

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

CONSENT CALENDAR FEBRUARY 28, 2014
Agenda Item 4.A

STAFF REPORT – LEASE NO. AR2274
By: Kacy Poletti

REQUEST:

Staff recommends that the Central Valley Flood Protection Board (Board) executes Lease No. AR2274 (Lease) with McCuen American River Drive Investors LP c/o McCuen Properties (McCuen) for the purpose of vehicular parking for a period of five years from March 1, 2014 to February 28, 2019, with consideration in the amount of \$26,136 annual rent.

BACKGROUND:

The 1.25 acres of proposed lease property is part of a larger 17.46 parcel acquired in fee through Deed No. 2274, in the name of Sacramento San Joaquin Drainage District, on December 12, 1957, in Sacramento County.

The Reclamation Board, now known as the Board, had previously leased the 1.25 acre portion to the adjacent building and parking lot owner, Farm Credit Bank of Sacramento, since December 1982. In 2002, Farm Credit Bank sold their office building and parking lot to McCuen. Subsequently, McCuen requested the parking lot lease between the Board and Farm Credit Bank of Sacramento to be assigned to them. The Board approved the Consent to the Assignment in September 2002, permitting McCuen as the new Lessee.

The previous lease between the Board and McCuen expired on December 31, 2012 and McCuen remained on holdover (month-to-month) status after the expiration date. By letter dated May 9, 2013, the lease was terminated due to the flood control project, American River Common Features Project, Water Resources Development Act 1996 Lower American River Element Flood Control Project, Site 10, approved by the Board in the July 13, 1998 Project Cooperation Agreement. The parking lot portion was required as a staging area for the soil-cement batch plant, to stage the drying beds for the waste

material removed from the levee, for storage equipment, parking for construction employees, and location for a construction office trailer. Project construction was completed December 31, 2013. Soon thereafter, the contractor restored the parking lot to pre-construction condition, as approved through a DWR Real Estate Branch (REB) staff inspection.

NEW LEASE REQUIREMENTS:

After completion of the flood control project on Board's property, staff obtained an Approval Memo from the Department of Water Resources (DWR) Division of Environmental Services, Environmental Site Assessment Section, determining that the site reconnaissance performed did not reveal recognized environmental conditions. Additionally, REB staff performed a lease rental rate appraisal to reflect the current fair market rental value. The proposed lease reflects the new fair market lease rate of \$26,136 per year.

REB staff also received approval from the Department of General Services (DGS) for the lease to be exempt from public bidding. According to the updated State Administrative Manual (S.A.M.) Section 1323.1, competitive bids are required for all new leases, or renewal of existing leases except if the lease meets one of the three criteria for exemption:

1. Leases where the agency has received prior approval from the RPSS to lease without solicitation
2. Leases to nonprofit organizations and governmental agencies
3. Telecommunication leases

REB staff provided a bid exemption justification to DGS' Real Property Services Section (RPSS) indicating that only the adjoining property owner (McCuen) has access to the Board's parking lot portion. Vehicles must enter and drive through McCuen's entrance and parking lot, to access the Board's parking lot portion. Because of the lack of access and location to any other buildings, a public bid did not seem reasonable since McCuen is the only viable tenant and bidder. DGS's RPSS approved REB's request to lease without solicitation in August 2013 for a 5 year term.

Lastly, REB staff worked in conjunction with DGS and DWR's Office of the Chief Counsel (OCC) to update the standard lease language. Also, OCC has been intimately involved in the negotiations of the lease terms with McCuen and their legal counsel. The attached proposed lease is the final updated and negotiated language agreed upon by DWR and McCuen, and approved by the OCC.

