

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

DEPT: Parks and Recreation

BOARD AGENDA # *B-18

Urgent Routine

AGENDA DATE June 24, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Director of Parks and Recreation to Execute a New Grazing Lease with Larry A Byrd for 694 Acres of Non-Irrigated Rolling Hills Adjacent to Modesto Reservoir

STAFF RECOMMENDATIONS:

1. Authorize the Director of Parks and Recreation, or her designee, to execute a new Grazing Lease with Larry A Byrd for 694 acres of non-irrigated rolling hills adjacent to Modesto Reservoir for \$25/acre, the term from July 1, 2008, to June 30, 2013.
2. Authorize the Director of Parks and Recreation, or her designee, to exercise the option to renew the Grazing Lease for three 5 year extensions from the term of this lease on the same terms, convents and conditions contained or any other terms mutually agreed to by both parties.

FISCAL IMPACT:

This lease will result in additional income in the amount of \$17,350 annually or \$86,750 over the 5-year lease term from July 1, 2008 to June 30, 2013. The income will be placed into the Parks and Recreation General Fund account.

BOARD ACTION AS FOLLOWS:

No. 2008-476

On motion of Supervisor Monteith, Seconded by Supervisor Grover

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Parks and Recreation to Execute a New Grazing Lease with Larry A Byrd for 694 Acres of Non-Irrigated Rolling Hills Adjacent to Modesto Reservoir

DISCUSSION:

Stanislaus County owns 694 acres of grazing land that partially surrounds Modesto Reservoir. For many years, the County has leased out this property for cattle grazing purposes. In 1994, Modesto Irrigation District (MID) completed the construction of a Water Treatment Plant at Modesto Reservoir to supply domestic drinking water for the City of Modesto. Since that time, MID has regularly indicated concern over the quality of the water that supplies the Water Treatment Plant and one of the concerns is the impact on water quality from contact with cattle grazing on land next to Modesto Reservoir.

Stanislaus County entered into an agreement with Larry A. Byrd to lease real property for cattle grazing adjacent to Modesto Reservoir on July 1, 2003 for \$25/acre. This agreement was for five (5) years with the option to renew for an additional five (5) years. In this lease, one of the conditions was for the lessee (Larry A. Byrd) to participate in a Water Shed Study that was conducted by the University of California, Davis. The purpose of this study was to gather data concerning *Cryptosporidium* in cattle, in relation to domestic watersheds. The lease agreement also stipulated that the lessee must modify grazing procedures depending on the needs of the researchers.

On September 4, 2007, the study was completed and resulted in a document titled, "Best Management Practices For Cattle Grazing on Modesto Reservoir." This document describes the Best Management Practices (BMP) required to help keep *Cryptosporidium* from entering into the domestic water supply at Modesto Reservoir. Due to the BMP that have been identified in this study, both County and MID staff felt it was in the best interest of the domestic water supply for the City of Modesto and the County to develop a new lease agreement with these BMP included rather than extending the existing lease through exercising the option for an additional five years.

During the study, Mr. Byrd was a willing participant and modified many of his normal management practices that are common with cattle operations in this area. Some of these modifications are prohibiting calves fewer than 4 months of age between September 1 and February 1 and limiting calving time to the spring season. In addition, the calving interval has been shortened to just ninety (90) days from February 1 to April 1. The study required Mr. Byrd to provide supplemental feeders to draw cattle away from the waters edge and to provide drinking water stations in locations that will keep the cattle from having to drink from or gather close to the reservoir. Due to the costs of the BMP above the price was negotiated at the current level of \$25/acre.

These modifications have resulted in significant expenses such as 11% of the cows not having calves. He is also required to pay for the supplemental feeding stations, which has increased his expenses to operate. Mr. Byrd has installed a watering system to provide stations in remote locations of the grazing pasture. He has worked with the United States Department of Agriculture National Resource Conservation Service and professional rangeland consultants to establish this in an area that has no electricity or operating water wells—thus requiring a very expensive solar powered pump. The system also required a very extensive pipeline to transport the water to the remote locations away from the reservoir. The investment in time and money has made it very costly for him to continue to graze his cattle at Modesto Reservoir.

