

Staff Report 51

APPLICANT:

East Bay Municipal Utility District

PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Two 0.0046-acre parcels of submerged lands located in the Mokelumne River at North Elliott Road in Lockeford and at Mackville Road, near Clements, San Joaquin County.

AUTHORIZED USE:

Continued use and maintenance of two existing river gauging station facilities used for monitoring river flow and river temperature.

TERM:

20 years, beginning March 1, 2023.

CONSIDERATION:

The public use and benefit; 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 agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements in the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 25, 1993, the Commission authorized issuance of a 30-year General Permit – Public Agency Use to the East Bay Municipal Utility District ([Item C08, February 25, 1993](#)). The lease expired on February 28, 2023.

The Applicant is now applying for a General Lease – Public Agency Use for continued use and maintenance of two existing river gauging station facilities, located in the Mokelumne River, in San Joaquin County.

The Applicant is a public corporation operating as a municipal utility which supplies water, generates electricity, and provides other services that benefit both rate payers and the State. The Applicant uses the two river gauging station facilities to collect statistical data that enables it to fulfill its obligations to water rights holders, fisheries, and for specific flood control requirements. The two existing river gauging station facilities provide measurements of both the flow and temperature of the river. Each site includes one bubbler tube, one temperature probe, and one concrete meter box. The monitoring equipment transmits information on the state of the river and water temperature to maintain a reliable, high quality water supply, and to ensure the protection of the ecosystem on the lower Mokelumne River.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The proposed lease is limited to a 20-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. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. On termination of the proposed lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

CLIMATE CHANGE:

The river-gauging station in-water and onshore facilities are located in and adjacent to the Mokelumne River, which is not tidally influenced at this location 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 as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine; will not substantially impair the public rights to navigation and fishing or substantially interfere with 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 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. If the Commission denies the application, the Applicant may be required to remove the two existing river gauging station facilities and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
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 issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with 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, 2023, for a term of 20 years, for the continued use and maintenance of two existing river gauging station facilities, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: the public use and benefit, 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 7674

LAND DESCRIPTION

Two parcels of submerged land in the bed of the Mokelumne River, lying adjacent to Section 24, Township 4 North, Range 7 East MDM and Section 15 Township 4 North, Range 8 East, MDM, County of San Francisco, State of California and more particularly described as follow:

PARCEL 1 – GAUGING STATION NEAR ELLIOTT RD

A parcel of submerged land in the bed of the Mokelumne River, lying adjacent to said Section 24 and more particularly described as follow:

Bounded on the southwest by a line parallel with and 5 feet northeasterly of that line and its northwesterly prolongation, having bearing of N 45°56'00" W and distance of 717.7 feet, as shown on that Record of Survey, filed March 18, 1970, in Book 20 of Surveys at Page 30, San Joaquin County, State of California;

Bounded on northeast by a line parallel with and 15 feet northeasterly of said line and its northwesterly prolongation;

Bounded on the southeast by the low water mark of the Mokelumne River;

Bounded on northwest by a line parallel with and 20 feet northwesterly of the low water mark of the Mokelumne River.

PARCEL 2 –GAUGING STATION NEAR MACKVILLERD

A 10-foot-wide strip of submerged lands situated in the bed of the Mokelumne River, lying adjacent to said Section 15, and lying 5 feet on each side of the following described centerline:

COMMENCING at the most northerly corner of that certain 5.75 acre parcel of land shown on map of survey, filed in Book of Surveys, Volume 20, page 51, San Joaquin County Records, said corner being on the southwesterly line of 40 foot wide Mackville Road; thence N 47°15'40" W along said southwesterly line of Mackville Road, 100.00 feet; thence leaving said southwesterly line, N 32°19'43" W, 946.13 feet to a point on the southwesterly line of 50 foot wide Mackville Road, as said southwesterly line is described in deed to the County of San Joaquin in Volume 199, page 418, Book of Official Records of San Joaquin

County, said point being the TRUE POINT OF BEGINNING; thence for the centerline of the 10-foot-wide strip of land herein described in the following two courses: (1) S 72°18'25" W, 73.93 feet and (2) N 38°04'50" W, 490 feet to the TERMINUS of the described centerline.

The sidelines of said strip shall be lengthened or shortened as to begin at the low water mark of said River and terminate at the line perpendicular to the point of TERMINUS.

EXCEPTING THEREFROM any portions lying landward of the low water mark on the left bank of the Mokelumne River.

