

Staff Report 31

APPLICANT:

City of Firebaugh

PROPOSED ACTION:

Issuance of General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the San Joaquin River, Firebaugh, Fresno County.

AUTHORIZED USE:

Bank protection along a 300± foot section of the west bank of the San Joaquin River and two stormwater outfall pipelines.

TERM:

10 years, beginning March 1, 2020.

CONSIDERATION:

Public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- If the Applicant or Lessor are informed that stormwater discharge from either or both of the pipelines negatively impact water quality of the San Joaquin River, then the Applicant is required to consult with the Central Valley Regional Water Quality Control Board. Lessor reserves the right to take other actions to protect Public Trust values and prevent and/or mitigate damage to Public Trust resources. Such actions may include but are not limited to: requiring periodic water quality monitoring and reporting, setting a monetary rent as provided in the Lease, or other actions deemed appropriate.

- If Applicant is required to obtain a National Pollutant Discharge Elimination System (NPDES) permit and/or other authorization from the Central Valley Regional Water Quality Control Board, then Applicant will provide a copy to Lessor.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 1, 2010, the Commission authorized a 10-year General Lease – Public Agency Use to the City of Firebaugh (Applicant), for the construction and maintenance of bank protection along approximately 300 feet of the west bank of the San Joaquin River ([Item C32, February 1, 2010](#)). That lease expired on February 29, 2020. During the application process, it was determined that two stormwater outfall pipelines also encroach onto sovereign land. The Applicant is now applying for a General Lease – Public Agency Use for the use and maintenance of the existing bank protection previously authorized by the Commission and for two stormwater outfall pipelines not previously authorized by the Commission.

The bank protection is approximately 300 feet in length and consists of sheet piling with a concrete cap at the toe of the bank. Behind the sheet piling and up along the bank are wire mesh baskets filled with 120 cubic yards of rock. The rock-filled wire mesh baskets have allowed silt to fill voids and create a habitat where vegetation has grown. The bank protection maintains and helps to improve the integrity of the San Joaquin River at this location, which has helped to protect the Public Trust resources of the river for recreational and navigational use by the public at no cost to the public. The upland property at this location consists of city buildings and a public school. Additionally, the bank protection will assist with flood protection of the upland parcel (not within the lease area).

During review of the application, staff became aware of two existing stormwater outfall pipelines protruding from the toe of the bank protection. These pipelines were not previously known to the Commission and were not authorized by the prior lease. The purpose of the two pipelines is to discharge stormwater from the upland properties between 12th Street and the A.E. Mills Intermediate School. The two outfall pipelines help to protect the upland properties and the banks of the San

Joaquin River at this location by diverting stormwater surges from going over the banks and instead discharges them directly into the river.

The proposed lease does not alienate the State's fee simple interest, nor permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to removal all improvements and restore the lease premises to their original condition.

The proposed lease requires the lessee to keep and maintain the bank protection and two outfall pipelines in good order and repair. The lease also requires consideration to the people of the State for the occupation of the public land involved, which will be public use and benefit.

CLIMATE CHANGE:

The project area is not tidally influenced and therefore, would not be subject to sea-level rise. However, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

Due to these potential changes, the existing bank protection, and the pipelines overhanging the bank protection, may be affected by flooding and erosion and could need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

CONCLUSION:

For all the reasons above, staff believes that the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce nor substantially interfere with the Public Trust needs and values at this location, at this

time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of an application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant, as prior lessee, may be required to remove the bank protection and two stormwater outfall pipelines and restore the premises to their original condition. Upon expiration or prior termination of the lease, the Applicant also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt

project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce nor substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning March 1, 2020, for a term of 10 years, for the use and maintenance of the existing bank protection previously authorized by the Commission and two stormwater pipelines not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent as specified in the lease if the Commission finds such action to be in the State's best interests.

EXHIBIT A
LAND DESCRIPTION

PARCEL ONE

A portion of sovereign land lying within the historic bed of the San Joaquin River, adjacent to the City of Firebaugh, County of Fresno, State of California, more particularly described as follows:

BEGINNING at point number 5881 of the low water mark of the San Joaquin River as shown on Sheet 19 of the Administrative Map of the San Joaquin River, Reach 3, prepared by the California State Lands Commission in March 2019; thence N 66°49'34" W along the last natural location of the low water mark of the San Joaquin River, 150.00 feet to point number 5880 as shown on said map; thence N 41°51'06" W, 17.58 feet; thence leaving said low water mark, N 64°32'41" E along the waterward face of a concrete retaining wall, 1.78' to the beginning of a tangent curve to the right; thence along said curve, having a radius of 40 feet, through a central angle of 54°27'42" for an arc distance of 38.02 feet; thence S 61°59'37" E, 146.73 feet; thence S 68°05'22" E, 35.60 feet to the last natural low water mark of the San Joaquin River; thence n 75°47'58" w along said historic low water mark, 51.52 feet to the **POINT OF BEGINNING**.

PARCEL TWO

A portion of sovereign land lying within the historic bed of the San Joaquin River, adjacent to the City of Firebaugh, County of Fresno, State of California, more particularly described as follows:

BEGINNING at point number 5881 of the low water mark of the San Joaquin River as shown on Sheet 19 of the Administrative Map of the San Joaquin River, Reach 3, prepared by the California State Lands Commission in March 2019; Thence N 75°47'58" W along the last natural location of the low water mark of the San Joaquin River, 36.87 feet; thence leaving said low water mark, N 88°26'59" E along the waterward face of a concrete retaining wall, 34.72' to the beginning of a tangent curve to the right; thence along said curve, having a radius of 40 feet, through a central angle of 48°20'16" for an arc distance of 33.75 feet to the last natural low water mark of the San Joaquin River; thence N 84°53'01" W along said historic low water mark, 29.20 feet to the **POINT OF BEGINNING**.

END DESCRIPTION