Approval to Authorize the Director of Parks and Recreation to Execute a New Grazing Lease with Larry A Byrd for 694 Acres of Non-Irrigated Rolling Hills Adjacent to Modesto Reservoir

Mr. Byrd has been a model lessee, a very good steward of the land, and a good neighbor with adjacent property owners. He also has a very good relationship with the Department of Parks and Recreation staff. For example, last year Mr. Byrd installed over 2 miles of new fencing between the County's property and a neighbor's almond orchard, which was worn out due to the age of the fence. Mr. Byrd also installed a cattle guard and fence to prevent cattle from entering the day use area of the reservoir due to the low water levels that MID is maintaining. The cattle can now cross in areas that have normally been under water during the summer months. Mr. Byrd has also taken it upon himself to help Department staff by removing dead cattle that have floated into the reservoir from other cattle operations and to inform them of problems at the recreation area when staff is not present. The Department staff can contact Mr. Byrd directly when issues require his attention. Due to his close proximity to the property, he usually responds in a very timely manner to their concerns.

If the proposed new Grazing Lease is not entered into, then the County will not have a legal way to make sure the Best Management Practices described in the Water Shed Study will be followed. MID and County staff have worked together to determine the terms of this proposed lease agreement. The domestic water supply for the City of Modesto, Park and Recreation areas, MID, and the neighboring property owners, make this a very sensitive property. Department staff acknowledges this as a situation requiring a special lease agreement with a special lessee.

POLICY ISSUE:

The Board of Supervisors should determine if executing a new Grazing Lease is consistent with the Board's priorities of a healthy community, a strong agricultural heritage and effective partnerships.

STAFFING IMPACT:

There are no staffing impacts associated with this item.



GRAZING LEASE

The County of Stanislaus, a political subdivision of the State of California herein called "Lessor," hereby leases to Larry A. Byrd, herein called "Lessee," approximately 694 acres of real property herein called "the Premises," in the County of Stanislaus, State of California, more particularly depicted in Exhibit "A" attached hereto and by this reference made a part hereof, on the following terms and conditions:

1. **TERM OF LEASE.** The term of this Lease shall be for the period of **five (5)** years, commencing at 12:01 a.m. **July 1, 2008**, and terminating at 11:59 p.m. **June 30, 2013.**

2. **PAYMENT.** Lessee agrees to pay to Lessor and Lessor agrees to accept as payment of \$25.00 per acre for the use and possession of the premises, the sum of **\$17,350.00** per year, payable to the "County of Stanislaus" in advance on the first day of July of each lease year, commencing **July 1, 2008**, at the office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9494.

3. **USE OF PREMISES.**

a. The premises shall, during the term of this Lease, be used for grazing, pasturing, maintenance and production of livestock, and for uses normally incident to such purpose, and for no other purposes.

b. During the period of each year from May 1, through September 30, inclusive, Lessor shall have exclusive use of Section 13 shown on the map attached hereto as Exhibit "A." During such period Lessee shall not use such area for any purposes without express written consent of Lessor.

4. **WITHDRAWAL OF LAND FROM LEASED PREMISES.** Lessor may, in each year during the term of this Lease, withdraw from the leased premises up to fifty (50) acres for the purpose of park development. Lessor shall give Lessee ninety (90) days prior written notice of such withdrawal. Upon the effective date of the withdrawal, the payment shall be proportionately reduced on the basis of the number of acres withdrawn compared to the number of acres leased. Any acreage, up to the 50 acres allowed for withdrawal, that is not withdrawn in any year, may be withdrawn, in Lessor's sole discretion, in any subsequent year, in addition to the 50 acres that is withdrawn for that current year.

5. **WASTE OR NUISANCE.** Lessee shall not commit or permit the commission by others of any waste on the premises; Lessee shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code; and Lessee shall not use or permit the use of the premises for any unlawful purposes.

6. **MAINTENANCE.** Lessee shall, at his own cost and expenses, keep and maintain the premises and improvements on the premises, in good order and repair and in as safe and clean a condition as they were when received by him from Lessor. Lessee shall keep and maintain at his sole cost and expense, all fences now upon the premises in good order and repair. Any new fences required will be at the sole expense of Lessee. All fencing repairs and new fences made by Lessee shall be in accordance with County standards and be approved by Lessor.

