

Staff Report 26

LESSEE/APPLICANT:

SFPP, L.P.

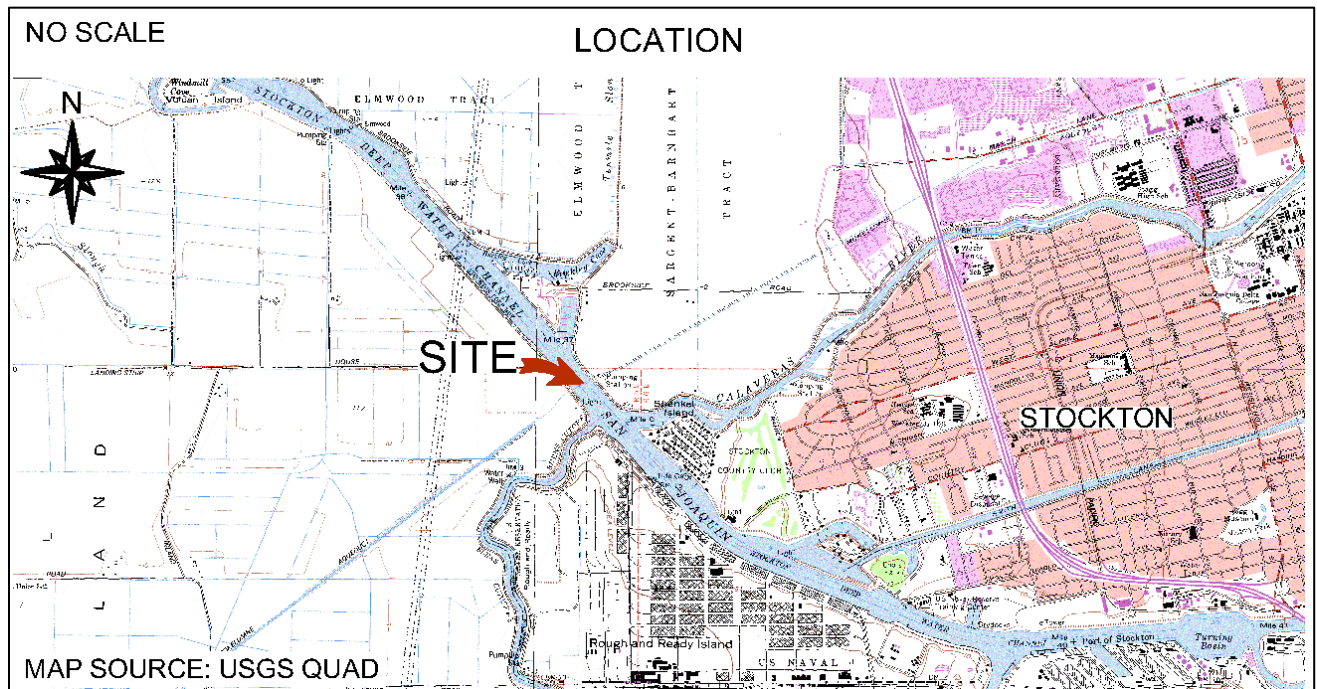
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Joaquin River, near Stockton, San Joaquin County (as shown in Figure 1).