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2014-02

AUTHORIZES EXECUTION OF
LEASE NO. AR2274 WITH
McCUEN AMERICAN RIVER DRIVE INVESTORS LP c/o McCUEN PROPERTIES

WHEREAS, Department of Water Resources staff recommends that the Central Valley Flood Board (Board) execute Lease No. AR2274 (Lease) with McCuen American River Drive Investors LP c/o McCuen Properties for the purpose of vehicular parking for a period of five years from March 1, 2014 to February 28, 2019; and

WHEREAS, the Department of General Services has provided approval for the lease to be exempt from public bidding; and

WHEREAS, consideration in the amount payable under the Lease shall be \$26,136 annual rent; and

WHEREAS, the Board considers execution of the Lease to be in the best interest of the State.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves said Lease and authorizes the Executive Officer of the Board to execute said Lease in its name.

PASSED AND ADOPTED by vote of the Board on _____, 2014.

William H. Edgar
President

Jane Dolan
Secretary

Approved as to Legal Form
And Sufficiency

By _____
Jeremy Goldberg
Chief Counsel

RECOMMENDATION:

McCuen has been the lessee of this property for over 10 years, is familiar with the property and lease terms, has fulfilled all the terms of their previous lease, and is in excellent standing as a tenant. Staff recommends approval of the new lease and execution by the Executive Officer of the Board.

ATTACHMENTS:

Lease No. AR2274

Maint. Yard: Sacramento
Lease No: AR2274
Cost Object: ADOELAROW300

State of California
California Natural Resources Agency
CENTRAL VALLEY FLOOD PROTECTION BOARD

LEASE

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1: Basic Provisions
- Section 2: Standard Provisions
- Section 3: Legal Description and/or map(s) of Lease Premises

SECTION 1

BASIC PROVISIONS

THE SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT), acting by and through the Central Valley Flood Protection Board of the State of California (P.O. Box 942836, Sacramento, California 94236-0001), hereinafter called STATE, for consideration specified in this Lease, does hereby lease, demise, and let to:

McCuen American River Drive Investors LP
c/o McCuen Properties
3640 American River Drive, Suite 150
Sacramento, California 95864

hereinafter referred to as LESSEE, those certain lands included in Section 3, hereinafter referred to as Premises, subject to the provisions, reservations, terms, covenants and conditions of this Lease.

Pursuant to Section 8550 and 8590 et.seq of the California Water Code, STATE has certain powers of acquisition, management, and disposal of real property for flood control purposes.

SIZE AND LOCATION: 1.25± acres (see attached map)

LAND USE OR PURPOSE: Vehicular Parking

IMPROVEMENTS: Parking lot

TERM: 5 years, March 1, 2014 – February 28, 2019

CONSIDERATION: \$26,136 annual rent

LIABILITY INSURANCE: \$1,000,000 combined single limit (See Standard Provisions)

SECTION 2 - STANDARD PROVISIONS

1. **ACREAGE APPROXIMATE.** LESSEE has visited and inspected the Premises and it is agreed that the acreage stated or shown in exhibits is only approximate and the STATE does not hereby warrant or guarantee the actual acreage included hereunder.
2. **USE OF PREMISES.** The use of Premises is to be strictly construed and therefore excludes the existence of any structures, mobile homes or trailers, incidental to the use of the Premises stated in Section 1 which are used for business, residential, or other incidental purposes, unless authorized in Section 1 Basic Provisions. No hunting or discharge of firearms is permitted on the Premises, unless authorized in Section 3, Special Provisions.
3. **PAYMENT OF RENT.** Rental payment shall be submitted to STATE addressed as follows:

California Department of Water Resources
ATTENTION: Cashier, Room 841
Post Office Box 942836
Sacramento, California 94236-0001

