

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-8

Urgent

Routine

AGENDA DATE August 11, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of an Agreement with the Modesto Irrigation District to Lease Modesto Reservoir for Recreational Purposes

STAFF RECOMMENDATIONS:

1. Approve an agreement with Modesto Irrigation District to lease Modesto Reservoir for recreational purposes.
2. Authorize the Chairman of the Board of Supervisors to sign a 25-year agreement with Modesto Irrigation District to lease Modesto Reservoir for recreational purposes.

FISCAL IMPACT:

There is no cost associated with entering into the lease agreement with the Modesto Irrigation District (MID) for Modesto Reservoir. However, there is a cost associated with the operation of the regional facility for recreation purposes. Based on a five-year history, costs associated with the operation of Modesto Reservoir averaged approximately \$1,070,750 while actual revenues averaged \$561,337. In Fiscal Year 2008-2009, the actual expenditures and revenues totaled \$1,104,756 and \$486,639, respectively. The current costs and revenues associated with the operation of (Continued Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-538

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended


2) Denied

3) Approved as amended

4) Other:

MOTION:

Approved the **modified** agreement with Modesto Irrigation District to lease Modesto Reservoir for recreational purposes as presented at the Board meeting; and, authorized the Chairman to sign the **modified** 25-year agreement with MID to lease Modesto Reservoir for recreational purposes.



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

Modesto Reservoir are included in the Adopted Proposed Budget for Fiscal Year 2009-2010 for Parks and Recreation and estimated to be \$930,960 and \$420,000. The Parks and Recreation budget has historically absorbed the variance between costs and revenues associated with Modesto Reservoir.

DISCUSSION:

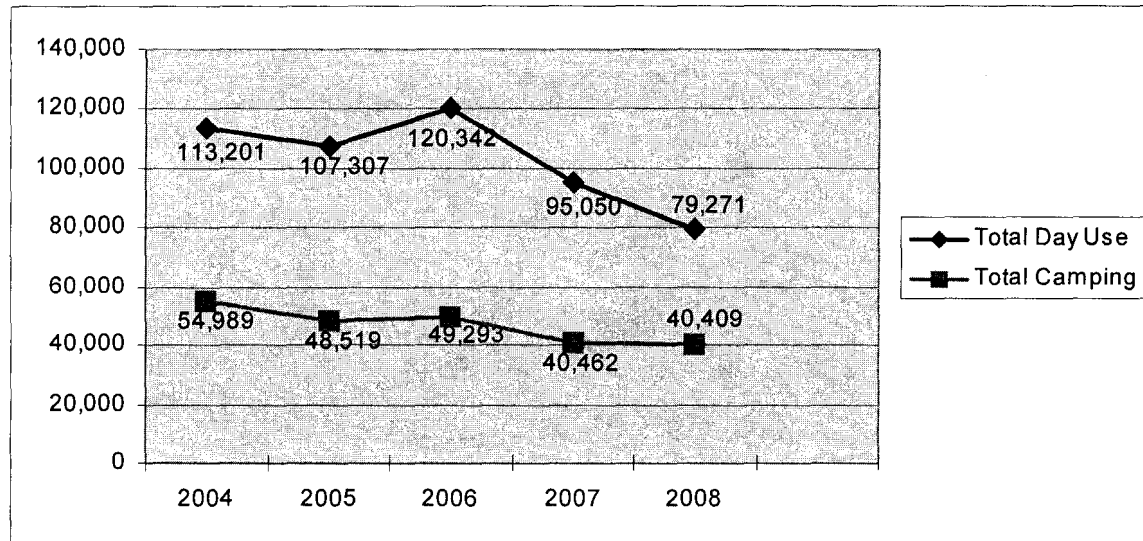
On January 8, 1985, Stanislaus County entered into a twenty-five year lease agreement with Modesto Irrigation District (MID) for the purpose of providing recreational opportunities at Modesto Reservoir. Over the past twenty-five years, many changes have taken place at the reservoir. The most significant change was the installation of the surface water treatment facility operated by MID for the City of Modesto. This required significant changes in how Modesto Reservoir is operated to provide the improved protection of water quality. In 1994, a County ordinance was adopted to codify these changes. MID and the County have partnered well to address issues that have come up over the past several years.

Modesto Reservoir is located on Reservoir Road, off of State Route 132, just a few miles east of Waterford. This regional park offers approximately 3,240 acres of land and approximately 2,800 acres of water for recreation and camping. The property surrounding the reservoir is owned by MID, the County and private property owners. Facilities include approximately 150 full hook-up campsites, undeveloped camping areas, marina, restrooms, picnic shelter, barbeques, picnic tables, archery range, and slalom ski course and radio control glider airplane field.

MID is proposing to exclude two areas that are in the current lease but will not be included the new lease (Attachment A). Both of these areas are identified on the map in the lease agreement. One area is the location of the reservoir dam and the second area is west of the fence on the north end of the reservoir. The exclusion of these two areas will have a minimal impact on recreation activities at Modesto Reservoir. There are provisions in this lease agreement stating that if the County does not operate the reservoir as a recreational facility then the leased lands would be maintained by MID. In the lease agreement, Exhibit A provides a legal description of the leased area and Exhibit B is a map identifying those areas.

Recreational use at Modesto Reservoir has decreased over the past few years. One of the reasons has been the fluctuation of the water level at Modesto Reservoir. There are many factors that influence the water level. MID has tried very hard to keep the water level higher during holiday weekends.

Approval of an Agreement with the Modesto Irrigation District to Lease Modesto Reservoir for Recreational Purposes



Modesto Reservoir is one of two reservoirs operated by Stanislaus County Department of Parks and Recreation (Parks). Some of the types of recreation provided at Modesto Reservoir include boating, fishing, water skiing, personal watercraft, sailing, waterfowl hunting, hiking, biking, archery, remote controlled gliders, and bird watching. Last year, the facility had almost 80,000 day use visitors and just over 40,000 campers that enjoyed Modesto Reservoir. This year, the Department had interested individuals submit 318 waterfowl blind draw applications for the 27 waterfowl blind locations at the reservoir.

Currently, Parks has an agreement with the Yahi Bowman Archery Club out at Modesto Reservoir. The club provides the operation and maintenance of the reservoir's archery range. The Yahi Bowman Archery Club holds monthly meetings and weekly shoots during the summer. They are also involved with many local youth groups. During this past year, the Club has hosted three youth events including one with the Stanislaus County Police Activities League to teach young people to learn to shoot. Additionally, the Club has made many improvements to the range over the past several years.

In addition, Parks has an agreement with the Modesto Radio Control Club at the regional facility. The Club has agreed to make improvements to the radio control glider airplane field near the west boat ramp. The Modesto Radio Control Club has monthly gatherings and special events throughout the year. The glider airplane field area is open to the public.

Also, Mid-Valley Water Ski Club holds numerous events at Modesto Reservoir throughout the year. Some examples of the activities include disabled ski clinics, "Ski-Fun Day for Kids" partnered with the Stanislaus County Police Activities League, Polar Bear Day and tournament competitions.

Approval of an Agreement with the Modesto Irrigation District to Lease Modesto Reservoir for Recreational Purposes

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Approval of the new lease agreement with the Modesto Irrigation District for the use of Modesto Reservoir for recreational purposes would maintain the current partnership and recreational opportunities at the regional facility.

POLICY ISSUE:

The Board of Supervisors should determine if entering into this lease agreement is consistent with the Board's priorities of a healthy community, a well-planned infrastructure system and effective partnerships.

STAFFING IMPACTS:

There are no staffing impacts associated with entering into this lease agreement. Should the Board choose not to enter into the lease agreement, Parks would only provide minimum maintenance to only the County owned property surrounding the Modesto Reservoir facility which would ultimately require a reduction-in-force. In addition, the contract with the Sheriff for Patrol Services could be impacted.

B-8

LEASE OF REAL PROPERTY FOR PARK AND RECREATION PURPOSES

The County of Stanislaus (hereinafter "County"), a political subdivision of the State of California, and Modesto Irrigation District, (hereinafter "District"), an irrigation district organized and existing under the laws of the State of California, agree to enter into a lease of real property for the purpose of park and recreation. As used in this Lease the term "party" means County or District and the term "Parties" means County and District.

WHEREAS this Lease is made with reference to the following facts:

(a) County desires to continue leasing the Real Property, hereinafter referred to herein as "the Real Property" or "the Premises," as a county park pursuant to Section 5157 of the Public Resources Code;

(b) District desires to continue leasing the Real Property to County, pursuant to Section 22505 of the Water Code;

(c) District has satisfied and throughout the term of this Lease will continue to satisfy and comply with, all conditions and provisions of California Health and Safety Code section 115840.5, thereby allowing recreational users to include having bodily contact with the water; and

(d) District has determined by resolution entered upon its minutes, that the property being leased under this Lease is not currently necessary for District purposes, and that the terms of this Lease are for the best interests of the District.

(e) County owns of the Premises under this Lease, and that this Lease itself, is subject and subordinate to certain deed reservations and restrictions, which said reservations and restrictions pertain to the watering of cattle in certain areas of said reservoir and are set forth in the deed of the Warner Land and Cattle Co., which deed was recorded on October 2, 1909 in Vol. 87 at page 213 in the Official Records of the County Recorder of the County of Stanislaus, State of California.

NOW, THEREFORE, in consideration of the mutual benefits, agreements and covenants herein contained, it is agreed between the parties as follows:

1. PREMISES

District leases to County and County leases from District for park and recreational purposes, and those purposes alone, all that real property adjacent to the Modesto (Dallas-Warner) Reservoir particularly described in the description thereof attached to and made a part of this Lease as Exhibit "A". For the convenience of the parties, there is attached hereto and made part hereof as Exhibit "B", a map showing the location and extent of the Real Property described in Exhibit "A", but the description and not the map shall determine the precise location of the Premises.

SECRET AGREEMENT

2. TERM

The term of this Lease shall be for twenty-five years, commencing on _____, 2009, provided that either party shall have the right to terminate this Lease by giving at least one year's prior written notice of termination to the other party, which notice may not, however, be given prior to _____, 2019.

3. USE OF REAL PROPERTY

(a) So far as is necessary in the light of the purposes for which the Premises are leased, and except as is otherwise herein set forth, County shall have the exclusive care, maintenance and control of the Real Property for the use and enjoyment of the general public as a part of County's park system. The Premises shall be maintained by County as a public recreation area, open to all persons, subject to reasonable regulations of County, including payment of reasonable fees for entry into and/or use of the facilities of said park.

(b) By execution of this Lease and entry in the Premises hereunder, County accepts the Premises as being in good and sanitary order, condition and repair, and agrees that upon expiration of this Lease, or sooner termination hereof, to surrender the Premises to the District in the same condition as when received, reasonable wear and tear excepted.

(c) District makes no representation as to, and does not warrant, the condition of the Premises, either at the inception of this Lease or as to any future point in time. Nothing in this Lease shall be construed as creating or imposing upon the District any duty or obligation to maintain or repair the Premises.

(d) At the expiration or termination of this Lease, County shall immediately surrender the Premises to the District and remove all of County's personal property from the Premises at County's cost. County shall promptly repair, at County's cost, all damage to the Premises caused by such removal.

4. APPLICABLE LAWS

The County shall use, operate and maintain the Premises in accordance with all applicable federal, state and local laws, orders, rules, ordinances and regulations as such laws may exist at any time during the term of this Lease (collectively "Laws"), including without limitation applicable health and safety laws, and any rules and regulations adopted by the County Parks and Recreation Department as to control and prevent the rise of unsightly conditions. The County shall comply with any rules, requirements or determinations adopted by the District in furtherance of such laws, including suspension or termination of activities on or within the Premises.

5. DISTRICT'S OPERATIONS TAKE PRIORITY

(a) Anything herein contained to the contrary notwithstanding, it is distinctly understood and agreed by and between the parties that District is now using and will continue to use its Modesto Reservoir and the surrounding real property owned by District for District's electrical and water operations, including the impounding and storage of

water for drinking and irrigation purposes, which functions are vital to and are a material and integral part of District's over-all water distribution system. For this reason, it is further understood and agreed by and between the parties that this Lease and the use of the Premises by County shall be subject at all times during the term of this Lease or any extension or renewal thereof, to the right of District to keep, alter, remove, add to, maintain, and repair, as District sees fit, District's dams, reservoirs, levees and all other facilities of District used by District in such electric and water operations, and District shall have the right at all such times without permit or license from the County to enter upon the Premises for the purpose of keeping, inspecting and maintaining such dams, reservoirs, levees, and facilities.

(b) It is further distinctly understood and agreed that County shall in no manner restrict, interfere with or impede or permit any restriction or interference with or impediment to said use of the Premises by District, or any persons acting under the direction of District, for District's said purposes. It is further agreed that District shall have the right at all times during the term hereof or any extension or renewal thereof to obtain and use dirt and cut and remove trees as District in its sound discretion deems necessary or advisable in District's maintenance and operation of its said property and facilities.

(c) The parties understand and agree that District shall at all times have the right to raise or lower the water level in said reservoir to any extent District deems fit in District's use of said reservoir and facilities for District's purposes; provided, however, that District shall not cause the water level in said reservoir to be above a true elevation of 211.4 feet, when to do so, damage to County's property constructed or erected under this Lease or the prior Lease of the property between County and District might reasonably be expected to occur. District shall not be responsible or have any duty or liability in the event that the reservoir rises above a true elevation of 211.4 feet, for any reason or reasons beyond District's control.

