

Staff Report 66

LESSEE:

California-American Water Company

PROPOSED ACTION:

Amendment of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, Monterey Bay, near Marina, Monterey County.

AUTHORIZED USE:

Construction, operation, and continued maintenance of a temporary exploratory test slant water well.

TERM:

8 years, beginning December 17, 2014.

CONSIDERATION:

\$450 per year, with an annual Consumer Price Index (CPI) adjustment.

PROPOSED AMENDMENT:

1. Amend Section 1, Term: Extend the term of the lease to December 16, 2027.
2. Delete Paragraph 9, Section 2, in its entirety and replace with the following:

9. Disposition of Lease Facilities.

- (a) Should the Lessee decommission the slant test well, Lessee shall submit a Lease Application and Minimum Expense Deposit for termination of the lease and disposition of the remaining facilities. The ultimate disposition of the slant test well and any other lease facilities remaining within the Commission's jurisdiction will be considered by the Commission when the Lessee submits an application for termination of the lease. The termination of the Lease and permanent disposition of

the slant test well and related facilities will be subject to separate review by the Commission, including but not limited to environmental review. Nothing in this Lease shall be interpreted to restrict or waive Lessor's right or ability to require the Lessee, prior to the termination of this Lease, to remove any or all facilities or structures, including the slant test well.

- (b) Should Lessee fail to obtain all necessary authorizations to maintain the slant test well, including but not limited to the issuance of Coastal Development Permit No. 9-20-0603, Lessee shall cease all maintenance pumping operations and submit a Lease Application and Minimum Expense Deposit for termination of the lease and disposition of the slant test well and any related lease facilities as specified in Section 2, subparagraph (a), of this Lease.

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 December 17, 2014, the Commission authorized issuance of a General Lease – Right-of-Way Use for a 3-year term to California American Water Company (Lessee) for the construction, operation, and decommissioning, subject to a Lease Termination and Abandonment Agreement to be considered at a future Commission meeting, of a temporary exploratory test slant water well ([Item 71, December 17, 2014](#)). The authorized test well was constructed to determine the feasibility of using a subsurface intake system at the site or nearby for use in a future desalination project, the Monterey Peninsula Water Supply Project (MPWSP).

On November 29, 2017, the Commission authorized an amendment to the lease to extend the lease term an additional 2 years ([Item 57, November 29, 2017](#)) due to delays in environmental review of the proposed MPWSP.

On June 28, 2019, the Commission authorized an amendment to the lease to extend the lease term an additional 3 years to December 16, 2022 ([Item 52, June 28, 2019](#)) to allow sufficient time for the Lessee to secure necessary permits and authorizations from other agencies for the MPWSP. The lease expired on December 15, 2022. The Lessee has been maintaining the authorized improvements under the hold-over provisions of the lease on a month-to-month tenancy. The Lessee is now

requesting an amendment to the lease to extend the lease term an additional 5 years to December 16, 2027.

Full-time pump testing ceased on February 28, 2018. Only periodic maintenance pumping is authorized pursuant to the terms of the lease. Continued maintenance pumping is intended to preserve the well and circulate water through the well screen to prevent biological growth and encrustation. The test well is turned on once per month and operated for approximately 4 hours at a rate of 2,000 gallons per minute.

The test well slants downward from the wellhead vault, extends approximately 1,000 feet into Monterey Bay, and terminates approximately 290 feet below the seafloor. Thus, the authorized improvements would not interfere with navigation, recreation (including diving), fishing, or other Public Trust uses.

The lease amendment and associated lease does not authorize the Lessee to utilize the test slant well for use in the MPWSP, nor does it authorize the construction of additional subsurface slant wells.

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 exploratory test slant water well facilities are located in the Pacific Ocean offshore of the City of Marina, which is a tidally influenced site.

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 Monterey tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for Monterey

Year	Projection (feet)
2030	0.5
2040	0.8
2050	1.1
2100	3.3

Source: Table 16, [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.

Rising sea levels can lead to increased flooding through regular inundation and larger flooding events, when combined with tidal events and storm surges. These climate change and sea level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure. The only portion (approximately 230 feet) of the test well facilities within the jurisdiction of the Commission lies below the seafloor. There is no development directly on the beach, on the seafloor, or in ocean waters within the Commission's leasing jurisdiction. The test well slants downward from the wellhead vault, extends approximately 1,000 feet into Monterey Bay, and terminates approximately 290 feet below the seafloor. Therefore, the portion of the test well facilities within the lease area is not likely to be vulnerable to the impacts from sea level rise or frequent and intense storms that are the result of climate change. However, the 5-year lease term extension will provide both the Commission and the Lessee an opportunity to evaluate the effects of sea level rise on the leased area in order to assess if incremental adaptation steps are necessary and appropriate.

