CALENDAR ITEM

C51

A 21 06/21/13
W 26647
S 12 R. Boggiano

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:
United States Fish and Wildlife Service

AREA, LAND TYPE, AND LOCATION:
Sovereign land in the Merced River, adjacent to Assessor's Parcel Numbers 043-020-023 and 043-050-015, near the town of Snelling, Merced County

AUTHORIZED USE:
Restoration and rehabilitation of the bed of the Merced River and floodplain to improve aquatic habitat and provide flood management; temporary installation of warning buoys; and continued use and maintenance of an existing diversion facility not previously authorized by the Commission.

LEASE TERM:
20 years, beginning June 21, 2013.

CONSIDERATION:
The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:
At all times while construction activities are taking place in the Merced River, Lessee shall install warning signs and buoys, both upstream and downstream of the construction site, to provide notice to the public that construction activities are taking place and to exercise caution.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the upland adjoining the lease premises.

2. The project site is located at Henderson Park, which has frontage on approximately 2,900-feet of the lower Merced River approximately three miles downstream of Crocker-Huffman Dam, and about .75 mile upstream

of the town Snelling. The overall vision of the Henderson Park Project is to restore habitat for salmonid and native fish species, provide open space and flood management, provide recreational opportunities, improve fish passage and reduce channel maintenance. The project is a collaborative effort by Merced County, the United States Fish and Wildlife Service (USFWS), the Anadromous Fish Restoration Program (AFRP), Cramer Fish Sciences, and local stakeholders and incorporates multiple strategies to meet the primary goals of Merced County strategic planning and the USFWS AFRP.

3. Project activities to occur within the lease area consist of re-grading and rehabilitating 15 acres of dredger tailings on the historic floodplain and 4,100 linear feet of salmonid habitat in the Merced River, and the construction of a non-motorized water craft launch site. Gravel for the enhancement project will be screened from Merced County land containing dredger mining tailings adjacent to the Merced River. A temporary transportable gravel processing plant will be established in the project site where dredger tailing material will be processed and sorted, and will be removed following the restoration work. Smooth, uncrushed river rock will be transported and staged onsite. Gravel will be deposited in-stream and manipulated by rubber-tired front end loaders. This equipment will travel from the staging area to the enhancement site using private roads and easement areas associated with the restoration site. To mitigate for negative effects on andramous salmonids, in-steam gravel placement activities will take place during the period from July 15 to October 15, outside of the salmon migration season. Construction will require approximately four to six weeks annually, with in-stream construction work requiring 10 to 20 days annually. After floodplain grading and gravel augmentation activities, the disturbed areas will be revegetated with native grasses.

4. The project site contains an existing diversion facility located at a geographic constriction in the channel that limits the flow of water. The diversion facility is used to rejoin the two channels as well as irrigate three ranches from March through October each year. Improvements to the diversion facility will be performed as part of the project to restore the facility to working condition and to prevent fish from entering the diversion ditch.

5. A Mitigated Negative Declaration, State Clearinghouse No. 2012081066, was prepared by Merced County and adopted on October 4, 2012, for this project. The California State Lands Commission staff has reviewed such document.

6. A Mitigation Monitoring Program was adopted by Merced County.

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 California Environmental Quality Act (CEQA) review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers, Central Valley Flood Protection Board, California Department of Fish and Wildlife

EXHIBITS:

A. Land Description
B. Site and Location Map
C. Mitigation Monitoring Program

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2012081066, and a Mitigation Monitoring Program were prepared by Merced County and adopted on October 4, 2012 for this Project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.

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 – Public Agency Use to the United States Fish and Wildlife Service beginning June 21, 2013, for a term of 20 years, for the restoration and rehabilitation of the bed of the Merced River and floodplain to improve aquatic habitat and provide flood management;

temporary installation of warning buoys; and continued use and maintenance of an existing diversion facility not previously authorized by the Commission as described on Exhibit A attached and by this reference made a part hereof; consideration to be the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

EXHIBIT A

W 26647

LAND DESCRIPTION

A parcel of submerged land situate in the bed of the Merced River, lying adjacent to Section 10, Township 5 South, Range 14 East, Mount Diablo Meridian as shown on Official U.S. Government Plat approved March 31, 1855 and lying adjacent to that parcel as described in Indenture, recorded July 20, 1950 in Volume 984 Official Records at Page 335, County of Merced, State of California and more particularly described as follows:

