

Staff Report 52

APPLICANT:

South Orange County Wastewater Authority

PROPOSED ACTION:

Termination of a General Lease – Public Agency Permit and Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, adjacent to Doheny State Beach, near the city of Dana Point, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing 57-inch-diameter outfall pipeline and ballast rock.

TERM:

30 years, beginning December 9, 2022.

CONSIDERATION:

Public health and safety; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- Lessee shall perform external inspections of the outfall pipeline and provide reports of such inspections to Commission staff for review periodically throughout the lease term and as warranted by any emergency repairs.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6303, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 24, 1977, the Commission authorized a 49-year Public Agency Permit to the South East Regional Reclamation Authority for the installation and maintenance of an ocean outfall line ([Item 6, February 24, 1977](#)). That permit will expire on January 14, 2026. The Applicant, successor to the South East Regional Reclamation Authority, is now requesting that the existing Permit be terminated and is applying for a General Lease – Public Agency Use for the use and maintenance of the existing 57-inch-diameter ocean wastewater outfall pipeline (San Juan Creek Ocean Outfall (SJCOO)) and ballast rock. The Applicant is a joint powers authority responsible for wastewater treatment and effluent discharges in a 200-square mile service area in Southern Orange County.

The outfall is located near the city of Dana Point and extends 2.2 miles offshore of Doheny State Beach at a maximum depth of 100 feet. The outfall discharges brine, treated groundwater, and secondary treated wastewater from several regional water district facilities, including the Applicant's, Santa Margarita Water District, Moulton Niguel Water District, City of San Clemente, and South Coast Water District (SCWD).

The Applicant is not proposing any changes to the outfall pipeline. The Applicant is requesting authorization to allow for the discharge of additional brine associated with the South Coast Water District's Doheny Desalination Project. SCWD is proposing the construction of an up to five million gallon per day ocean water desalination plant near the city of Dana Point. SCWD has submitted an application to the Commission to construct up to four subsurface slant wells, located on sovereign land, offshore of Doheny State Beach. The proposed lease can be found as a separate agenda item (Item 71) on the December 9, 2022, Commission meeting agenda.

Brine and treated process waste streams from the desalination plant would be disposed of and conveyed through the Applicant's SJCOO. Brine from the desalination plant would be blended in the outfall pipeline with existing wastewater streams from other regional treatment plants.

On March 9, 2022, the San Diego Regional Water Quality Control Board adopted [Order No. R902022-0007](#)/National Pollutant Discharge Elimination System Permit (NPDES) No. CA0107417. The order became effective on May 1, 2022, and expires on April 30, 2027. The Order requires the SCWD to offset potential harm from additional brine discharge by creating 7.45 acres of wetland mitigation. Additionally, the Order includes technology-based requirements for monitoring water quality near the outfall, the outfall wastewater plume location and potential migration to recreational areas, as well as a fecal source marker to identify bacteria that poses a potential health threat to swimmers, surfers, and other ocean recreational users. The NPDES Permit authorizes a combined discharge of approximately 43.8 million gallons per day from several member agency sources to the SJCOO, which includes discharge from the proposed Doheny desalination plant.

Staff reviewed the November 2022 Ocean Outfall External Inspection and Condition Survey Report for the SJCOO. A detailed underwater inspection was conducted with a remote operated vehicle (ROV) on November 17 and 18, 2022. No significant undermining or significant damage to the outfall were observed. The outfall appears to be generally in good condition and functioning properly. The lease includes a provision requiring the Applicant to implement the maintenance recommendations described in the report within three years of the lease issuance date, including restoring sections of the pipeline where ballast rock is absent and cleaning diffuser ports of marine growth and other obstructions.

