

Staff Report 43

PARTIES:

California State Lands Commission

California Department of Water Resources (DWR)

PROPOSED ACTION:

Consider authorizing acceptance of a Transfer of Jurisdiction of certain property interests from DWR to the Commission and to enter into a Memorandum of Agreement to facilitate coordination and review of a proposed carbon capture and sequestration project application.

AREA, LAND TYPE, AND LOCATION:

State-owned lands on Sherman Island, Sacramento County.

BACKGROUND:

Global climate change caused by greenhouse gas emissions, including emissions of carbon dioxide (CO₂), leads to a warming planet, rising sea levels, and elevated salinity in the Sacramento–San Joaquin Rivers Delta. This endangers drinking and irrigation water critical to the people and environment of California. In response, the legislative and executive branches of state government have set ambitious emissions reduction targets. Statewide emissions must fall to 40 percent below 1990 emissions levels by 2030 ([California Global Warming Solutions Act of 2006, as amended](#)), and all retail electricity must be generated from renewable or zero-carbon sources by the end of 2045 ([100 Percent Clean Energy Act of 2018](#)). Former Governor Brown declared a statewide goal of carbon neutrality as soon as possible but no later than 2045 and net negative emissions after 2045 ([Executive Order B-55-18](#)). In September Governor Newsom required that by 2035 all new cars and passenger trucks sold in California be zero-emission vehicles ([Executive Order N-79-20](#)). And in October 2020 Governor Newsom issued an Executive Order setting the state's goal to conserve at least 30 percent of California's land and coastal waters by 2030 ([Executive Order N-82-20](#)).

Nonetheless, California is unlikely to meet its emissions targets without using all available (proven and new technological) tools, including carbon capture and sequestration (CCS).¹ CCS is a suite of technologies that allows the capture of CO₂ from the environment or from industrial facilities; processing, compression, and transport of the captured CO₂; and injection of CO₂ into subsurface geological formations for permanent² storage (i.e., sequestration). California is well situated to take advantage of CCS because of its large industrial facilities and favorable sequestration geology in deep brine and depleted oil and gas reservoirs.

The mission of DWR is to sustainably manage the water resources of California, in cooperation with other agencies, to benefit the state's people and protect, restore, and enhance the natural and human environments. DWR's expertise lies in technologically complex water storage and conveyance projects. As part of the State Water Project, the State, by and through DWR, purchased land on Sherman Island, a large island in Sacramento County near the confluence of the Sacramento and San Joaquin Rivers. The land is presently leased for agriculture, grazing, and wetlands uses.

DWR believes that Sherman Island overlies a deep brine reservoir suitable for the safe, permanent, environmentally beneficial, and economically viable sequestration of CO₂. DWR and a project proponent have been developing the outlines of a CCS project to use Sherman Island for CO₂ storage from industrial facilities. Further analysis, including geophysical surveys and exploratory wells, will be required to ensure the reservoir's suitability.

DWR approached Commission staff because of the Commission's expertise in leasing and management of State-owned real property, including beneficial use of subsurface reservoirs. DWR and Commission staff believe that the Commission's surface and subsurface leasing and lease management expertise, knowledge, and established leasing processes would increase efficiency, transparency, meaningful stakeholder engagement, and potential for project success.

¹ Energy Futures Initiative & Stanford University's Precourt Institute for Energy, "An Action Plan for Carbon Capture and Storage in California: Opportunities, Challenges, and Solutions," October 2020.

² In this context, *permanent* means intended to be forever. Federal permitting requires site monitoring for at least 50 years after injection. The State requires monitoring for at least 100 years to qualify the project for valuable carbon credits, which are expected to be a part of the project.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Government Code section 14673; Public Resources Code sections 6005, 6106, 6216, and 6501.1.

STATE'S BEST INTERESTS:

Energy efficiency, a shift to renewable sources of energy, and lifestyle changes all promise to reduce greenhouse gas emissions. These are vital to slowing or stopping climate change. CCS offers a path to permanently remove CO₂ from the atmosphere or to prevent CO₂ from entering the atmosphere in the first place.

Climate change is a global phenomenon, and California is a recognized leader in climate action. Yet, no commercial-scale, operational CCS facility exists today in California. Staff therefore believes that exploring the CCS technology and working towards a viable project will be beneficial not only if this project succeeds but also to demonstrate and promote what is possible in California. The first step to exploring the CCS project is to accept a Transfer of Jurisdiction from DWR and to enter into an MOA that will help with communication and coordination between the agencies as the project evolves.