Such payments must be identified with Lease Number. If rent is not paid when due, STATE may take action including terminating the Lease.
4. **UTILITIES.** LESSEE agrees to pay said rent as herein provided and to pay all water, electric, gas and other utility charges or any other charges payable in connection with LESSEE'S use of Premises during the term of this Lease. No utilities including electricity or gas will be provided by STATE and STATE assumes no liability for the existence or nonexistence of utilities.
5. **WATER AVAILABILITY.** It is understood and agreed between the parties hereto STATE does not guarantee the availability, quality or quantity of water on the Premises.
6. **TAXES.** LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied upon interest in this Lease. It is understood that this Lease may create a possessory interest subject to the payment of property taxes and/or assessments levied on such interest. Assessments LESSEE shall pay include but are not limited to: mosquito abatement, fire hazard abatement, Reclamation District assessments, County assessments and Proposition 218 assessments.
7. **COMPLIANCE WITH LAWS.** LESSEE shall, at his sole cost and expense, comply with all of the statutes, laws, ordinances, regulations, and requirements of all municipal, county, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and the use of the Premises as provided in this Lease.
8. **CONDITION OF PREMISES.** By entry hereunder, LESSEE accepts the Premises as being in good order, condition and repair, and agrees that on the last day of the term, or upon sooner termination of this Lease, to surrender to STATE the Premises with any appurtenances or improvements in the same condition as when received, reasonable use and wear thereof and damage by act of nature, excepted.
9. **MAINTENANCE.** LESSEE shall maintain the Premises, and any improvements existing on the Premises in a weed-free condition and in good repair, and otherwise operate the Premises during the term hereof in a businesslike manner.

LESSEE agrees that in no event shall STATE be required to perform any maintenance on or make repairs or alterations to the Premises of any nature. LESSEE agrees to keep the Premises in good order and condition at his sole cost and expense. LESSEE does hereby waive all rights to make repairs at the expense of STATE as provided in Sections 1941 and 1942 of the Civil Code.
10. **ALTERATION OF PREMISES.** No alteration to the Premises, including surface topography or construction of facilities or improvements thereon shall be allowed without prior written approval by the STATE.
11. **PROTECTION AGAINST NUISANCE AND DAMAGE.** No removal of soil or dumping of refuse by LESSEE is permitted in any area of the Premises, and LESSEE shall not commit or suffer to be committed any waste or nuisance upon the Premises including storage of abandoned and inoperable motorized equipment or vehicles; and Lessee agrees not to cut or remove any trees or brush thereon except as approved in writing by STATE; and LESSEE further agrees that he shall at all times exercise due diligence in the protection of the Premises against damage or destruction by fire or other causes.
12. **PERFORMANCE.** In the event of the failure, neglect, or refusal of LESSEE to do or perform work, or any part thereof, or any act or thing in this Lease provided for by law to be done and performed by LESSEE, STATE shall, at its option, have the right to do and perform the same, and LESSEE hereby covenants and agrees to pay STATE the cost thereof on demand.
13. **RIGHT TO ENTER, STATE.** During continuance in force of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises to inspect the Premises and the operations of LESSEE or for survey or other lawful STATE purposes. Additionally, in the case of high water or other emergency, STATE expressly reserves the right at any and all times to temporarily enter upon said Premises as reasonably necessary for the purpose of addressing said high water or emergency event. STATE will be responsible for reasonably repairing damage resulting from STATE's entry and for reasonably restoring the Premises to the condition existing immediately prior to STATE's entry.
14. **RIGHTS OF OTHERS.** This Lease is subject to all existing easements, servitudes, licenses and rights of way for canals, ditches, levees, roads, highways, telegraph, telephone and electric power lines, railroads, pipelines and other purposes, whether recorded or not and rights of others under any existing oil, gas and mineral lease or leases affecting the Premises or any portion thereof, whether recorded or not. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easement. The public utility will be required to reimburse LESSEE for any damages caused to the LESSEE's operations by the construction work on the easement area.
15. **RIGHT TO ENTER UNDER MINERAL RIGHTS.** LESSEE agrees not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold oil, gas, or other mineral interests upon or under said Leased Premises; nor shall LESSEE, in any way, interfere with the rights of ingress and egress of said interest holders.
16. **INDEMNIFICATION.** This Lease is made upon the express condition that the State of California is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of the STATE. LESSEE agrees to defend, indemnify and save harmless the State of California from

all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring. Provided however, when claims by third parties are made which assert the STATE and LESSEE are each negligent, the STATE shall be held harmless and have no obligation for any loss or cost until the limits of the LESSEE's insurance provided for below are exhausted in payment or settlement of a claim. But the STATE's obligation shall be limited to its share of any negligence claim based on its share of the claimed negligence. LESSEE further agrees to provide necessary workers compensation insurance for all employees of LESSEE upon Premises at LESSEE's own cost and expense.

