

MINUTE ITEM
This Calendar Item No. 25
was approved as Minute item
No. 25 by the State Lands
Commission by a vote of 3
to 0 at its 7/10/89

CALENDAR ITEM

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S 37

25

07/10/89
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TITLE SETTLEMENT AGREEMENT, ACCEPTANCE OF CONTRACT AND
LICENSE, AND GENERAL LEASE - COMMERCIAL USE

APPLICANT: Yuma Associates, Ltd., a limited California
partnership
1570 Brookhaven Drive, Suite 200
Santa Ana, California 92705

BACKGROUND:

This title settlement covers State interest in a parcel of land in Imperial County near Winterhaven, approximately one-half mile north of the City of Yuma adjacent to the current bank of the Colorado River. Pursuant to law, the State holds title to the bed of the Colorado River in fee below the ordinary low water mark (OLWM), subject to the public trust, and holds public trust easements for the area between the ordinary high water mark (OHWM) and the ordinary low water mark.

The Colorado River, in the area of the subject parcel, has since 1850 been affected by numerous natural and artificial influences, including erosion, accretion, avulsion, rechannelization, and bank stabilization. Due to such influences, uncertainty exists as to the precise last natural location of the OHWM and the OLWM of the Colorado River at this location.

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CURRENT SITUATION:

I. Yuma Associates, Ltd. wishes to settle title with the State by entering into a title settlement agreement covering all State interest within its adjacent upland parcel (Subject Parcel) shown on the attached Exhibit "A", Map of Agreement.

Yuma Associates and Commission staff have negotiated a settlement, the principal terms of which are as follows:

1. Yuma Associates, Ltd. will quitclaim all of its right, title, and interest in the "River" Parcel shown on Exhibit "A". Yuma Associates will also grant to the State an easement (Access and Parking Easement) for vehicular and pedestrian and parking access appurtenant to and for the benefit of the River parcel.
2. The State will quitclaim all of its right, title, and interest by reason of its sovereignty in the Subject Parcel belonging to Yuma Associates.
3. The agreement will remove any potential public trust claims to the Subject Parcel.
4. Escrow will be opened for all necessary action to effect the agreement, including, but not limited to, (a) the State Lands Commission obtaining a contract and license from the Bureau of Reclamation for access to the easement parcel and (b) Yuma Associates obtaining a lease from the State Lands Commission for its fishing pier and boat ramp.

II. In conjunction with the Access and Parking Easement granted to the State, the United States Bureau of Reclamation is granting a non-exclusive Contract and License (Exhibit "C") for access over the Bureau's Lower Reservation Levee right-of-way to the Access and Parking Easement from Winterhaven Drive. The contract and license is for maintenance of an access road not to exceed 40 feet in width and is for a period of 50 years.

III. Applicant has constructed a fishing pier and boat-launching ramp which extends over the River Parcel adjacent to Applicant's RV park. The portions of the structures extending over the River Parcel comprise approximately 322+ square feet and would be subject to a State lease as follows:

Initial period: 25 years beginning on the date the settlement agreement is recorded.

Surety bond: \$5,000

Public liability insurance: Combined single limit coverage of \$500,000.

Consideration: \$250 per annum; five-year rent review.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 2, Div. 3; Title 14, Div. 6.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves settlements of title and boundary problems.

Authority: P.R.C. 21080.11.

APPROVALS OBTAINED:

United States Army Corps of Engineers and Department of Fish and Game.

