Meeting Date: 12/05/23
Lease Number: 7163
Staff: D. Simpkin

Staff Report 58

LESSEE:

ExxonMobil Corporation

PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

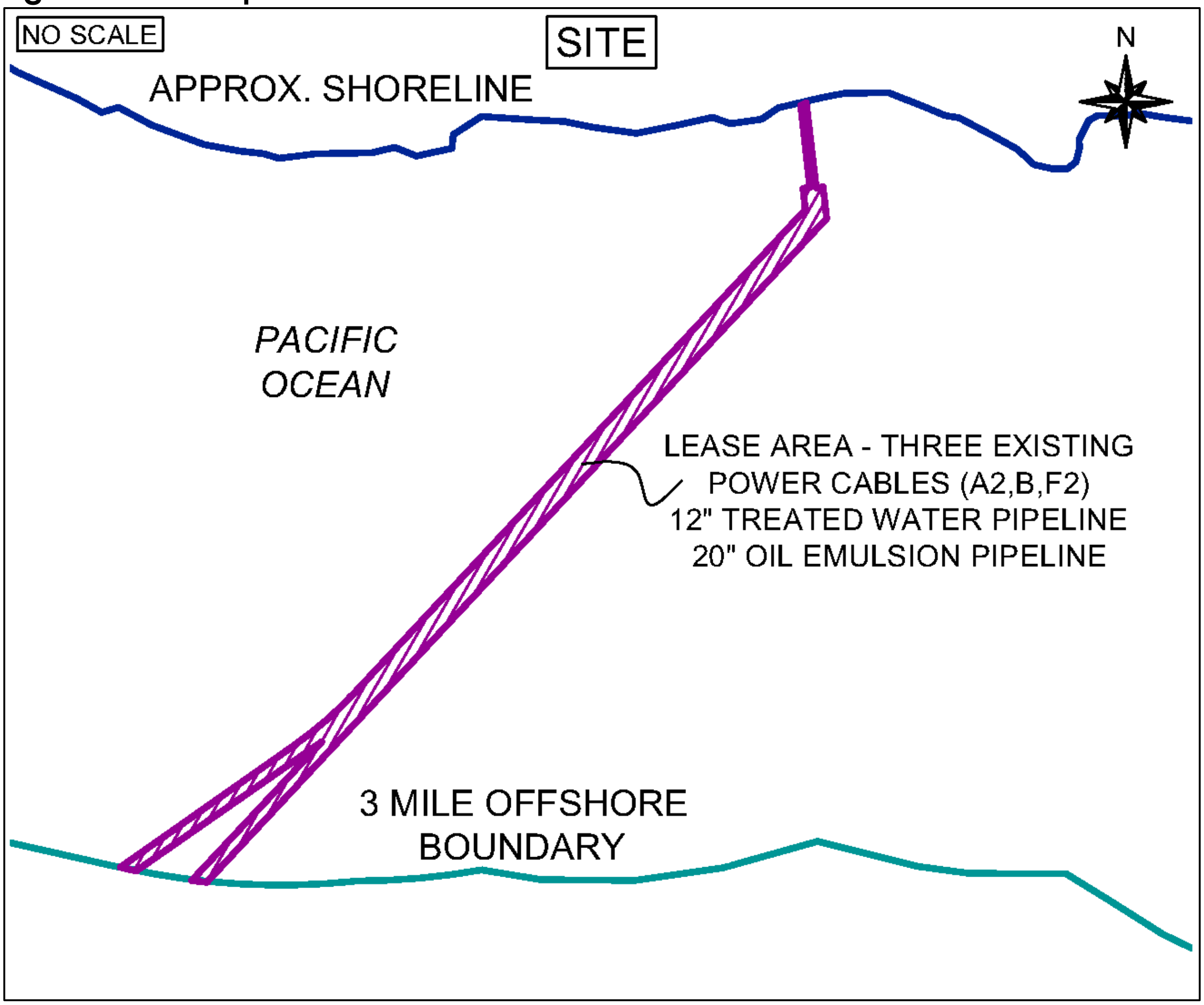
Sovereign land located in the Pacific Ocean, near El Capitan State Beach, Santa Barbara County (as shown in Figure 1).

Figure 1. Location

AUTHORIZED USE:

Operation and maintenance of an existing 12-inch-diameter water pipeline, a 20-inch-diameter oil emulsion pipeline, and three 6-inch-diameter power cables (as shown in Figure 2).

Figure 2. Site Map



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

TERM:

34 years, beginning February 1, 1988.