17. **INSURANCE.** LESSEE shall furnish to the STATE a Certificate of Insurance, at the time the Lease is signed, stating that there is liability insurance presently in effect for LESSEE with bodily injury and property damage limits of not less than \$1,000,000 per occurrence. The Certificate of Insurance will provide:

- a. That the insurer will not cancel the insured's coverage without 30 days' prior written notice to the STATE.
- b. That the STATE, its officers, agents, employees and servants are included as additional insureds, but only insofar as the operations under this Lease are concerned.
- c. That the STATE will not be responsible for any premiums or assessments on the policy.
- d. That Premises included in this Lease (referenced by Lease number) is covered by the policy.

LESSEE agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Lease. In the event said insurance coverage expires at any time or times during the term of this Lease, LESSEE agrees to provide at least thirty (30) days prior to said expiration date, a new Certificate of Insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Lease, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the State Department of General Services. In the event LESSEE fails to keep in effect at all times insurance coverage as herein provided, STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event.

If LESSEE is self-insured in whole or in part for any of the above-described types and levels of coverage, LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. The STATE may require financial information to justify LESSEE's self-insured status. If, at any time after the execution of the Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Insurance clause pertaining to policies of insurance in regard to those types and levels of insurance.

18. **DEBTS AND CLAIMS - STATE NOT LIABLE.** The STATE shall not be liable for any debts or claims that arise from the operation of this Lease.
19. **TITLE KEPT FREE OF ENCUMBRANCES.** During the term provided for in the Lease, LESSEE will not in any way encumber or cloud title to the Premises, or any part thereof, nor shall the interest or estate of STATE in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by LESSEE. LESSEE will promptly pay all utility charges, assessments, and all debts contracted by it in reference to the Premises to the end that no liens shall attach hereto. Any claim to, or lien upon, the

Leased Premises arising from any act or omission of LESSEE shall accrue only against the leasehold estate of LESSEE and shall be subject and subordinate to the paramount title and rights of STATE in and to the Leased Premises.

20. **NOTICES.** All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, postage prepaid and addressed to such party at its address set forth in Section 1 of this Lease. The address to which notices may be mailed, as aforesaid to either party, may be changed by written notice given by subject party to the other, as hereinbefore provided; but nothing contained shall preclude the giving of any such notice by personal service.
21. **NO SUBLETTING.** LESSEE shall not, without previous consent in writing of STATE, sublet the Premises in whole or in part, nor assign this Lease or any interest herein.
22. **TERMINATION.** STATE may terminate this Lease in whole or in part at any time during the term hereof by giving LESSEE notice in writing at least thirty (30) days prior to the date when any such termination shall become effective. In the event of any such termination, in whole or in part, STATE shall reimburse LESSEE for the unearned portion of any prepaid rent. Any such refund shall be based on the premise that the rent payable under the Lease is identical as to all portions of the land. In the event of a partial termination, all rentals payable thereafter shall be reduced in accordance with the proportionate amounts of land remaining under the Lease.
23. **HOLDOVER.** Any holding over after expiration of the term of this Lease with the consent of STATE, expressed or implied, shall be deemed to be a tenancy only from month to month. Rent to be paid monthly pro rata to the rate set forth herein. Said month-to-month tenancy shall be subject otherwise to all the terms and conditions of this Lease so far as applicable.
24. **NO RIGHT TO RENEWAL.**
- a. STATE offers and LESSEE accepts no assurances that the Premises or any other comparable acreage at the site described herein will be made available to LESSEE beyond the term stated in Section 1 or as said term is reduced as provided herein.
 - b. STATE will not be responsible in any way for reimbursement claims by LESSEE for any costs incurred for future materials or obligations necessary for the operation of this site which LESSEE has paid in anticipation of renewal, extension or grant of occupancy beyond lease term.
25. **ACTION FOR BREACH - ATTORNEYS' FEES.** If action be brought by the STATE for recovery of any rent due under the provisions hereof or for any breach hereof, or for the recovery of possession of Premises, or to protect any rights given to the STATE against LESSEE, prevailing party shall be entitled to attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of payment or the costs of said action.
26. **INDEPENDENT CAPACITY.** LESSEE and any and all agents and employees of LESSEE shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained shall be construed as constituting the parties herein as partners.

