**CALENDAR ITEM**

# C59

A 34 05/24/12
W 26537
S 18 S. Paschall

## GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

**APPLICANTS**:

Kenneth D. Wheat and Edith J. Wheat, as Co-Trustees of The Wheat Family Trust, U/A Dated February 21, 2011

**AREA, LAND TYPE, AND LOCATION**:

Sovereign land located in the Colorado River, adjacent to 1174 Beach Drive, city of Needles, San Bernardino County.

**AUTHORIZED USE**:

Use and maintenance of existing rock stairs with railing and riprap bankline located on State sovereign land.

**LEASE TERM**:

10 years, beginning May 24, 2012.

**CONSIDERATION**:

**Rock Stairs**: Annual rent in the amount of $50, with the State reserving the right to fix a different rent periodically during the term of the lease, as provided in the lease.

**Riprap Bankline:** Public use and benefit, with the State reserving the right to set a monetary consideration if it is determined to be in the best interest of the State.

**SPECIFIC LEASE PROVISIONS**:

**Insurance**: Combined single-limit liability coverage of not less than $1,000,000.

**Other**:

1. Applicants acknowledge that the Public Access Easement shall remain open to the public and that no structures or improvements shall be erected and no personal property placed so as to obstruct or prevent public access in and along the Easement. Such improvements include, but are not limited to, fences, walls, railings,

or landscaping. Applicants further acknowledge that they shall not place signs or advocate in any other manner to prevent or discourage public use of the Public Access Easement.

2. Lessees shall not have the right to exclude the public from the use of the stairs, install any structures to prevent public use of the stairs, nor post signage or advocate in any manner against public use of the stairs.

**OTHER PERTINENT INFORMATION:**

1. Applicants own the upland adjoining the lease premises.

2. The State of California had its fee ownership of the sovereign land located in the Colorado River at this location confirmed in 1991 as a result of a Boundary Line Agreement and Compromise Settlement entered into between the Commission and Kahala Needles Partners, Ltd., a Nevada Limited Partnership, recorded as AD 134 dated January 1, 1991 and recorded on August 11, 1992, document No. 92-333250, Official Records, San Bernardino County, California. Projects, including new development or maintenance of existing facilities, extending waterward of the Ordinary High Water Mark (OHWM) fixed by AD 134 require obtaining a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicants' upland property is located along the Colorado River adjacent to the fixed OHWM.

3. Pursuant to AD 134, the State of California was granted a perpetual public pedestrian access easement running parallel to the fixed OHWM. The easement is intended to provide public access to and along the bank of the Colorado River. The easement affects lots 1-40 of the Rio Buena Vista residential subdivision, one of which is the Applicants' property. Public access to the easement is from the northern or southern end of the subdivision, or from the Colorado River.

4. The United States Department of the Interior, Bureau of Reclamation (Reclamation), Yuma Area Office conducted a review by boat of the bankline on March 27, 2002 and also conducted a site visit on April 10, 2002. The inspection revealed that the bankline had been cleared of vegetation and that the federally constructed riprap and jetties were undisturbed and in good condition. By letter dated April 23, 2002, Reclamation stated its ability to place additional riprap on the bankline at this location was compromised due to the pending development of the upland residences. Consequently, Reclamation would not provide additional riprap to the bankline at this location in the future. Reclamation

decreed that the upland homeowner would be responsible for maintaining protection of their own banklines in the future, subject to the homeowners seeking approval and permitting of their riprap or bankline construction work from the United States Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899.

5. The riprap bankline mutually benefits both the public and the Applicants, and will be maintained by the Applicants at no cost to the public.

6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

   Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

A**.** Land Description
B**.** Site and Location Map

**RECOMMENDED ACTION**:
It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize Issuance of a General Lease – Recreational and Protective Structure Use to Kenneth D. Wheat and Edith J. Wheat, as Co-Trustees of The Wheat Family Trust, U/A Dated February 21, 2011, beginning May 24, 2012, for a term of 10 years, for use and maintenance of existing rock stairs with railing and riprap bankline located on sovereign land, as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the rock stairs to be $50 per year; consideration for the riprap bankline to be the public use and benefit, with the State reserving the right to set a monetary consideration if it is determined to be in the best interest of the State; combined single-limit liability coverage of not less than $1,000,000

## EXHIBIT A

**W 26537**

## LAND DESCRIPTION

A parcel of State owned sovereign land situate in the bed of the Colorado River, lying adjacent to Swamp and Overflow Survey 2168, patented June 12, 1891, County of San Bernardino, State of California, more particularly described as follows:

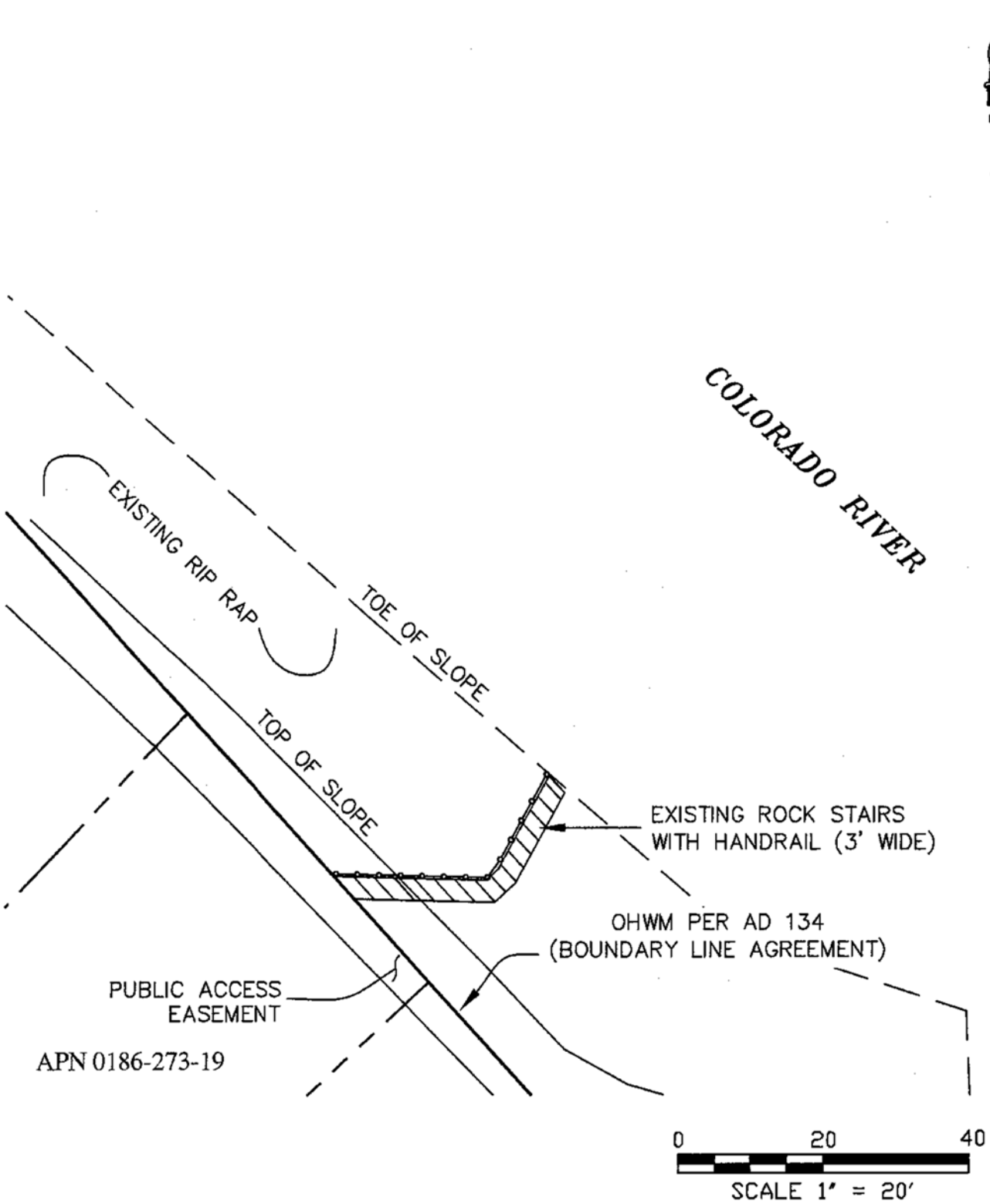
> All those lands underlying an existing set of rock stairs, and rip rap lying adjacent to that parcel described in Exhibit A of Grant Deed recorded March 14, 2011 as Document Number 2011-0103949 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark as described in Exhibit A of Boundary Line Agreement recorded August 11, 1992 as document Number 92-333250 in Official Records of said County.

Accompanying plat is hereby made part of this description.

## END OF DESCRIPTION

Prepared 4/25/2012 by the California State Lands Commission Boundary Unit.