CONCLUSION:

For the reasons stated above, staff believes the issuance of this lease amendment 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. If the Commission denies the application, the Lessee may not maintain the test slant well within lands under the Commission's jurisdiction and must decommission the slant test well, subject to separate review by the Commission, including but not limited to environmental review. The lessee has no right to a new lease or to renewal of any previous lease.

2. The Pure Water Monterey recycled water expansion project (Pure Water Expansion project) has been developed by the Monterey Peninsula Water Management District and Monterey One Water (MW1) to provide recycled water that would serve the Lessee's customers on the Monterey Peninsula. CPUC proceedings on the matter are ongoing and no party, including the Lessee, disputes approval of the Pure Water Expansion project. In September 2022, the CPUC issued a proposed decision to approve the Pure Water Expansion. As part of the same proceeding, the CPUC will also consider longer term supply and demand estimates and whether additional water supplies will be needed beyond what the Pure Water Expansion will provide.
3. As required by CPUC, the Lessee previously applied to the CPUC for a water purchase agreement from the Pure Water Expansion project. An Administrative Law Judge issued a tentative decision approving the water purchase agreement on September 30, 2022. However, the Lessee has raised concerns regarding their financial obligations, is currently refusing to enter into the water purchase agreement, and may request a re-hearing, which could take 9 to 10 months to resolve.
4. On November 17, 2022, the CCC conditionally approved a CDP, associated with Application No. 9-20-0603, to construct and operate a slant well field, associated water transmission pipelines and related infrastructure within the coastal zone associated with the MPWSP. The CCC's issuance of a CDP to the Lessee is conditioned on a number of special conditions. Among other items, Special Condition 1 concerns pending litigation between the City of Marina and Cal Am. The CCC staff report states, "If the final judgement or disposition of the case demonstrates that the Lessee does not have, and cannot feasibly obtain, water rights (to the extent applicable) for the MPWSP or that the Lessee's project would cause harm to any aquifer that is a source of drinking water to the City of Marina or the Marina Coast Water District, the CDP will not be issued." State Water Board's Administrative Hearings Office (AHO) also has a pending proceeding regarding whether the Lessee's proposed withdrawals of subsurface water would be subject to the state's water rights provisions. The AHO is

conducting the proceeding after the trial court referred various issues to the AHO to resolve.

5. If the Lessee's MPWSP clears all regulatory and permitting requirements, the discharge of brine from the ocean desalination plant may use an existing ocean wastewater outfall, owned and operated by MW1. The outfall was leased to the Monterey Peninsula Water Pollution Control Agency (predecessor to MW1) in 1981 and is subject to Lease No. PRC 6091.9. Use of the existing outfall for brine discharge would require modifications. Alternatively, the construction of a new ocean outfall may be required. Any modifications to the existing ocean outfall or construction of a new ocean outfall within the Commission's jurisdiction would require a lease, Commission authorization, and review under the California Environmental Quality Act. Additionally, any discharge of brine from the MPWSP would require review and approval from the Central Coast Regional Water Quality Control Board.
6. 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.
7. 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.

APPROVAL OBTAINED:

California Coastal Commission

EXHIBIT:

A. 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 amendment will not 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease Number PRC 9177, a General Lease – Right-of-Way Use, effective February 28, 2023, to extend the lease term to December 16, 2027 and modify the Lease Special Provisions substantially in the form described in the “Proposed Amendment” portion of this Staff Report, concerning the lands described in Exhibit A (for reference purposes only) attached and by this reference made a part hereof; all other terms and conditions of the lease will remain in effect without amendment.

NO SCALE

SITE



PACIFIC OCEAN

LEASE PARCEL
(TEST SLANT WELL)



APPROX.
SHORELINE

APN
203-011-019

PACIFIC OCEAN, NEAR THE CITY OF MARINA

NO SCALE

LOCATION



Exhibit A

LEASE 9177
CALIFORNIA AMERICAN
WATER
APN 203-011-019
GENERAL LEASE -
RIGHT-OF-WAY USE
MONTEREY COUNTY



SITE

TS 11/15/2022

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.