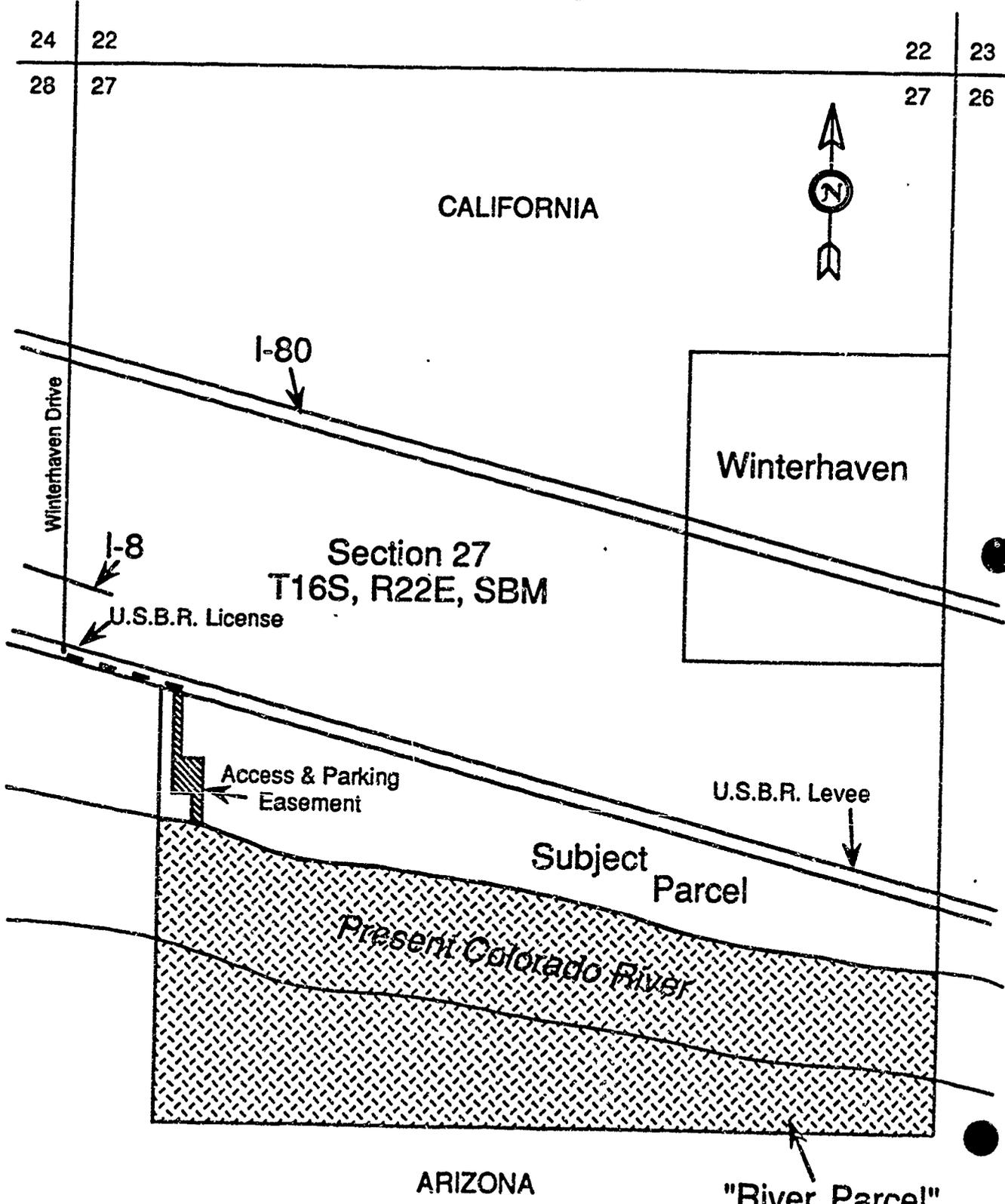
- EXHIBITS:
- A. Map of Agreement.
 - B. Location Map.
 - C. Contract and License Agreement.
 - D. Land Description of Lease Area.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA, PURSUANT TO 14 CAL. CODE REGS. 15061, AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTION AND RECORDATION, ON BEHALF OF THE COMMISSION, OF A TITLE SETTLEMENT AGREEMENT BETWEEN YUMA ASSOCIATES, LTD., A CALIFORNIA LIMITED PARTNERSHIP, AND THE STATE SUBSTANTIALLY IN THE FORM ON FILE IN THE PRINCIPAL OFFICE OF THE STATE LANDS COMMISSION.
3. AUTHORIZE ACCEPTANCE OF A CONTRACT AND LICENSE FROM THE UNITED STATES BUREAU OF RECLAMATION FOR ACCESS TO THE STATE'S EASEMENT PARCEL SUBSTANTIALLY IN THE FORM SHOWN ON EXHIBIT "C" ATTACHED.
4. AUTHORIZE ISSUANCE TO YUMA ASSOCIATES, LTD. OF A 25-YEAR GENERAL LEASE - COMMERCIAL USE, BEGINNING ON THE DATE OF RECORDATION OF THE TITLE SETTLEMENT AGREEMENT; IN CONSIDERATION OF ANNUAL RENT IN THE AMOUNT OF \$250, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE; PROVISION OF A \$5,000 SURETY BOND; PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF \$500,000; FOR MAINTENANCE OF AN EXISTING FISHING PIER AND BOAT RAMP ON THE LAND DESCRIBED ON EXHIBIT "D" ATTACHED AND BY REFERENCE MADE A PART HEREOF.
5. FIND THAT UPON THE RECORDATION OF THE SUBJECT TITLE SETTLEMENT AGREEMENT (AGREEMENT) AND THE CLOSING OF ESCROW:
 - (A) THE PORTIONS OF THE COLORADO RIVER, WITHIN THE SUBJECT PARCEL DESCRIBED IN THE AGREEMENT, HAVE BEEN IMPROVED, FILLED, AND RECLAIMED, AND HAVE THEREFORE BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND ARE NO LONGER AVAILABLE, USEFUL, OR SUSCEPTIBLE TO BEING USED FOR NAVIGATION AND FISHING, AND ARE, IN FACT, NO LONGER SUBMERGED LANDS; AND, THEREFORE, ARE FREED FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION, AND FISHERIES.