END OF DESCRIPTION

The above described Parcel 2 is based on that original description approved by the County Surveyor and found in PRC 7674.9 file.

Prepared 02/02/2023 by the California State Lands Commission Boundary Unit.



NO SCALE

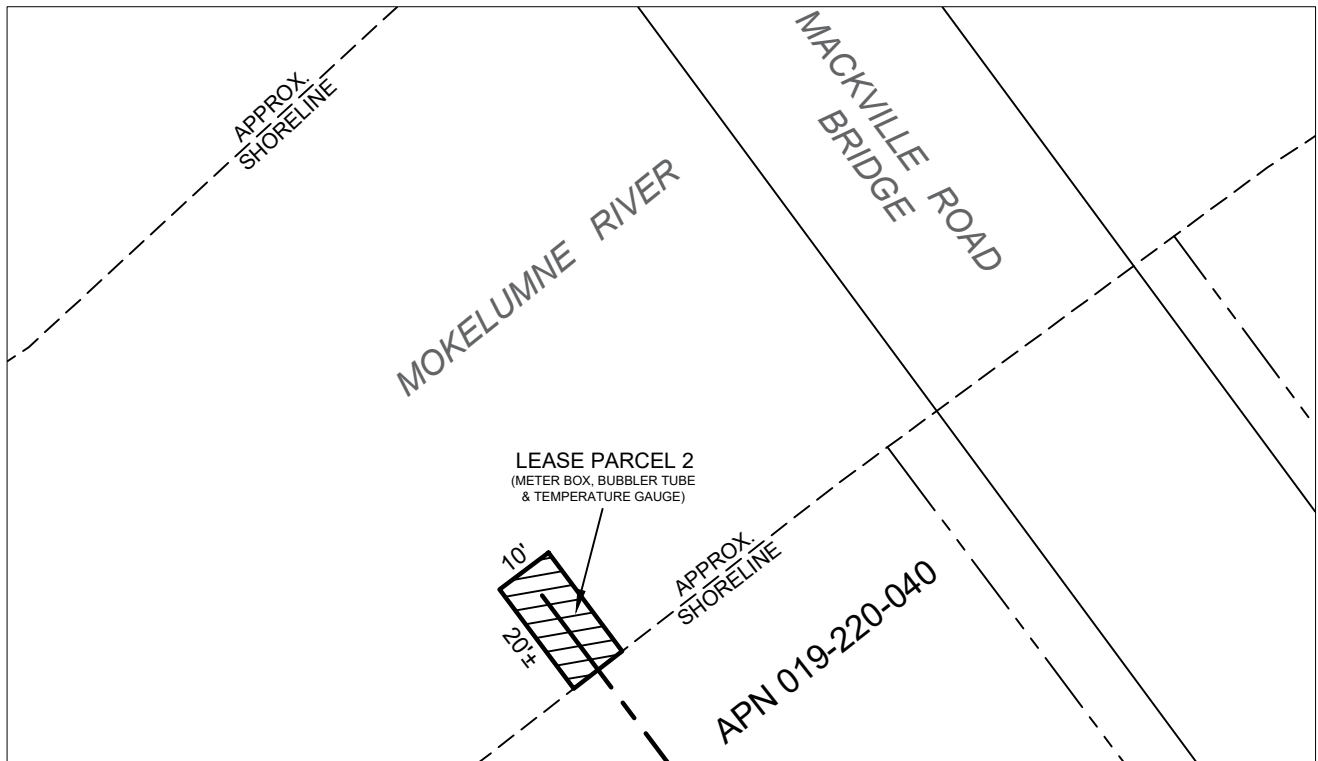
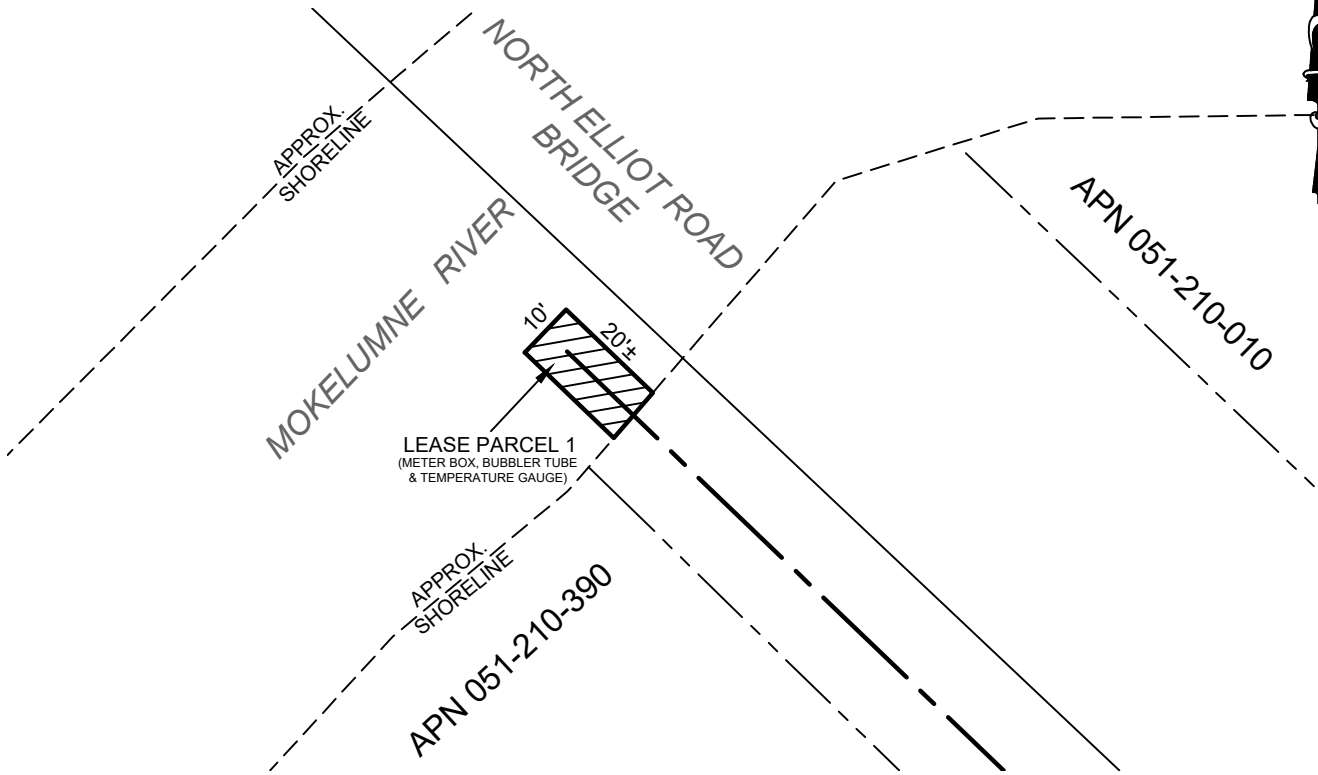