> Said parcel bounded on the east by the southerly prolongation of the east line of that parcel described in Indenture, recorded July 20, 1950 in Volume 984 Official Records at Page 335 in Official Records of said County; bounded on the north by the westerly prolongation of the north line of Lot 1 of Section 10, Township 5 South, Range 14 East, Mount Diablo Meridian as shown on Official U.S. Government Plat approved March 31, 1855; bounded on the northeast by the low water mark of the right bank of the Merced River; bounded on the southwest by the low water mark of the left bank of said river.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the Merced River.

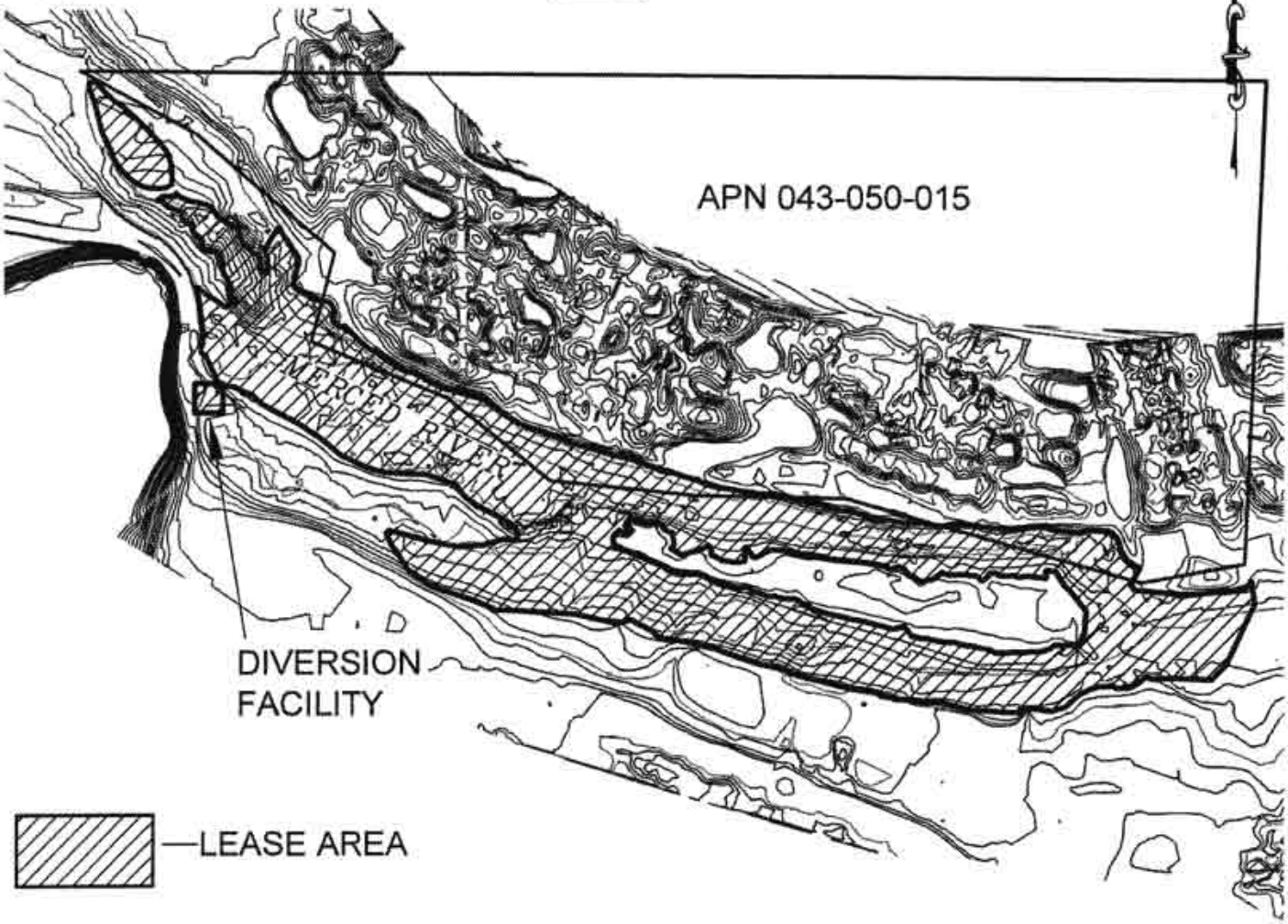
END OF DESCRIPTION

Prepared 01/29/13 by the California State Lands Commission Boundary Unit

LICENSED LAND SURVEYOR
STEVE C. LEHMAN
Exp. 12/31/13
No. 7377
STATE OF CALIFORNIA

NO SCALE

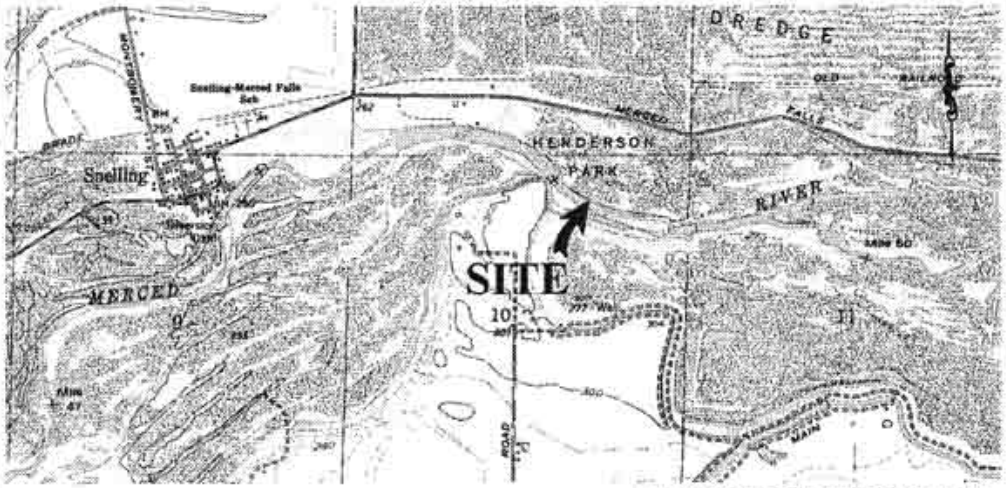
SITE



0.75 MILES UPSTREAM FROM TOWN OF SNELLING

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 26647
HENDERSON PARK PROJECT
APN 043-050-015
GENERAL LEASE -
PUBLIC AGENCY USE
MERCED COUNTY

TS 01/29/13

Potential Impact	Mitigation Measure	Responsible Party	Timing
Impact AQ-1. Dust emissions from materials delivery and gravel placement	**MM 5. Reduce Dust and Air Quality Impacts – Materials Transport.** Implement the following dust reduction measures during movement of materials from construction staging area to sites where gravel augmentation will occur to reduce construction related emissions: • wet materials to limit visible dust emissions using water; • provide at least six inches of freeboard space from the top of the container; or, • cover the container.	During Construction	Permittee / Subcontractors