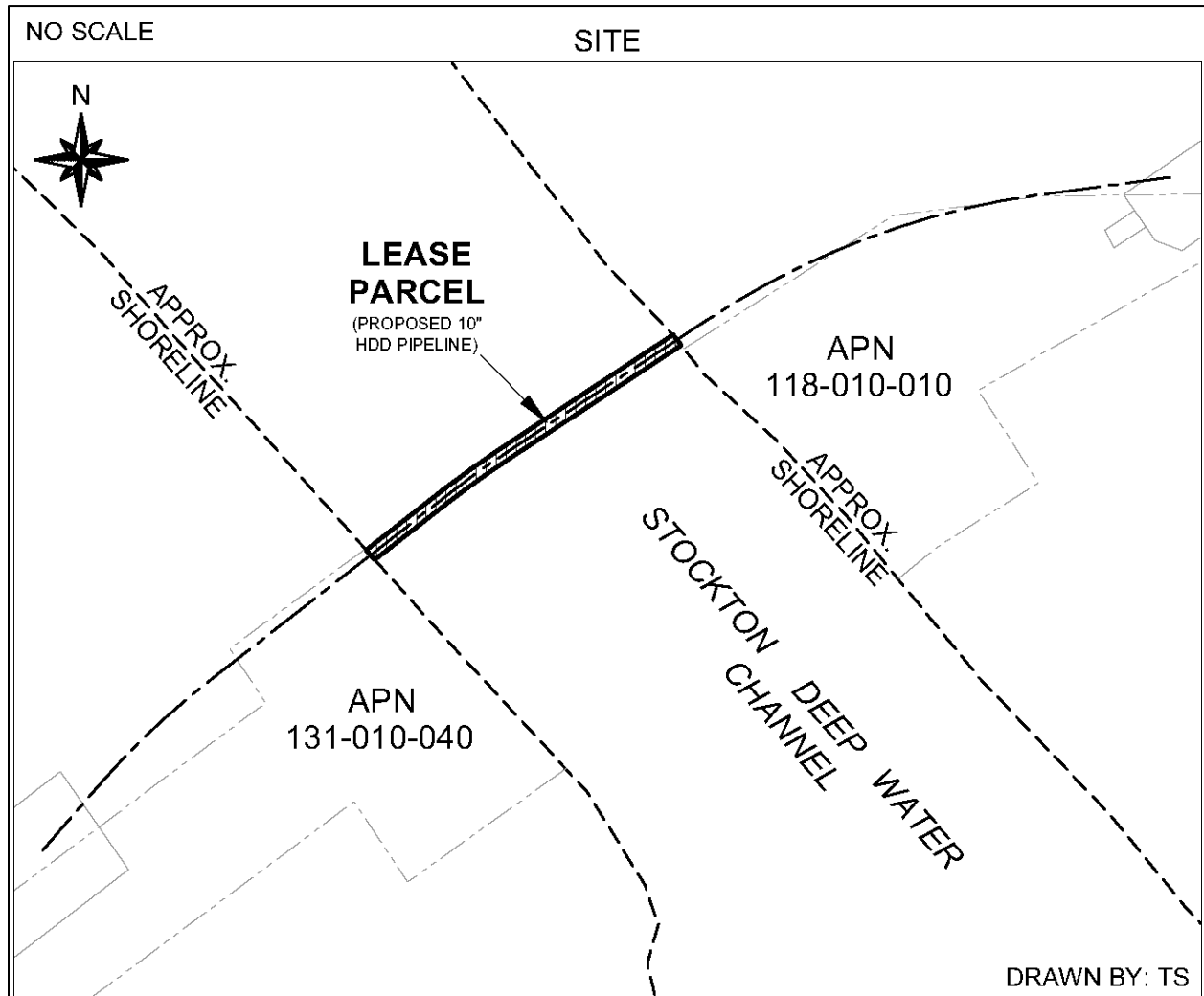
Figure 1. Location



AUTHORIZED USE:

Installation and use of a replacement 10-inch-diameter steel horizontal directional drilled (HDD) pipeline to transport refined petroleum products (as shown in Figure 2).

Figure 2. 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:

5 years, beginning December 5, 2023

CONSIDERATION:

\$503 per year, with an annual Consumer Price Index adjustment as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

- Lessor and Lessee agree that Lessee may self-insure for General Liability coverage of no less than \$5,000,000 per occurrence.
- A bond in an amount no less than \$1,000,000.
- Lessee shall submit a final set of engineering design drawings as issued for construction prior to undertaking the entire project.
- Lessee must contact all culturally and traditionally affiliated tribes and if requested by consulting tribes, a tribal monitor must be present during ground-disturbing activities.
- Lessee shall submit “as-built” plans following the project completion.

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 September 20, 2013, the Commission authorized the issuance of Lease No. PRC 9042, a 20-year General Lease – Right-of-Way Use to the Applicant for the continued use and maintenance of 31 existing petroleum pipelines measuring from 4 inches to 20 inches in diameter located in various waterways throughout the State ([Item 29, September 20, 2013](#)). The lease will expire on March 31, 2033.

The Applicant is now applying to install a new replacement refined petroleum products pipeline under the San Joaquin River (River) by HDD. The existing 10-inch-diameter pipeline identified as Line Segment 9 (LS-9) is currently authorized under Lease No. PRC 9042. The pipeline serves as a conduit for refined petroleum products (such as gasoline and diesel) for the Northern California area. The Lessee conducts integrity management and maintenance programs to operate the pipeline safely. Regular pipeline inspections revealed an anomaly indicating the integrity of the pipeline is at risk. The anomaly requires an immediate repair or replacement consistent with the United States Department of Transportation Pipeline and Hazardous Material Safety Administration’s (PHMSA) regulations. (see 49 CFR 195.452(h)(4)(i)(c)) The condition of the pipeline was verified and confirmed by both the Applicant and the California State Fire Marshal. In order to remediate the public safety risk, the Lessee is proposing immediate replacement of the

pipeline. In accordance with federal code, the Applicant has reduced the operating pressure on the line and is conducting weekly visual inspections. The Applicant is working diligently to obtain required project approvals from all local, state and federal entities with jurisdiction prior to the end of 2023 and is scheduled to mobilize in early January 2024 to complete the emergency replacement.

