

MINUTE ITEM

This Calendar Item No. 24
was approved as Minute Item
No. 24 by the State Lands
Commission by a vote of 3
to 0 at its 1-21-88
meeting.

CALENDAR ITEM

A 4, 10

24

01/21/88
PRC 7073
Martinez

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AUTHORIZE NOTIFICATION OF DEFAULT
OF HAZARD REMOVAL REQUIREMENT
UNDER MINERAL EXTRACTION LEASE NO. PRC 7073

LESSEE: Aggregate Transport Co., Inc.
P.O. Box 160086
Sacramento, California 95816

AGENT: John Grattan
Grattan/Gersick/Karp
1009 Fourteenth Street
Sacramento, California 95814

BACKGROUND INFORMATION:

On April 23, 1987, Lease PRC 7073 was issued to Aggregate Transport for two years, effective May 1, 1987. The lease was awarded pursuant to competitive bidding.

The lease bid package provided a disposal site which was environmentally approved for dumping but not offsite transfer. The bid package also stated that the bidder could use another spoils site provided it could be certified under CEQA.

The bid package called for removal of a navigational hazard located at the entrance to the docks. Removal of the hazard was to be accomplished within the first three months of the lease term that is by July 31, 1987. Determination of royalty was by the highest bid factor.

CALENDAR ITEM NO. 2.4 (CONT'D)

Aggregate Transport was the highest qualified bidder of the two bids it submitted a bid factor of 2.3. The 2.3 bid factor operates as a multiplier to the lease royalty formula and fixes royalty at 23 percent of the weighted average sales price per cubic yard. The lease has a minimum annual royalty of \$30,000 and an annual rental of \$121.

In its bid proposal Aggregate Transport indicated that it would use the spoils site identified in the bid package and that it could obtain all necessary approvals. In the alternative aggregate Transport stated that it would use a site located at Harbor Sand and Gravel, 231, 2nd Street, West Sacramento, APA #12755-01-02.

On June 29, 1987, the Lessee had not begun removal of the hazard and was reminded of the requirement to remove it by July 31, 1987. At that time, the Lessee requested a 30-day extension of the hazard removal date to allow for approval of the project by the Central Valley Regional Water Quality Control Board on August 14, 1987. The lessee anticipated at that time that all other required permits (including approval by the City of West Sacramento to spoil and transport materials through the City) would be in hand during the month of July. Staff granted the lessee's request for an extension of 30 days. The Regional Water Quality Control Board permit was issued on August 14, 1987.

By early August, the lessee had still not obtained a permit from the City of West Sacramento. The City was hesitant to issue a permit because of potential impacts associated with transporting the material from the disposal site. At the lessee's request, a letter was sent to the City on August 17, 1987, informing the Planning Department of the terms of the lease including the provision requiring removal of the navigational hazard. The City considered but did not approve the project on September 24, 1987.

CALENDAR ITEM NO. 24 (CONT'D)

Because the permit issued by the Department of Fish and Game authorizes the lessee to perform dredging only from July 1 - September 30, the lessee will not be able to dredge before next July regardless of receiving City approval. Therefore, the hazard remains in place and the lease is in default.

Additionally, the lessee has made no attempt at any time to use the alternate site identified in its bid proposal. In fact, it has now lost the right to use the site because of a lease termination to date the lessee has not secured the right to any other disposal site.

The default has occurred because of the lessee's failure to dredge the navigational hazard during the first three months of the lease term. Staff is therefore seeking authorization to notify lessee immediately that it is in default under the terms of the lease.

Upon notification, lessee has 90 days to cure the default. If lessee fails to cure the default within the 90-day period, the Commission may proceed to cancel the lease and collect damages.

AB 884:

N/A.

OTHER PERTINENT INFORMATION:

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Adm. Code 15378.

EXHIBITS:

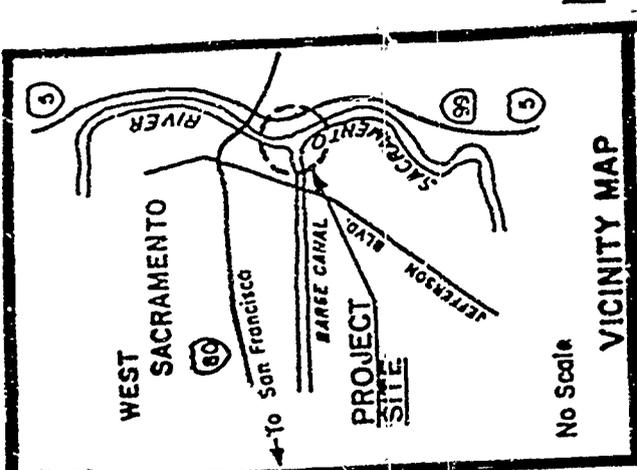
- A. Site Map.
- B. Lease.