(d) None of the matters and things which County may be authorized to do by virtue of this Lease shall be done, affixed, installed, erected or located below a true elevation of 211.4 feet above sea level, it being understood that the area below such elevation shall be subject to flooding without regard to time or season and without notice; provided, however, that this section shall not apply to boat ramps or buoys.

(e) The parties agree that should it become necessary in the sound discretion of District in the furtherance of District's water development, storage, treatment, and distribution activities, for District to raise the level in said reservoir above a true elevation of 211.4 feet, District shall have the right to terminate this Lease on one year's written notice to County and this Lease shall terminate one year after the receipt by County of written notice from District of District's desire and intention to terminate this Lease. Such notice shall be presented to the Clerk of the Board of Supervisors of the County.

6. DISTRICT RESERVES CERTAIN RIGHTS

(a) District reserves to itself all water and water rights in and relating to the Real Property; provided, however, that County may develop such water on the Real

Property as is necessary to carry out the purposes of this Lease to provide for park and recreational facilities for the public.

(b) District reserves to itself all underlying minerals, oil, and gas formations; provided, however, that any exploration, excavation, construction or removal of said minerals, oil, and gas as performed by District, its agents or assigns shall not interfere with or destroy any improvements made or operation and maintenance being carried on by County. Notwithstanding the foregoing, District shall have the right, should District desire to, to explore for, excavate, develop and remove such minerals, on the condition that District fully compensate County on a fair market value basis for any damage done to property of County or any interference with County's lawful activities, which activities are not carried on in conflict with the terms, covenants and conditions of this Lease.

(c) The amount of any compensation due to County under the provisions of paragraph 6 (b) shall be determined by agreement of the parties. Should they be unable to agree the provisions of the California Government Claims Act, Government Code section 900 et seq. shall apply.

7. COUNTY'S RESPONSIBILITY AND AUTHORITY

(a) County shall have exclusive control of the operation, leasing and contracting of all concessions for the sale of fishing licenses, refreshments, food, rentals, or boats and other equipment, mooring space and related recreational facilities. Concessions may be awarded in accordance with the manner selected by County. Swimming and boating areas in Modesto Reservoir shall be agreed upon by the parties. Such areas when designated shall be under the control of County, and County will provide necessary warning signs, buoys and lines of demarcation for such swimming and boating areas.

(b) County shall provide minimum health and sanitation improvements and facilities for the use of the general public, and will maintain the Premises in a clean, safe and sanitary condition.

(c) County shall not be obligated to develop as a recreation site each and every part of the Premises, but shall be obligated to police and maintain the Premises in a clean, safe and sanitary condition. County shall have discretion concerning specific areas of the Premises to be improved as recreation sites, except as otherwise limited in this Lease.

(d) From time to time County may excavate for borrow or fill materials within the reservoir area as may be necessary and consistent with the purposes of this Lease, but shall do so only at locations designated by District. Existing levees, dams or other installation or facilities of District or access thereto shall not be altered, disturbed, endangered or interfered with by County or any uses of the Premises by County or its Permittees.

(e) County may, with the written consent of District, sublease any part or parts of the Premises not included for development. The sublease shall be subject to the restrictions and provisions of this Lease. Such subletting may be made as a part of any

transaction wherein County may acquire an interest in property of third parties for addition to and inclusion within the master plan of development.

(f) District agrees to permit the County, at County's sole cost, to patrol, police and control the activity of boaters, fishermen, swimmers, water skiers and the like, other than persons employed by, acting as agents of, or otherwise authorized by District in the performance of their duties for District. District further agrees not to grant, consent to or acquiesce in the exercise of any rights in, to or upon the surface of Modesto Reservoir to any persons other than its own agents and employees, or as hereinabove granted to County and members of the public lawfully entering the same through said County park.

8. ENVIRONMENTAL HAZARDS

(a) County shall not, generate, manufacture, or dispose of on, under or about the Premises, any flammable, explosive, or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as defined by common practice or by any federal, state or local governmental body or agency ("Hazardous Substance"); provided, however, that parking of automobiles in and of itself shall not violate this provision.

(b) Without limiting any remedies the District may have, in the event any spill of a Hazardous Substance or other contamination occurs on the Premises during the term of this Lease or any renewal thereof, or occurred at any time during County's possession of the Premises, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of the District, County shall immediately notify the District and take all action to mitigate the effects of such spill or contamination. County shall at its own expense, unless otherwise directed by the District, remediate such spill or contamination to the District's satisfaction and in compliance with all applicable laws, rules and regulations. The District shall have the option to perform the remediation itself or through any contractor and County shall cooperate with the District to complete the remediation and shall reimburse the District for all costs and expenses incurred in connection with the remediation.

(c) In the event the District or its contractor performs remediation work County shall upon notice from the District cease use of the Premises as directed in the notice. The District will notify County when the condition has been resolved, at which time, but not before, County may resume its use of the Premises.

(d) County agrees to assume liability for and to defend and hold harmless the District from and against all injuries or death to any person and damage to any property, and all related expenses, including without limitation attorneys' fees, investigators' fees, administrative fees and expenses, litigation expenses and any judgments, fines or penalties assessed against the District, resulting from County's failure to comply with this Section 8 and any laws, rules or regulations concerning the subject matter hereof. The provisions of this Section 8 shall survive the expiration and termination of this Lease.

9. COUNTY IMPROVEMENTS

(a) County will be responsible for the clean and orderly maintenance and repair as well as the safety and the security of the Premises. From time to time by agreement of the parties, planning for development or changes of the Premises by County may be revised and particular proposed or existing facilities and improvements changed, added, deleted, or removed; provided, however, that District shall have the right to make prior review of and to approve or reject each change, addition or improvement so that the future rights of District are protected.

(b) County shall have the right during the term of this Lease to make any and all necessary or desirable alterations, improvements or additions upon the Premises and to attach or erect structures, signs and other fixtures consistent with the purposes of this Lease. Any such alterations, improvements, additions, structures or signs so placed in or upon or attached to the Premises by County shall be and remain the property of County and may be removed from the Premises by County within a reasonable time after expiration of the term or other termination of this Lease. County shall be responsible, at no cost to District, for performing all environmental and other reports and obtaining all environmental and other permissions and licenses required for its use of the Premises under the Lease.

(c) District's rights hereunder to inspect, or otherwise review, comment on, test, accept or approve, any act or determination by County under this Lease, or any part of it, shall not impose any duty, obligation or liability on District with respect to the act or determination, nor shall they impose any duty to inspect, review or approve the methods by which any work is performed. Nor shall any such action, or failure to take such action, by District prejudice any claim, right or privilege that District may have arising out of this Lease, or relieve Contractor of its responsibility for the performance and condition of the work or of its contractual responsibility under this Lease.

10. INDEMNIFICATION

This Lease is made upon the express condition that District is to be free from all liability and claims for damages arising from the lease or use of the Premises by County pursuant to this Lease. The County shall indemnify and hold the District, District's directors, officers, representatives, agents and employees, and each of them, harmless from and against any and all expenses, losses, damages, claims or liabilities, including to District and District's property, arising directly or indirectly from any act, omission or negligence in the use of the Premises or the performance of County's duties or obligations under this Lease, and from and against any and all costs, expenses or liabilities incurred in or in connection with any of such claims or any proceeding brought thereon, provided that the County and its agents shall not be held liable for any injury or damage to persons or property resulting from any terrorist/criminal acts or acts of war. District will provide timely notice to Contractor upon receipt of any third party claim related to this Agreement. The provisions of this paragraph shall not apply to any liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the District. County hereby agrees at its expense promptly to assume the defense of and to defend against any indemnified claim,

suit or other proceeding brought thereon, and promptly to pay any and all costs, charges, attorney's fees, and other expenses and any and all judgments that may be incurred against the District, its directors, officers, representatives, agents or employees, or any of them. If any judgment or other lien be placed upon or obtained against the property of the District, its directors, officers, representatives, agents or employees, or any of them, in or as a result of any such claim, suit or proceeding, County shall at once cause the same to be discharged and dissolved by giving bond or otherwise.

11. TERMINATION OF RIGHT TO PROCEED

The occurrence of any of the following shall constitute a default by County and a breach of this Lease:

- (a) Any action or failure to act by the County that interferes with or precludes District's use of its water for domestic purpose;
- (b) Violation of the terms of Section 4;
- (c) Interference with or impediment to District's use of the Premises in violation of the terms of Section 5;
- (d) Commencement of any major work of improvement without County having first obtained the written consent of District;
- (e) Failure to maintain in effect insurance coverage as described in Section 13 of this Lease;
- (f) Sublease of the Premises without District's consent, or any other assignment, transfer, or encumbrance of this Agreement or the Premises, or involuntary assignment as described in Section 12 of this Lease.
- (g) Failure to perform or comply with any other provision of this Lease if the failure to perform or comply is not cured within twenty (20) days after notice has been given to County. If the default cannot reasonably be cured within twenty (20) days, County shall not be in default on this Lease if County commences to cure the default within the twenty (20) day period and diligently and in good faith continues to cure the default. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that County perform the provisions of this Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease unless the District so elects in the notice.
- (h) The District shall have the following remedies to which the District may resort cumulatively or in the alternative if County commits a default under this Lease:
 - (i) The District can continue this Lease in full force and effect, and this

Lease will continue in effect as long as the District does not terminate County's right to possession. No act by the District allowed by this paragraph shall terminate this Lease unless the District notifies County that the District elects to terminate this Lease. After County's default and for as long as the District does not terminate County's right to possession of the Premises, if County obtains the District's consent, County shall have the right to assign or sublet County's interest in this Lease, but County shall not be released from liability.

(ii) The District can terminate this Lease and County's right to possession of the Premises granted by this Lease, and any and all rights and benefits to which County may otherwise be entitled pursuant to this Lease. Termination under this paragraph shall not relieve County from the payment of any sum then due to the District or from any claim for damages previously accrued or then accruing against County. Promptly after notice of termination, County shall vacate and surrender the Premises and the District may reenter and take possession of the Premises. No act by the District other than giving written notice to County shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the District's initiative to protect the District's interest under this Lease shall not constitute a termination of County's right to possession. On termination, the District has the right to recover from County any amount, and court costs, necessary to compensate the District for all detriment proximately caused by the County's default.

(iii) This Lease and all its provisions shall be deemed abandoned and terminated in the event County shall, for a period of one continuous year, cease to operate and maintain the Premises as a part of County's park system or in the event County shall otherwise abandon the Premises for the purposes for which it is leased under this Lease; provided, however, that the provisions of this paragraph shall not be effective by reason of suspension of County's park operations caused by or due to the declaration of the existence of a period of emergency because of war.

12. ASSIGNMENT, SUBLETTING AND ENCUMBERING

No interest of County in this Lease shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment:

(a) If County is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which County is the bankrupt;

(i) If a writ of attachment or execution is levied on this Lease; or

- (ii) If, in any proceeding or action to which County is a party, a receiver is appointed with authority to take possession of the Premises.
- (b) An involuntary assignment shall constitute a default by the County and the District shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of County.

13. INSURANCE

- (a) County shall, at County's expense, without limiting any of its other obligations or liabilities, maintain in effect at all times during the Term of this Lease and any renewal thereof not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to Owner. Upon execution of this Lease County shall deliver to the District certificates of insurance evidencing the insurance required pursuant to this paragraph.
 - (i) Workers' Compensation Insurance as required by the State of California, including Employers Liability limits of not less than One Million Dollars (\$1,000,000) per occurrence.
 - (ii) Commercial General Liability or Comprehensive General Liability Insurance insuring against liability for injury to persons and property and for the death of any person, or persons, occurring in, on or about the Premises. The liability under such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage Two Million Dollars (\$2,000,000) aggregate.
 - (iii) Business Automobile or Comprehensive Automobile Insurance including, as applicable, owned, non-owned, and hired motor vehicles, in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit of bodily injury and property damage. If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.
- (b) Not more frequently than each five (5) years, if in the good faith opinion of the District or of County's independent insurance broker through whom such liability insurance is obtained by County, the amount of any insurance coverage at that time is not adequate, County shall increase the insurance coverage to the amounts deemed adequate in the opinion of the District or the insurance broker, whichever required the increase.
- (c) All of County's policies shall contain an endorsement providing that written notice by mail shall be given to the District at least thirty (30) days prior to any termination, cancellation or reduction of coverage.

- (d) County's policies, excepting only that for Workers' Compensation, shall also contain each of the following:
- (i) Provisions or endorsements naming the District, its directors, officers, agents, employees and volunteers, and each of them, as insureds as respects liabilities arising in, on or about the Premises, and providing that such insurance is primary insurance as respects the interest of the District and that any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder;
 - (ii) Cross Liability or Severability of Interest clause; and
 - (iii) Provisions or endorsements stating that the insurance required hereunder, subject to all of its other terms and conditions, applies to the liability assumed by County under this Lease, including without limitation, any Indemnity.
- (e) Upon execution of this Lease, and annually thereafter during the Term of this Lease or any renewal thereof, County shall furnish the District with certificates of insurance and with original endorsements effecting coverage required by this Paragraph. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- (f) The coverages shall contain no special limitation on the scope of protection afforded to the District, its directors, officers, agents, employees or volunteers. Any failure with reporting provisions of the policies, including breaches of warranties, shall not affect coverage provided the District.
- (g) The foregoing requirements as to the types, limits and the District's approval of insurance coverages to be maintained by County are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by County under this Lease.
- (h) If County fails to maintain the insurance coverage as required by this paragraph, the District, in the District's sole discretion and at County's sole cost and expense, may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above or at the District's sole option, such failure of County to maintain required insurance may constitute a default under this Lease.