	MM 6. Reduce Dust and Air Quality Impacts – Gravel Placement. Implement the following dust reduction measure during gravel placement to reduce construction-related emissions: • limit or promptly remove any of mud or dirt on construction equipment and vehicles at the end of each workday, or once every 24 hours.	During Construction	Permittee / Subcontractors
Impact BIO-1. Disturbance to and removal of native trees	**MM 1. Protect and Compensate for Native Trees.** Native trees, such as Fremont cottonwood (*Populus fremontii*), oak (*Quercus* spp.), and willow (*Salix* spp.) with a diameter-at-breast-height (DBH) of 6 inches or greater will be protected with 30-foot, 10-foot, and 10-foot buffers, respectively. Native trees will be marked with flagging and fenced if close to Project work area to prevent disturbance. To compensate for the removal of riparian shrubs and trees during Project implementation, the plans will identify tree and shrub species that will be planted, how, where, and when they will be planted, and measures to be taken to ensure a minimum performance criteria of 70 percent survival of planted trees for a period of three consecutive years. Irrigation will not be used, but the return of inundation to the floodplain is expected to promote growth of native riparian species. The tree plantings will be based on native tree species compensated for in the following manner: • Oaks having a DBH of three to five inches will be replaced in-kind, at a ratio of 3:1, and planted during the winter dormancy period in the nearest suitable location to the area where they were removed. Oaks with a DBH of greater than five inches will be replaced in-kind at a ratio of 5:1. • Riparian trees (i.e., willow, cottonwood, poplar, alder, ash, etc.) and shrubs will be replaced in-kind and on site, at a ratio of 3:1, and planted in the nearest suitable location to the area where they were removed.	Permittee	Entire Project