The outfall pipeline and ballast rock will not substantially interfere with the Public Trust needs and values at this location because the pipeline is located on the seafloor. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease also has a limited 30-year term and does not grant the lessee exclusive rights to the lease premises, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding and erosion, and changes in sand deposition, affect open coastal areas in California. The 57-inch-diameter wastewater outfall pipeline and ballast rock are located in a tidally influenced site in the Pacific Ocean, offshore of Doheny State Beach.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the "high emissions,"

“low risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The La Jolla tide gauge was used for the projected sea level rise scenario for the region as listed in Table 1.

Table 1. Projected Sea Level Rise for La Jolla

Year	Projection (feet)
2030	0.6
2040	0.9
2050	1.2
2100	3.7

Source: Table 31, State of California Sea-Level Rise Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

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 (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris.

Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run-up, potentially resulting in greater erosion than previously experienced.

The current structures are submerged and should not be vulnerable to climate change impacts if properly inspected and maintained. Conformance with lease provisions for periodic surveys, inspections, and maintenance of the pipelines, outfall diffuser, and ballast rock as needed or required by law should avoid or minimize future climate change-related impacts.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea level rise.

CONCLUSION:

For the reasons stated above, staff believes the issuance of this lease will not substantially interfere with the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the 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. The lessee has no right to a new lease or a renewal of any previous lease.
2. The Applicant has also applied for a new General Lease – Public Agency Use, for the Aliso Creek Ocean Outfall (Lease 5139). That lease will be considered as a separate item on the December 9, 2022, Commission agenda.
3. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
4. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action 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).

5. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

California Regional Water Quality Control Board San Diego Region

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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:

1. Find that the termination of the lease and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and
2. Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective December 8, 2022, Lease Number PRC 5253, a Public Agency Permit, issued to the South East Regional Reclamation Authority.
2. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning December 9, 2022, for a term of 30 years, for the use and maintenance of an existing 57-inch-diameter ocean wastewater outfall pipeline and ballast rock, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: public health and safety, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

EXHIBIT A

LEASE 5253

LAND DESCRIPTION

A strip of tide and submerged land, 20 feet wide, in the bed of the Gulf of Santa Catalina, Pacific Ocean adjacent to Doheny State Park, County of Orange, State of California, and lying 10 feet on each side of the following described centerline:

BEGINNING at a point having California Coordinate System, of 1927, Zone 6, coordinates of N = 474222.00 feet, E = 1563423.00 feet; thence South 22° 26' 49" West 10550.00 feet; thence North 67° 33' 11" West 1300.00 feet to the point of TERMINUS of said centerline.

The sidelines of said strip to be lengthened or shortened as to begin on the Mean High Tide Line of said Pacific Ocean and to terminate at a line perpendicular to the terminus of said centerline.

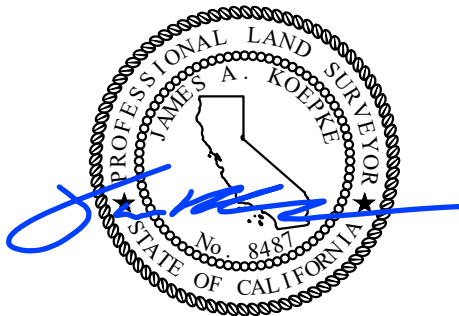
EXCEPTING THEREFROM any portion lying landward of the Mean High Tide Line of the Pacific Ocean.

THE BASIC OF BEARINGS AND COORDINATES shown are based on California State Plane Coordinate System, of 1927, Zone 6 (1975 Datum).