14. ABANDONMENT BY COUNTY

County shall not abandon, vacate or surrender the Premises at any time during the term of this Lease, or any renewal thereof; and if County does abandon, vacate, or surrender the Premises, or is dispossessed by process of law, or otherwise, this Lease, and all County's rights granted thereby, shall terminate, and all personal property belonging to

County and left on the Premises shall be kept for a reasonable time by the District, but in no event longer than fifteen (15) days after the District gives County notice to remove that property from the Premises, after which time, if it has not been reclaimed by County, it may be treated by the District as abandoned.

15. NO THIRD PARTY BENEFIT

This Agreement is made solely for the benefit of the Parties hereto and it is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto and no person, firm, association, corporation or public entity other than the Parties shall have any right to enforce this Agreement.

16. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party by mail shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

MODESTO IRRIGATION DISTRICT
Post Office Box 4060
1231-11th Street
Modesto, CA 95352
Attention: General Manager

STANISLAUS COUNTY
1010 10th Street
Suite 6800
Modesto, CA 95354
Attention: Chief Executive Officer

[signatures on next page]

IN WITNESS WHEREOF, we have set our hands and caused our seals to be affixed the day and year first above written.

Executed on _____ at Modesto, California

LESSOR: MODESTO IRRIGATION DISTRICT

LESSEE: STANISLAUS COUNTY

Tom Van Groningen, Board President

Jim DeMartini, Chairman

Date: _____

Date: _____

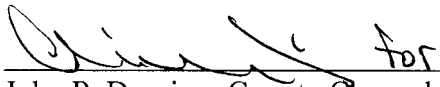
Pat Mills, Secretary

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Tim O'Laughlin, General Counsel



John P. Doering, County Counsel

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AMENDED AGREEMENT

138

LEASE OF REAL PROPERTY FOR PARK AND RECREATION PURPOSES

The County of Stanislaus (hereinafter "County"), a political subdivision of the State of California, and Modesto Irrigation District, (hereinafter "District"), an irrigation district organized and existing under the laws of the State of California, agree to enter into a lease of real property for the purpose of park and recreation. As used in this Lease the term "party" means County or District and the term "Parties" means County and District.

WHEREAS this Lease is made with reference to the following facts:

(a) County desires to continue leasing the real property, hereinafter referred to herein as "the Real Property" or "the Premises," as a county park pursuant to Section 5157 of the Public Resources Code;

(b) District desires to continue leasing the Real Property to County, pursuant to Section 22505 of the Water Code:

(c) District has satisfied, and throughout the term of this Lease will continue to satisfy and comply with, all conditions and provisions of California Health and Safety Code section 115840.5, thereby allowing recreational users to include having bodily contact with the water; and

(d) District has determined by resolution entered upon its minutes, that the property being leased under this Lease is not currently necessary for District purposes, and that the terms of this Lease are for the best interests of the District.

(e) County's use of the Premises under this Lease, and ~~that~~ this Lease itself, is subject and subordinate to certain deed reservations and restrictions, which said reservations and restrictions pertain to the watering of cattle in certain areas of said reservoir and are set forth in the deed of the Warner Land and Cattle Co., which deed was recorded on October 2, 1909 in Vol. 87 at page 213 in the Official Records of the County Recorder of the County of Stanislaus, State of California.

NOW, THEREFORE, in consideration of the mutual benefits, agreements and covenants herein contained, it is agreed between the parties as follows:

1. PREMISES

District leases to County and County leases from District for park and recreational purposes, and those purposes alone, all that real property adjacent to and including the Modesto (Dallas-Warner) Reservoir particularly described in the description thereof attached to and made a part of this Lease as Exhibit "A". For the convenience of the parties, there is attached hereto and made part hereof as Exhibit "B", a map showing the location and extent of the Real Property described in Exhibit "A", but the description and not the map shall determine the precise location of the Premises.

2. TERM

The term of this Lease shall be for twenty-five years, commencing on August 11, _____, 2009, provided that either party shall have the right to terminate this Lease by giving at least one year's prior written notice of termination to the other party, which notice may not, however, be given prior to August 11, _____, 2019.

3. USE OF REAL PROPERTY

(a) So far as is necessary in the light of the purposes for which the Premises are leased, and except as is otherwise herein set forth, County shall have the exclusive care, maintenance and control of the Real Property for the use and enjoyment of the general public as a part of County's park system. The Premises shall be maintained by County as a public recreation area, open to all persons, subject to reasonable regulations of County, including payment of reasonable fees for entry into and/or use of the facilities of said park.

(b) By execution of this Lease and entry in the Premises hereunder, County accepts the Premises as being in good and sanitary order, condition and repair, and agrees that upon expiration of this Lease, or sooner termination hereof, to surrender the Premises to the District in the same condition as when received, reasonable wear and tear excepted.

(c) District makes no representation as to, and does not warrant, the condition of the Premises, either at the inception of this Lease or as to any future point in time. Nothing in this Lease shall be construed as creating or imposing upon the District any duty or obligation to maintain or repair the Premises.

(d) At the expiration or termination of this Lease, County shall immediately surrender the Premises to the District and remove all of County's personal property from the Premises at County's cost. County shall promptly repair, at County's cost, all damage to the Premises caused by such removal.

4. APPLICABLE LAWS

The County shall use, operate and maintain the Premises in accordance with all applicable federal, state and local laws, orders, rules, ordinances and regulations (collectively "Laws") as such laws may exist at any time during the term of this Lease (~~collectively "Laws"~~), including without limitation applicable health and safety laws, and any rules and regulations adopted by the County Parks and Recreation Department as to control and prevent the rise of unsightly conditions. The County shall comply with any rules, requirements or determinations adopted by the District in furtherance of such laws, including suspension or termination of activities on or within the Premises.

5. DISTRICT'S OPERATIONS TAKE PRIORITY

(a) Anything herein contained to the contrary notwithstanding, it is distinctly understood and agreed by and between the parties that District is now using and will continue to use its Modesto Reservoir and the surrounding real property owned by District

for District's electrical and water operations, including the impounding and storage of water for drinking and irrigation purposes, which functions are vital to and are a material and integral part of District's over-all water distribution system. For this reason, it is further understood and agreed by and between the parties that this Lease and the use of the Premises by County shall be subject at all times during the term of this Lease or any extension or renewal thereof, to the right of District to keep, alter, remove, add to, maintain, and repair, as District sees fit, District's dams, reservoirs, levees and all other facilities of District used by District in such electric and water operations, and District shall have the right at all such times without permit or license from the County to enter upon the Premises for the purpose of keeping, inspecting and maintaining such dams, reservoirs, levees, and facilities.

(b) It is further distinctly understood and agreed that County shall in no manner restrict, interfere with or impede or permit any restriction or interference with or impediment to said use of the Premises by District, or any persons acting under the direction of District, for District's said purposes. It is further agreed that District shall have the right at all times during the term hereof or any extension or renewal thereof to obtain and use dirt and cut and remove trees as District in its sound discretion deems necessary or advisable in District's maintenance and operation of its said property and facilities.

(c) The parties understand and agree that District shall at all times have the right to raise or lower the water level in said reservoir to any extent District deems fit in District's use of said reservoir and facilities for District's purposes; provided, however, that District shall not cause the water level in said reservoir to be above a true elevation of 211.4 feet, when to do so, damage to County's property constructed or erected under this Lease or the prior Lease of the property between County and District might reasonably be expected to occur. District shall not be responsible or have any duty or liability in the event that the reservoir rises above a true elevation of 211.4 feet, for any reason or reasons beyond District's control.

(d) None of the matters and things which County may be authorized to do by virtue of this Lease shall be done, affixed, installed, erected or located below a true elevation of 211.4 feet above sea level, it being understood that the area below such elevation shall be subject to flooding without regard to time or season and without notice; provided, however, that this section shall not apply to boat ramps or buoys.

(e) The parties agree that should it become necessary in the sound discretion of District in the furtherance of District's water development, storage, treatment, and distribution activities, for District to raise the level in said reservoir above a true elevation of 211.4 feet, District shall have the right to terminate this Lease on one year's written notice to County and this Lease shall terminate one year after the receipt by County of written notice from District of District's desire and intention to terminate this Lease. Such notice shall be presented to the Clerk of the Board of Supervisors of the County.

6. DISTRICT RESERVES CERTAIN RIGHTS

(a) District reserves to itself all water and water rights in and relating to the Real Property; provided, however, that County may develop such water on the Real

Property as is necessary to carry out the purposes of this Lease to provide for park and recreational facilities for the public.

(b) District reserves to itself all underlying minerals, oil, and gas formations; provided, however, that any exploration, excavation, construction or removal of said minerals, oil, and gas as performed by District, its agents or assigns shall not interfere with or destroy any improvements made or operation and maintenance being carried on by County. Notwithstanding the foregoing, District shall have the right, should District desire to, to explore for, excavate, develop and remove such minerals, on the condition that District fully compensate County on a fair market value basis for any damage done to property of County or any interference with County's lawful activities, which activities are not carried on in conflict with the terms, covenants and conditions of this Lease.

(c) The amount of any compensation due to County under the provisions of paragraph 6 (b) shall be determined by agreement of the parties. Should they be unable to agree the provisions of the California Government Claims Act, Government Code section 900 et seq. shall apply.

7. COUNTY'S RESPONSIBILITY AND AUTHORITY

(a) County shall have exclusive control of the operation, leasing and contracting of all concessions for the sale of fishing licenses, refreshments, food, rentals, or boats and other equipment, mooring space and related recreational facilities. Concessions may be awarded in accordance with the manner selected by County. Swimming and boating areas in Modesto Reservoir shall be agreed upon by the parties. Such areas when designated shall be under the control of County, and County will provide necessary warning signs, buoys and lines of demarcation for such swimming and boating areas.

(b) County shall provide minimum health and sanitation improvements and facilities for the use of the general public, and will maintain the Premises in a clean, safe and sanitary condition.

(c) County shall not be obligated to develop as a recreation site each and every part of the Premises, but shall be obligated to police and maintain the Premises in a clean, safe and sanitary condition. County shall have discretion concerning specific areas of the Premises to be improved as recreation sites, except as otherwise limited in this Lease.

(d) From time to time County may excavate for borrow or fill materials within the reservoir area as may be necessary and consistent with the purposes of this Lease, but shall do so only at locations designated by District. Existing levees, dams or other installation or facilities of District or access thereto shall not be altered, disturbed, endangered or interfered with by County or any uses of the Premises by County or its Permittees.

(e) County may, with the written consent of District, sublease any part or parts of the Premises not included for development. The sublease shall be subject to the restrictions and provisions of this Lease. Such subletting may be made as a part of any

transaction wherein County may acquire an interest in property of third parties for addition to and inclusion within the master plan of development.

(f) District agrees to permit the County, at County's sole cost, to patrol, police and control the activity of boaters, fishermen, swimmers, water skiers and the like, other than persons employed by, acting as agents of, or otherwise authorized by District in the performance of their duties for District. District further agrees not to grant, consent to or acquiesce in the exercise of any rights in, to or upon the surface of Modesto Reservoir to any persons other than its own agents and employees, or as hereinabove granted to County and members of the public lawfully entering the same through said county park.

8. ENVIRONMENTAL HAZARDS

(a) County shall not, generate, manufacture, or dispose of on, under or about the Premises, any flammable, explosive, or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as defined by common practice or by any federal, state or local governmental body or agency ("Hazardous Substance"); provided, however, that parking of automobiles in and of itself shall not violate this provision.

(b) Without limiting any remedies the District may have, in the event any spill of a Hazardous Substance or other contamination occurs on the Premises during the term of this Lease or any renewal thereof, or occurred at any time during County's possession of the Premises, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of the District, County shall immediately notify the District and take all action to mitigate the effects of such spill or contamination. County shall at its own expense, unless otherwise directed by the District, remediate such spill or contamination to the District's satisfaction and in compliance with all applicable laws, rules and regulations. The District shall have the option to perform the remediation itself or through any contractor and County shall cooperate with the District to complete the remediation and shall reimburse the District for all costs and expenses incurred in connection with the remediation.

(c) In the event the District or its contractor performs remediation work County shall upon notice from the District cease use of the Premises as directed in the notice. The District will notify County when the condition has been resolved, at which time, but not before, County may resume its use of the Premises.

(d) County agrees to assume liability for and to defend and hold harmless the District from and against all injuries or death to any person and damage to any property, and all related expenses, including without limitation attorneys' fees, investigators' fees, administrative fees and expenses, litigation expenses and any judgments, fines or penalties assessed against the District, resulting from County's failure to comply with this Section 8 and any laws, rules or regulations concerning the subject matter hereof. The provisions of this Section 8 shall survive the expiration and termination of this Lease.

9. COUNTY IMPROVEMENTS

(a) County will be responsible for the clean and orderly maintenance and repair as well as the safety and the security of the Premises. From time to time by agreement of the parties, planning for development or changes of the Premises by County may be revised and particular proposed or existing facilities and improvements changed, added, deleted, or removed; provided, however, that District shall have the right to make prior review of and to approve or reject each change, addition or improvement so that the future rights of District are protected.

(b) County shall have the right during the term of this Lease to make any and all necessary or desirable alterations, improvements or additions upon the Premises and to attach or erect structures, signs and other fixtures consistent with the purposes of this Lease; provided, however, that District shall have the right to make prior review of and to approve or reject each change, addition or improvement so that the future rights of District are protected. Any such alterations, improvements, additions, structures or signs so placed in or upon or attached to the Premises by County shall be and remain the property of County and may be removed from the Premises by County within a reasonable time after expiration of the term or other termination of this Lease. County shall be responsible, at no cost to District, for performing all environmental and other reports and obtaining all environmental and other permissions and licenses required for its use of the Premises under the Lease.