The project entails complex technological, environmental, and land-use issues over a timeline of more than 100 years. The project proposal is at a preliminary stage with many unknowns. DWR and Commission staff expect the project's scope, schedule, and budget to be refined during the application process. No approvals or permits are forthcoming until after robust engineering and environmental review and meaningful public engagement.

Government Code section 14673 allows state agencies to transfer jurisdiction of property with the approval of the Director of the Department of General Services. By this transfer, the Commission would acquire the ability to lease or use the state land on Sherman Island that is currently under the jurisdiction of DWR. Despite the uncertainty in project scope, DWR and Commission staff have developed a proposed Transfer of Jurisdiction sufficient to allow the Commission to consider and, if approved, manage the project. The Transfer would include jurisdiction of the subsurface property interests sufficient to allow CO₂ to be injected and permanently stored and so much of the surface as may be needed to accomplish the project. The proposed Transfer of Jurisdiction also addresses when and how jurisdiction may revert to DWR following project refinement, completion, or abandonment. Taking this first step would allow the project proponent to submit an

application to the Commission, after which Commission staff can engage with the applicant in engineering, geological, and environmental review.

In addition, the Parties plan to address agency responsibilities and expectations, to the extent foreseeable, in a Memorandum of Agreement (MOA). Clear roles and responsibilities would prevent miscommunication and align goals. Subjects addressed in the MOA include interagency communication, public communications, reimbursement for staff expenses, the nature of the jurisdiction transferred to the Commission and the jurisdiction retained by DWR, resolving competing uses for the property, and allocation of project revenue, should a project ultimately be approved. The MOA is not intended to, and does not, alter either DWR's or the Commission's authority or duties under law. Instead, the MOA provides a framework for coordination.

CONCLUSION:

For all the reasons above, staff believes that acceptance of the Transfer of Jurisdiction and entering into a Memorandum of Agreement are in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the requested transfer is a discretionary action by the Commission. Each time the Commission approves or rejects a transfer, it exercises legislatively delegated authority. If the Commission denies the requested transfer, all jurisdiction in the lands will remain with DWR.
2. This action is consistent with the "Leading Climate Activism" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. The subject authorizations to accept a Transfer of Jurisdiction and to enter into a Memorandum of Agreement are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Location and Site Map of Transfer Lands
- B. Transfer of Jurisdiction Agreement

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

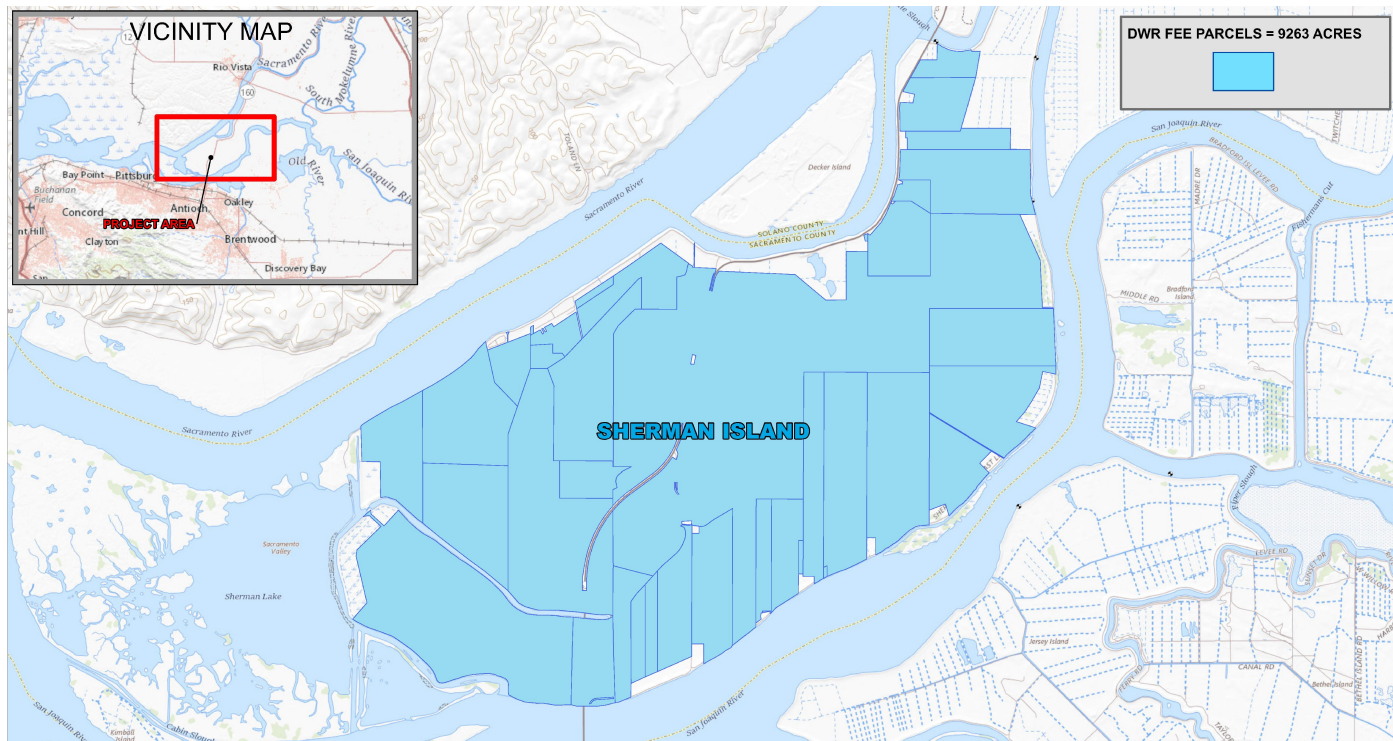
Find that acceptance of the Transfer of Jurisdiction and entering into a Memorandum of Agreement are in the State's best interests.

