

CALENDAR ITEM
C30

A 25,29

10/20/05

S 14

PRC 8520

WP 8520.9

J. Smith

AMENDMENT OF LEASE

LESSEES:

James and Carolyn Moen, et al

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

AREA, LAND TYPE, AND LOCATION:

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

AUTHORIZED USE:

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

LEASE TERM:

Three years, eight months, beginning April 1, 2004, and ending December 31, 2007.

CONSIDERATION:

The public health and safety.

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PROPOSED AMENDMENT:

Approve the work plans submitted by Calaveras Materials, Inc., (Calaveras) to remove and/or remediate the River crossings and restore the lease premises. All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. Lessees own and have the right to use the uplands adjoining the lease premises.
2. At its meeting on April 5, 2004, the Commission authorized the issuance of Lease No. PRC 8520.9 to James and Carolyn Moen (Moens) and Calaveras, as co-Lessees (Lessees), for maintenance of existing crossing structures on the San Joaquin River (River). Calaveras is the lessee on property owned by the Moens in Madera County and successor to a gravel mining operation for which the River crossings were constructed. Active extractive mining operations have ceased on the Moen property, and Calaveras is phasing out operations under its reclamation plan with Madera County.

The Lease requires the Lessees to submit a plan to remove the River crossing structures and remediate the sites pursuant to Section 2, paragraph 4. The project described in the plan is subject to compliance with all applicable laws, rules and regulations, including the preparation by the Commission, at Lessees' expense, of the required environmental documentation under the provisions of the CEQA and subsequent authorization by the Commission. The Lease also requires the Lessees to enter into an agreement to provide reimbursement to the Commission for costs incurred to complete the CEQA process and direct expenses in assuring compliance with an approved work plan.

The Commission additionally approved an Agreement between the Moens, Calaveras, the San Joaquin River Conservancy, and the Commission, which would, among other things, provide the conditions for carrying out a remediation or removal project involving the existing River crossings. As a result of a number of drafting modifications, Commission staff believed a new authorization of the modified Agreement was appropriate.

On March 10, 2005, the San Joaquin River Conservancy Board agreed to the acquisition of the Moen's property, subject to the modified Agreement,

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which provides for the amount of \$500,000 to be withheld (holdback funds) from the purchase price as surety for completion of the work plan. Any and all holdback funds remaining at the completion of the work plan are to be returned to the Moens.

At its meeting on April 26, 2005, the Commission authorized: 1) the approval of a Modified Purchase Money Holdback Agreement; 2) amendment of the Lease to include the Moen children as co-Lessees; 3) modification of certain provisions of the Lease; and (4) extension of the lease expiration date to December 31, 2007.

3. As required in the Lease, the Lessees have submitted work plans for removal and/or remediation of the River crossing structures. All of the non-sedimentary material will be transported offsite to a building materials recycling facility or a licensed metal recycling facility. The project includes:

SOUTHERN TRESTLE BRIDGE

- a. Removal of the wood deck, bridge frame, siding and support pilings. In the event the support pilings cannot be completely removed, the pilings will be cut five feet below the mudline; and
- b. Removal of concrete riprap in and along the riverbank.

LAND BRIDGE

Option 1

- a. Removal of the two existing 96-inch culverts;
- b. Regrading the southern land bridge to the elevation of the existing River channel, which will protect existing habitat and allow some water to flow over the land bridge during periods of high flow;
- c. Removal of all asphalt and concrete rubble; and
- d. Removal of the culvert and fill material in the north channel of the River; or

Option 2

- a. Removal of the two existing 96-inch culverts;
- b. Regrading the southern land bridge to the elevation of the existing River channel, which will protect existing habitat and allow some water to flow over the land bridge during periods of high flow;

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- c. Removal of all asphalt and concrete rubble;
- d. Removal of the existing culvert and fill material in the north channel of the River, placement of one of the 96-inch culverts removed from the southern land bridge onto the bed of the northern River channel; and
- e. Regrading the northern land bridge over the culvert and the north channel.