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CALENDAR ITEM NO. 24 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER TO NOTIFY AGGREGATE TRANSPORT THAT IT HAS FAILED TO COMPLY WITH THE HAZARD REMOVAL PROVISION OF LEASE PRC 7073 AND IS IN DEFAULT OF SECTION 1, PARAGRAPH 3 OF THE LEASE, AND FURTHER, THAT FAILURE TO CURE THE DEFAULT WITHIN NINETY DAYS OF RECEIPT OF THE NOTICE MAY CAUSE CANCELLATION OF THE LEASE AND PAYMENT OF DAMAGES.



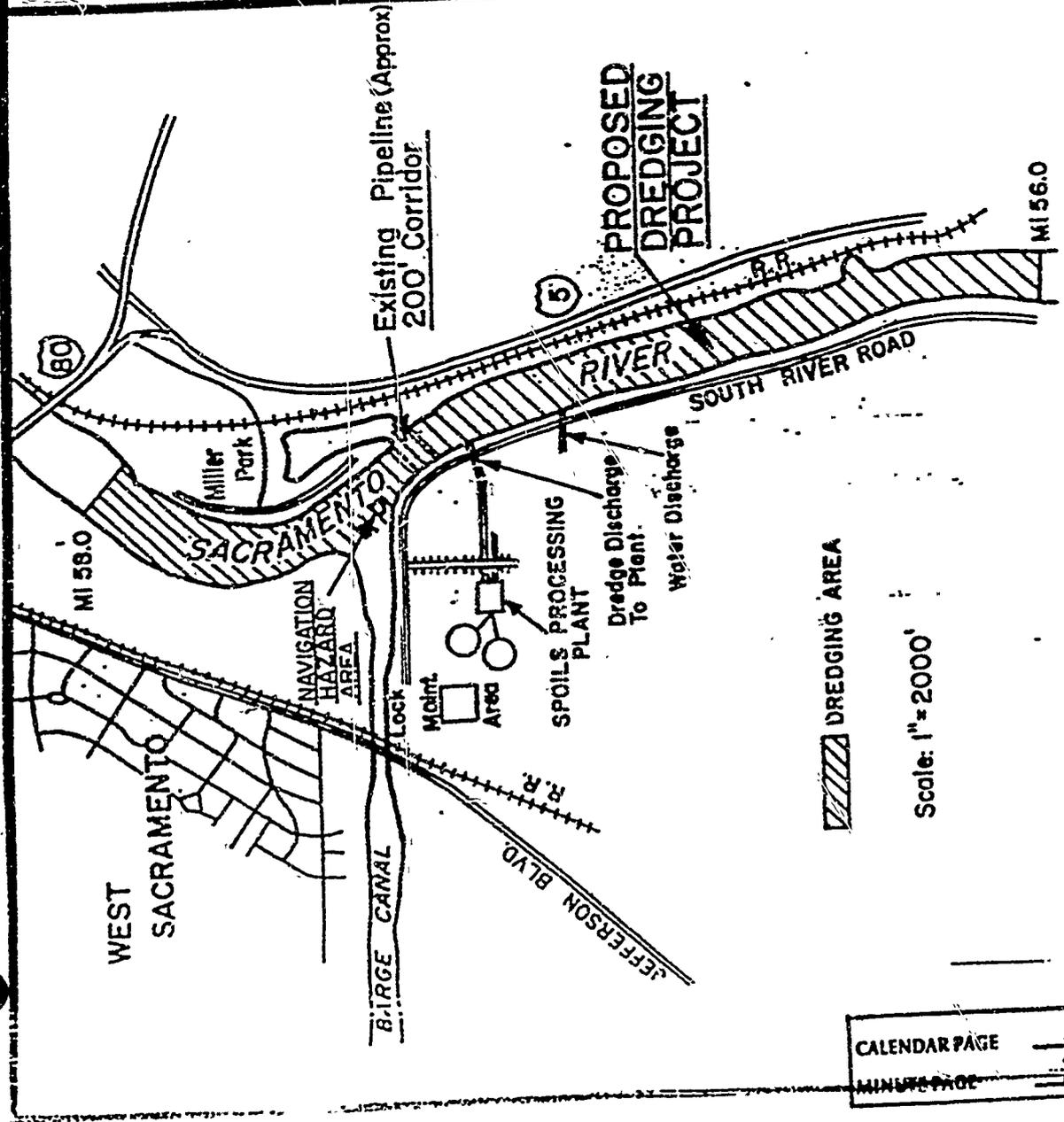
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VICINITY MAP