CONSIDERATION:

$178,145 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

PROPOSED AMENDMENT:

- Section 2, Paragraph 7 is deleted in its entirety and replace with the following:

  "7. Holding Over: Paragraph 15 of Section 4 is hereby deleted, and the following paragraph is substituted therefore:
  Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease with any fixes rental, royalty, or other consideration provided for in the expired Lease being consideration provided for in the expired Lease being payable in advance on the first day of the month at the rate of one-twelfth (1/12) of the annual amount, and any variable rental, royalty, or other consideration being payable monthly in arrears in accordance with the rate schedule set forth in the expired Lease. However, in no event shall such hold-over period exceed seven (7) years, ending January 31, 2029."

- Section 1, Surety Bond or Other Security is amended to $15,000,000.

- Section 2 is amended to include additional lease provisions related to operational requirements and ongoing inspection, monitoring, and reporting.

- Within 6-months of Lessor's adoption of the Analysis of Public Trust Resources and Values (APTR), which will assess the long-term risks and impacts to Public Trust resources for existing offshore oil and gas pipelines under Lessor's leasing jurisdiction, Lessee may submit, either (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises or (b) an application and minimum expense deposit for removal of the improvements and restoration of the Lease Premises.

- Beginning January 2024, Lessee shall meet as needed with Lessor's staff to discuss the status of the improvements, future plans related to the Santa Ynez Unit, or any other topics related to the lease. Eight months prior to Lessee's anticipated restart of the Santa Ynez unit, Lessee shall meet with Lessor's staff no less than monthly unless both parties mutually agree that regular meetings are no longer necessary.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6106, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On January 21, 1988, the Commission authorized a General Lease - Right-of-Way Use to the Lessee for improvements associated with the development of the Santa Ynez Unit (SYU) (Item 47, January 21, 1988). That lease expired on January 31, 2022. The holdover period in the lease was limited to January 31, 2024. On September 20, 2021, the Lessee applied for a new General Lease – Right-of-Way Use. Staff is proposing an amendment to the lease to extend the holding-over period in addition to amending other general and special provisions while staff prepare an Analysis of Public Trust Resources and Values (APTR), which will assess the long-term risks and impacts to Public Trust resources for existing offshore oil and gas pipelines under the Commission's leasing jurisdiction. Additional information regarding the APTR can be found under Agenda IItem 59 of the Commission's December 5, 2023 regular meeting agenda (Item 59, December 5, 2023).

The improvements are part of the Lessee's SYU, which connect three offshore platforms (Hondo, Harmony, and Heritage) installed in Federal waters on the Pacific Outer Continental Shelf (OCS) to an onshore processing facility at Las Flores Canyon in Santa Barbara County. Oil is transported from the offshore platforms through the 20-inch-diameter pipeline and treated at the Las Flores Canyon Oil and Gas Plant. The existing 12-inch-diameter water pipeline and the 20-inch-diameter oil emulsion pipeline connect the Lessee's offshore platform Harmony to shore. The three 6-inch-diameter power cables serve platforms Harmony, Hondo, and Heritage.

In May 2015, an onshore pipeline operated by Plains All American Pipeline (Plains) ruptured, releasing over 120,000 gallons of oil product onto land and into the Pacific Ocean. The Plains pipeline remains non-operational, and prior to the rupture, this pipeline was the sole pipeline used to transport produced oil from the SYU, Venoco's Platform Holly, and Freeport MacMoRan's Point Arguello Platforms to market. The Lessee has not resumed oil and gas extraction and processing, and since the Plains pipeline incident, the Lessee placed the SYU into a non-production ("shut in") status. In October 2022, the Lessee acquired segments 901 and 903 from Plains, which includes the portion that ruptured in 2015, with plans to perform remediation work and eventually restart operations in the SYU.

The Lessee has also applied for permitting from the County of Santa Barbara, that if approved, would allow the Lessee to truck oil from Las Flores Canyon to local refineries. This proposal faced challenges and was ultimately denied by the County, leading the Lessee to challenge the decision in the U.S. District Court – Central District of California (Case No: 2:22-cv-03225 DMG). On competing motions for summary judgment, the Court ruled against the Lessee in an order dated September 27, 2023 upholding the County's denial of the Lessee's permit request. Other legal issues remain pending in the case.

The Lessee has continued to inspect and maintain the pipelines while they have been shut in. As of the date of this staff report, none of those inspections have triggered repair obligations under state and federal regulations. Currently, the oil emulsion pipeline is inactive solely due to the temporary suspension of federal SYU production following the Plains pipeline rupture – an incident the Lessee did not cause nor contribute to.