- (B) THE LANDS AND INTEREST IN LANDS ACQUIRED BY THE STATE ARE GREATER THAN, OR EQUAL IN VALUE TO, THE LANDS OR INTERESTS IN LANDS BEING CONVEYED TO YUMA ASSOCIATES, LTD.
6. AUTHORIZE THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE TERMS AND PROVISIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, PREPARATION, EXECUTION AND RECORDATION OF ALL DOCUMENTS, MAPS, DEEDS, TITLE AND ESCROW INSTRUCTIONS AND APPEARANCES IN ANY LEGAL PROCEEDINGS NECESSARY TO FINALIZE THIS AGREEMENT.

Map of the Agreement



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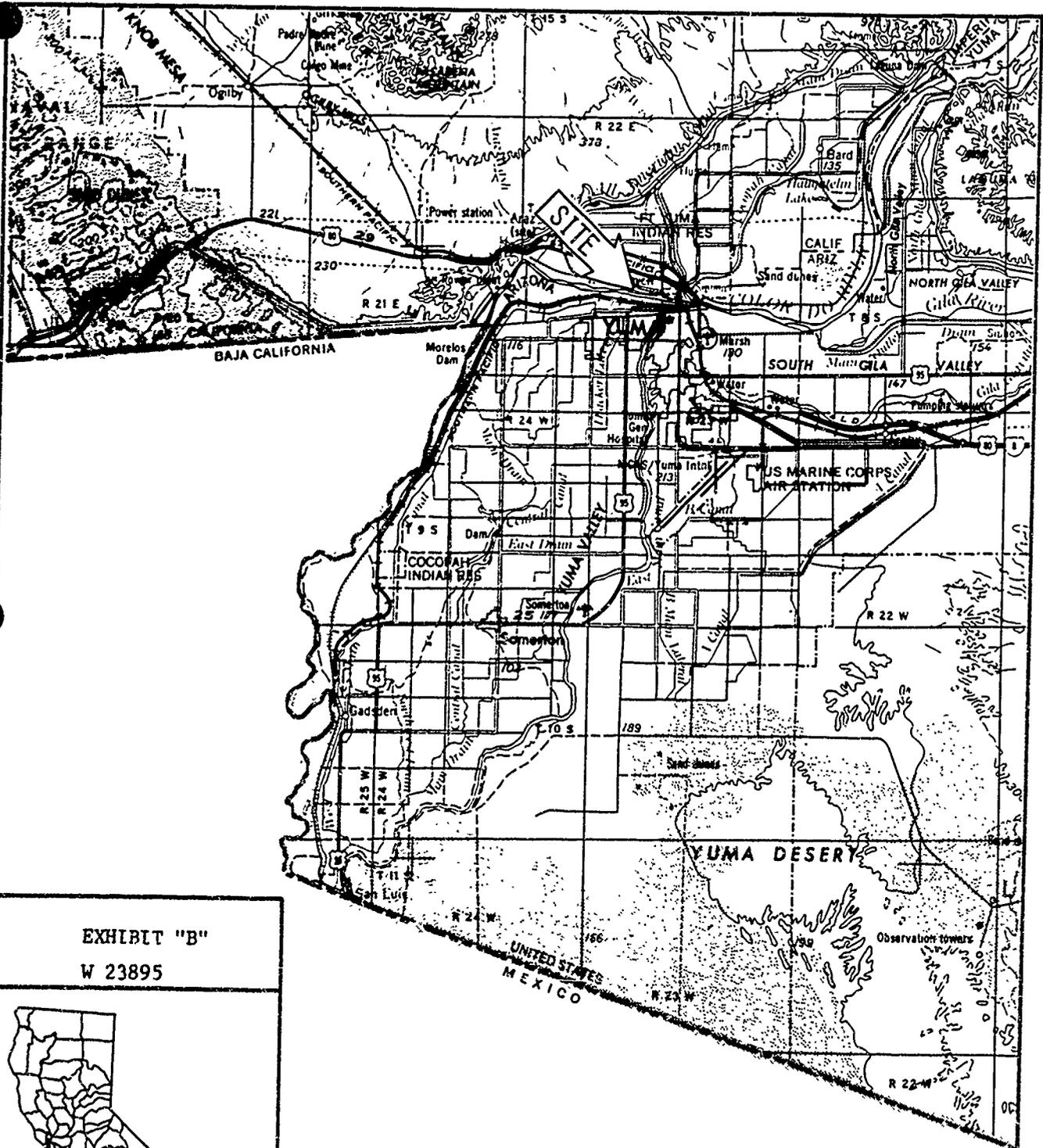


EXHIBIT "B"
 W 23895



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EXHIBIT "C"

9-07-34-L0720

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
YUMA PROJECTS OFFICE
YUMA, ARIZONA

ORIGINAL

COLORADO RIVER FRONT WORK AND LEVEE SYSTEM

Contract and License for Access Road

1. THIS CONTRACT, made as of the ___ day of _____ 19____, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Act of Congress approved August 4, 1939 (53 Stat. 1187), as amended August 18, 1950 (64 Stat. 643), between THE UNITED STATES OF AMERICA, hereinafter styled the "United States," acting for this purpose by the Regional Director, Lower Colorado Region, hereinafter referred to as "Contracting Officer" and STATE LANDS COMMISSION, State of California, hereinafter styled "Contractor";

WITNESSETH:

2. WHEREAS, the Contractor desires a right to construct, operate, and maintain an access road to a parking area and river access within and across the Lower Reservation Levee right-of-way, a portion of which was reserved to the United States under Secretarial Order dated December 20 1978; and

3. WHEREAS, the granting of such right by the United States and the exercise thereof by the Contractor under the terms and conditions herein provided will not be incompatible with the purposes for which the said right-of-way is being administered.