EXHIBIT "A"
 LEASE FOR EXTRACTION
 OF
 MINERAL RESOURCES
 W23828
 SACRAMENTO RIVER
 SACRAMENTO/YOLO
 COUNTIES



RO.12/86



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EXHIBIT B

STATE LANDS COMMISSION

State of California

Lease for Extraction of Mineral Resources

Section 1

THIS INDENTURE OF LEASE; made and entered into pursuant to Division 6 of the Public Resources Code, Statutes of California, by and between the State of California, acting by and through the State Lands Commission, sometimes hereinafter called the State, as lessor, and Aggregate Transport Co., Inc.

hereinafter called the lessee, whose mailing address is:
28 28th Street, P.O. Box 160086, Sacramento, CA 95816

W I T N E S S E T H

That the State, in consideration of the royalties and rentals provided hereunder, as well as the covenants, conditions and agreements herein contained, does hereby lease unto the lessee that certain parcel of land, hereinafter designated as the "leased lands," situate in the counties of Sacramento and Yolo, State of California, and more particularly described in Section 3 hereof.

1. This lease shall commence on the first of the month following the month in which this lease is executed by the State, which date shall be hereinafter referred to as the "effective date of this lease" and shall continue for two years, unless sooner terminated as provided below. The lessee shall have the option to renew this lease for one successive period of two years upon such reasonable terms and conditions as may be prescribed by the State, including but not limited to, modification of the royalty or rental provisions, or any other provisions in a manner which, in the opinion of the State, will adequately protect the interests of the State.

2. The lessee shall have the right to remove sand and gravel from the leased lands. No other minerals of any kind shall be removed without the further express consent of Lessor.

3. Additionally, Lessee shall remove the navigational hazard identified in Exhibit "A" as necessary to attain a navigational depth determined by the United States Army Corps of Engineers. Such hazard shall be removed during the first three months of this Lease.

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4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15025), the staff has prepared a Negative Declaration identified as EIR No. 403, State Clearinghouse No. 86072111 attached as Exhibit "B". Such Negative Declaration was prepared and circulated for public review pursuant to the provisions of CEQA. Further environmental documentation will be required to discuss use of any disposal site proposed for use by the successful bidder not identified in ND 403. Said additional environmental documentation, if required, will have to be adopted by the State Lands Commission prior to the effective date of this lease. The mining operations allowable under this lease shall be those described in said Negative Declaration and () any additional environmental documentation.

5. The bond required pursuant to paragraph 17 of Section 4 is to be in the amount of \$40,000.00.

6. This lease consists of four sections and exhibits "A" and "B" attached hereto and by reference made a part of the whole agreement.

Section 2

CONSIDERATION:

Royalties for the mineral resources produced or extracted are to be determined according to the following formula:

$$R = [0.10 W(Y)] B$$

Where R = royalty in dollars and cents paid to the State.
 B = bid factor of 2.3 ^{100%} which shall be no less than 1.0.
 W = weighted average lease quarter gross sales price, f.o.b. the dock, per cubic yard.
 Y = total lease quarter cubic yardage removed from the lease area.

The weighted average sales price (WASP) per lease quarter shall include consideration of wholesale and retail sales and is subject to approval and audit by the State. The royalty rate for a lease quarter shall be based upon the WASP for that quarter. In place sales shall not be permitted.

The minimum royalty to be paid to the State for any lease year shall be Thirty Thousand Dollars (\$30,000).

The first lease quarter shall be the first three months following the effective date of the lease and every three-month period thereafter shall be a lease quarter. A lease year shall be the first twelve (12) consecutive months following the effective date of the lease and every twelve month period thereafter shall be a lease year.

All sales and production data are subject to audit by the State. The term "dock" as used herein is defined as the berthing facility commonly used by the lessee as the base of operations for the conduct of those operations permitted under the terms of this lease.

All royalties shall be due and payable to the State as provided in Section 4, Paragraph 2 hereof.

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Section 3

Land Description

All that tide and submerged land in the bed of the Sacramento River between Mile Post 56.0 and Mile Post 58.0 in Sacramento and Yolo Counties, California.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water marks along the right and left banks of the Sacramento River.

END OF DESCRIPTION

PREPARED DECEMBER 4, 1986 BY BOUNDARY SERVICES UNIT, M. L. SHAFER, SUPERVISOR.

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Section 4

COVENANTS AND CONDITIONS

1. PURPOSE:

(a) The lessee shall have the right to remove only those mineral resource deposits from the leased lands as are specified in paragraph 2 of Section 1 hereof.

(b) The State shall have the right to go upon the leased lands for the purposes of conducting surveys, tests, or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the leased lands of any natural resources including but not limited to oil, hydrocarbon gas, other hydrocarbons, and geothermal resources, as well as all other mineral deposits listed in Public Resources Code Section 6407 (hereinafter collectively "mineral resources"), provided that such surveys, tests, or experiments do not unreasonably interfere with or endanger lessee's operations pursuant to this lease.