(c) District's rights hereunder to inspect, or otherwise review, comment on, test, accept or approve, any act or determination by County under this Lease, or any part of it, shall not impose any duty, obligation or liability on District with respect to the act or determination, nor shall they impose any duty to inspect, review or approve the methods by which any work is performed. Nor shall any such action, or failure to take such action, by District prejudice any claim, right or privilege that District may have arising out of this Lease, or relieve Contractor of its responsibility for the performance and condition of the work or of its contractual responsibility under this Lease.

10. INDEMNIFICATION

This Lease is made upon the express condition that District is to be free from all liability and claims for damages arising from the lease or use of the Premises by County pursuant to this Lease. The County shall indemnify and hold the District, District's directors, officers, representatives, agents and employees, and each of them, harmless from and against any and all expenses, losses, damages, claims or liabilities, including to District and District's property, arising directly or indirectly from any act, omission or negligence in the use of the Premises or the performance of County's duties or obligations under this Lease, and from and against any and all costs, expenses or liabilities incurred in or in connection with any of such claims or any proceeding brought thereon, provided that the County and its agents shall not be held liable for any injury or damage to persons or property resulting from any terrorist/criminal acts or acts of war. District will provide timely notice to Contractor upon receipt of any third party claim related to this Agreement. The provisions of this paragraph shall not apply to any liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising

from the sole negligence or willful misconduct of the District. County hereby agrees at its expense promptly to assume the defense of and to defend against any indemnified claim, suit or other proceeding brought thereon, and promptly to pay any and all costs, charges, attorney's fees, and other expenses and any and all judgments that may be incurred against the District, its directors, officers, representatives, agents or employees, or any of them. If any judgment or other lien be placed upon or obtained against the property of the District, its directors, officers, representatives, agents or employees, or any of them, in or as a result of any such claim, suit or proceeding, County shall at once cause the same to be discharged and dissolved by giving bond or otherwise.

11. TERMINATION OF RIGHT TO PROCEED

(a) The occurrence of any of the following shall constitute a default by County and a breach of this Lease:

- (ai) Any action or failure to act by the County that interferes with or precludes District's use of its water for domestic purpose;
- (iib) Violation of the terms of Section 4;
- (iiie) Interference with or impediment to District's use of the Premises in violation of the terms of Section 5;
- (ivd) Commencement of any major work of improvement without County having first obtained the written consent of District;
- (ve) Failure to maintain in effect insurance coverage as described in Section 13 of this Lease;
- (vi-f) Sublease of the Premises without District's consent, or any other assignment, transfer, or encumbrance of this Agreement or the Premises, or involuntary assignment as described in Section 12 of this Lease.
- (viig) Failure to perform or comply with any other provision of this Lease if the failure to perform or comply is not cured within twenty (20) days after notice has been given to County. If the default cannot reasonably be cured within twenty (20) days, County shall not be in default on this Lease if County commences to cure the default within the twenty (20) day period and diligently and in good faith continues to cure the default. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that County perform the provisions of this Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease unless the District so elects in the notice.

(~~h~~b) The District shall have the following remedies to which the District may resort cumulatively or in the alternative if County commits a default under this Lease:

(i) The District can continue this Lease in full force and effect, and this Lease will continue in effect as long as the District does not terminate County's right to possession. No act by the District allowed by this paragraph shall terminate this Lease unless the District notifies County that the District elects to terminate this Lease. After County's default and for as long as the District does not terminate County's right to possession of the Premises, if County obtains the District's consent, County shall have the right to assign or sublet County's interest in this Lease, but County shall not be released from liability.

(ii) The District can terminate this Lease and County's right to possession of the Premises granted by this Lease, and any and all rights and benefits to which County may otherwise be entitled pursuant to this Lease. Termination under this paragraph shall not relieve County from the payment of any sum then due to the District or from any claim for damages previously accrued or then accruing against County. Promptly after notice of termination, County shall vacate and surrender the Premises and the District may reenter and take possession of the Premises. No act by the District other than giving written notice to County shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the District's initiative to protect the District's interest under this Lease shall not constitute a termination of County's right to possession. On termination, the District has the right to recover from County any amount, and court costs, necessary to compensate the District for all detriment proximately caused by the County's default.

(iii) This Lease and all its provisions shall be deemed abandoned and terminated in the event County shall, for a period of one continuous year, cease to operate and maintain the Premises as a part of County's park system or in the event County shall otherwise abandon the Premises for the purposes for which it is leased under this Lease; provided, however, that the provisions of this paragraph shall not be effective by reason of suspension of County's park operations caused by or due to the declaration of the existence of a period of emergency because of war.

12. ASSIGNMENT, SUBLETTING AND ENCUMBERING

No interest of County in this Lease shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment:

(a) If County is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which County is the bankrupt;

- (i) If a writ of attachment or execution is levied on this Lease; or
 - (ii) If, in any proceeding or action to which County is a party, a receiver is appointed with authority to take possession of the Premises.
- (b) An involuntary assignment shall constitute a default by the County and the District shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of County.

13. INSURANCE

- (a) County shall, at County's expense, without limiting any of its other obligations or liabilities, maintain in effect at all times during the Term of this Lease and any renewal thereof not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to Owner. Upon execution of this Lease County shall deliver to the District certificates of insurance evidencing the insurance required pursuant to this paragraph.
- (i) Workers' Compensation Insurance as required by the State of California, including Employers Liability limits of not less than One Million Dollars (\$1,000,000) per occurrence.
 - (ii) Commercial General Liability or Comprehensive General Liability Insurance insuring against liability for injury to persons and property and for the death of any person, or persons, occurring in, on or about the Premises. The liability under such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage, Two Million Dollars (\$2,000,000) aggregate.
 - (iii) Business Automobile or Comprehensive Automobile Insurance including, as applicable, owned, non-owned, and hired motor vehicles, in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit of bodily injury and property damage. If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.
- (b) Not more frequently than each five (5) years, if in the good faith opinion of the District or of County's independent insurance broker through whom such liability insurance is obtained by County, the amount of any insurance coverage at that time is not adequate, County shall increase the insurance coverage to the amounts deemed adequate in the opinion of the District or the insurance broker, whichever required the increase.

- (c) All of County's policies shall contain an endorsement providing that written notice by mail shall be given to the District at least thirty (30) days prior to any termination, cancellation or reduction of coverage.
- (d) County's policies, excepting only that for Workers' Compensation, shall also contain each of the following:
 - (i) Provisions or endorsements naming the District, its directors, officers, agents, employees and volunteers, and each of them, as insureds as respects liabilities arising in, on or about the Premises, and providing that such insurance is primary insurance as respects the interest of the District and that any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder;
 - (ii) Cross Liability or Severability of Interest clause; and
 - (iii) Provisions or endorsements stating that the insurance required hereunder, subject to all of its other terms and conditions, applies to the liability assumed by County under this Lease, including without limitation, any Indemnity.
- (e) Upon execution of this Lease, and annually thereafter during the Term of this Lease or any renewal thereof, County shall furnish the District with certificates of insurance and with original endorsements effecting coverage required by this Paragraph. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- (f) The coverages shall contain no special limitation on the scope of protection afforded to the District, its directors, officers, agents, employees or volunteers. Any failure with reporting provisions of the policies, including breaches of warranties, shall not affect coverage provided the District.
- (g) The foregoing requirements as to the types, limits and the District's approval of insurance coverages to be maintained by County are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by County under this Lease.
- (h) If County fails to maintain the insurance coverage as required by this paragraph, the District, in the District's sole discretion and at County's sole cost and expense, may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above or at the District's sole option, such failure of County to maintain required insurance may constitute a default under this Lease.

14. ABANDONMENT BY COUNTY

County shall not abandon, vacate or surrender the Premises at any time during the term of this Lease, or any renewal thereof; and if County does abandon, vacate, or surrender the Premises, or is dispossessed by process of law, or otherwise, this Lease, and all County's rights granted thereby, shall terminate, and all personal property belonging to County and left on the Premises shall be kept for a reasonable time by the District, but in no event longer than fifteen (15) days after the District gives County notice to remove that property from the Premises, after which time, if it has not been reclaimed by County, it may be treated by the District as abandoned.

15. NO THIRD PARTY BENEFIT

This Agreement is made solely for the benefit of the Parties hereto and it is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto and no person, firm, association, corporation or public entity other than the Parties shall have any right to enforce this Agreement.

16. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party by mail shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

MODESTO IRRIGATION DISTRICT
Post Office Box 4060
1231-11th Street
Modesto, CA 95352
Attention: General Manager

STANISLAUS COUNTY
1010 10th Street
Suite 6800
Modesto, CA 95354
Attention: Chief Executive Officer

[signatures on next page]

IN WITNESS WHEREOF, we have set our hands and caused our seals to be affixed the day and year first above written.

Executed on _____ at Modesto, California

LESSOR: MODESTO IRRIGATION DISTRICT

LESSEE: STANISLAUS COUNTY

Tom Van Groningen, Board President

Jim DeMartini, Chairman

Date: _____

Date: _____

Pat Mills, Secretary

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Tim O'Laughlin, General Counsel

John P. Doering, County Counsel

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EXHIBIT "A"

**Legal Description for
Parks and Recreation Agreement**

Being a portion of that certain real property belonging to Modesto Irrigation District lying in Sections 8, 15, 16, 17, 20, 21, 22, 23, 27 and 28, Township 3 South, Range 12 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, more particularly described as follows:

Beginning at a point on the West Section line of Section 20, Township 3 South, Range 12 East, M.D.B.& M., North 00° 17'26" West 1218.3 feet from the South West Section corner of said Section; thence South 73°52' East 165 feet; thence South 51°44' East 132 feet; thence North 76°34' East 126 feet; thence North 13°26' West 544 feet; thence North 04°29' West 332 feet; thence North 00°13' West 239 feet; thence North 01°08' East 201 feet; thence North 09°35' East 148 feet; thence North 04°21' West 124 feet; thence North 08°24' West 660 feet to a point distant 2000.00 feet south of the North line of Section 20; thence South 89°29'05" East, distant 2000.00 feet South of and parallel with the North line of said Section 20, a distance of 230 feet, more or less, to a point on the 211.4 feet contour on the East Face of Dam No. 1 of the Modesto Reservoir (formerly known as Dallas Warner Reservoir); thence Southerly, Southeasterly and Easterly along said contour to a point distant 2500 feet East of the West line of said Section 20; thence South 00°17'26" East, distant 2500 feet East of, and parallel with the West line of said Section 20, a distance of approximately 800 feet to a point; thence along the property line of the Modesto Irrigation District: North 76° 01' East 653.52 feet; thence North 64° 53' East 396 feet; thence North 44° 50' East 1056 feet; thence North 88° 34' East to the point of intersection of this course with the West 1/4 1/4 Section line of Section 21, Township 3 South, Range 12 East, M.D.B& M.; thence North along said 1/4 1/4 Section line to its point of intersection with the 211.4 feet contour around the Modesto Reservoir, the elevation of the 211.4 feet contour referred to here and subsequently are based on U. S. Coast and Geodetic datum, Elevation of B.M. No. T679-1943 being 215.019 feet above sea level; thence in a general Easterly direction along said contour to its point of intersection with a line 1600 feet West of and parallel with the East Section Line of said Section 21, said point of intersection

1 being on or near the East West 1/4 Section line of said Section 21; thence to a point on said 1/4
2 Section line 1600 feet West of the East 1/4 Section corner of said Section; thence East to the
3 South West corner of the Southeast 1/4 of the Northeast 1/4 of said Section 21; thence North
4 along the East 1/4 1/4 Section line of said Section 21 to its point of intersection with the 211.4
5 feet contour; thence in a general Easterly and Southerly direction along said contour to a point;
6 thence North 56°00' West to a point which is approximately 1020 feet North of the South
7 Section line of said Section 21 and 1130 feet West of the East Section line of said Section 21;
8 thence South 37° 42' West 300 feet; thence South 1° 17' West 300 feet; thence
9 South 51°43' East 545 feet; thence South 45° 43' East 1259 feet to a point on the Section line
10 common to Sections 27 and 28, Township 3 South, Range 12 East, M.D.B.& M.,
11 North 0° 35' West 1852 feet from the 1/4 Section corner common to said Sections 27 and 28;
12 thence South 68° 05' East 1422.9 feet to the East boundary of the West 1/2 of the Northwest 1/4
13 of said Section 27; thence continue South 68° 05' East 347.8 feet; thence South 61°17' East to a
14 point on the West line of the East 1/2 of the East 1/2 of the Northwest 1/4 of said Section 27;
15 thence North along said West line of the East 1/2 of the East 1/2 of the Northwest 1/4 to its point
16 of intersection with the 211.4 feet contour; thence in a general Easterly direction along said
17 contour to its point of intersection with the North-South 1/4 Section line of said Section 27;
18 thence South along said 1/4 Section line to a point 660 feet North of the interior 1/4 Section
19 corner of said Section 27; thence, East parallel with and 660 feet North of the East West 1/4
20 Section line of said Section 27 a distance of 330 feet; thence North, parallel with and 330 feet
21 East of the North-South 1/4 Section line of said Section 27, to a point of intersection with the
22 211.4 feet contour; thence in a general Easterly direction along said contour to its point of
23 intersection with a line 100 feet Westerly from and parallel with the center line of the inlet canal
24 to Modesto Reservoir; thence in a general Southerly and Easterly direction along said line,
25 parallel with and 100 feet distant Westerly and Southerly from the center line of said inlet canal,
26 to its point of intersection with the South line of the Northeast 1/4 of the Southeast 1/4 of the
27 Northeast 1/4 of said Section 27; thence West to the South West corner of said Northeast 1/4 of
28 the Southeast 1/4 of the Northeast 1/4; thence South to the Southeast corner of the Southwest 1/4
29 of the Southeast 1/4 of the Northeast 1/4 of said Section 27; thence East along the East West 1/4
30 Section line of said Section 27 to the East 1/4 Section corner of said Section 27; thence North
31 along the East Section line of said Section 27 to its intersection with the 211.4 feet contour along