7. **TAXES AND OTHER CHARGES.** It is understood that the property interest created by this Lease may be subject to property taxation and that Lessee shall pay all taxes, assessments or other charges levied or made as a result of Lessee's possession or use of the premises without contribution by Lessor.

8. **ENTRY BY OTHERS.** Lessor shall have the right to post signs forbidding trespass by persons other than Lessee or his employees upon the premises, and to deny entry upon the premises to unauthorized persons. In addition, Lessor shall have the right to grant written permission, under such rules and regulations as may be adopted by its Board of Supervisors, allowing persons to use the shoreline of the reservoir and to hunt water fowl on the premises during the open hunting season.

9. **ALTERATIONS.** Lessee shall not make or permit any other person to make any alterations to the premises or any improvement thereon without the prior written consent of Lessor.

10. **INSPECTIONS BY LESSOR.** Lessee shall permit Lessor's agents, representatives or employees to enter the premises at all reasonable times for the purpose of inspecting the premises to determine whether Lessee is complying with the terms of the Lease and for park purposes or doing other lawful acts that may be necessary to protect Lessor's interest.

Lessor may, after serving the Lessee ten (10) days prior written notice of failure to comply with the terms of the Lease in the manner provided for service of notices in this Lease, enter the premises and take such action, as Lessor deems necessary to protect its interest in this Lease in the premises.

11. **HOLD HARMLESS.** Lessee agrees to indemnify and hold Lessor harmless from any and all claims, liability, loss, damage or expense resulting from Lessee's occupation and use of the premises.

12. **ASSIGNMENT.** Lessee shall not assign, sublet, encumber or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the premises without the prior written consent of Lessor. Without the consent of Lessor, any attempted assignment or transfer of this Lease or any interest therein, either by voluntary or involuntary act of Lessee or by operation of law or otherwise, shall, at the option of Lessor, terminate this Lease. The Stanislaus County Department of Parks and Recreation Director is authorized to grant the consent of Lessor, as required by this paragraph.

13. **DEFAULT BY LESSEE.** All covenants and agreements contained in this Lease are declared to be conditions to this Lease. Should Lessee default in the performance of any condition or agreement contained in this Lease, Lessor may terminate and re-enter and regain possession of the premises in the manner then provided by the laws of unlawful detainer in the State of California then in effect.

14. **ATTORNEY'S FEES.** Should any litigation be commenced between the parties to this Lease concerning the premises, this Lease or the rights and duties in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for the attorney's fees in such litigation which shall be determined by the court in such litigation or in separate action brought for that purpose.

15. **GOVERNING LAW AND VENUE.** This Lease shall be deemed to be made under, and shall be governed by the construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Lease shall have venue in the County of Stanislaus, State of California.

16. **NOTICES.** Notices desired or required to be given by this Lease, or by any law now or hereinafter in effect, may be given by enclosing the same in a sealed envelope, addressed to the party for whom intended and by depositing such envelope, with postage prepaid, in the United States Post Office or any substation thereof, or any public letter box. Any such notice and the envelope containing the same shall be addressed to Lessee as follows:

Mr. Larry Byrd
2100 Timbell Road
Waterford, California 95386

or such other place as may hereinafter be designated in writing by Lessee and the notices and envelopes containing the same to Lessor shall be addressed as follows:

Stanislaus County
Department of Parks and Recreation
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Attn: Susan M. Garcia

or such other place as may hereinafter be designated in writing by Lessor.

17. **BINDING ON HEIRS.** This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent by Lessor to any assignment of this Lease or any interest therein by Lessee except as provided in **ASSIGNMENT.**

18. **RENEWAL.** Provided that no material Default has occurred and is continuing under the Lease at the time the option is exercised, Lessee shall have **three (3)** options to renew this Lease for an additional period of five **(5)** years each (respectively, the "First Extension Term," the "Second Extension Term" and the "Third Extension Term" collectively, the "Extension Terms") from the expiration of the term of this Lease on the same terms, covenants and conditions as herein contained or any other terms mutually agreed to by both parties. If the renewal of this Lease is agreeable to both parties, the parties must exercise this renewal provision, if at all, in writing at least two (2) months prior to the termination of the existing Lease period.