(c) The State shall have the right to issue additional non-exclusive exploratory rights to conduct surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the leased lands of any natural resource except those listed in paragraph 2 of Section 1; provided that operations conducted pursuant to such rights do not unreasonably interfere with or endanger lessee's operations pursuant to this lease. Further, lessee agrees to allow all persons authorized by such rights to enter upon the leased lands in order to conduct such surveys, tests or experiments.

(d) This lease is entered into with the agreement that its purposes are and its administration shall be consistent with the principle of multiple use of public lands and resources; this lease shall allow co-existence of other permits or leases of the same lands for deposits of other mineral resources under applicable laws, and the existence of this lease shall not preclude other uses of this area covered hereby. However, operations under such other permits or leases or other such uses shall not unreasonably interfere with or endanger operations under this lease, nor shall operations under this lease unreasonably interfere with the public easement for commerce, navigation, and fishing or endanger operations under any permit, lease, or other entitlement for use issued pursuant

to the provisions of any other act. Nor shall this lease be construed as superseding the authority which any State department or agency has with respect to the management, protection, and utilization of the State lands and resources under its jurisdiction. The State may prescribe in its rules and regulations those conditions it deems to be necessary for the protection of other mineral resources.

(e) This lease does not confer upon the lessee any other privilege or right not expressly given herein.

2. CONSIDERATION:

Lessee agrees to pay to the State the following royalties and rentals, without deduction, delay or offset and as is further provided herein:

(a) Lessee agrees to pay the State, annually in advance, as rent, the sum of One Hundred Twenty-One Dollars (\$121.00) per year.

(b) Operating royalties for the mineral resources produced or extracted based on the formula, rate, or in the amount specified in Section 2 hereof, which shall be due and payable the 25th day of the month following the quarter of production.

(c) If the operating royalties for the mineral resources produced and/or extracted and sold during any lease year is less than the minimum royalty set forth in Section 2, hereof, the difference between the total operating royalty paid for that year and the minimum royalty shall be determined by lessee and shall be due and payable no later than the 25th day of the month, following the end of the lease year. In the event that this lease is terminated for any reason during a lease year, the minimum royalty for such lease year shall be due and payable no later than the 25th day of the month following the date of termination. The minimum royalty for such lease year shall be prorated on the basis of a 365-day year.

(d) Lessee shall keep accurate books and records of his operations hereunder, including all minerals extracted from the leased lands, together with the cost of extraction of same and of mining, milling, and shipping thereof, and shall file with the State copies of all sales contracts for the disposition of any and all minerals extracted from the leased lands.

(e) On or before the 25th day of each lease quarter, the lessee shall deliver to the State statements in the form prescribed showing the work performed upon the leased lands value of all mineral resources extracted, produced, shipped or

sold therefrom during the preceding lease quarter. These statements shall be provided to the State each lease quarter regardless of whether any mineral resources were extracted, produced, shipped or sold or whether any work was performed on the leased lands.

3. INTEREST AND PENALTIES:

(a) It is agreed by the parties hereto that any royalties or rentals or other monetary considerations, arising under the provisions of the lease, and not paid when due as provided in this lease shall bear interest from the day following the day upon which such monetary consideration was due at the rate of one and one half (1 1/2) percent per month until the date of payment.

(b) It is agreed by the parties hereto that any royalties or rentals or other monetary considerations, arising under the provisions of the lease, and not paid when due as provided in this lease, shall be subject to a five (5) percent penalty on the amount of any such royalties, rentals, or other monetary considerations arising under the provisions of this lease.

(c) It is agreed by the parties hereto that, for the purposes of this Section, "royalties or rentals or other monetary considerations, arising under the provisions of this lease, and not paid when due" includes but is not limited to any amounts determined by the State to have been due to the State if, in the judgment of the State, an audit by the State of the accounting statement and records required by paragraphs 2(d) of Section 4 hereof, shows that inaccurate, unreasonable or inapplicable information contained or utilized in the statement resulted in the computation and payment to the State of less royalties or rentals than actually were due to the State.

4. ENVIRONMENTAL IMPACT:

The lessee hereby agrees to conduct its mining operations in accordance with, and to abide by the rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify, or minimize the environmental impact of its operations under this lease as set forth or discussed in the environmental documentation described in paragraph 4 of Section 1 hereof and on file in the office of the State Lands Commission, 1807 - 13th Street, Sacramento, California, which environmental documentation is by reference made a part hereof. Lessee shall comply with any and all modifications of equipment and plans deemed necessary by the State to achieve the criteria and objectives set forth in the environmental documentation.

