

Staff Report 24

LESSEE:

GenOn Delta, LLC, a Delaware limited liability company

APPLICANT:

BB Antioch, LLC, a California limited liability company, as to an undivided 50% tenant-in-common interest; and Antioch Real Estate Member, LLC, a Delaware limited liability company, as to an undivided 50% tenant-in-common interest

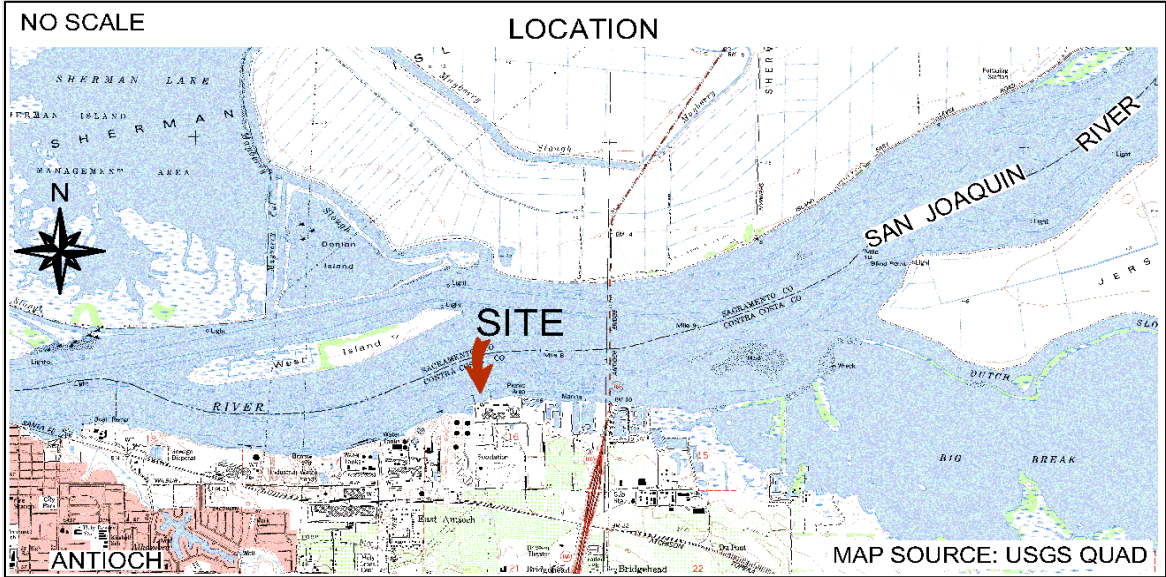
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed for a General Lease – Industrial Use and Issuance of a General Lease – Industrial Use.

AREA, LAND TYPE, AND LOCATION:

1.49± acres of filled and unfilled sovereign land in the San Joaquin River, adjacent to 3201 Wilbur Avenue, Antioch, Contra Costa County (as shown in Figure 1).