4. NOW, THEREFORE, in consideration of covenants herein specified and obligations assumed by the Contractor and subject to the terms and conditions hereinafter stated, the United States does hereby grant to Contractor, a nonexclusive license to operate and maintain an access road to a parking area and river access, not to exceed forty (40) feet in width, within and across the Lower Reservation Levee rights-of-way of the United States in the County of Imperial, State of California, as said right-of-way for the levee and access road are located in the following described land:

Fractional Section Twenty-Seven
(27), Township Sixteen (16) South,
Range Twenty-Two (22) East, San
Bernardino Meridian, California, at

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the location shown on drawings designated Exhibit "A" attached hereto and by this reference made a part hereof.

All construction work performed by the Contractor across said lands shall be in conformity with plans and specifications approved by the Contracting Officer and shall be conducted by Contractor at all times in a manner satisfactory to the Contracting Officer. The Contractor shall not cause or permit the surface of the ground to be altered in such a way as to affect natural drainage without the prior written approval of the Contracting Officer. Contractor further agrees to keep his improvements to a minimum so as not to disturb the natural contours of the land and that he will not prospect on, or remove materials from the land.

5. There is hereby reserved to the United States, its successors and assigns, the right to use the access road constructed, operated, and maintained by Contractor pursuant to this contract, together with the right as against the Contractor to use the aforesaid lands of the United States to construct, reconstruct, alter, operate, and maintain therein and thereon dams, dikes, canals, wasteways, laterals, ditches, telephone and telegraph lines, electrical transmission lines, roadways, and appurtenant structures without any payment by the United States, its successors or assigns, for the exercise of such rights and the Contractor agrees that if the construction, reconstruction, alteration, operation, or maintenance of any or all of such dams, dikes, canals, wasteways, laterals, ditches, telephone and telegraph lines, electrical transmission lines, roadways, or appurtenant structures, across, over, and upon such lands should be made more expensive by reason of the existence of any structures, improvements, or workings of the Contractor thereon, such additional expense may be estimated by the Secretary of the Interior whose estimate shall be final and binding upon the parties hereto. Within thirty (30) days after demand is made upon the Contractor for payment of any such sums, the Contractor will make payment thereof to the United States or its successors or assigns constructing, reconstructing, altering, operating, or maintaining such dams, dikes, canals, wasteways, laterals, ditches, telephone and telegraph lines, electrical transmission lines, roadways, appurtenant structures across, over, or upon said lands. The Contractor hereby releases the United States, its officers, agents, employees, successors, or assigns, from any liability for damage to any structures, improvements, or workings of the Contractor resulting from the construction, reconstruction, alteration, operation, or maintenance of any of the works hereinafter enumerated. Nothing in this article shall be construed as in any manner limiting other reservations in favor of the United States contained in this contract.

6. The Contractor shall at all times and at Contractor's sole expense operate and maintain the said access road and make the necessary repairs and replacements in said access road in a good and workmanlike manner and so as not to interfere with the proper use and operation of or cause injury to any property or works of the United States, its successors or assigns. The Contractor shall reimburse the United States, or its successors or assigns for all damages arising out of the utilization of the aforementioned lands and shall promptly pay any bills rendered therefore by the United States.

7. The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the Contractor's activities under this contract.

8. Subject to the right hereby reserved to the United States to cancel this contract forthwith, by written notice, upon breach by Contractor of any of the provisions hereof, the term of this contract shall be for the period of fifty (50) years from the date hereof; Provided, That the United States shall have the right to terminate such rights if Contractor is in default hereunder. If Contractor is in default hereunder, the United States shall give Contractor written notice of such default, and if Contractor has failed to remedy such default within thirty (30) days, then the United States shall have the option to terminate this license. On expiration or termination of this contract, all improvements constructed or erected by Contractor pursuant to this contract shall be and become the property of the United States.

9. This contract shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; Provided, however, That no assignment or transfer of any of the rights of the Contractor hereunder shall be made without the prior written consent of the United States.