5. WASTE OF RESOURCES, DAMAGE, LOSS AND LIABILITY:

Lessee shall use all reasonable precautions to prevent waste of, damage to, or loss of mineral resources and wildlife on or in the leased lands, and shall be liable to the State for any such waste, damage or loss to the extent that such waste, damage, or loss is caused by (1) the negligence of lessee, its employees, servants, agents or contractors; (2) the breach of any provision of this lease by lessee, its employees, servants, agents or contractors; or (3) the non-compliance of the lessee, its employees, servants, agents or contractors, with applicable statutes or rules and regulations of the State provided, however, that nothing herein shall diminish any other rights or remedies which the State may have in connection with any such negligence, breach or non-compliance. With respect to any other such damage or loss, lessee agrees to indemnify, save the State harmless and, at the option of the State, defend, except in matters involving the State's title, the State against any and all losses, damages, claims, demands or actions caused by, arising out of, or connected with the operations of the lessee hereunder as are more specifically provided under paragraph 18 of Section 4 hereof.

6. SUSPENSION OF OPERATIONS:

In the event of any disaster or of pollution caused in any manner or resulting from operations under this lease, lessee shall immediately suspend all operations except those which are corrective or mitigative and promptly notify staff of the State Lands Commission. Such operations shall not be resumed until adequate corrective measures have been taken and authorization for resumption of operations has been given by the State. Further, lessee shall suspend any operations, except those which are corrective or mitigative, if the State determines that there is a substantial likelihood that continued operations could endanger public health or safety or cause serious damage to property or the environment. Such operations shall not be resumed until the State determines that adequate corrective measures are feasible and have been taken to eliminate such substantial likelihood and approves resumption of operations.

7. ENTRY BY STATE:

State, or persons authorized by State, shall have the right, at all reasonable times, to go upon the leased lands for the purpose of inspecting the same, for the purpose of maintaining or repairing said premises, for the purpose of placing upon the property any usual or ordinary signs, for fire or police purposes, to protect the premises from any cause

whatever, or for purposes of examining and inspecting at all times the operations of lessee with respect to improvements, machinery, and fixtures used in connection therewith, all without any rebate of charges and without any liability on the part of the State, for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

8. NOTICES:

(a) All notices to lessee or lessor herein provided to be given shall be deemed to have been fully given when made in writing, and deposited in the United States Mail, return receipt requested, and postage prepaid, addressed as follows:

To the State: State Lands Commission
1807 - 13th Street
Sacramento, CA 95814

To the Lessee: As set forth in Section 1 hereof

The addresses to which the notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other as herein above provided.

(b) All notices to lessee herein provided to be given shall also be deemed to have been fully given if made in writing and personally served upon lessee or any officer thereof.

(c) All payments specified in this lease shall be made to the State at the address provided in paragraph 8(a) above.

9. EXAMINATION OF BOOKS:

Lessee hereby waives any and all rights and objections it may have to prevent an examination of the books and records at reasonable times of any individual, association, or corporation which has transported for, or received from lessee, any minerals extracted or produced from the leased lands. Further, lessee waives any and all rights and objections it may have to prevent an examination and inspection of the books and records at reasonable times of the lessee or of any such individual, association or corporation with respect to such individual's association's, or corporation's or to lessee's operations, improvements, machinery and fixtures used or in connection with the leased lands.

10. WAIVER OF USE OF DATA:

(a) Lessee does hereby waive any statutory or other right or objection to prevent disclosure to the State or a duly authorized employee or representative of the State of any information, reports, data, or studies of any kind, filed by lessee with any federal, State or local public agency relating to the leased lands, or any operations carried out in connection with this lease irrespective of whether such information, reports, data or studies of any kind contain sensitive or proprietary or confidential information or trade secrets. Any and all such information, reports, data, or studies of any kind filed by lessee with any federal, State or local public agency including all information filed with the State pursuant to a paragraph or section of this lease, shall be available at all times for the use of the State or its duly authorized representatives for any purpose. Notwithstanding any provisions hereof, however, any information, reports, data, or studies obtained by the State from any public agency and which are not public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of lessee or upon a determination by the State that such disclosure is in the public interest.