27. **NONDISCRIMINATION.**

- a. In the performance of this Lease, the LESSEE will not discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, age, handicap, religion, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, sex, sexual orientation, or use of family care leave. LESSEE will take action to ensure that the employees and applicants for employment are treated during employment without regard to their race, color, creed, sex, national origin, ancestry, age, handicap, or religion.
- b. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- c. LESSEE shall comply with all provisions of the Fair Employment and Housing Act (Government Code (GC) Section 12990 (a-f) et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the Lease by reference and made a part thereof as if set forth in full. LESSEE shall not post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (GC, Section 12920-12976).
- d. Remedies for willful violations:
 - i. The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of final judgment having that effect from a court action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.
 - ii. The STATE shall have the right to terminate this Lease and any loss of revenue sustained by the STATE by reason thereof will be borne and paid for by LESSEE.

28. **AMERICANS WITH DISABILITIES ACT.** Where applicable, LESSEE shall comply with all Federal requirements established under the following: 28 Code of Regulations, Part 36, Americans with Disabilities Act, in order to make programs accessible to all participants and to provide equally effective communications.

29. **PERSONAL PROPERTY.** All personal property, tools, or equipment taken onto, stored or placed on the Premises by LESSEE shall remain the property of LESSEE. Such personal property shall be removed by LESSEE, at his sole risk and expense, upon the expiration or sooner termination of this Lease. STATE does not accept any responsibility for any damage, including, but not limited to damages caused by fire, flooding and theft, to any personal property, including any equipment, tools or machinery stored on the lease Premises.

30. **HAZARDOUS SUBSTANCES.** LESSEE agrees that it will

comply with all laws, either Federal, State, or local, existing during the term of this Lease pertaining to the use, storage, transportation and disposal of any hazardous substance as that term is defined in such applicable law. LESSEE shall obtain any and all local, State and Federal permits required including: restricted pesticide use permit and burning permits, and comply with all of the conditions noted herein.

Dumping of hazardous material or waste is strictly prohibited. No use or storage of any hazardous substance or chemical, as those terms are used in CERCLA (42 USC 9601.14) or SARA (42 USC 11021.e) or any similar State law, or use of any pesticide, oil, petroleum product or fuel; except only materials packaged and purchased for consumer use in containers not to exceed one (1) gallon, or fuel in a vehicle fuel tank.

No accumulation, storage treatment or disposal of any waste material, excepting only temporary storage not to exceed 14 days, or nonhazardous solid refuse produced from activities on the property for pick up by a municipal or licensed commercial refuse service and lawful use of sanitary sewers (if any) for domestic sewage

No manufacturing or maintenance of equipment or vehicles, or use, installation or construction vessels, tanks dikes, sumps or ponds or any activity for which a license or permit is required from any government agency for (1) transportation, storage, treatment or disposal of any wastes (2) discharge of any pollutant including but not limited to discharge to air, water, or a sewer system.

Any spill or release of a hazardous material to the air, soil, surface water or ground water will be immediately reported to the State as well as to the appropriate governmental agencies and shall be promptly and fully cleaned up and the property (including soils and surface water and ground water) restored to its original condition.

In the event the STATE or any of its affiliates, successors, principals, employees or agents should incur any liability, cost or expense, including attorneys' fees and costs, as a result of LESSEE's illegal or alleged illegal use, storage, transportation or disposal of any hazardous substance, including any petroleum derivative, LESSEE shall indemnify, defend and hold harmless any of these individuals against such liability.