The proposed replacement 10-inch-diameter steel refined petroleum products pipeline would be installed by HDD and would tie into the existing pipeline network. The proposed replacement pipeline would be located approximately 89 feet below the bottom of the River since it would be installed using HDD. Installation of the new pipeline at a much greater depth would improve public safety and would not impact either the navigability or the recreational use of the River.

The new pipeline would be installed with a proposed HDD entry point located within the East Bay Municipal Utility District utility corridor and within the Brookside Country Club golf course on the northeast side of the River. The equipment staging area would be located within the utility corridor and the agricultural land on the southwest side of the River. According to the Applicant, the new replacement pipeline would better ensure the safe transport of needed resources. Upon completion of installation and operation of the new replacement pipeline, the Lessee will be required to submit a new application to remove the inactive segment of the pipeline from the River.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. In addition, the lease has a limited 5-year term and does not grant the lessee exclusive rights to the lease premises.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred 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 public land.

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 facilities would be located within the riverbed of 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 projections and rates of sea level rise. Staff evaluated the "high emissions," "low risk

aversion" scenario to apply a conservative approach based on both current emissions trajectories and the lease location. The San Francisco 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 San Francisco

Year	Projection (feet)
2030	0.5
2040	0.8
2050	1.1
2100	3.4

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 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 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.

Climate change processes, including but not limited to sea level rise and increased storm scour effects, are not expected to affect the Project. While the Project is within a portion of the River that is tidally influenced, the replacement pipeline would be installed at a depth of approximately 89 feet under the bed and banks of the River and would therefore not be affected by projected conditions.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and the adjacent upland (outside the lease area) are in an area that may be subject to effects of climate change, including sea level rise.

ENVIRONMENTAL JUSTICE:

The [Commission's Environmental Justice Policy](#) reaffirms its commitment to an informed and open process in that all people are treated equitably and with dignity. Among other goals, the policy commits to "strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease." As part of its commitment

to environmental justice, staff reviewed data that indicated high pollution burdens to the surrounding community. These burdens may result in health impacts such as asthma, cardiovascular disease, and low birth rate. In addition, the same data showed high burdens related to groundwater threats, impaired waters, and hazardous waste. Furthermore, the data revealed that the neighboring communities are disadvantaged.

As part of an environmental justice outreach and engagement effort, staff contacted community-based organizations in San Joaquin County on November 7, 2023. The outreach included a brief description of the lease and conveyed a strong desire to learn from the perspectives of the local community. As of the posting of this staff report, no responses to the outreach have been received. Furthermore, the proposed lease requires that the Lessee contact all culturally and traditionally affiliated tribes prior to construction and, if requested by consulting tribes, a tribal monitor must be present during any ground-disturbing activities.

CONCLUSION:

For all the reasons stated above, staff believes that issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the 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 to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic, and Environmental Justice," and "Leading Climate Activism" Strategic Focus Areas of the [Commission's 2021-2025 Strategic Plan](#).
3. The proposed lease includes a lease maintenance agreement to cover staff costs to comply with the lease terms.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act as a statutorily exempt

project. The project is exempt because it involves a specific action to prevent or mitigate an emergency.

Authority: Public Resources Code section 21080, subdivision (b)(4) and California Code of Regulations, title 14, section 15269, subdivisions (b) & (c).

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Central Valley Flood Protection Board
East Bay Municipal Utility District
Reclamation District

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 statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(4) and California Code of Regulations, title 14, section 15269, subdivision (c), specific actions to prevent or mitigate an emergency.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that issuance of the proposed lease for installation of a petroleum products pipeline would not be materially adverse to public health and safety; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning December 5, 2023, for a term of 5 years, for installation of a horizontal directional drilled 10-inch-diameter refined petroleum products pipeline; annual rent in the amount of \$503, with an annual Consumer Price Index adjustment; a bond in an amount no less than \$1,000,000; and liability insurance or self-insurance in an amount no less than \$5,000,000 per occurrence.

2. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the new improvement following construction.