AUTHORIZATION:

1. Authorize the Executive Officer, or her designee, to accept a Transfer of Jurisdiction from the Department of Water Resources in substantially the form as shown in Exhibit B.
2. Authorize the Executive Officer, or her designee, to execute a Memorandum of Agreement between the Commission and the Department of Water Resources in substantially the form of the Agreement on file with the Commission.

NO SCALE

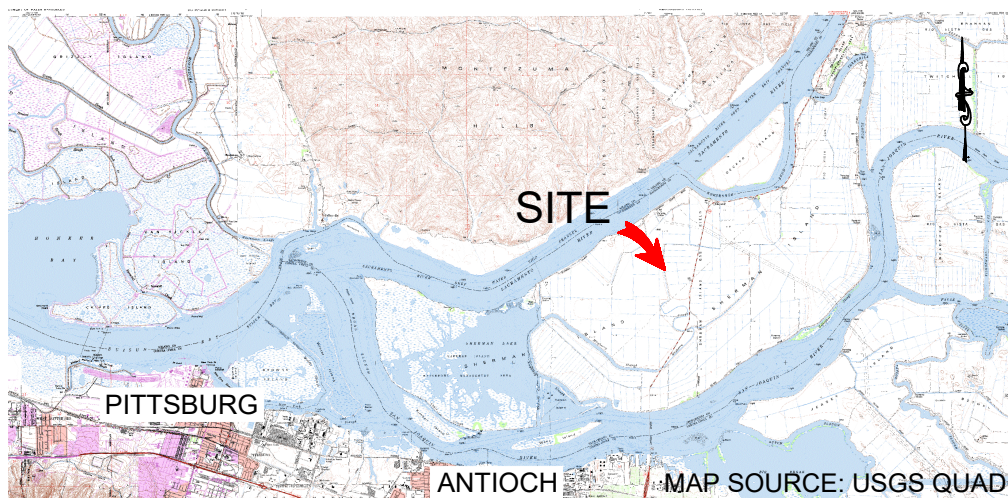
SITE



SHERMAN ISLAND, SACRAMENTO COUNTY

NO SCALE

LOCATION



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT A

12534

DEPT. OF WATER RESOURCES
& STATE LANDS COMMISSION
APN: MULTIPLE
TRANSFER OF JURISDICTION
SACRAMENTO COUNTY



JAK 4/20/2021

EXHIBIT B

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN Nos.
SLC No. JTO **XX**

Transfer of Jurisdiction of State-Owned Real Property on Sherman Island, Sacramento County

This agreement between the California Department of Water Resources (DWR) and the California State Lands Commission (SLC), with the approval of the California Department of General Services, is dated and effective April 27, 2021.