Option 2 would allow for increased water flow and also would provide the San Joaquin River Conservancy (Conservancy) with access to its adjacent property. This option would be implemented if the Conservancy agrees to maintain this access pursuant to a lease that would need to be authorized by the Commission in the future.

NORTHERN TRESTLE BRIDGE

- a. Placement of fill material (native sand and gravel) in the River channel to provide a work pad for access to the eastern half of the northern trestle bridge;
 - b. Removal of the deck support, frame, side panels and support pilings. In the event the support pilings cannot be completely removed, the pilings will be cut five feet below the mudline;
 - c. Removal of concrete rip rap in and along the riverbank; and
 - d. Removal of the fill material placed in the River channel.
4. The proposed Project incorporates procedures and methodologies that will avoid or reduce potential environmental impacts. In addition, several federal and State agencies have established that if activities are conducted in the subject reach of the San Joaquin River during specified time periods and employ specified methodologies, the impacts of such activities to natural resources will be "minor" or "insignificant". The relevant agencies and their Guidelines or conditions are discussed below.

U. S. Army Corps of Engineers (Corps)

A federal Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers will ensure that the Proposed Project complies with applicable provisions of the CWA and will therefore minimize potential impacts to waters of the U.S. For example, restoration of areas of

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temporary construction access into waters of the U.S. is incorporated into the Proposed Project. Also inherent in the receipt of the Corps permit is conformance with environmental conditions, e.g., work within the San Joaquin River will occur during low flow conditions, specified by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service.

U.S. Fish and Wildlife Service (USFWS)

The proposed Project incorporates provisions of Conservation Guidelines for the Valley Elderberry Longhorn Beetle (VELB) (Revised July 19, 1999) that have been issued by the USFWS. The Guidelines assist Federal agencies and non-federal project applicants that need incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit in developing measures to avoid and minimize adverse effects on the VELB.

One elderberry shrub that can potentially support the VELB is located within the footprint of the proposed Project. Nearly all of the project activities will occur outside the 100-foot buffer, which is the area of complete avoidance as established by the USFWS Guidelines. Work to remove the two 96-inch culverts will encroach into the 100-foot buffer; however, the proposed Project provides for a 35-foot protection buffer from the shrub and its associated riparian habitat. The project would also include implementing other required measures contained in the USFWS Guidelines, including fencing to avoid the shrub and associated habitat, conducting worker awareness training for the VELB, and biological monitoring during all work activities within the 100-foot buffer of the elderberry shrub.

State Department of Fish and Game (DFG)

A Streambed Alteration Agreement (SAA) [Fish & Game Code section 1601 et seq.] will apply to the proposed Project. The incorporation of the conditions of the SAA within the proposed Project, consistent with applicable provisions of law, including, but not limited to, the Fish & Game Code, will minimize or avoid potential impacts to biological resources within the area affected by Project activities.

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Regional Water Quality Control Board (Water Board)

Potential impacts to water quality will be minimized or avoided through the incorporation of best management practices into the Proposed Project that will be employed during construction activities. Further a federal Clean Water Act (CWA) Section 401 "certification" obtained from the Regional Water Quality Control will ensure that the Proposed Project complies with applicable provisions of the CWA that protect water quality.

5. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification and that significant environmental values that were originally identified are either no longer there, that such values are not within the project site or will not be affected by the proposed project.

APPROVALS REQUIRED:

U.S. Army Corps of Engineers; Regional Water Quality Control Board; and the California Department of Fish and Game

EXHIBITS:

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

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

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CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b)(3).

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY WILL INVOLVE LANDS IDENTIFIED AS POSSESSING SIGNIFICANT ENVIRONMENTAL VALUES PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370 ET SEQ.