10. (a) Any notice, demand, or request required or authorized by this contract to be given or made to or upon the United States shall be deemed properly given or made if delivered, or mailed postage prepaid, to the Project Manager, Yuma Projects Office, Bureau of Reclamation, P.O. Box D, Yuma, Arizona 85366.

(b) Any notice, demand, or request required or authorized by this contract to be given or made to or upon the Company shall be deemed properly given or made if delivered, or mailed postage prepaid, to Contractor at the address given at the foot of this contract.

(c) The designation of the person to or upon whom any notice, demand, or request is to be given or made, or the address of any such person, may be changed at anytime by notice given in the same manner as provided in this Article for other notices.

11. The Contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this contract without liability or in its discretion to require the Company to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

12. No Member of or Delegate to Congress or Resident Commissioner, and no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

13. The Contractor, during the performance of this contract agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants and employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency Contracting Officer, advising the labor

union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of this notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

14. Contractor's responsibilities and/or liability under Paragraphs 5, 6 and 7 shall be subject to the availability of appropriated funds and any limitations imposed by law.

IN WITNESS WHEREOF, the parties hereto have signed their names to this contract the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director
Lower Colorado Region
Bureau of Reclamation

By: _____

Title: _____

ATTEST:

(Seal)

ACKNOWLEDGMENT

State of Nevada)
) ss.
County of Clark)

On this ___ day of _____, 19___, before me,
_____, a Notary Public in and for said County
and State personally appeared _____,
Regional Director, Lower Colorado Region, Bureau of Reclamation,
United States Department of the Interior, known to me to be the
person described in the foregoing instrument, and acknowledged to
me that he executed the same on behalf of the United States of
America in the capacity therein stated and for the purpose
therein contained.

Notary Public in and for the County
of Clark, State of Nevada

My Commission Expires: _____

(SEAL)

ACKNOWLEDGMENT

State of _____)
County of _____) ss.

On this _____ day of _____ 19____, before me,
_____, the undersigned official, personally
appeared _____, who acknowledged himself to
be the _____, of the _____
_____, and that he, as such _____
_____, being authorized so to do, executed the
foregoing instrument for the purposes therein contained, by
signing the name of the The State of California, Acting By and
Through its _____
by himself as _____.