(b) Lessee agrees to supply to the staff of the State Lands Commission within thirty (30) days of the completion thereof, or the completion of any recorded portion thereof, all physical and factual exploration results, logs, surveys and any other data in any form resulting from operations under this lease or from any surveys, tests, or experiments conducted on the leased lands by lessee or any person or entity acting with the consent of lessee or with information or data provided by lessee. Lessee agrees to supply to the staff of the State Lands Commission within thirty (30) days of the completion thereof, or the completion of any recorded portion thereof, the results of all geological, geophysical or chemical experiments, tests, reports and studies, interpretive or factual, irrespective of whether the results of such tests, experiments, reports or studies contain sensitive or proprietary or confidential information or trade secrets. Lessee further agrees that any statutory or other rights or objections it might have to prevent disclosure of any such tests, experiments, reports or studies referred to in this paragraph 10 to the staff of the State Lands Commission are hereby waived. Notwithstanding any provisions hereof, however, all data and documents supplied by lessee pursuant to this section shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e) and may be disclosed to other persons only with the written consent of lessee or upon a determination by the State that such disclosure is in the public interest.

11. PRESERVATION OF PROPERTY, WASTE DISCHARGE:

Lessee shall carry on all work hereunder with due regard for the preservation of the property covered by this lease and with due regard to the environmental impact of its operations in accordance with the following terms and conditions:

(a) Lessee shall remove equipment and facilities within ninety (90) days after lessee has ceased making use thereof in its operations.

(b) All excavating and production operations shall be conducted in such manner as to eliminate as far as practicable, dust, noise, vibration, or noxious odors. Operating sites shall be kept neat, clean and safe.

(c) Pollution of the ocean and tidelands, rivers, lakes or other bodies of water, and all impairment of and interference with bathing, fishing, or navigation in the waters of the ocean or any bay or inlet thereof is prohibited, and no refuse of any kind from any extraction or production activities shall be permitted to be deposited on or pass into waters of the ocean, any bay or inlet thereof, rivers, lakes or other bodies of water, without specific written State authorization.

(d) No permanent filled lands, piers, platforms, or other fixed or floating structures in, on, or over any tide and submerged lands covered by this lease or otherwise available to lessee shall be permitted to be constructed, used, maintained, or operated without obtaining any and all permits required under appropriate State and federal laws, rules and regulations, or complying with all valid ordinances of cities and counties applicable to lessee's operations, or without securing the written permission of the State Lands Commission specifically authorizing the activity.

(e) Dredging within a 200-foot wide corridor surrounding the existing pipeline operated by the City of Sacramento designated in Exhibit "A" shall be prohibited from September 1, 1986 through April 30, 1987.

(f) Improvements, structures, pipelines, water developments, and other property of the State or other lessees or permittees shall be protected from damage and repaired or replaced by lessee when damaged by lessee.

(g) Access to extraction or production sites by the public shall be controlled by lessee to prevent accidents or injury to persons or property.

(h) The above are in addition to, and not to be construed as limitations upon, all other rules, regulations, restrictions, mitigation measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out pursuant to this lease.

12. EXISTING RIGHTS:

This lease is issued subject to all existing valid rights as of the date of execution hereof and such rights shall not be affected by the issuing of this lease.

13. OTHER EASEMENTS AND INTERESTS:

To the extent of the right, title and interest of the State of California in the leased lands, the State shall have the right at any time during the term of this lease, or any extension thereof, to grant to any person, upon such terms as it may determine, such easements, rights-of-way, permits, leases, or other interests, in the leased lands, including easements for tunnels or wells bored through or in the leased lands as the State may, in its discretion, determine to be necessary or appropriate, provided, however, interests which unreasonably interfere with or endanger lessee's operations shall not be granted.

14. COMPLIANCE WITH LAWS AND RULES:

Lessee shall comply with all valid laws of the United States and of the State of California and with all valid ordinances of cities and counties applicable to lessee's operations hereunder, including without limitation by reason of the specification thereof lessee's compliance with all provisions of the Public Resources Code, the Administrative Code, and the Statutes of California, the enforcement of which are not within the jurisdiction of the State Lands Commission. Lessee further agrees without limitation by reason of the specification thereof to comply with all provisions of Division 2 and Division 6 of the Public Resources Code, Statutes of California, applicable to lessee's operations hereunder, and with all rules and regulations as may from time to time be issued by the State, or by other State agencies, applicable to the lessee's operations hereunder. Lessee also agrees that in its employment practices hereunder it shall not discriminate against any person because of race, color, religion, sex, ancestry or national origin.

15. WORKMEN'S COMPENSATION INSURANCE:

Lessee shall at all times in any and all operations under this lease and in any and all work in and upon the leased lands, carry full and complete Workmen's Compensation Insurance, covering all employees.

16. TAXES:

Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State or of any political subdivision thereof or the United States of America, against any and all improvements, property or assets of lessee situate upon the leased lands or other rights of lessee arising out of the lease.

17. BOND:

Lessee shall furnish and shall thereafter maintain said bond in favor of the State of California in the sum specified in paragraph 5 of Section 1 hereof to guarantee the faithful performance of lessee of the requirements, terms and covenants and observance of the conditions of this lease, and of the provisions of the Public Resources Code and the rules and regulations of the State. Said bond shall be fully effective as of the effective date of this lease and must be approved as to its sufficiency and specific provisions by the Executive Officer of the State Lands Commission, or her designee, prior to the execution of this lease.