EXHIBIT A

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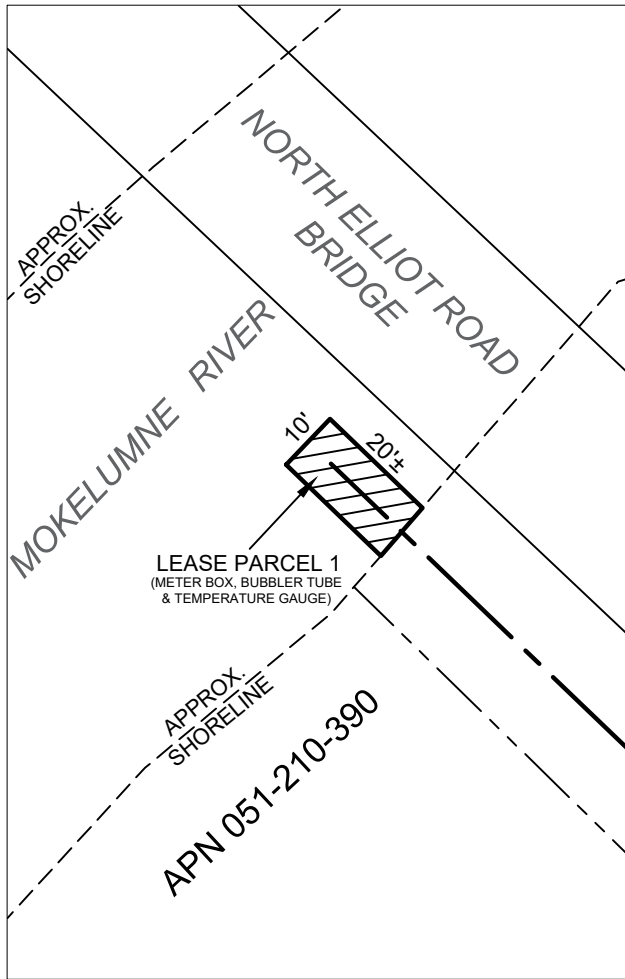
LAND DESCRIPTION PLAT
 LEASE 7674, EBMUD
 SAN JOAQUIN COUNTY