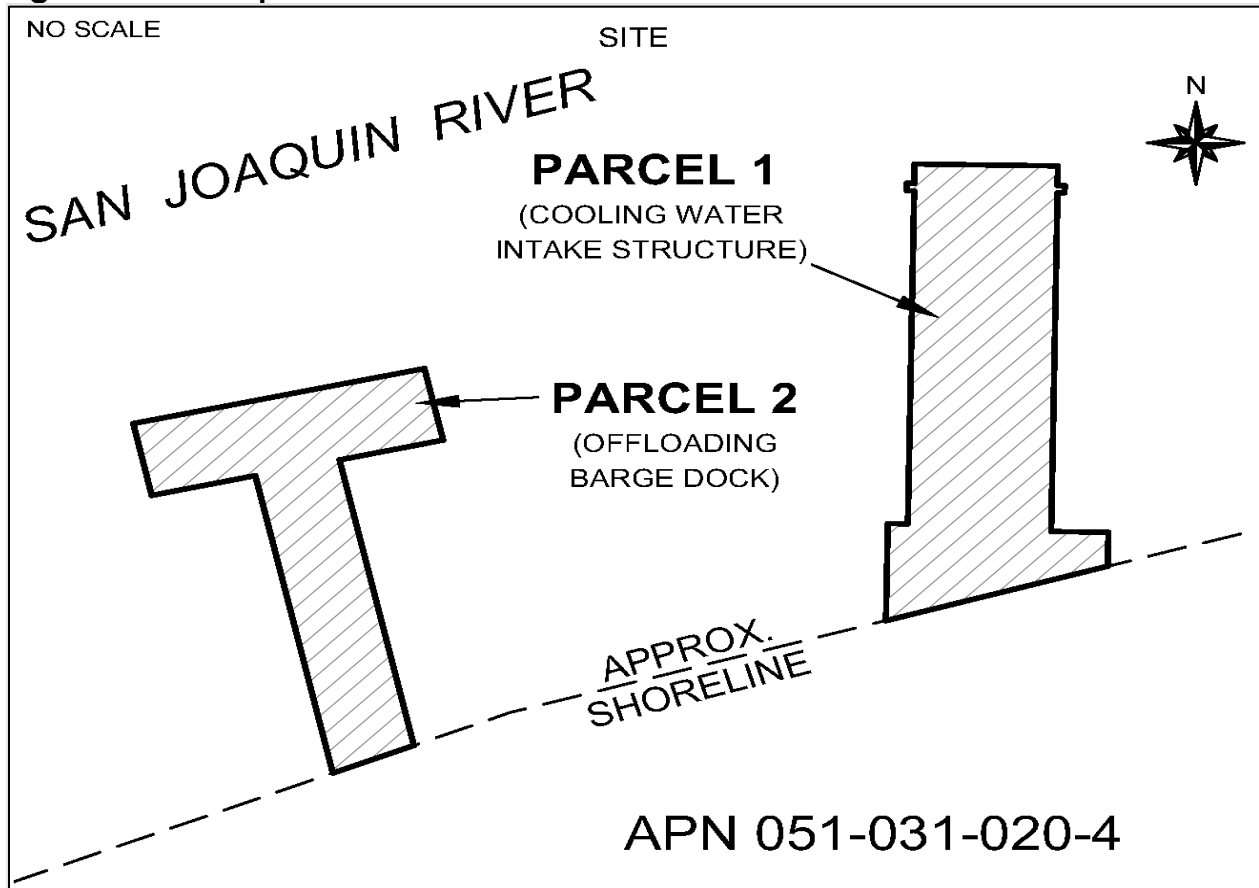
Figure 1. Location



AUTHORIZED USE:

The maintenance of an existing non-operational cooling water intake facility, comprised of two 12-foot-diameter water intake pipelines 354-feet in length and appurtenances and support structures, and a non-operational offloading barge dock facility, comprised of a 300-foot barge dock, six 7-pile dolphins, walkway, and a 12-inch-diameter standby oil pipeline (as shown in Figure 2).

Figure 1. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning August 17, 2023.

CONSIDERATION:

\$13,140 per year, with an annual Consumer Price Index; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability Insurance in an amount no less than \$4,000,000 per occurrence.
- Surety bond or other security in the amount of \$2,000,000.
- Current Base Rent may be revised by appraisal on any one of the first four Lease anniversary dates, with the revised amount retroactive to the beginning date of the lease. Base Rent may subsequently be revised on each fifth Lease anniversary date as counted from August 17, 2023, as provided in the Lease.
- Lessee may submit a good-faith estimate prepared by a licensed engineering contractor for the costs of full removal of the Improvements as a basis to revise the Surety amount. If such a cost estimate is received prior to the first lease anniversary date of August 17, 2024, and Lessor's staff concurs with the estimate, the Surety amount may be revised by the Executive Officer or designee. Any requests to revise the Surety amount following the first Lease anniversary date shall require Lessor's review and approval to amend the Lease.
- Lessee shall provide a detailed work plan for either the reuse/operation of or the removal of the authorized improvements within the Lease Premises by August 17, 2028. Any plan will require Lessor authorization.
- Any change in use of the improvements will require prior Lessor written authorization.

BACKGROUND:

The Contra Costa Power Plant was originally constructed and operated by Pacific Gas and Electric Company (PG&E) on the upland property adjacent to the lease premises under Lease 415 ([Item 16, June 14, 1949](#)). The plant became operational in 1951 and originally utilized the lease premises under Lease 415 for a cooling water intake structure connected to seven power generating units. The units were powered by fuel oil until the 1970s. Fuel oil was primarily transported via an overland pipeline from Richmond but was also delivered by tankers and barges following completion of a barge dock facility in 1966, authorized under Lease 3124 ([Item 6, April 29, 1964](#)).

The Contra Costa Power Plant switched to natural gas starting in the 1970s, with very limited fuel oil use thereafter. PG&E operated the Contra Costa Power Plant and lease areas under Leases 415 and 3124 until 1998 when, in response to the California deregulation of the electric industry, PG&E entered into a contract with Southern Energy Delta, a Delaware limited liability company (Southern Energy Delta), for the plant's purchase and sale. On April 13, 1999, the Commission

authorized the assignment of both leases to Southern Energy Delta ([Item 7, April 13, 1999](#)).