1 the northerly side of the Modesto Irrigation District Inlet canal to Modesto Reservoir; thence
2 Northerly, Easterly and Westerly along said contour line or a line 100 feet Easterly from and
3 parallel with the center line of said Inlet Canal, whichever line is farther from said centerline, to
4 its point of intersection with the North Section line of Section 27, Township 3 South, Range 12
5 East, M.D.B.& M., approximately 200 feet East of the North 1/4 Section corner of said Section;
6 thence West to said 1/4 Section corner; thence North approximately 30 feet along the North
7 South 1/4 Section line of Section 22, Township 3 South, Range 12 East, M.D.B.& M., to its
8 point of intersection with the 211.4 feet contour; thence Westerly and Northerly along said
9 contour line to its point of intersection with said North South 1/4 Section line of Section 22;
10 thence North to the North West corner of the Southwest 1/4 of the Southwest 1/4 of the
11 Southeast 1/4 of said Section 22; thence East along the North line of said Southwest 1/4 of the
12 Southwest 1/4 of the Southeast 1/4 of Section 22 to its point of intersection with the 211.4 feet
13 contour; thence in a general North Easterly direction along said contour to its point of
14 intersection with the West line of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of
15 said Section 22; thence North to the Northwest corner of said Southeast 1/4 of the Northeast 1/4
16 of the Southeast 1/4 of Section 22; thence East along the North line of said Southeast 1/4 of the
17 Northeast 1/4 of the Southeast 1/4 to its point of intersection with the 211.4 feet contour; thence
18 in a general Easterly direction along said contour to its point of intersection with a line 500 feet
19 East of and parallel with the West Section line of Section 23, Township 3 South, Range 12 East,
20 M.D.B.& M; thence South along this last described line to its point of intersection with the South
21 line of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 23; thence
22 East to the Southeast corner of said Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4;
23 thence North to the Northeast corner of the Southwest 1/4 of the Southwest 1/4 of the
24 Northwest 1/4 of said Section 23; thence West to the Northwest corner of said Southwest 1/4 of
25 the Southwest 1/4 of the Northwest 1/4; thence South along the West line of said Section 23 to
26 its point of intersection with the 211.4 feet contour; thence in a general Westerly and Northerly
27 direction along said contour to its point of intersection with a line 1100 feet West of and parallel
28 with the East line of Section 21, Township 3 South, Range 12 East, M.D.B.& M.; thence North
29 along this last described line, 1100 feet West of and parallel with the East line of said Section 21
30 to its Northerly point of intersection with the 211.4 feet contour; thence in a general
31 Northeasterly direction along said 211.4 feet contour to its point of intersection with the East

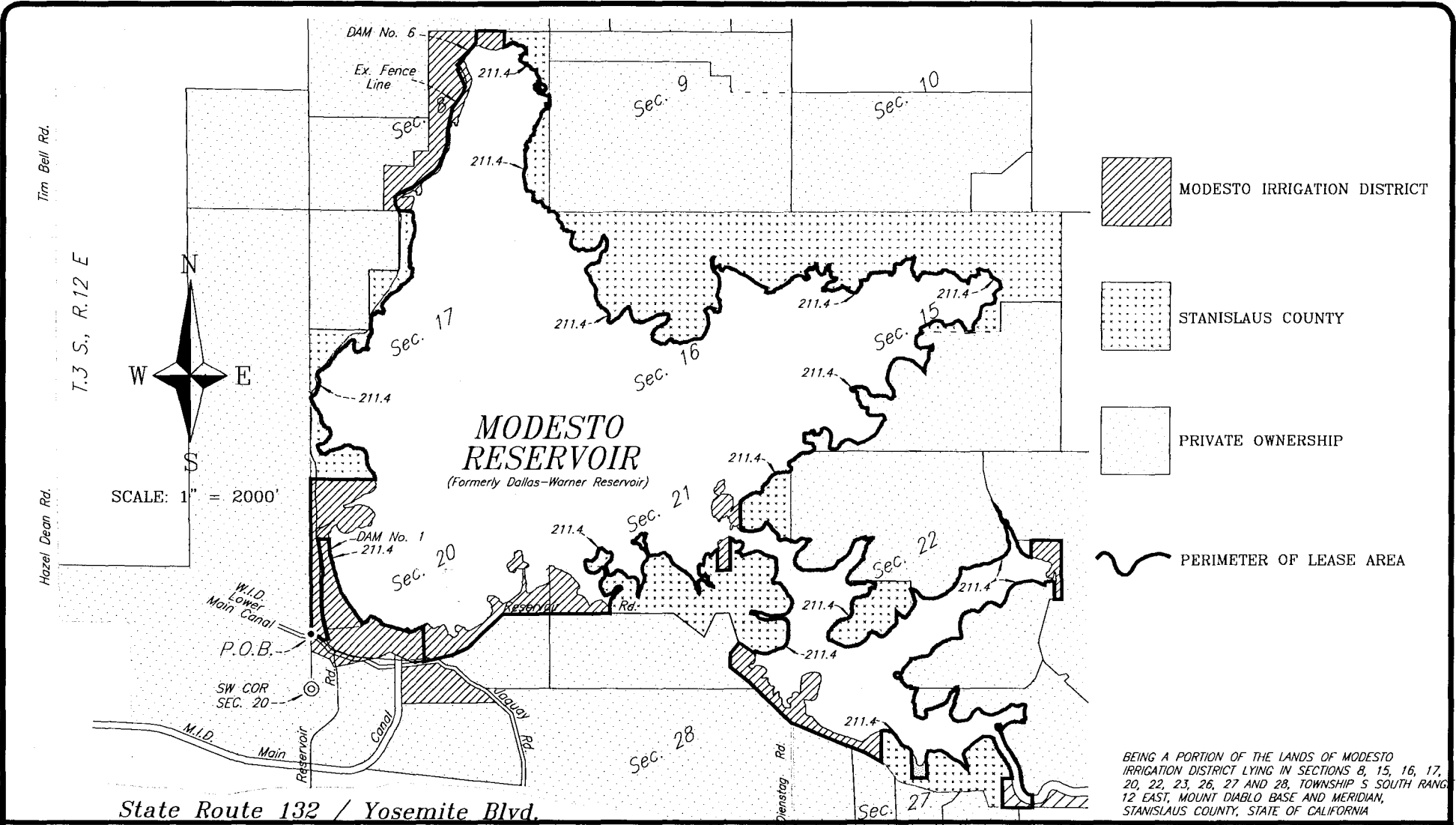
1 West 1/4 section line of Section 15, Township 3 South, Range 12 East, M.D.B.& M.,
2 approximately 1150 feet East of the interior 1/4 Section corner of said Section 15; thence East
3 along the said East West 1/4 section line to its Easterly intersection with the 211.4 feet contour;
4 thence in a general Easterly, North and Westerly direction along said 211.4 feet contour to its
5 point of intersection with the North Section line of Section 16, Township 3 South, Range 12
6 East, M.D.B.& M.; thence West along the North line of said Section 16 to the Northwest corner
7 of said Section; thence North along the East section line of Section 8, Township 3 South, Range
8 12 East M.D.B.& M., to its point of intersection with the 211.4 feet contour; thence in a general
9 Westerly and Northerly direction along said 211.4 feet contour to its point of intersection with
10 the East section line of said Section 8 approximately 2100 feet North of the Southeast corner of
11 said Section; thence North along said East section line of said Section 8 to its Northerly point of
12 intersection with the 211.4 feet contour; thence in a general Northerly and Westerly direction
13 along said 211.4 feet contour to its point of intersection with a line that extends Southerly, at
14 right angles to the North 1/4 1/4 section line of said Section 8, at a point that is 990 feet West of
15 the Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence North to
16 the said point on the North 1/4 1/4 Section line of said Section 8, 990 feet West of the said
17 Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence West along
18 the North 1/4 1/4 section line of said Section 8 to a point distant 1600 feet west of said Northeast
19 corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence south, at right angles to
20 the North 1/4 1/4 section line of said Section 8, approximately 256 feet to a point of intersection
21 with the Northeasterly projection of the Northwesterly line of the edge of the road at Dam No. 6;
22 thence South $40^{\circ}10'47''$ West, along the projection of and the Northwesterly line of said edge
23 road, a distance of 647 feet to a point on a fence line of the existing corral; thence
24 South $40^{\circ}26'46''$ East, along the corral fence, a distance of 97 feet to an angle point in said corral
25 fence; thence South $47^{\circ}47'52''$ West, along said corral fence, a distance of 61 feet to an angle
26 point in said corral fence; thence southerly along the existing fence line and along the westerly
27 edge of a road the following 19 courses:
28 1) South $24^{\circ}55'16''$ East 402 feet;
29 2) South $22^{\circ}23'23''$ West 145.4 feet;
30 3) South $34^{\circ}02'52''$ West 407.4 feet;
31 4) South $12^{\circ}29'29''$ West 518.7 feet;

1 5) South $00^{\circ}37'00''$ West 247.4 feet;
2 6) South $06^{\circ}19'07''$ West 66 feet;
3 7) South $19^{\circ}26'37''$ West 61.3 feet;
4 8) South $23^{\circ}22'42''$ West 419.3 feet;
5 9) South $32^{\circ}51'41''$ West 83.6 feet;
6 10) South $46^{\circ}13'04''$ West 87.6 feet;
7 11) South $52^{\circ}30'10''$ West 116.1 feet;
8 12) South $52^{\circ}03'19''$ West 350.5 feet;
9 13) South $58^{\circ}49'49''$ West 112.8 feet;
10 14) South $65^{\circ}27'54''$ West 336.1 feet;
11 15) South $51^{\circ}19'02''$ West 69.4 feet;
12 16) South $23^{\circ}01'20''$ West 69.4 feet;
13 17) South $02^{\circ}25'40''$ East 116.4 feet;
14 18) South $25^{\circ}01'57''$ East 116.4 feet;
15 19) South $23^{\circ}23'00''$ East 61.7 feet to a point on a point on the South section line of said
16 Section 8; thence East, along the South section line of said Section 8, to its point of intersection
17 with the 211.4 feet contour; thence in a general Southerly direction along said 211.4 feet contour
18 to its point of intersection with the West line of the Southeast 1/4 of the Northwest 1/4 of Section
19 17, Township 3 South, Range 12 East, M.D.B.& M.; thence South along this last described line
20 to its Southerly point of intersection with the 211.4 feet contour; thence in a general
21 Southwesterly direction along said 211.4 feet contour to its point of intersection with the West
22 section line of Said Section 17; thence South along said West section line of said. Section 17 to
23 its Southerly point of intersection with the 211.4 feet contour; thence in a general Southeasterly
24 direction along said 211.4 feet contour to its point of intersection with the East West line through
25 the center of the North 1/2 of the Northwest 1/4 of Section 20, Township 3 South, Range 12
26 East, M.D.B.& M.; thence West along the said line East and West through the center of the
27 North half of the Northwest 1/4 of said Section 20 to its point of intersection with the West
28 section line of said. Section 20; thence South $00^{\circ}17'26''$ East, along the West section line of
29 Section 20 of said Township and Range, a distance of 3454.9 feet to the Point of Beginning.
30 END DESCRIPTION

DWG NAME: K:\2009 LDD Survey Projects\Modesto Reservoir\2009 Land Lease\dwg\Modesto Reservoir 2009 Lease.dwg - Exhibit B - 114

PLOTTED BY: MICHAEL D

EXHIBIT "B"



BEING A PORTION OF THE LANDS OF MODESTO IRRIGATION DISTRICT LYING IN SECTIONS 8, 15, 16, 17, 20, 22, 23, 26, 27 AND 28, TOWNSHIP 5 SOUTH RANGE 12 EAST, MOUNT DIABLO BASE AND MERIDIAN, STANISLAUS COUNTY, STATE OF CALIFORNIA



EXHIBIT "B"
PARKS AND RECREATION AGREEMENT

DATE: August 3, 2009	DWG BY: M. Jones
SCALE: 1" = 2000'	APP. BY:
FILE NAME: Modesto Reservoir 2009 Lease.dwg	

BOARD OF SUPERVISORS

**LEASE OF REAL PROPERTY FOR
2009 AUG 17 A 7:53 PARK AND RECREATION PURPOSES**

The County of Stanislaus (hereinafter "County"), a political subdivision of the State of California, and Modesto Irrigation District, (hereinafter "District"), an irrigation district organized and existing under the laws of the State of California, agree to enter into a lease of real property for the purpose of park and recreation. As used in this Lease the term "party" means County or District and the term "Parties" means County and District.