Potential Impact	Mitigation Measure	Responsible Party	Timing
Impact BIO-2. Impacts to riparian vegetation.	**MM 11. Use Special Transportation Routes and Work Areas.** Special transportation routes and work areas will be designated to avoid damaging trees and shrubs in riparian habitats, especially those sensitive species described above. Potential impacts to the riparian vegetation could occur during the transport of gravel from construction staging area to the river. These impacts will be minimized to the greatest extent practicable by selecting routes that avoid or minimize damage. There will be no impacts on heritage size trees (i.e., greater than 16 inches in diameter). Trees will be flagged and fenced (when near work area) to prevent unintended damage.	During Construction	Permittee / Subcontractors
Impact BIO-3. Disturbance to nesting birds	**MM 3. Avoidance Measures for Nesting Birds.** To meet California Department of Fish and Wildlife's (CDFW) recommendations for mitigation and protection of Swainson's hawks (*Buteo swainsoni*), surveys will be conducted by a qualified biologist for a 1/2 mile radius around all Project activities. Site surveys will be conducted to identify suitable foraging and roosting habitat and species presence, in accordance with CDFW survey guidelines. The no-disturbance buffer should be a minimum of 0.25 miles around any identified nests. If State-listed species are found to be nesting in the Project area, CDFW will be notified to discuss Project implementation and avoidance of take.	Permittee	Entire Project
	MM 8. Work Outside of Critical Periods for Sensitive Species. To avoid impacts to sensitive species, all Project ground-disturbing activities will be conducted during the period August through September, which is outside of critical periods. If work must be conducted before this time, appropriate surveys would be performed to avoid impacts to special status and sensitive species. Nesting birds and raptors are protected under the Migratory Bird Treaty Act and California Fish and Game Code. If tree removal is unavoidable, it will occur during the non-breeding season (mid-September). If other construction activities must occur during the potential breeding season (February through mid-September) surveys for active nests and/or roosts will be conducted by a qualified biologist no more than 30 days prior to the start of construction. A minimum no-disturbance buffer will be delineated around active nests (note, size of buffer depends on species encountered) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.	Permittee	Entire Project
	MM 14. Designated Biologist Monitor. The Designated Biologist shall be on-site	Permittee	Entire Project

Potential Impact	Mitigation Measure	Responsible Party	Timing
	daily while construction and/or surface-disturbing activities are taking place to minimize take of the special-status species, to check for compliance with all mitigation and avoidance measures, to check all exclusion zones to ensure that signs, stakes, and fencing are intact, and that human activities are restricted to areas outside of these protective zones.		
Impact BIO-4. Disturbance to roosting bats	**MM 9. Monitor for Bats to Prevent Impacts.** For bat species, before any ground-disturbing activities, a qualified biologist will survey for the presence of associated habitat types for the bat species of concern. If bats are present, suitable avoidance and conservation measures will be implemented: Project will avoid work in May, June, and July and will apply a minimum 300-foot buffer of roosting bats, maternity roosts or winter hibernacula until all young bats have fledged.	Permittee	Entire Project
	MM 14. Designated Biologist Monitor. See Impact BIO-3 above.	Permittee	Entire Project
Impact BIO-5. Disturbance to American badger dens	**MM 10. Monitor for Wildlife to Prevent Impacts.** Pre-construction surveys will be conducted by qualified wildlife biologists, who will determine the use of the Project site by American badgers; surveys will focus on identification of potential badger dens within the construction footprint and a minimum 250-foot buffer around the construction footprint. If badger dens are located within the construction or buffer area, prior to initiation of construction California Department of Fish and Wildlife (CDFW) will be consulted for further instructions on methods to avoid direct impacts to this species. Pre-construction surveys will also be conducted by qualified wildlife biologists to determine the use of the Project site and a minimum 500-foot buffer around the construction footprint by San Joaquin kit fox; surveys will focus on identification of potential, atypical, active, and natal kit fox dens as defined in the U.S. Fish and Wildlife Service's (USFWS) 1999 *Standard Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance*. If potential kit fox dens are located within the construction or buffer area, a minimum of five consecutive nights of camera/scent stations and track stations will be placed by the den entrances in order to determine if the den is in use by kit fox. If active or natal dens are confirmed, CDFW and USFWS will be consulted for further instructions on methods to avoid direct impacts to this species as well as the need for incidental take permits.	Permittee	Entire Project
	MM 14. Designated Biologist Monitor. See Impact BIO-3 above.	Permittee	Entire Project