18. INDEMNIFICATION:

To the extent hereafter provided lessee agrees to indemnify, save harmless and, at the option of the State, defend, except in matters involving title, the State of California, its officers, agents and employees against any and all claims, losses demands, causes of action, or liability of any kind which may be asserted against or imposed upon the State of California or any of its officers, agents, or employees by any third person or entity arising out of or connected with operations hereunder, or the use by lessee or its agents, employees or contractors or the land. Without limiting the generality of the foregoing, such indemnification shall include any claim, loss, demand, cause of action or liability of any kind asserted against or imposed upon the State of California or any of its officers, agents, or employees arising out of or connected with any alleged or actual violation by lessee, its agents, employees or contractors of property or contractual rights of any third person or entity. This provision shall not be construed so as to require lessee to indemnify the State for

any alleged acts or negligence or other wrongful act of the State or any officer, agency or employee thereof, except to the extent that such negligence or other wrongful act is alleged to consist of the issuance of this lease, or the adoption and enforcement of the provisions set forth in the lease or in the rules and regulations in effect at the time of the issuance of this lease, or in any alleged failure of the State to adequately enforce any such provisions, provided further that said indemnification shall be limited as follows:

(a) That the foregoing indemnity specified in the lease and regulations is not intended to nor shall it be construed to require the lessee to defend the State's title to mineral resources and that in case of litigation involving the titles of the lessee and the State, lessee and the State will join in defending their respective interests, each bearing the cost of its own defense.

(b) For the purpose of satisfying any judgments, settlements, claims, or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that the State has no title to the land or mineral resources in the leased lands and that the owner thereof is entitled to payment for resources extracted under the lease, this indemnification will be limited to any State liability in excess of the monies received by the State in the form of royalties or other payments, as owner of the mineral resources, including any interest actually earned thereon.

At the option of the State, lessee shall procure and maintain liability, property damage or other insurance for the benefit of the State in an amount satisfactory to the State.

19. BREACH, SUSPENSION OF OPERATIONS, AND CANCELLATION:

In the event of breach by lessee for failure to comply with any of the terms or provisions of this lease, or with any of the regulations or laws applicable thereto and in force during the period of the lease, the State, by written notice, may suspend operations allowable under this lease. In the event of such a breach by lessee, the State may also, and in addition, declare a forfeiture and cancel this lease after ninety (90) days written notice and demand that lessee comply with the terms and provisions of this lease or with the laws or regulations applicable thereto. Any such written notices shall particularize the grounds for any suspension or cancellation. In the event of suspension, operations may not be resumed until the breach is cured or the State, in writing, authorizes a resumption of operations. In the event of the cancellation of this lease, lessee shall comply with the restoration, reclamation and removal conditions specified in paragraph 27 of Section 4 heretof.

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20. WAIVER OF BREACH:

The waiver by the State of any default or breach of any term, covenant or condition shall not constitute a waiver of any other default or breach whether of the same or any other term, covenant or condition, regardless of the State's knowledge of such other defaults or breaches. The subsequent acceptance of monies hereunder by the State shall not constitute a waiver of any preceding default or breach of any term, covenants or condition, other than the failure of lessee to pay the particular monies so accepted, regardless of the State's knowledge of such preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension, or renewal of the lease or revocation of any notice or other act by the State.

21. SOLVENCY:

In the event that lessee at any time during the term hereof is insolvent under any of the provisions of the Federal Bankruptcy Act, or makes a voluntary assignment of his assets for the benefit of creditors, or is adjudged a bankrupt, either upon lessee's voluntary petition in bankruptcy, or upon the involuntary petition of lessee's creditors, or any of them, or should an attachment be levied or permitted to remain for any unreasonable length of time upon or against the interest, rights, or privileges of lessee in or to any mineral resources extracted or extractable from the leased lands, then; upon election by the State, all of the interest, rights and privileges of lessee in and to all mineral resources extracted, produced and saved from the leased lands by reason of lessee's operations thereon, shall terminate upon receipt of written notice from the State advising that the State has so elected. In such event the State shall have, and lessee, by the acceptance hereof, hereby gives the State the right, option and privilege to cancel and terminate this lease and all of the terms and provisions granted hereby, and all of the rights and privileges of lessee in and to or upon the leased lands and in any to any mineral resources extracted, produced and saved from the leased lands by reason of lessee's operations thereon, and all of lessee's rights and privileges granted by this lease shall terminate immediately upon receipt of written notice from the State that the State has so exercised its option.