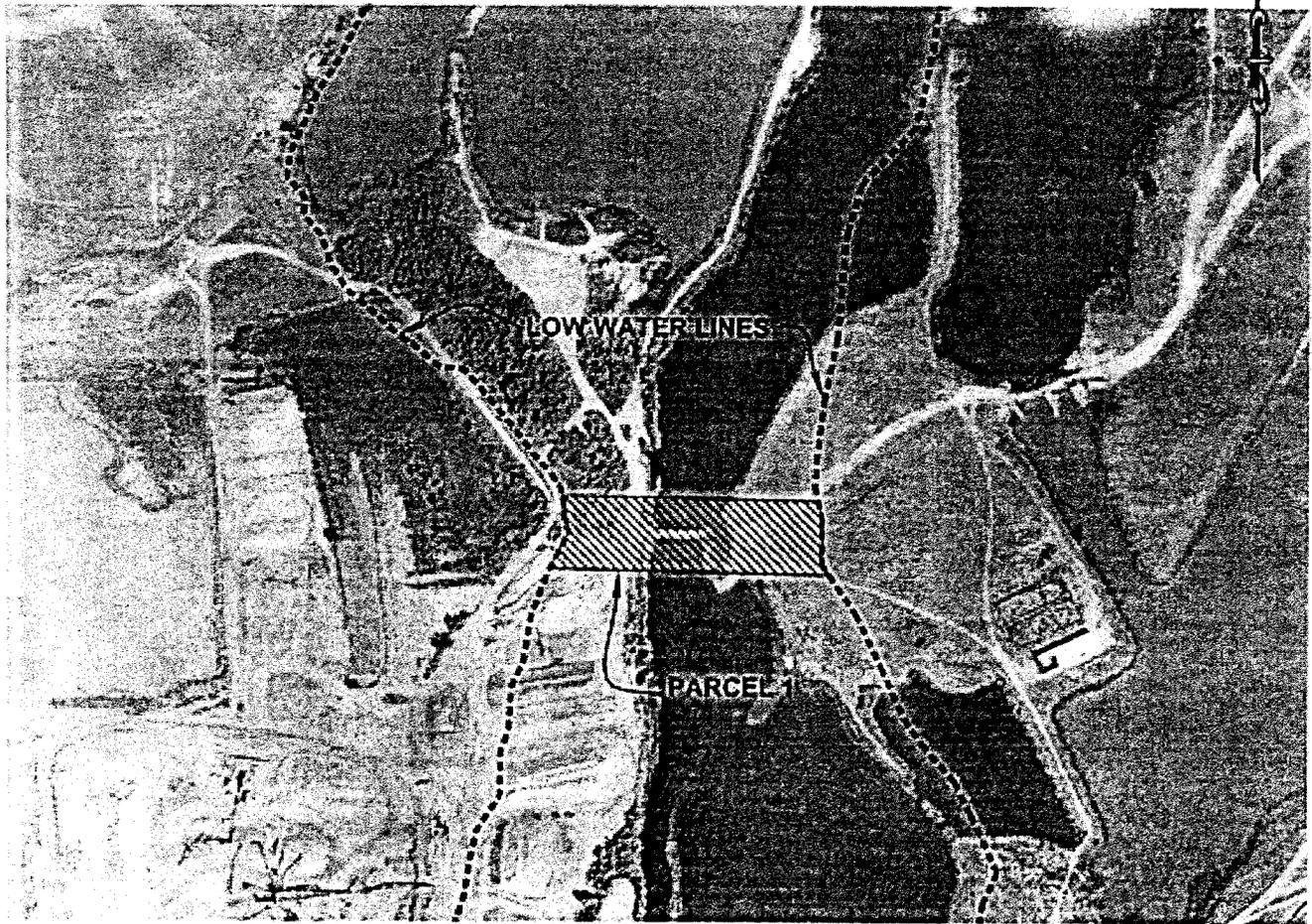
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 8520.9, A GENERAL LEASE - RIGHT OF WAY USE, OF LANDS DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE NOVEMBER 1, 2005, TO APPROVE THE WORK PLANS FOR REMOVAL AND/OR REMEDIATION OF RIVER CROSSINGS AND RESTORATION OF LEASE PREMISES; ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