Recitals

- A. DWR has general jurisdiction of certain real property on Sherman Island in Sacramento County (Property), described on Exhibit A and depicted for informational purposes only on Exhibit B.
- B. The Property is critical to the reliability of the State Water Project, protection of water quality, and flood control.
- C. DWR and SLC believe that the Property contains subsurface geologic formations suitable for the safe, permanent, environmentally beneficial, and economically viable sequestration of carbon dioxide.
- D. SLC desires to acquire jurisdiction of only so much of the Property as is necessary and convenient to complete a carbon sequestration project, potentially including carbon dioxide capture, transport, injection, and permanent storage on the Property (Potential Project).
- E. DWR is willing to transfer jurisdiction of the Property to SLC for the future consideration of a Potential Project.
- F. SLC acknowledges that DWR has entered into a Memorandum of Understanding for completion of a feasibility study seeking to prove up the efficacy of a carbon sequestration project on Sherman Island. SLC and

EXHIBIT B

DWR agree that the feasibility study shall continue under DWR's jurisdiction.

Transfer of Jurisdiction

Pursuant to Section 14673 of the California Government Code, DWR hereby transfers to SLC jurisdiction of the Property sufficient to complete the Potential Project. Such jurisdiction includes, without limitation, the right to use or lease State-owned subsurface pore space and geologic formations in the Property for permanent carbon dioxide sequestration and the right to use or lease the surface of the Property for purposes such as characterization, injection, or monitoring wells; pipeline and utility rights-of-way; electrical and mechanical substations; or temporary or permanent construction and access roads.

Limitations and Conditions

1. SLC agrees to treat the submission of the Project Proponent's MOU with DWR as the date for determining application priority.
1. SLC shall not use or lease the Property in a way that unreasonably interferes with uses permitted or authorized by DWR existing at the time of this transfer of jurisdiction or DWR's future uses related to water quality, the State Water Project, or flood control.
2. DWR retains all jurisdiction and interest in the Property other than that transferred to accomplish the Potential Project, and DWR's uses related to the protection of water quality, the State Water Project, and flood control have priority over Potential Project uses. For all other uses, DWR may use, lease, or otherwise dispose of the Property so long as such use or lease does not unreasonably interfere with the Potential Project.
3. The Parties agree that the transfer of jurisdiction is limited to accomplish the Potential Project and is not a real property transfer of the fee interest in the Property. SLC does not accept and will not be liable for any taxes, fees, or assessments based on ownership of real property, other than as may be directly related to operation of the Project.
4. SLC shall consult with DWR before authorizing uses of the surface of the Property, and the Parties will work together to minimize conflict with existing and foreseeable uses. Nevertheless, SLC and SLC staff have final decision-making authority. However, DWR reserves the right to prohibit uses that may interfere with DWR's uses related to water quality, State Water Project, flood control.
5. DWR retains the jurisdiction necessary to accomplish a feasibility study, including without limitation an exploratory well. If the exploratory well

EXHIBIT B

remains in place as part of an operational project, DWR shall transfer control of the infrastructure to SLC by written, signed memorandum.

6. At any time and from time to time, DWR and SLC may mutually determine by written, signed memorandum that all or any portion of the Property is no longer needed to accomplish the Potential Project. Such a determination shall cause the transferred jurisdiction to revert in DWR as to that portion of the Property. SLC's Executive Officer may make this determination for the Commission.
7. SLC's transferred jurisdiction in the property shall automatically revert to DWR upon any of the following: a) the irrevocable abandonment of the Project; b) the completion of the Project, including all required post-injection site care, monitoring, and regulation; or c) as may be agreed in a separate Memorandum of Agreement between DWR and SLC. If any such event occurs, it shall be memorialized in a written memorandum signed by both Parties.
8. Nothing in this transfer of jurisdiction is intended to or does authorize DWR or SLC to take or damage private property.

EXHIBIT B

The parties hereto have executed this Agreement as of the dates set out opposite each signature.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Karla Nemeth
Director

Date: _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Jennifer Lucchesi
Executive Officer

Date: _____

APPROVED:
State of California
Department of General Services

Jennifer Osborn
Director

Date: _____

EXHIBIT B

Exhibit A: Land Description (preferably by APN & by metes and bounds or deed references)

EXHIBIT B

Exhibit B: Plat of Property (SLC may be able to create once we have the land description)