WHEREAS this Lease is made with reference to the following facts:

- (a) County desires to continue leasing the real property, hereinafter referred to herein as "the Real Property" or "the Premises," as a county park pursuant to Section 5157 of the Public Resources Code;
- (b) District desires to continue leasing the Real Property to County, pursuant to Section 22505 of the Water Code;
- (c) District has satisfied, and throughout the term of this Lease will continue to satisfy and comply with, all conditions and provisions of California Health and Safety Code section 115840.5, thereby allowing recreational uses to include having bodily contact with the water; and
- (d) District has determined by resolution entered upon its minutes, that the property being leased under this Lease is not currently necessary for District purposes, and that the terms of this Lease are for the best interests of the District.
- (e) County's use of the Premises under this Lease, and this Lease itself, is subject and subordinate to certain deed reservations and restrictions, which said reservations and restrictions pertain to the watering of cattle in certain areas of said reservoir and are set forth in the deed of the Warner Land and Cattle Co., which deed was recorded on October 2, 1909 in Vol. 87 at page 213 in the Official Records of the County Recorder of the County of Stanislaus, State of California.

NOW, THEREFORE, in consideration of the mutual benefits, agreements and covenants herein contained, it is agreed between the parties as follows:

1. PREMISES

District leases to County and County leases from District for park and recreational purposes, and those purposes alone, all that real property adjacent to and including the Modesto (Dallas-Warner) Reservoir particularly described in the description thereof attached to and made a part of this Lease as Exhibit "A". For the convenience of the parties, there is attached hereto and made part hereof as Exhibit "B", a map showing the location and extent of the Real Property described in Exhibit "A", but the description and not the map shall determine the precise location of the Premises.

2. TERM

The term of this Lease shall be for twenty-five years, commencing on August 11, 2009, provided that either party shall have the right to terminate this Lease by giving at least one year's prior written notice of termination to the other party, which notice may not, however, be given prior to August 11, 2018.

3. USE OF REAL PROPERTY

(a) So far as is necessary in the light of the purposes for which the Premises are leased, and except as is otherwise herein set forth, County shall have the exclusive care, maintenance and control of the Real Property for the use and enjoyment of the general public as a part of County's park system. The Premises shall be maintained by County as a public recreation area, open to all persons, subject to reasonable regulations of County, including payment of reasonable fees for entry into and/or use of the facilities of said park.

(b) By execution of this Lease and entry in the Premises hereunder, County accepts the Premises as being in good and sanitary order, condition and repair, and agrees that upon expiration of this Lease, or sooner termination hereof, to surrender the Premises to the District in the same condition as when first received, reasonable wear and tear excepted.

(c) District makes no representation as to, and does not warrant, the condition of the Premises, either at the inception of this Lease or as to any future point in time. Nothing in this Lease shall be construed as creating or imposing upon the District any duty or obligation to maintain or repair the Premises.

(d) At the expiration or termination of this Lease, County shall immediately surrender the Premises to the District and remove all of County's personal property from the Premises at County's cost. County shall promptly repair, at County's cost, all damage to the Premises caused by such removal.

4. APPLICABLE LAWS

The County shall use, operate and maintain the Premises in accordance with all applicable federal, state and local laws, orders, rules, ordinances and regulations (collectively "Laws"), as such laws may exist at any time during the term of this Lease, including without limitation applicable health and safety laws, and any rules and regulations adopted by the County Parks and Recreation Department as to control and prevent the rise of unsightly conditions. The County shall comply with any rules, requirements or determinations adopted by the District in furtherance of such laws, including suspension or termination of activities on or within the Premises.

5. DISTRICT'S OPERATIONS TAKE PRIORITY

(a) Anything herein contained to the contrary notwithstanding, it is distinctly understood and agreed by and between the parties that District is now using and will continue to use its Modesto Reservoir and the surrounding real property owned by District

for District's electrical and water operations, including the impounding and storage of water for drinking and irrigation purposes, which functions are vital to and are a material and integral part of District's over-all water distribution system. For this reason, it is further understood and agreed by and between the parties that this Lease and the use of the Premises by County shall be subject at all times during the term of this Lease or any extension or renewal thereof, to the right of District to keep, alter, remove, add to, maintain, and repair, as District sees fit, District's dams, reservoirs, levees and all other facilities of District used by District in its electric and water operations, and District shall have the right at all such times without permit or license from the County to enter upon the Premises for the purpose of keeping, inspecting and maintaining such dams, reservoirs, levees, and facilities.

(b) It is further distinctly understood and agreed that County shall in no manner restrict, interfere with or impede or permit any restriction or interference with or impediment to said use of the Premises by District, or any persons acting under the direction of District, for District's said purposes. It is further agreed that District shall have the right at all times during the term hereof or any extension or renewal thereof to obtain and use dirt and cut and remove trees as District in its sound discretion deems necessary or advisable in District's maintenance and operation of its said property and facilities.

(c) The parties understand and agree that District shall at all times have the right to raise or lower the water level in said reservoir to any extent District deems fit in District's use of said reservoir and facilities for District's purposes; provided, however, that District shall not cause the water level in said reservoir to be above a true elevation of 211.4 feet, when to do so, damage to County's property constructed or erected under this Lease or the prior Lease of the property between County and District might reasonably be expected to occur. District shall not be responsible or have any duty or liability in the event that the reservoir rises above a true elevation of 211.4 feet, for any reason or reasons beyond District's control.

(d) None of the matters and things which County may be authorized to do by virtue of this Lease shall be done, affixed, installed, erected or located below a true elevation of 211.4 feet above sea level, it being understood that the area below such elevation shall be subject to flooding without regard to time or season and without notice; provided, however, that this section shall not apply to boat ramps or buoys.

(e) The parties agree that should it become necessary in the sound discretion of District in the furtherance of District's water development, storage, treatment, and distribution activities, for District to raise the level in said reservoir above a true elevation of 211.4 feet, District shall have the right to terminate this Lease on one year's written notice to County and this Lease shall terminate one year after the receipt by County of written notice from District of District's desire and intention to terminate this Lease. Such notice shall be presented to the Clerk of the Board of Supervisors of the County.

6. DISTRICT RESERVES CERTAIN RIGHTS

(a) District reserves to itself all water and water rights in and relating to the Real Property; provided, however, that County may develop such water on the Real

Property as is necessary to carry out the purposes of this Lease to provide for park and recreational facilities for the public.

(b) District reserves to itself all underlying minerals, oil, and gas formations; provided, however, that any exploration, excavation, construction or removal of said minerals, oil, and gas as performed by District, its agents or assigns shall not interfere with or destroy any improvements made or operation and maintenance being carried on by County. Notwithstanding the foregoing, District shall have the right, should District desire to, to explore for, excavate, develop and remove such minerals, on the condition that District fully compensate County on a fair market value basis for any damage done to property of County or any interference with County's lawful activities, which activities are not carried on in conflict with the terms, covenants and conditions of this Lease.

(c) The amount of any compensation due to County under the provisions of paragraph 6 (b) shall be determined by agreement of the parties. Should they be unable to agree the provisions of the California Government Claims Act, Government Code section 900 et seq. shall apply.

7. COUNTY'S RESPONSIBILITY AND AUTHORITY

(a) County shall have exclusive control of the operation, leasing and contracting of all concessions for the sale of fishing licenses, refreshments, food, rentals, or boats and other equipment, mooring space and related recreational facilities. Concessions may be awarded in accordance with the manner selected by County. Swimming and boating areas in Modesto Reservoir shall be agreed upon by the parties. Such areas when designated shall be under the control of County, and County will provide necessary warning signs, buoys and lines of demarcation for such swimming and boating areas.

(b) County shall provide minimum health and sanitation improvements and facilities for the use of the general public, and will maintain the Premises in a clean, safe and sanitary condition.

(c) County shall not be obligated to develop as a recreation site each and every part of the Premises, but shall be obligated to police and maintain the Premises in a clean, safe and sanitary condition. County shall have discretion concerning specific areas of the Premises to be improved as recreation sites, except as otherwise limited in this Lease.

(d) From time to time County may excavate for borrow or fill materials within the reservoir area as may be necessary and consistent with the purposes of this Lease, but shall do so only at locations designated by District. Existing levees, dams or other installation or facilities of District or access thereto shall not be altered, disturbed, endangered or interfered with by County or any uses of the Premises by County or its Permittees.

(e) County may, with the written consent of District, sublease any part or parts of the Premises not included for development. The sublease shall be subject to the restrictions and provisions of this Lease. Such subletting may be made as a part of any

transaction wherein County may acquire an interest in property of third parties for addition to and inclusion within the master plan of development.

(f) District agrees to permit the County, at County's sole cost, to patrol, police and control the activity of boaters, fishermen, swimmers, water skiers and the like, other than persons employed by, acting as agents of, or otherwise authorized by District in the performance of their duties for District. District further agrees not to grant, consent to or acquiesce in the exercise of any rights in, to or upon the surface of Modesto Reservoir to any persons other than its own agents and employees, or as hereinabove granted to County and members of the public lawfully entering the same through said county park.

8. ENVIRONMENTAL HAZARDS

(a) County shall not, generate, manufacture, or dispose of on, under or about the Premises, any flammable, explosive, or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as defined by common practice or by any federal, state or local governmental body or agency ("Hazardous Substance"); provided, however, that parking of automobiles in and of itself shall not violate this provision.

(b) Without limiting any remedies the District may have, in the event any spill of a Hazardous Substance or other contamination occurs on the Premises during the term of this Lease or any renewal thereof, or occurred at any time during County's possession of the Premises, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of the District, County shall immediately notify the District and take all action to mitigate the effects of such spill or contamination. County shall at its own expense, unless otherwise directed by the District, remediate such spill or contamination to the District's satisfaction and in compliance with all applicable laws, rules and regulations. The District shall have the option to perform the remediation itself or through any contractor and County shall cooperate with the District to complete the remediation and shall reimburse the District for all costs and expenses incurred in connection with the remediation.

(c) In the event the District or its contractor performs remediation work County shall upon notice from the District cease use of the Premises as directed in the notice. The District will notify County when the condition has been resolved, at which time, but not before, County may resume its use of the Premises.

(d) County agrees to assume liability for and to defend and hold harmless the District from and against all injuries or death to any person and damage to any property, and all related expenses, including without limitation attorneys' fees, investigators' fees, administrative fees and expenses, litigation expenses and any judgments, fines or penalties assessed against the District, resulting from County's failure to comply with this Section 8 and any laws, rules or regulations concerning the subject matter hereof. The provisions of this Section 8 shall survive the expiration and termination of this Lease.

9. COUNTY IMPROVEMENTS

(a) County will be responsible for the clean and orderly maintenance and repair as well as the safety and the security of the Premises. From time to time by agreement of the parties, planning for development or changes of the Premises by County may be revised and particular proposed or existing facilities and improvements changed, added, deleted, or removed; provided, however, that District shall have the right to make prior review of and to approve or reject each change, addition or improvement so that the future rights of District are protected.

(b) County shall have the right during the term of this Lease to make any and all necessary or desirable alterations, improvements or additions upon the Premises and to attach or erect structures, signs and other fixtures consistent with the purposes of this Lease; provided, however, that District shall have the right to make prior review of and to approve or reject each change, addition or improvement so that the future rights of District are protected. Any such alterations, improvements, additions, structures or signs so placed in or upon or attached to the Premises by County shall be and remain the property of County and may be removed from the Premises by County within a reasonable time after expiration of the term or other termination of this Lease. County shall be responsible, at no cost to District, for performing all environmental and other reports and obtaining all environmental and other permissions and licenses required for its use of the Premises under the Lease.

(c) District's rights hereunder to inspect, or otherwise review, comment on, test, accept or approve, any plan, improvement, act or determination by County under this Lease, or any part of it, shall not impose any duty, obligation or liability on District with respect to the plan, improvement, act or determination, nor shall they impose any duty to inspect, review or approve the methods by which any work is performed. Nor shall any such action, or failure to take such action, by District prejudice any claim, right or privilege that District may have arising out of this Lease, or relieve Contractor of its responsibility for the performance and condition of the work or of its contractual responsibility under this Lease.

10. INDEMNIFICATION

This Lease is made upon the express condition that District is to be free from all liability and claims for damages arising from the lease or use of the Premises by County pursuant to this Lease. The County shall indemnify and hold the District, District's directors, officers, representatives, agents and employees, and each of them, harmless from and against any and all expenses, losses, damages, claims or liabilities, including to District and District's property, arising directly or indirectly from any act, omission or negligence in the use of the Premises or the performance of County's duties or obligations under this Lease, and from and against any and all costs, expenses or liabilities incurred in or in connection with any of such claims or any proceeding brought thereon, provided that the County and its agents shall not be held liable for any injury or damage to persons or property resulting from any terrorist/criminal acts or acts of war. District will provide timely notice to Contractor upon receipt of any third party claim related to this Agreement. The provisions of this paragraph shall not apply to any liability for damages for death or

bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the District. County hereby agrees at its expense promptly to assume the defense of and to defend against any indemnified claim, suit or other proceeding brought thereon, and promptly to pay any and all costs, charges, attorney's fees, and other expenses and any and all judgments that may be incurred against the District, its directors, officers, representatives, agents or employees, or any of them. If any judgment or other lien be placed upon or obtained against the property of the District, its directors, officers, representatives, agents or employees, or any of them, in or as a result of any such claim, suit or proceeding, County shall at once cause the same to be discharged and dissolved by giving bond or otherwise.