19. **MODIFICATION.** Lessor may modify the method, amount, or rate of consideration effective on each fifth year anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth year anniversary it may do so effective any one (1) of the next five (5) year anniversaries following such fifth year anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth year anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

20. **TERMINATION.** Lessor may terminate this Lease for any reason at their sole discretion with 30-day notice.

21. **TIME OF ESSENCE.** Time is expressly declared to be the essence of this Lease.

22. **WAIVER.** The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

23. **COMMUNICATION.** Lessee shall work and communicate closely with the owner or managers of leased land. This would include, but is not limited to emergency responses concerning cattle, public concerns, contract needs, damage control and continuing good relations with staff.

24. **STEWARDS OF THE LAND.**

a. Being good stewards of the land would include, but not be limited to, issues such as overgrazing, herd management and recreational needs that co-exist with the grazing lands.

b. Lessee shall exercise good grazing practices to avoid overgrazing of the Lease Premises. Lessor may at any time during the Lease term, make an analysis of forage conditions utilizing accepted range management practices. Such analysis shall indicate grazing conditions and may include a determination of forage levels, at various times, during the year. Lessor shall have the right to require Lessee to move cattle to or from any area of the Lease Premises where any overgrazing situation may exist for a period of time consistent with the grazing analysis. If supplemental feeding is utilized, distribution of feed will be such that livestock are not concentrated so as to cause damage to vegetation and soil and Lessee shall only allow supplemental feeding of certified weed-free feed.

25. **GOOD NEIGHBOR.** Being a good neighbor with adjacent land owners would include, but not be limited to, frequency of fence line inspection and repairs, the frequency of herd counts and inspections and herd management practices.

26. **BEST MANAGEMENT PRACTICES (BMP) FOR CATTLE.** The Lessee shall implement the following practices:

- a. Bulls are to be introduced with the cows only during the months of May through July if calving will take place on the reservoir. No calves less than 4 months of age on the reservoir between September 1st and February 1st.
- b. Calving interval goal of 60 days but not to exceed 90 days. Calving should be 80% complete by April 1st, 100% complete by May 1st.
- c. Maximum of 150 cow-calf pairs, no more than 35 in the inlet areas.
- d. No calving except in Pasture 1, 2, 16 and 20
- e. Maintain properly functioning good vegetative buffer strip between the cattle and the water's edge
- f. Water development and supplement feeders shall be located away from the reservoir. Maintain at least, 7 salt licks, 4 supplemental feed stations away from the water. Maintain at least 2 supplemental watering stations in pastures 16 and 20 adjacent to other attractants.
- g. Submit an annual operations report and summary by October of each year. The summary shall include the following information for all pastures:
 - i. Number of cow-calf pairs, number of bulls and number of open cows. Also age of youngest calf introduced into the inlet area and date introduced.
 - ii. Dates and times of grazing and the pastures where they were grazed
 - iii. Supplemental feeding practices-number, location and duration
 - iv. Provide vaccination records including date of vaccination and vaccinations used.
 - v. Supplemental water stations and management practices and problem resolutions
 - vi. Grazing land improvements-fence repairs etc
 - vii. Monitoring practices
 - viii. Protection, enhancement and Management of riparian areas-erosion control etc.
 - ix. Number of dead cattle removed from water.


27. Lessee agrees to adopt any changes to the BMP's listed in 26 above, that may be issued by the University of California, Davis Cooperative Extension Rangeland Specialist if agreeable to the Lessor.

EXECUTED ON 6/24/08 at Modesto, California.

