harmless from liability for property damage or personal injury arising from DWR's design, construction, and operation of activities on State lands pursuant to this memorandum and from the acts of DWR's employees, agents and contractors, excepting any damage or injury caused by the negligence or willful misconduct of SLC and its employees, agents, or contractors.

Dated: _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

_____
WILLIAM NORTHROP
Executive Officer

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

_____
RONALD B. ROBIE
Director

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