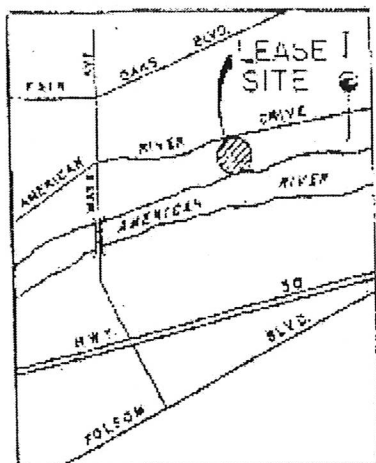
Where LESSEE is found to be in breach of this provision due to the issuance of a government order directing LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by LESSEE or any person acting under LESSEE's direction, control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order including any and all expenses imposed on or incurred by STATE in connection with or response to such government order.

In the event a government order is issued naming LESSEE or LESSEE incurs any liability, during or after the term of the Lease, in connection with contamination which preexisted LESSEE's obligations and occupancy under this Lease or which were caused by STATE, STATE shall hold harmless, indemnify, and defend LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts and expenses thereof.

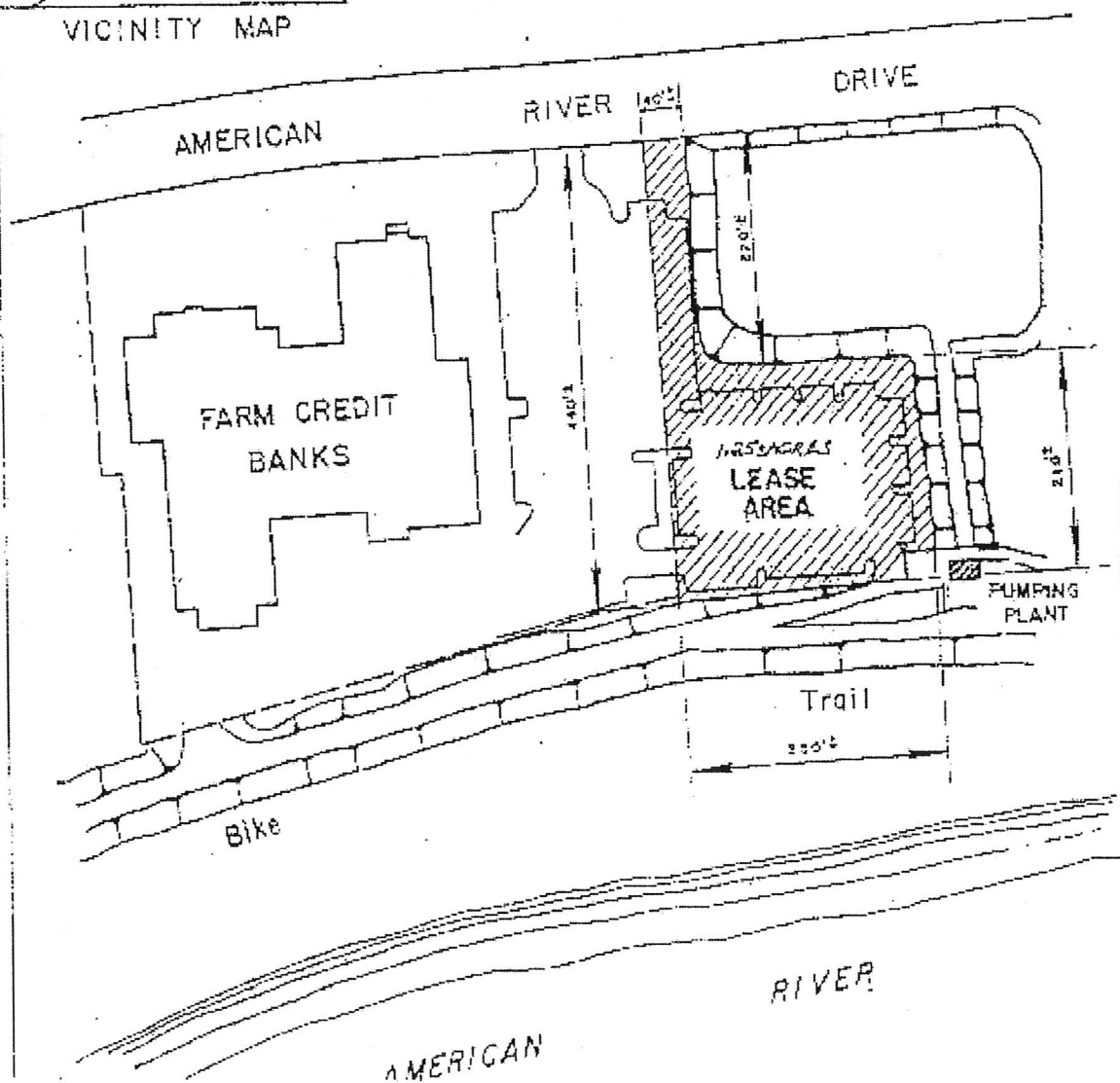
31. **SUCCESSORS TO LEASE.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