# EXHIBIT A

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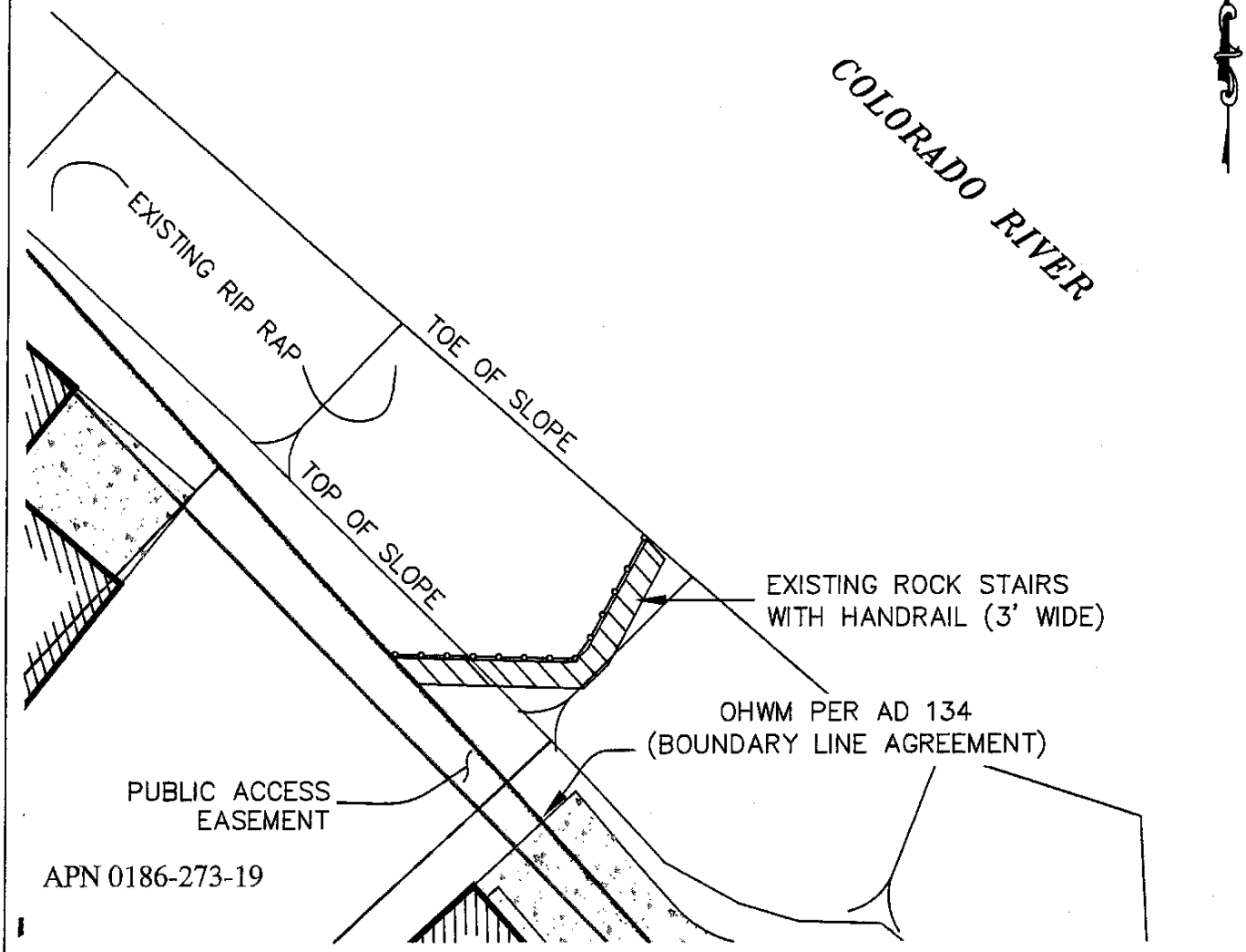
DJF 04/25/2012

| | |
|---|---|
| LAND DESCRIPTION PLAT<br>W 26537, WHEAT<br>SAN BERNARDINO COUNTY | CALIFORNIA STATE<br>LANDS COMMISSION |

NO SCALE

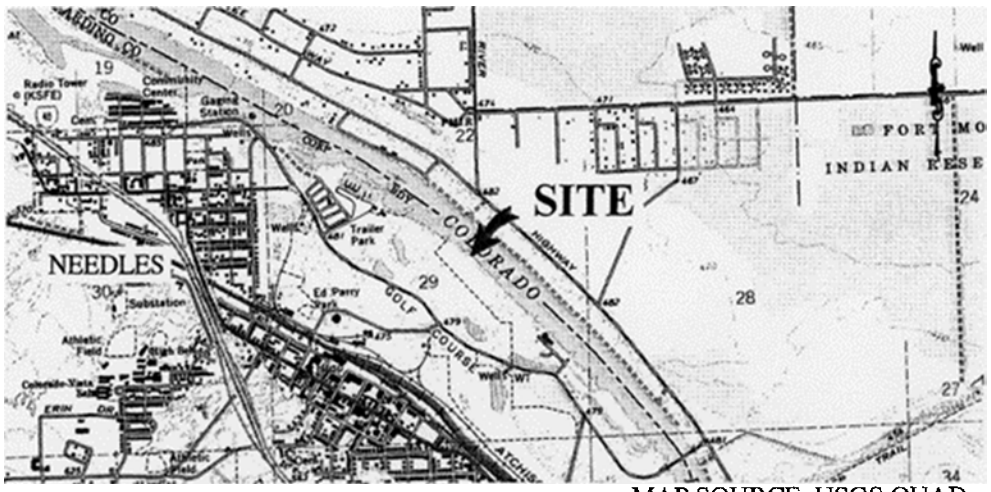
# SITE




1174 BEACH DRIVE, NEEDLES

NO SCALE

# LOCATION




MAP SOURCE: USGS QUAD

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

# Exhibit B

W 26537
WHEAT
APN 0186-273-19
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SAN BERNARDINO COUNTY

DJF 04/24/2012