NO SCALE

SITE



**CALAVERAS MATERIALS INC.
SAN JOAQUIN RIVER CROSSINGS**

NO SCALE

LOCATION

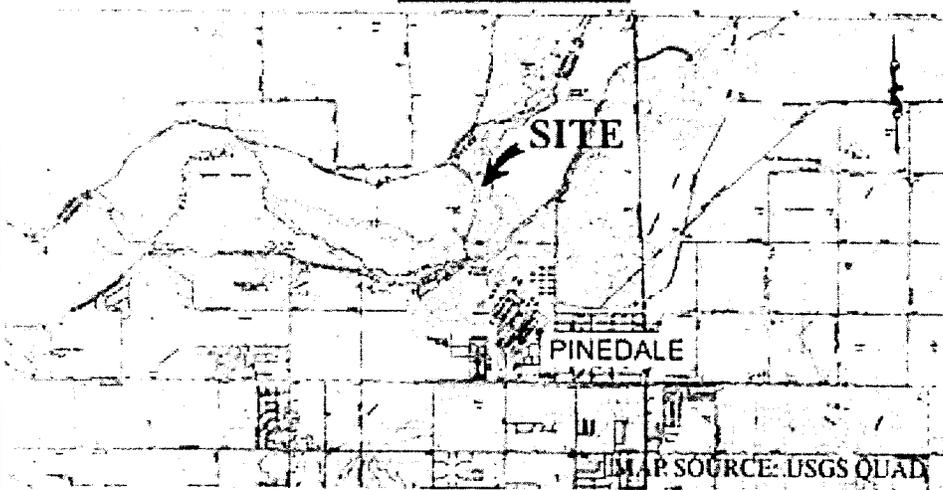


Exhibit A

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GENERAL LEASE
RIGHT OF WAY USE
FRESNO/MADERA CO.



This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties, and is not intended to be, nor shall it be construed as a waiver or limitation of any State interest in the subject or any other property.

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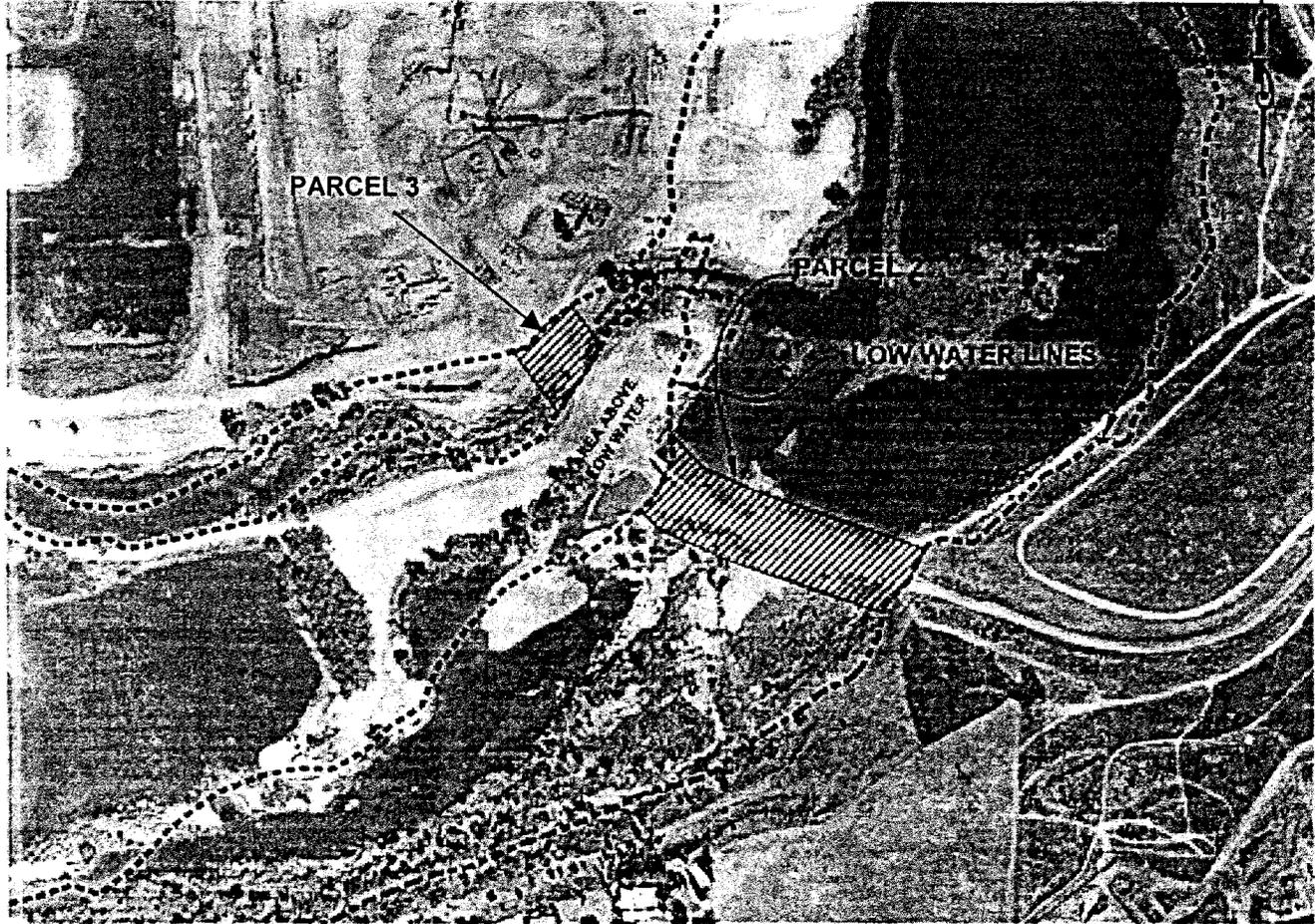
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NO SCALE