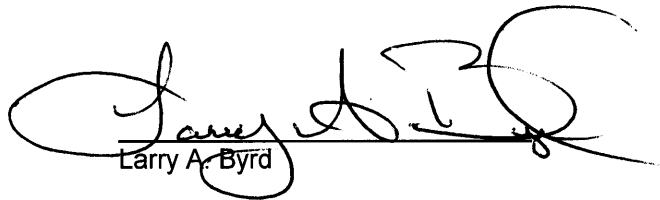
STANISLAUS COUNTY:

LESSOR:

LESSEE:



Sonya K. Harrigfeld
Department of Parks and Recreation



Larry A. Byrd

6-24-08

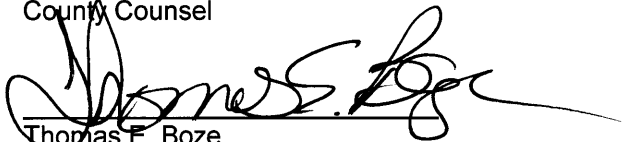
Date

6-24-08

Date

APPROVED AS TO FORM:

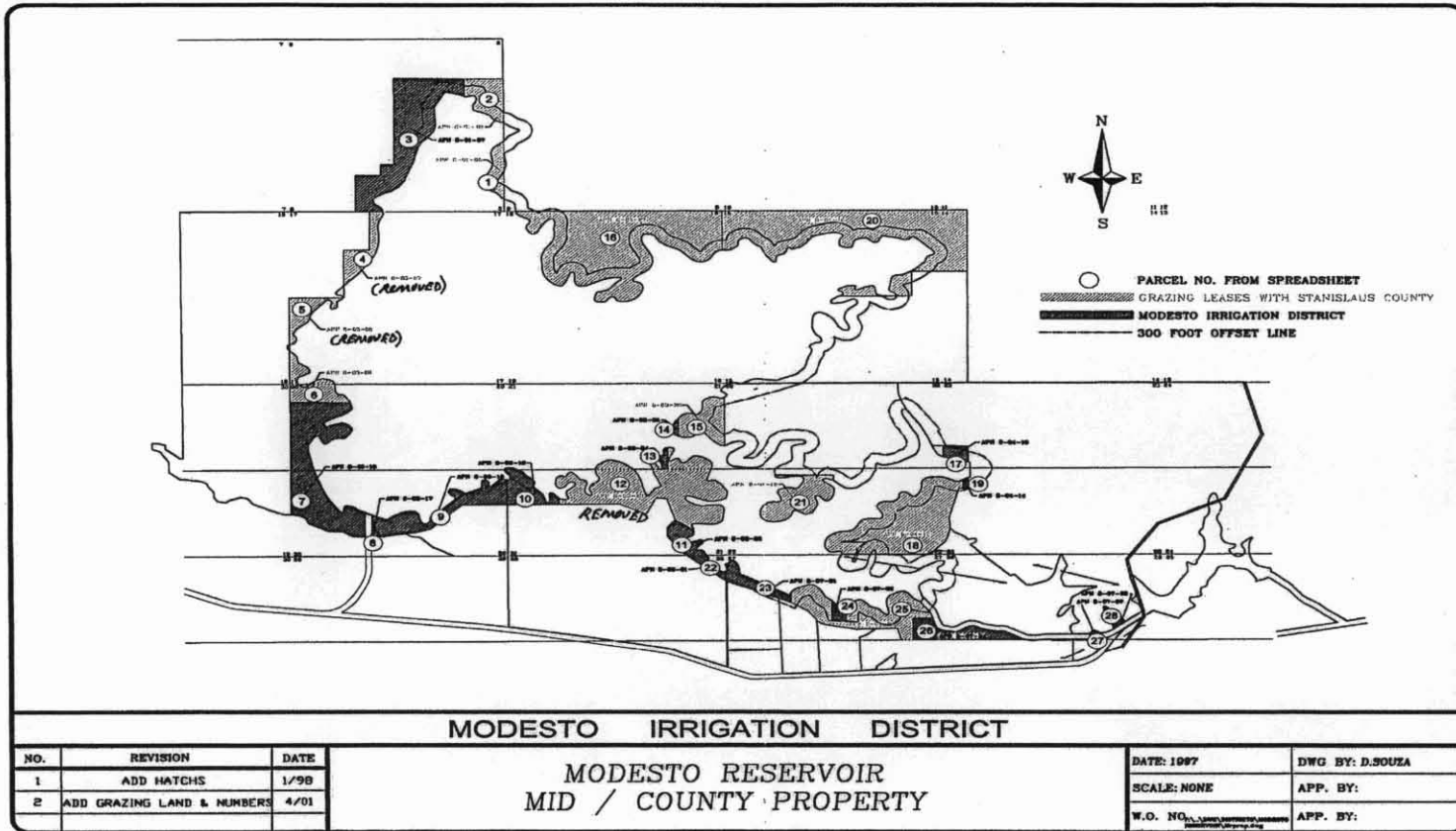
John P. Doering
County Counsel



Thomas E. Boze
Deputy County Counsel

Date

EXHIBIT A





Department of Parks and Recreation
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Phone: (209) 525-6770
Fax: (209) 525-6773