The pipeline connecting the dock and tank battery was formally closed in 2003 and placed into “out-of-service” status by the U.S. Department of Transportation and California State Fire Marshall. The barge dock facility was placed in “caretaker status” by the U.S. Coast Guard in accordance with Title 33, Code of Federal Regulations (CFR), Section 154.105. The Contra Costa Power Plant was decommissioned starting in 1995 and formally ceased operation in 2013.

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 June 14 1999, the Commission authorized a new General Lease – Industrial Use to Southern Energy Delta and the termination of Lease 3124 to consolidate both lease areas and authorized improvements under Lease 415 ([Item 5, June 14, 1999](#)). The existing lease is for a 25-year term for the continued use and maintenance of an existing cooling water intake structure and appurtenances, and an offloading barge dock. The cooling water intake structure is comprised of two 12-foot-diameter water intake pipelines and appurtenances, and the dock facility is comprised of a 300-foot barge dock, six 7-pile dolphins, walkway, and a 12-inch-diameter standby oil pipeline. The lease will expire on June 13, 2024.

Between 1999 and 2019, through a series of business transactions, Southern Energy Delta changed its name to GenOn Delta, LLC, a Delaware limited liability company.

In 2022, GenOn Delta, LLC entered into a contract with the Applicant for the purchase and sale of the former Contra Costa Power Plant site. As part of the proposed sale, on December 5, 2022, the Applicant applied to terminate the existing Lease 415 and request a new lease. On June 29, 2023, ownership interest in the upland parcel was transferred to the Applicant. Staff recommends the termination of the current lease and approval of a new lease effective August 17, 2023.

The cooling water intake structure and appurtenances, and the offloading barge dock facility have existed for many years at this location. The Applicant does not

currently have a plan for reuse of or to operationalize the in-water improvements, but anticipates the cooling water intake structure and the barge dock facility will be used for a future industrial/commercial operation. Such a future use would be subject to CEQA and the Commission's review and approval. The proposed lease is limited to a term of 10 years and contains language obligating the Applicant, by year 5 of the lease, to provide a plan to the Commission for its review and approval for either the reuse of or the removal of the authorized improvements, which is to be completed prior to the expiration of the lease term. The lease requires the Applicant to conduct above and below water inspections and provide the results for staff review no later than August 17, 2024.

The existing facilities are located in an industrial area with limited recreational usage. The existing improvements do not substantially interfere with public trust uses and needs in the area, and the lease does not alienate the State's fee simple interest or grant the lessee exclusive rights to the lease premises. Prior to the termination of the lease, Lessee may be required to remove all improvements from State land and restore the lease premises to its natural state.

Furthermore, the proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred, directly or indirectly, as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located in Antioch on the San Joaquin River, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

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," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco 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 San Francisco

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

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

This effect could increase the San Joaquin River's inundation levels within the lease area. In addition, as stated in the [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, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers, creeks, and tidally influenced waterways, 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.

Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate. In addition, climate change may result in increased damage to wooden structures such as piers and pilings due to changing water conditions (e.g., salinity and temperature) which promote the upstream expansion of destructive species such as shipworms (Teredinidae), marine borers that utilize wood for both housing and food, and are present in coastal, shelf, and pelagic habitats.

The head work, comprised of a concrete structure supported by pilings, a portion of the intake pipeline, a pier, and a dock are located above the OHWM on the bank. These structures are fixed and may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation. The remainder of the intake pipeline is located at depth in the San Joaquin River and is unlikely to be affected by climate change.

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 (not under lease) are located in an area that may be subject to effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, staff believes acceptance of a lease quitclaim deed for the existing lease and issuance of a new lease is consistent with the common law Public Trust Doctrine; will not substantially interfere with Public Trust needs at this location, at this time, nor 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 for acceptance of a quitclaim for the existing lease and issuance of a new lease 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 to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a lease quitclaim deed 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).

4. Staff recommends that the Commission find that this activity 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.

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:

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

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective August 16, 2023, for Lease No. PRC 415.1, a General Lease – Industrial Use
2. Authorize issuance of a General Lease – Industrial Use to the Applicant, beginning August 17, 2023, for a term of 10 years, for the maintenance of an existing cooling water intake structure and an offloading barge dock with appurtenant facilities, as described in the lease; annual rent in the amount of \$13,140, with an annual Consumer Price Index adjustment with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$4,000,000 per occurrence; and a surety bond in the amount of \$2,000,000.
3. Authorize the Executive Officer or designee to modify the Surety Bond amount based on an estimate of the full improvement removal costs, if an estimate is received within the first year of the lease, as specified in the lease.