SITE



CALAVERAS MATERIALS INC.
SAN JOAQUIN RIVER CROSSINGS

NO SCALE

LOCATION

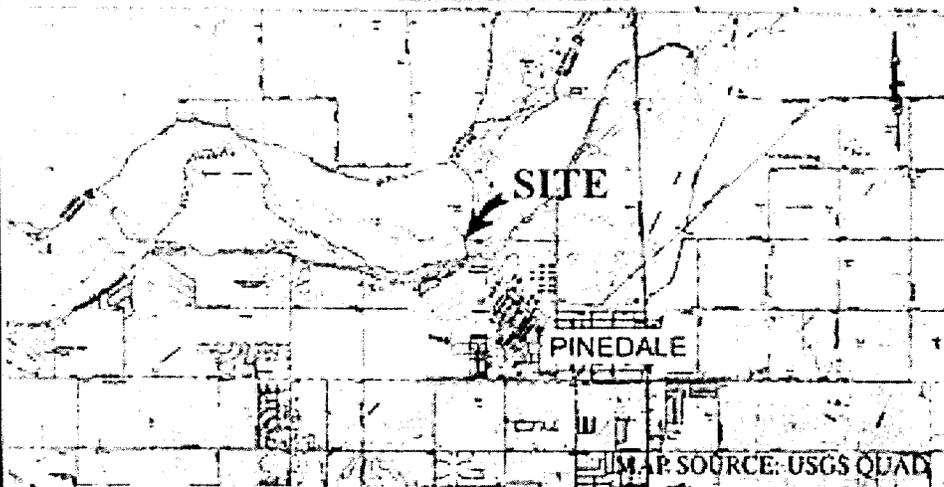


Exhibit A

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GENERAL LEASE
RIGHT OF WAY USE
FRESNO/MADERA CO.



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Exhibit B

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LAND DESCRIPTION

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

Parcel 1 – Main Channel (Upper Crossing)

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

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

Parcel 2 – Main Channel (Lower Crossing)

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

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

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Parcel 3 – Secondary Channel (Lower Crossing)

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

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

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

END OF DESCRIPTION

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