CALIFORNIA STATE
 LANDS COMMISSION

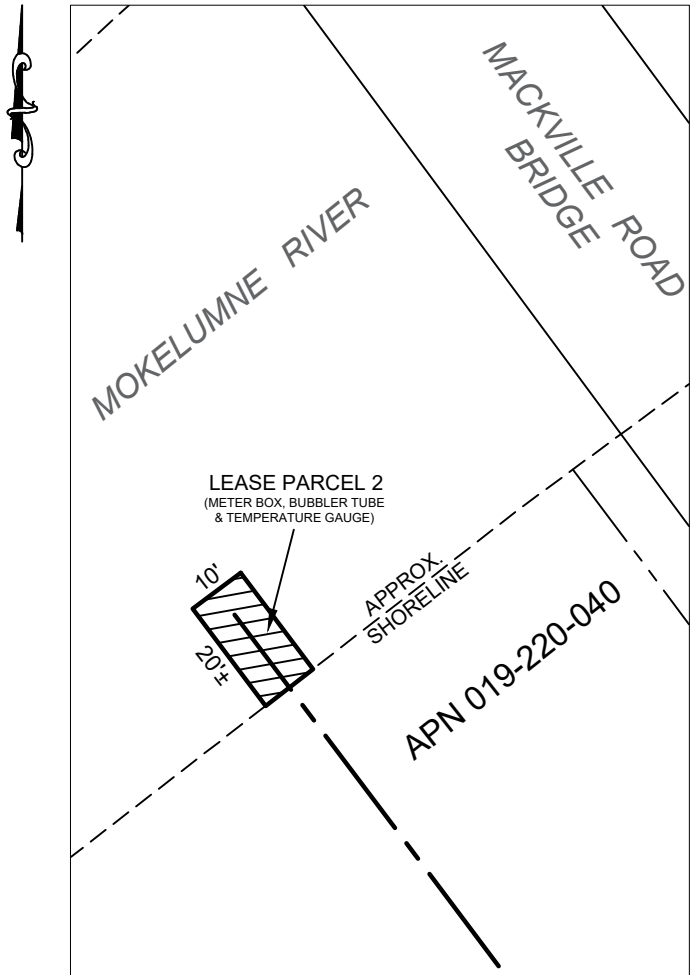


NO SCALE

SITE



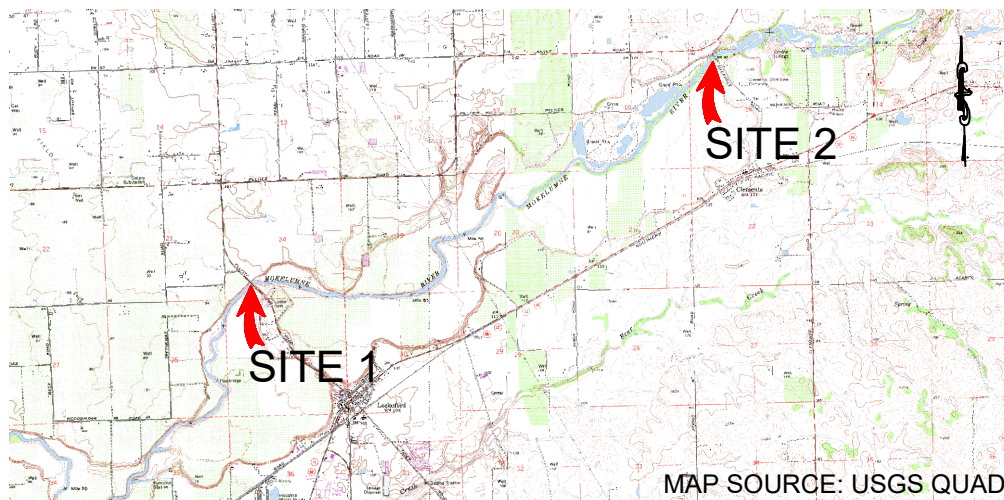
NEAR N. ELLIOTT ROAD BRIDGE



NEAR MACKVILLE ROAD BRIDGE

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 7674
 EBMUD
 APNs 051-210-390 &
 019-220-040
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SAN JOAQUIN COUNTY



DT 02/02/2023