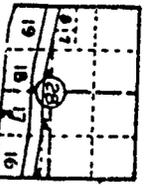
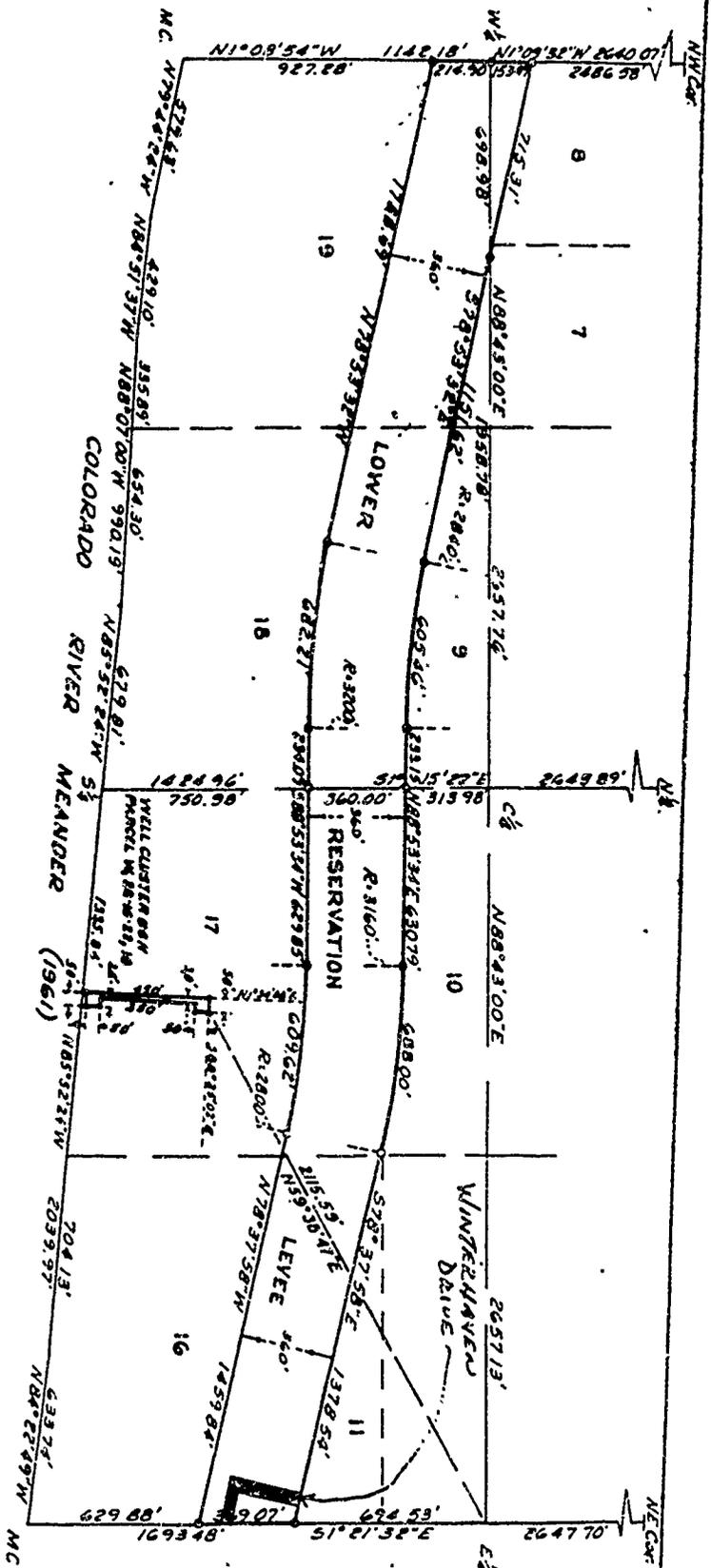
IN WITNESS WHEREOF, I hereunto set my hand and official
seal.

Notary Public in and for said County and State

My Commission Expires:

(SEAL)

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KEY LOCATION

PROPERTY OF
 UNITED STATES
 LOTS 16, 17, 18 & 19
 SECTION 28 T16S R 22E S 8M

RIGHT-OF-WAY AREA
 PARCEL L. 28-16-22-1, LEVEE 44.66 ACRES MORE OR LESS
 PARCEL W. 28-16-22-18, WELL 0.36 ACRES, MORE OR LESS.



SECTION 28 T16S R 22E S 8M

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 YUMA SOLOLECTS DIVISION
 COLORADO RIVER CONTINGENT VILLAGE SYSTEM
 RIGHT-OF-WAY
 PARCEL (ASSIGNMENT)
 DRAWN: M.L.E. SUBMITTED: 7/2/83
 TRACED: D.M.A., MICHAEL M. DILLON
 CHECKED: W.L. ALVARADO, J. J. ALVARADO
 YUMA, ARIZONA FEB 18 1983 423-503-444

EXHIBIT A

EXHIBIT "D"

LAND DESCRIPTION

W 23895

Those parcels of submerged land in the bed of the Colorado River in Section 27, T6S, R22E, SBM, Imperial County, California, lying immediately beneath the fishing pier and boat launching ramp as shown on the exhibits attached to the United States Army Corps of Engineers, Los Angeles District, Public Notice No. 88-221-DP, dated July 20, 1988, and Waterward of the Yuma Associates, Ltd. Property line as established by Title Settlement Agreement No. _____, Recorded on _____, as Document No. _____, in the office of the County Recorder of said County.

END OF DESCRIPTION

PREPARED FEBRUARY 15, 1989 BY BIU 1.

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