**AMENDMENT NO. 1
TO
GRAZING LEASE**

This Amendment No. 1 to Grazing Lease Agreement ("Amendment No. 1") by and between the County of Stanislaus ("Lessor") and Larry A. Byrd ("Lessee") is made and entered into on April 8, 2013.

Whereas, the Lessor and Lessee entered into a Grazing Lease Agreement dated June 24, 2008, (the Lease"); and

Whereas, Section 1 – "Term of Lease" set the term of the Lease to expire at 11:59 p.m., on June 30, 2013; and

Whereas, Section 18 – "Renewal" states that Lessee has 3 options to renew the lease for an additional period of five (5) years each, (respectively the "First Extension Term," the "Second Extension Term," and the "Third Extension Term," collectively the "Extension Term") on the same terms, covenants and conditions as herein contained or any other terms mutually agreed to by both parties; and

Whereas, Section 18 – "Renewal" states if the renewal of this Lease is agreeable to both parties, the parties must exercise this renewal provision in writing at least two (2) months prior to the termination of the existing Lease period; and

Whereas, Section 19 – "Modification" allows for the Lessor to modify the method, amount, or rate of consideration effective on each fifth year anniversary giving the Lessee at least thirty (30) days notice prior to the effective date; and

Whereas, this amendment is for the mutual benefit of Lessor and Lessee;

Now, therefore, the Lessor and Lessee agree as follows:

1. Section 1 of the Lease is amended to read as follows:

"TERM OF LEASE: The term of this Lease shall be for the period of five (5) years, commencing at 12:01 a.m. July 1, 2008, and terminating at 11:59 p.m. June 30, 2013. The First Extended Term of the Lease shall be for a period of five (5) years, commencing at 12:01 a.m. July 1, 2013 and terminating at 11:59 p.m. June 30, 2018."

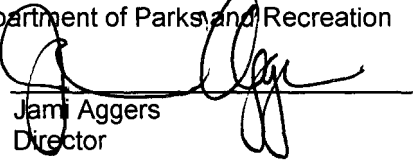
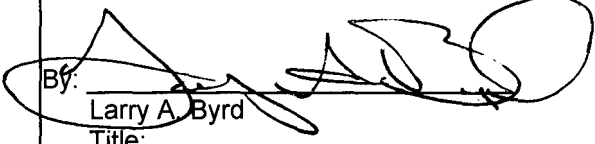

2. Section 2 of the Lease is amended to read as follows:

"PAYMENT: During the initial term of the Lease, Lessee agrees to pay to Lessor and Lessor agrees to accept as payment of \$25.00 per acre for the use and possession of the premises, the sum of \$17,350.00 per year, payable to the "County of Stanislaus" in advance on the first day of July of each lease year, commencing July 1, 2008, at the office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9494.

During the First Extended Term of the Lease, the Lessee shall pay to the Lessor and Lessor agrees to accept as payment of \$26.25 per acre for the use and possession of the premises, the sum of \$18,217.50 per year, payable to the "County of Stanislaus" in advance on the first day of July of each lease year, commencing July 1, 2013, at the office of the Department of Parks and Recreation, 3800 Cornucopia Way, Suite C, Modesto, California 95358-9494

3. Except as provided in this Amendment, all other terms and conditions of the Lease remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives, on the date and year first above written.

<p>COUNTY OF STANISLAUS Department of Parks and Recreation</p> <p>By:  Jami Aggers Director</p> <p style="text-align: center;">"Lessor"</p> <p>Date: _____</p>	<p>LARRY A. BYRD</p> <p>By:  Larry A. Byrd Title: _____</p> <p style="text-align: right;">"Lessee"</p> <p>Date: <u>4-28-13</u></p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By:  Alice Mimms Deputy County Counsel</p>	