Potential Impact	Mitigation Measure	Responsible Party	Timing
Impact BIO-6. Disturbance to San Joaquin kit fox dens	**MM 10. Monitor for Wildlife to Prevent Impacts.** See Impact BIO-5 above. **MM 14. Designated Biologist Monitor.** See Impact BIO-3 above.	Permittee Permittee	Entire Project Entire Project
Impact BIO-7. Impacts to valley elderberry longhorn beetle	**MM 7. Protect Elderberry Shrubs with Buffers.** Each year, before beginning construction activities a pre-Project survey will be conducted of the Project site. Extensive surveys for elderberry shrubs have already been completed (URS 2006d), and areas to avoid identified. If elderberry shrubs (or other special status plants) are identified in subsequent surveys they will be avoided. Complete avoidance may be assumed when there is at least a 100-foot buffer around the plant. These buffers will be established and maintained around all elderberry plants with stems measuring 1 inch in diameter at the ground level. Project activities will be adjusted to ensure no activities occur in the buffer area, thereby avoiding any negative effects on valley elderberry longhorn beetle. **MM 14. Designated Biologist Monitor.** See Impact BIO-3 above.	Permittee Permittee	Entire Project Entire Project
Impact HYD-1. Resuspension of mercury in sediment.	**MM 2. Monitor Mercury Levels.** Following methods in the Stillwater Sciences (2004) Mercury Assessment, total mercury from sediments will be evaluated to insure samples are below or within the range of natural background levels (50-80 nanograms per gram [ng/g]) for California's Central Valley. If samples are found with mercury levels above established standards, work will be halted to assess contamination potential. As a further precaution, mercury levels will be measured before, during, and after restoration activities in the Merced River Ranch area.	Permittee	During Construction
Impact HYD-2. Increased turbidity from construction.	**MM 4. Monitor Water Quality and Prevent Impacts.** The Project will comply with Section 401 of the Clean Water Act and obtain certification for Project-related activities to control sediment and maintain water quality downstream of the Project site during the construction activities. To minimize risk from additional fine sediments, all trucks and equipment will be cleaned, gravels will be processed away from flowing water, and in-stream work will occur during the low flow season (e.g., less than 300 cubic feet per second). Sediment fencing will be used along the river corridor to capture floating materials or sediments mobilized during construction activities, and prevent water quality impacts. Stream bank impacts will be isolated and minimized to reduce bank sloughing. The banks will be stabilized with revegetation following Project activities.	Permittee	Entire Project
Impact NOISE-1.	**MM 12. Reduce Impacts from Noise.** To mitigate noise-related impacts, the Project will	During	Permittee /

Potential Impact	Mitigation Measure	Responsible Party	Timing
Construction-related increases in ambient noise	require all contractors to comply with the following conditions: • restrict construction activities to time periods when there is the least potential for disturbance; • install and maintain sound-reducing equipment and muffled exhaust on all construction equipment; and • optimize the location of processing equipment to be the least disturbance in terms of noise for the local residents.	Construction	Subcontractors
Impact CUL-1. Disturbance to undiscovered cultural resources.	**MM 13. Protect Objects of Cultural Significance.** If any objects of cultural significance are unearthed during the construction process, work will be halted until a qualified archeologist can assess the significance of the new find. If human remains are unearthed during the construction process, the Project team will comply with the California Health and Safety Code Section 7050.5, which states that no further disturbance shall occur until the County Coroner has investigated the situation following the Public Resource Code section 5097.98.	During Construction	Permittee