32. **REDUCTION IN AREA.** STATE, at its sole discretion may reduce the leased acreage during the term of this lease by giving LESSEE notice in writing at least thirty (30) days prior to the date any such reduction shall become effective. In the event of a reduction in leased acreage, all rents will be recalculated thereafter and shall reflect the change in acreage remaining under the lease.
33. **RELOCATION.** In the event the STATE terminates this Lease pursuant to Paragraph 22, LESSEE acknowledges and agrees that it has no claim against the STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code Sections 7260 et. seq. or any regulations implementing or interpreting such sections. LESSEE further agrees that, other than the reimbursement described in Paragraph 25, it has no claim in either law or equity against the STATE for damages or other relief should the Lease be terminated and waives such claims it may have.
34. **DISPOSITION OF IMPROVEMENTS.** During the term of this Lease, all improvements and personal property placed in, upon, or under the leased Premises by LESSEE shall remain the property of the LESSEE. Upon lease termination or termination of tenancy, at LESSEE's sole expense, LESSEE shall remove all personal property, and shall remove/demolish all items (if any) STATE identifies for removal/demolition on said Premises within thirty (30) days of written notice and shall restore the ground as needed. Should LESSEE fail to remove said property within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of the LESSEE. Upon written demand by STATE, the LESSEE shall pay all cost and expense of the removal of LESSEE's property.
- LESSEE may, however, with written consent of the STATE, abandon in place any and all of LESSEE's property, real or personal, to include all furnishings and fixtures, above or below ground, whereupon, as abandoned, title to said improvements shall vest in STATE.
35. **BINDING.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.
36. **PARAGRAPH HEADINGS.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
37. **ESSENCE OF TIME.** Time is of the essence for each and all of the provisions, covenant and conditions of the agreement.
38. **SEPARATE COUNTERPARTS.** This Lease may be executed in separate counterparts, each of which when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.
39. **SUPERCEDURE.** This Lease supersedes and voids any prior license, lease, or agreement between STATE and the LESSEE identified in this Lease with regards to the Premises.
40. **SEVERABILITY.** If any term, covenant, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.
41. **ENTIRE AGREEMENT.** This Lease and its exhibits constitute the entire agreement between STATE and LESSEE. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding.

SECTION 3



VICINITY MAP

PARKING LOT
LEASE #AR2274

State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES

LEASE NO. AR2274

This Lease shall become effective only when fully approved and executed on behalf of the State of California and a duly executed copy has been delivered to LESSEE. The submission of this Lease by STATE, its agent or representative for examination by LESSEE does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein, or a reservation of the Premises in favor of LESSEE. LESSEE'S submission of an executed copy of this Lease to STATE shall constitute an offer to STATE to lease the Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE

STATE OF CALIFORNIA
CENTRAL VALLEY FLOOD PROTECTION BOARD

Max Sussman

Title: _____

Date: January 28, 2014

Date: _____