11. TERMINATION OF RIGHT TO PROCEED

(a) The occurrence of any of the following shall constitute a default by County and a breach of this Lease:

- (i) Any action or failure to act by the County that interferes with or precludes District's use of its water for domestic purpose;
- (ii) Violation of the terms of Section 4;
- (iii) Interference with or impediment to District's use of the Premises in violation of the terms of Section 5;
- (iv) Commencement of any major work of improvement without County having first obtained the written approval of District;
- (v) Failure to maintain in effect insurance coverage as described in Section 13 of this Lease;
- (vi) Sublease of the Premises without District's consent, or any other assignment, transfer, or encumbrance of this Agreement or the remises, or involuntary assignment as described in Section 12 of this lease.
- (vii) Failure to perform or comply with any other provision of this Lease if the failure to perform or comply is not cured within twenty (20) days after notice has been given to County. If the default cannot reasonably be cured within twenty (20) days, County shall not be in default on this Lease if County commences to cure the default within the twenty (20) day period and diligently and in good faith continues to cure the default. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that County perform the provisions of this Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease unless the District so elects in the notice.

(b) The District shall have the following remedies to which the District may resort cumulatively or in the alternative if County commits a default under this Lease:

(i) The District can continue this Lease in full force and effect, and this Lease will continue in effect as long as the District does not terminate County's right to possession. No act by the District allowed by this paragraph shall terminate this Lease unless the District notifies County that the District elects to terminate this Lease. After County's default and for as long as the District does not terminate County's right to possession of the Premises, if County obtains the District's consent, County shall have the right to assign or sublet County's interest in this Lease, but County shall not be released from liability.

(ii) The District can terminate this Lease and County's right to possession of the Premises granted by this Lease, and any and all rights and benefits to which County may otherwise be entitled pursuant to this Lease. Termination under this paragraph shall not relieve County from the payment of any sum then due to the District or from any claim for damages previously accrued or then accruing against County. Promptly after notice of termination, County shall vacate and surrender the Premises and the District may reenter and take possession of the Premises. No act by the District other than giving written notice to County shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on the District's initiative to protect the District's interest under this Lease shall not constitute a termination of County's right to possession. On termination, the District has the right to recover from County any amount, and court costs, necessary to compensate the District for all detriment proximately caused by the County's default.

(iii) This Lease and all its provisions shall be deemed abandoned and terminated in the event County shall, for a period of one continuous year, cease to operate and maintain the Premises as a part of County's park system or in the event County shall otherwise abandon the Premises for the purposes for which it is leased under this Lease; provided, however, that the provisions of this paragraph shall not be effective by reason of suspension of County's park operations caused by or due to the declaration of the existence of a period of emergency because of war.

12. ASSIGNMENT, SUBLETTING AND ENCUMBERING

No interest of County in this Lease shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment:

(a) If County is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which County is the bankrupt;

(i) If a writ of attachment or execution is levied on this Lease; or

- (ii) If, in any proceeding or action to which County is a party, a receiver is appointed with authority to take possession of the Premises.
- (b) An involuntary assignment shall constitute a default by the County and the District shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of County.

13. INSURANCE

- (a) County shall, at County's expense, without limiting any of its other obligations or liabilities, maintain in effect at all times during the Term of this Lease and any renewal thereof not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to Owner. Upon execution of this Lease County shall deliver to the District certificates of insurance evidencing the insurance required pursuant to this paragraph.
 - (i) Workers' Compensation Insurance as required by the State of California, including Employers Liability limits of not less than One Million Dollars (\$1,000,000) per occurrence.
 - (ii) Commercial General Liability or Comprehensive General Liability Insurance insuring against liability for injury to persons and property and for the death of any person, or persons, occurring in, on or about the Premises. The liability under such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage, Two Million Dollars (\$2,000,000) aggregate.
 - (iii) Business Automobile or Comprehensive Automobile Insurance including, as applicable, owned, non-owned, and hired motor vehicles, in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit of bodily injury and property damage. If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.
- (b) Not more frequently than each five (5) years, if in the good faith opinion of the District or of County's independent insurance broker through whom such liability insurance is obtained by County, the amount of any insurance coverage at that time is not adequate, County shall increase the insurance coverage to the amounts deemed adequate in the opinion of the District or the insurance broker, whichever required the increase.
- (c) All of County's policies shall contain an endorsement providing that written notice by mail shall be given to the District at least thirty (30) days prior to any termination, cancellation or reduction of coverage.

- (d) County's policies, excepting only that for Workers' Compensation, shall also contain each of the following:
 - (i) Provisions or endorsements naming the District, its directors, officers, agents, employees and volunteers, and each of them, as insureds as respects liabilities arising in, on or about the Premises, and providing that such insurance is primary insurance as respects the interest of the District and that any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder;
 - (ii) Cross Liability or Severability of Interest clause; and
 - (iii) Provisions or endorsements stating that the insurance required hereunder, subject to all of its other terms and conditions, applies to the liability assumed by County under this Lease, including without limitation, any Indemnity.
- (e) Upon execution of this Lease, and annually thereafter during the Term of this Lease or any renewal thereof, County shall furnish the District with certificates of insurance and with original endorsements effecting coverage required by this Paragraph. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- (f) The coverages shall contain no special limitation on the scope of protection afforded to the District, its directors, officers, agents, employees or volunteers. Any failure with reporting provisions of the policies, including breaches of warranties, shall not affect coverage provided the District.
- (g) The foregoing requirements as to the types, limits and the District's approval of insurance coverages to be maintained by County are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by County under this Lease.
- (h) If County fails to maintain the insurance coverage as required by this paragraph, the District, in the District's sole discretion and at County's sole cost and expense, may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above or at the District's sole option, such failure of County to maintain required insurance may constitute a default under this Lease.

14. ABANDONMENT BY COUNTY

County shall not abandon, vacate or surrender the Premises at any time during the term of this Lease, or any renewal thereof; and if County does abandon, vacate, or surrender the Premises, or is dispossessed by process of law, or otherwise, this Lease, and all County's rights granted thereby, shall terminate, and all personal property belonging to

County and left on the Premises shall be kept for a reasonable time by the District, but in no event longer than fifteen (15) days after the District gives County notice to remove that property from the Premises, after which time, if it has not been reclaimed by County, it may be treated by the District as abandoned.

15. NO THIRD PARTY BENEFIT

This Agreement is made solely for the benefit of the Parties hereto and it is not made for the benefit of any person, firm, association, corporation or public entity not a party hereto and no person, firm, association, corporation or public entity other than the Parties shall have any right to enforce this Agreement.

16. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party by mail shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

MODESTO IRRIGATION DISTRICT
Post Office Box 4060
1231-11th Street
Modesto, CA 95352
Attention: General Manager

STANISLAUS COUNTY
1010 10th Street
Suite 6800
Modesto, CA 95354
Attention: Chief Executive Officer

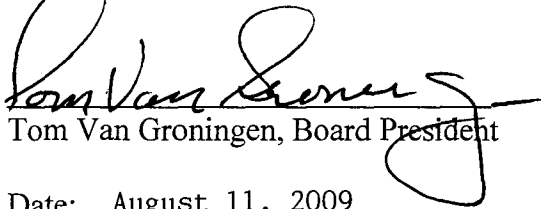
[signatures on next page]

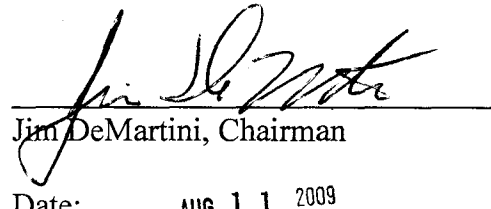
IN WITNESS WHEREOF, we have set our hands and caused our seals to be affixed the day and year first above written.

Executed on August 11, 2009 at Modesto, California

LESSOR: MODESTO IRRIGATION DISTRICT

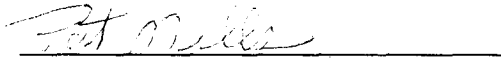
LESSEE: STANISLAUS COUNTY


Tom Van Groningen, Board President


Jim DeMartini, Chairman

Date: August 11, 2009


Date: AUG 11 2009

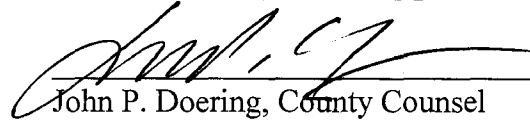

Pat Mills, Secretary

Date: August 11, 2009

APPROVED AS TO FORM:

APPROVED AS TO FORM:


Tim O'Laughlin, General Counsel


John P. Doering, County Counsel

RESOLUTION NO. 2009-64
APPROVING EXECUTION OF LEASE OF REAL PROPERTY
FOR PARK AND RECREATION PURPOSES BETWEEN MODESTO
IRRIGATION DISTRICT AND STANISLAUS COUNTY

WHEREAS, the Modesto Irrigation District (MID) and Stanislaus County originally entered into a 25 year lease of real property in the vicinity of Modesto Reservoir for recreational purposes on September 15, 1959; and

WHEREAS, such lease was amended on March 25, 1963, and renewed again on September 16, 1984; and

WHEREAS, such lease is due to expire on September 16, 2009; and

WHEREAS, the intergovernmental relationship between MID and Stanislaus County, over the last 50 years, has been mutually beneficial for the two parties in regards to such lease; and

WHEREAS, Stanislaus County has performed in good faith with regards to all provisions of the Lease; and

WHEREAS, Stanislaus County has provided valued recreational opportunities for the public that represents, in large part, existing MID electrical customers; and

WHEREAS, MID has determined by resolution entered upon its minutes, that the leasing under this lease is for the best interest of the MID and will not interfere with the use of the property by MID for MID purposes; and

WHEREAS, MID and Stanislaus County desire to continue leasing the real property.

NOW, therefore, BE IT RESOLVED, That the Board of Directors of the Modesto Irrigation District does hereby authorize and direct the President and Secretary to execute the Lease of Real Property for Park and Recreation Purposes between Modesto Irrigation District and Stanislaus County.

Moved by Director Kidd, seconded by Director Hensley, that the foregoing resolution be adopted.

The following vote was had:

Ayes: Directors Hensley, Kidd, Serpa, Van Groningen and Warda

Noes: Directors None

Absent: Directors None

The President declared the resolution adopted.

o0o

I, Pat Caldwell Mills, Secretary of the Board of Directors of the MODESTO IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held the 11th day of August 2009.



Secretary of the Board of Directors
of the Modesto Irrigation District

1 **EXHIBIT "A"**

2 **Legal Description for**
3 **Parks and Recreation Agreement**
4

5 Being a portion of that certain real property belonging to Modesto Irrigation District lying in
6 Sections 8, 15, 16, 17, 20, 21, 22, 23, 27 and 28, Township 3 South, Range 12 East, Mount
7 Diablo Base and Meridian, County of Stanislaus, State of California, more
8 particularly described as follows:
9

10 **Beginning** at a point on the West Section line of Section 20, Township 3 South, Range 12 East,
11 M.D.B. & M., North 00° 17' 26" West 1218.3 feet from the South West Section corner of said
12 Section; thence South 73° 52' East 165 feet; thence South 51° 44' East 132 feet; thence
13 North 76° 34' East 126 feet; thence North 13° 26' West 544 feet; thence North 04° 29' West
14 332 feet; thence North 00° 13' West 239 feet; thence North 01° 08' East 201 feet; thence
15 North 09° 35' East 148 feet; thence North 04° 21' West 124 feet; thence North 08° 24' West
16 660 feet to a point distant 2000.00 feet south of the North line of Section 20; thence
17 South 89° 29' 05" East, distant 2000.00 feet South of and parallel with the North line of said
18 Section 20, a distance of 230 feet, more or less, to a point on the 211.4 feet contour on the East
19 Face of Dam No. 1 of the Modesto Reservoir (formerly known as Dallas Warner Reservoir);
20 thence Southerly, Southeasterly and Easterly along said contour to a point distant 2500 feet East
21 of the West line of said Section 20; thence South 00° 17' 26" East, distant 2500 feet East of, and
22 parallel with the West line of said Section 20, a distance of approximately 800 feet to a point;
23 thence along the property line of the Modesto Irrigation District: North 76° 01' East 653.52 feet;
24 thence North 64° 53' East 396 feet; thence North 44° 50' East 1056 feet; thence North 88° 34'
25 East to the point of intersection of this course with the West 1/4 1/4 Section line of Section 21,
26 Township 3 South, Range 12 East, M.D.B. & M.; thence North along said 1/4 1/4 Section line to
27 its point of intersection with the 211.4 feet contour around the Modesto Reservoir, the elevation
28 of the 211.4 feet contour referred to here and subsequently are based on U. S. Coast and
29 Geodetic datum, Elevation of B.M. No. T679-1943 being 215.019 feet above sea level; thence in
30 a general Easterly direction along said contour to its point of intersection with a line 1600 feet
31 West of and parallel with the East Section Line of said Section 21, said point of intersection