END OF DESCRIPTION

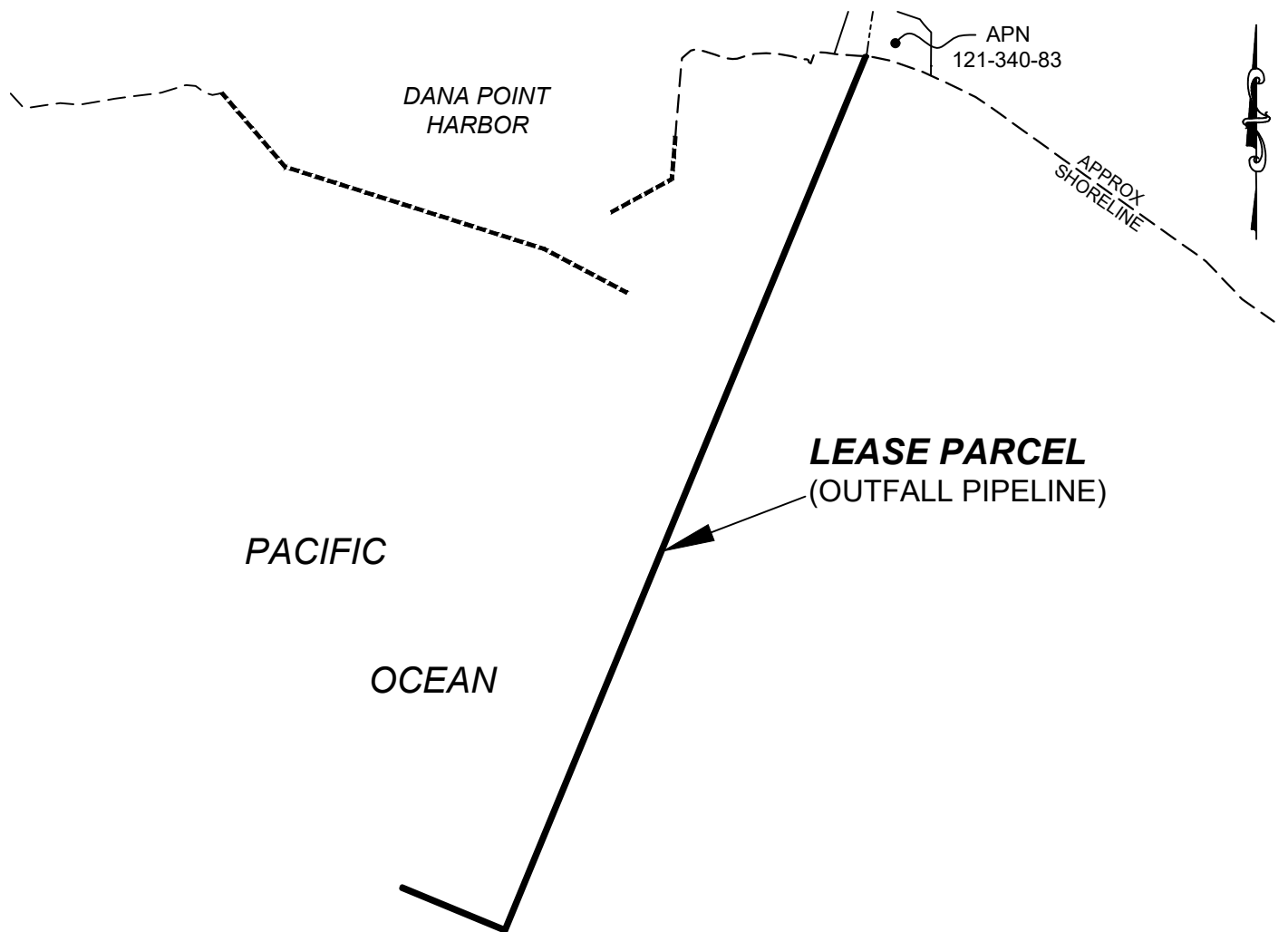
The above description is based on that original description prepared by California State Lands Commission Boundary Unit on December 6, 1976, as found in PRC 5253 (W 20824) file, Calendar Item C6.

Revised 05/11/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE



PACIFIC OCEAN AT DOHENY STATE BEACH, DANA POINT HARBOR

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 B

LEASE 5253
SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY
GENERAL LEASE -
PUBLIC AGENCY USE
ORANGE COUNTY



TS 05/11/2022