22. ASSIGNMENT AND SUBLETTING:

Lessee may assign or transfer this lease or any interest therein and may sublet said land or any part thereof, as provided in Public Resources Code Section 6804, to any

person, association of persons, or corporation, who at the time of such assignment, transfer or sublease possesses the qualifications required of lessees by Division 6, Part 2, Chapter 3 of the Public Resources Code, subject to the prior written consent of the State. Such written consent to an assignment, transfer, or sublease may be conditioned upon the altering, changing or amending of this lease, as is deemed to be in the best interest of the State. The consent to any transfer of any interest in this lease shall not be deemed a consent to any subsequent assignment, subletting, occupancy or use by another person. Any assignment, transfer or subletting without such consent whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee; further any such attempted transfer shall be a breach of the lease and shall at the option of the State terminate this lease. However, the above provision shall not prevent lessee from subcontracting parts of the work to be performed without State approval so long as lessee remains responsible to the State. Upon approval of any assignment, transfer or sublease, the assignee, transferee or sublessee shall be bound by the terms of this lease to the same extent as if such assignee, transferee or sublessee were the original lessee, any conditions in the assignment, transfer or sublease to the contrary notwithstanding.

23. OVERRIDING ROYALTY:

No overriding royalty involving production from this lease shall be permitted without the written authorization from the State Lands Commission.

24. SUCCESSORS:

The covenants and conditions herein contained shall, subject to the provisions of any assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

25. MODIFICATION OF LEASE:

Whenever it appears to be in the public interest, the parties hereto by mutual agreement in writing, may alter or modify the terms of this lease, or may terminate the same, with such adjustments and for such considerations as may be fair and equitable in the circumstances.

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26. QUITCLAIM:

Lessee may at any time make and file with the State a written quitclaim of all rights under this lease. Such quitclaim shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make all payments of all rentals and royalties therefor accrued and lessee will immediately and at his own expense and risk, salvage and remove all structures erected by lessee and restore the land as nearly as possible to the condition existing at the date of execution of this lease with due care to carry out all obligations imposed by this lease. No such quitclaims shall release lessee or his surety from any liability for breach of any obligation of this lease with respect to which lessee is in default at the time of the filing of such quitclaim or relinquishment.

27. SURRENDER OF PREMISES:

If lessee is not the surface owner at the time of the expiration of this lease, or sooner termination thereof, the lessee shall deliver up and surrender possession of the leased lands with all improvements, structures, and fixtures thereon in good order and condition; alternatively, and at the option of State and as specified by State, lessee, who is not the surface owner, at the expiration of this lease, or sooner termination thereof, shall deliver up and surrender possession of the leased lands after removing all or any part of the improvements, structures and fixtures and other things which have been put upon the leased lands by lessee, removing such of the same as shall be required by the State within ninety (90) days, and otherwise restore the premises and replant those areas designated by the State with due care to carry out all obligations imposed by paragraph 5 of Section 4 of this lease.

28. FORCE MAJEURE:

The obligations imposed upon lessee by the provisions of this lease may be suspended during such time as lessee is prevented from complying therewith by war, strikes, riots, acute and unusual labor or material shortages, acts of God, or by such other extreme and unusual conditions which are beyond the control of the lessee.

29. TIME OF ESSENCE:

Time is of the essence in this lease.

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30. RELATIONSHIP OF THE PARTIES:

The performing obligations arising under this lease, it is understood that this lease does not constitute, and the parties hereto do not intend it to create among the parties or their successors in interest a partnership or joint venture or the relationship of master and servant, or principal and agent.

31. SEVERABILITY:

If any provision herein is judicially determined to be invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

32. POSSESSORY INTEREST TAX:

Lessee recognizes and understands in accepting this lease that his interest created therein may be subject to a possible Possessory Interest Tax that the city or county may impose on such interest, and that such tax payment shall not reduce any rent or royalty due the Lessor hereunder and any such tax shall be the liability of and be paid by the lessee.

33. CAPTIONS:

The captions in this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

This agreement will become binding on the State only when approved by the State Lands Commission and when executed on the behalf of the Commission.

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...
...
...

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IN WITNESS WHEREOF, the parties hereto do execute this lease.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

4-24-87

Date

W. M. Thompson

W. M. THOMPSON, Chief
Extractive Development, gram

January 20, 1987

Date

LESSEE

By: K. Bell

Kay Bell, Jr.
President

Title

28 28th Street
P. O. Box 160086

Address

Sacramento, CA 95816

City and State

CORPORATE SEAL,
if corporation

0734L

FILE COPY	
APPROVED:	<u>[Signature]</u>
Section Head	<u>[Signature]</u>
Legal	<u>J.F. A</u>

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