1 being on or near the East West 1/4 Section line of said Section 21; thence to a point on said 1/4
2 Section line 1600 feet West of the East 1/4 Section corner of said Section; thence East to the
3 South West corner of the Southeast 1/4 of the Northeast 1/4 of said Section 21; thence North
4 along the East 1/4 1/4 Section line of said Section 21 to its point of intersection with the 211.4
5 feet contour; thence in a general Easterly and Southerly direction along said contour to a point;
6 thence North 56°00' West to a point which is approximately 1020 feet North of the South
7 Section line of said Section 21 and 1130 feet West of the East Section line of said Section 21;
8 thence South 37° 42' West 300 feet; thence South 1° 17' West 300 feet; thence
9 South 51°43' East 545 feet; thence South 45° 43' East 1259 feet to a point on the Section line
10 common to Sections 27 and 28, Township 3 South, Range 12 East, M.D.B.& M.,
11 North 0° 35' West 1852 feet from the 1/4 Section corner common to said Sections 27 and 28;
12 thence South 68° 05' East 1422.9 feet to the East boundary of the West 1/2 of the Northwest 1/4
13 of said Section 27; thence continue South 68° 05' East 347.8 feet; thence South 61°17' East to a
14 point on the West line of the East 1/2 of the East 1/2 of the Northwest 1/4 of said Section 27;
15 thence North along said West line of the East 1/2 of the East 1/2 of the Northwest 1/4 to its point
16 of intersection with the 211.4 feet contour; thence in a general Easterly direction along said
17 contour to its point of intersection with the North-South 1/4 Section line of said Section 27;
18 thence South along said 1/4 Section line to a point 660 feet North of the interior 1/4 Section
19 corner of said Section 27; thence, East parallel with and 660 feet North of the East West 1/4
20 Section line of said Section 27 a distance of 330 feet; thence North, parallel with and 330 feet
21 East of the North-South 1/4 Section line of said Section 27, to a point of intersection with the
22 211.4 feet contour; thence in a general Easterly direction along said contour to its point of
23 intersection with a line 100 feet Westerly from and parallel with the center line of the inlet canal
24 to Modesto Reservoir; thence in a general Southerly and Easterly direction along said line,
25 parallel with and 100 feet distant Westerly and Southerly from the center line of said inlet canal,
26 to its point of intersection with the South line of the Northeast 1/4 of the Southeast 1/4 of the
27 Northeast 1/4 of said Section 27; thence West to the South West corner of said Northeast 1/4 of
28 the Southeast 1/4 of the Northeast 1/4; thence South to the Southeast corner of the Southwest 1/4
29 of the Southeast 1/4 of the Northeast 1/4 of said Section 27; thence East along the East West 1/4
30 Section line of said Section 27 to the East 1/4 Section corner of said Section 27; thence North
31 along the East Section line of said Section 27 to its intersection with the 211.4 feet contour along

1 the northerly side of the Modesto Irrigation District Inlet canal to Modesto Reservoir; thence
2 Northerly, Easterly and Westerly along said contour line or a line 100 feet Easterly from and
3 parallel with the center line of said Inlet Canal, whichever line is farther from said centerline, to
4 its point of intersection with the North Section line of Section 27, Township 3 South, Range 12
5 East, M.D.B.& M., approximately 200 feet East of the North 1/4 Section corner of said Section;
6 thence West to said 1/4 Section corner; thence North approximately 30 feet along the North
7 South 1/4 Section line of Section 22, Township 3 South, Range 12 East, M.D.B.& M., to its
8 point of intersection with the 211.4 feet contour; thence Westerly and Northerly along said
9 contour line to its point of intersection with said North South 1/4 Section line of Section 22;
10 thence North to the North West corner of the Southwest 1/4 of the Southwest 1/4 of the
11 Southeast 1/4 of said Section 22; thence East along the North line of said Southwest 1/4 of the
12 Southwest 1/4 of the Southeast 1/4 of Section 22 to its point of intersection with the 211.4 feet
13 contour; thence in a general North Easterly direction along said contour to its point of
14 intersection with the West line of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of
15 said Section 22; thence North to the Northwest corner of said Southeast 1/4 of the Northeast 1/4
16 of the Southeast 1/4 of Section 22; thence East along the North line of said Southeast 1/4 of the
17 Northeast 1/4 of the Southeast 1/4 to its point of intersection with the 211.4 feet contour; thence
18 in a general Easterly direction along said contour to its point of intersection with a line 500 feet
19 East of and parallel with the West Section line of Section 23, Township 3 South, Range 12 East,
20 M.D.B.& M; thence South along this last described line to its point of intersection with the South
21 line of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 23; thence
22 East to the Southeast corner of said Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4;
23 thence North to the Northeast corner of the Southwest 1/4 of the Southwest 1/4 of the
24 Northwest 1/4 of said Section 23; thence West to the Northwest corner of said Southwest 1/4 of
25 the Southwest 1/4 of the Northwest 1/4; thence South along the West line of said Section 23 to
26 its point of intersection with the 211.4 feet contour; thence in a general Westerly and Northerly
27 direction along said contour to its point of intersection with a line 1100 feet West of and parallel
28 with the East line of Section 21, Township 3 South, Range 12 East, M.D.B.& M.; thence North
29 along this last described line, 1100 feet West of and parallel with the East line of said Section 21
30 to its Northerly point of intersection with the 211.4 feet contour; thence in a general
31 Northeasterly direction along said 211.4 feet contour to its point of intersection with the East

1 West 1/4 section line of Section 15, Township 3 South, Range 12 East, M.D.B.& M.,
 2 approximately 1150 feet East of the interior 1/4 Section corner of said Section 15; thence East
 3 along the said East West 1/4 section line to its Easterly intersection with the 211.4 feet contour;
 4 thence in a general Easterly, North and Westerly direction along said 211.4 feet contour to its
 5 point of intersection with the North Section line of Section 16, Township 3 South, Range 12
 6 East, M.D.B.& M.; thence West along the North line of said Section 16 to the Northwest corner
 7 of said Section; thence North along the East section line of Section 8, Township 3 South, Range
 8 12 East M.D.B.& M., to its point of intersection with the 211.4 feet contour; thence in a general
 9 Westerly and Northerly direction along said 211.4 feet contour to its point of intersection with
 10 the East section line of said Section 8 approximately 2100 feet North of the Southeast corner of
 11 said Section; thence North along said East section line of said Section 8 to its Northerly point of
 12 intersection with the 211.4 feet contour; thence in a general Northerly and Westerly direction
 13 along said 211.4 feet contour to its point of intersection with a line that extends Southerly, at
 14 right angles to the North 1/4 1/4 section line of said Section 8, at a point that is 990 feet West of
 15 the Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence North to
 16 the said point on the North 1/4 1/4 Section line of said Section 8, 990 feet West of the said
 17 Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence West along
 18 the North 1/4 1/4 section line of said Section 8 to a point distant 1600 feet west of said Northeast
 19 corner of the Southeast 1/4 of the Northeast 1/4 of said Section 8; thence south, at right angles to
 20 the North 1/4 1/4 section line of said Section 8, approximately 256 feet to a point of intersection
 21 with the Northeasterly projection of the Northwesterly line of the edge of the road at Dam No. 6;
 22 thence South $40^{\circ}10'47''$ West, along the projection of and the Northwesterly line of said edge
 23 road, a distance of 647 feet to a point on a fence line of the existing corral; thence
 24 South $40^{\circ}26'46''$ East, along the corral fence, a distance of 97 feet to an angle point in said corral
 25 fence; thence South $47^{\circ}47'52''$ West, along said corral fence, a distance of 61 feet to an angle
 26 point in said corral fence; thence southerly along the existing fence line and along the westerly
 27 edge of a road the following 19 courses:
 28 1) South $24^{\circ}55'16''$ East 402 feet;
 29 2) South $22^{\circ}23'23''$ West 145.4 feet;
 30 3) South $34^{\circ}02'52''$ West 407.4 feet;
 31 4) South $12^{\circ}29'29''$ West 518.7 feet;

1 5) South $00^{\circ}37'00''$ West 247.4 feet;
2 6) South $06^{\circ}19'07''$ West 66 feet;
3 7) South $19^{\circ}26'37''$ West 61.3 feet;
4 8) South $23^{\circ}22'42''$ West 419.3 feet;
5 9) South $32^{\circ}51'41''$ West 83.6 feet;
6 10) South $46^{\circ}13'04''$ West 87.6 feet;
7 11) South $52^{\circ}30'10''$ West 116.1 feet;
8 12) South $52^{\circ}03'19''$ West 350.5 feet;
9 13) South $58^{\circ}49'49''$ West 112.8 feet;
10 14) South $65^{\circ}27'54''$ West 336.1 feet;
11 15) South $51^{\circ}19'02''$ West 69.4 feet;
12 16) South $23^{\circ}01'20''$ West 69.4 feet;
13 17) South $02^{\circ}25'40''$ East 116.4 feet;
14 18) South $25^{\circ}01'57''$ East 116.4 feet;
15 19) South $23^{\circ}23'00''$ East 61.7 feet to a point on a point on the South section line of said
16 Section 8; thence East, along the South section line of said Section 8, to its point of intersection
17 with the 211.4 feet contour; thence in a general Southerly direction along said 211.4 feet contour
18 to its point of intersection with the West line of the Southeast 1/4 of the Northwest 1/4 of Section
19 17, Township 3 South, Range 12 East, M.D.B.& M.; thence South along this last described line
20 to its Southerly point of intersection with the 211.4 feet contour; thence in a general
21 Southwesterly direction along said 211.4 feet contour to its point of intersection with the West
22 section line of Said Section 17; thence South along said West section line of said. Section 17 to
23 its Southerly point of intersection with the 211.4 feet contour; thence in a general Southeasterly
24 direction along said 211.4 feet contour to its point of intersection with the East West line through
25 the center of the North 1/2 of the Northwest 1/4 of Section 20, Township 3 South, Range 12
26 East, M.D.B.& M.; thence West along the said line East and West through the center of the
27 North half of the Northwest 1/4 of said Section 20 to its point of intersection with the West
28 section line of said. Section 20; thence South $00^{\circ}17'26''$ East, along the West section line of
29 Section 20 of said Township and Range, a distance of 3454.9 feet to the Point of Beginning.
30 END DESCRIPTION

DWG NAME: K:\2009 LID Survey Projects\Modesto Reservoir 2009 Lease.dwg | Modesto Reservoir 2009 Lease.dwg - Exhibit B - 11x
PLOTTED BY: MICHAEL D
DATE: 08/25/09 11:11

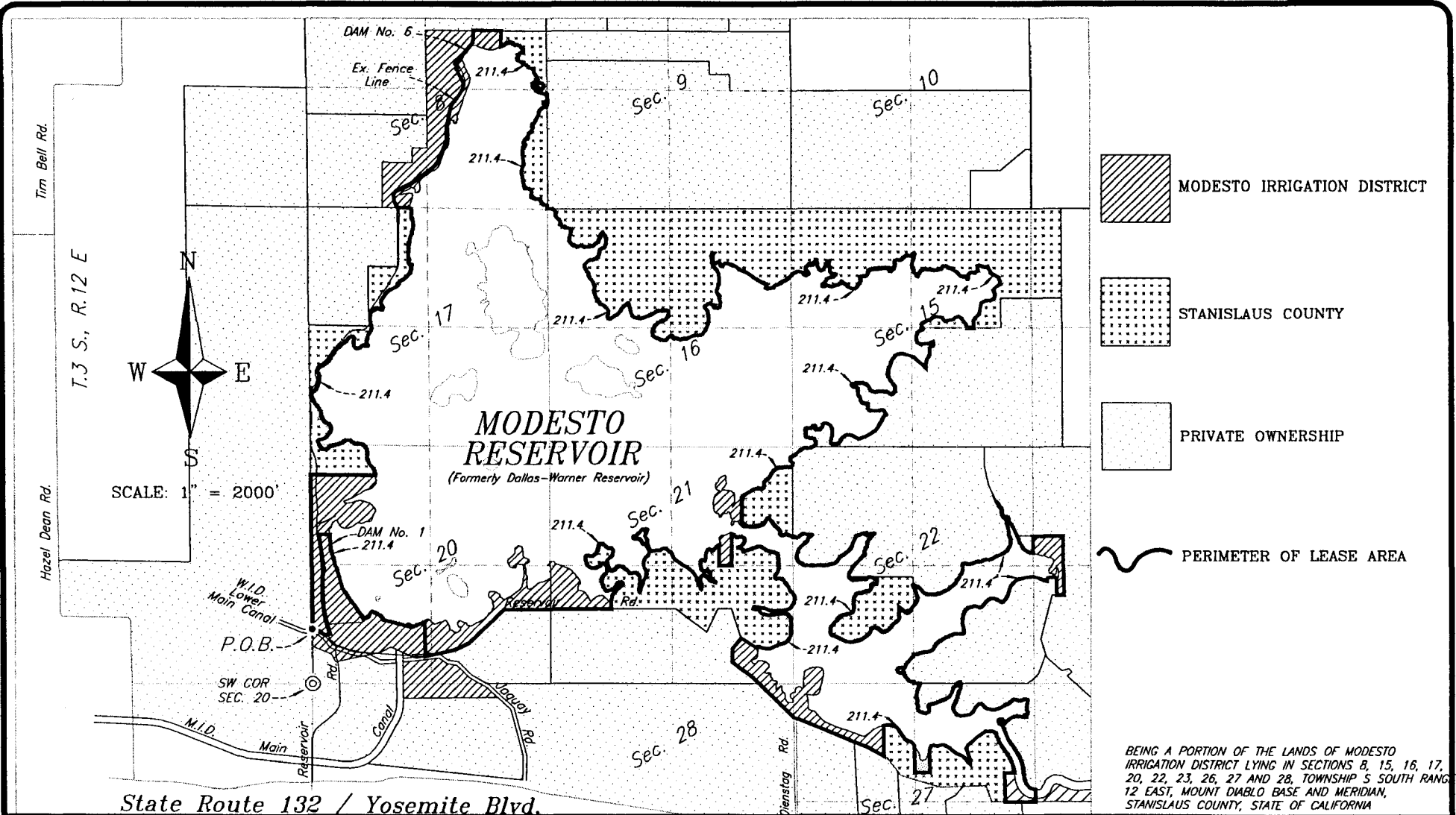


EXHIBIT "B"
PARKS AND RECREATION AGREEMENT

DATE: August 3, 2009 DWG BY: M. Jones

SCALE: 1" = 2000' APP. BY:

FILE NAME: Modesto Reservoir 2009 Lease.dwg