This lease amendment would extend the holding-over period of the lease an additional five years, with hold-over to end January 31, 2029. Additionally, although the existing lease is for right-of-way use of existing facilities serving operations based in federal waters outside of the state's jurisdiction, the terms of the proposed amendment require the Lessee to conduct inspections that exceed existing State and Federal regulatory requirements. This includes the condition that the Lessee update its pipeline inspections and testing and submit those results for Commission review and approval prior to continuing operations at the Federal Platforms and conveying product through the pipelines within the Commission's jurisdiction. This process is designed to allow the state to independently verify the pipelines' structural integrity and ensure risks to the environment and surrounding communities are minimized. Additionally, this amendment also requires an increase in the bond to cover the cost to fully remove the improvements should the Lessee be unable or unwilling to do so in the future.

When considering whether to recommend leases or lease amendments that could prolong fossil fuel production and use, staff remains mindful of the climate crisis as an existential threat to California and acknowledges that the best way to prevent the worst impacts of the climate crisis is to reduce greenhouse gas emissions by transitioning from fossil fuels extraction and use to renewable energy generation and use. California recently enacted legislation that establishes a state policy to 1) achieve net zero greenhouse gas emissions as soon as possible, but no later than 2045; 2) achieve and maintain net negative greenhouse gas emissions thereafter; and 3) ensure that by 2045, statewide greenhouse gas emissions are reduced to at least 85 percent below the 1990 levels (AB 1279, Muratsuchi; Chapter 337, Statutes of 2022). Moreover, staff also recognizes that greenhouse gas emissions related to the transportation, processing, and use of oil and gas can adversely affect air quality in communities adjacent to such activities – this is recognized as a critical environmental injustice.

In this case, staff recommends approving the lease amendment for several reasons. First, the Lessee has operated the pipelines safely in the past. The pipelines and cables do not substantially interfere with Public Trust needs and values at this location and have existed for decades without incident. This extension will allow staff to conduct a comprehensive analysis of impacts to Public Trust resources for all the Commission's offshore oil and gas pipeline leases, as more fully described in Agenda Item 59. Second, the pipelines support oil and gas operations located in federal waters that are authorized by federal land management and regulatory authorities. Third, the existing federal and state frameworks regulating these operations, including the subject pipelines, are designed to ensure public health, safety, and environmental protection. Additionally, the proposed provisions for ongoing inspection, testing, and monitoring were intentionally designed to exceed both federal and state requirements. In contrast, while denial of the amendment might disrupt federal operations (in the event that the SYU resumes operation), this is unlikely to provide a long-term solution for the state's energy transition and may lead to legal complexities.

The transition to renewable energy is a statewide effort that must address the transition away from fossil fuels comprehensively. It involves both the deliberate and strategic phasing-out of fossil fuels along with the creation of renewable energy generation capabilities. California has set strong goals for the transition to renewable energy resources. Under SB 1020 (Laird; Chapter 361, Statutes of 2022), renewable energy and zero-carbon resources must supply 100 percent of all retail sales of electricity to customers by the end of 2045. The Commission has an essential role in the state's transition to zero-carbon energy sources and continues to work with federal, state, and local partners to plan and implement strategies to meet the state's goals. For example, the Commission authorized staff to retain consultants to assess the fiscal impact of a voluntary relinquishment by the Commission's lessees of their remaining interests in actively producing offshore oil and gas leases in state waters (Item 39, August 23, 2022). Lastly, the Commission remains invested in transitioning its leasing portfolio to integrate wind, geothermal, solar, and wave energy technologies as part of the ongoing renewable energy transition leveraging state-owned lands.

Therefore, staff recommends authorizing a lease amendment with specific lease modifications and additions. The limitation on the holdover period will be extended an additional 5 years, ending January 31, 2029, allowing the Commission to consider the appropriateness of a new lease as the State moves closer to deadlines to eliminate greenhouse gas emissions, procure energy from renewable sources, and reduce the impacts from the climate crisis. Next, the lease amendment includes provisions requiring the Lessee to conduct inspections that exceed existing State and Federal regulatory requirements and requires Commission review and approval of the inspection results prior to conveying product through the pipelines. The Lessee is also encouraged to submit a lease application for a new lease for the continued use of the Lease Premises or an application for removal of the improvements and restoration of the Lease Premises within 6-months of the Commission adopting the APTR. This helps ensure that, when considering a possible future lease application, the Commission will have time to gather the information it needs to either continue the improvements' authorization or to require their removal and have time to complete any required analysis under the California Environmental Quality Act (CEQA). The bonding requirement is amended to $15,000,000 to cover potential liability. In essence, this requirement is designed to protect the State in the event the Lessee is unable or unwilling to remove the improvements. The amendment includes testing and monitoring requirements, in addition to those required by other regulatory agencies, which will enhance public and environmental protection.

The proposed lease amendment does not alienate the State's fee simple interest and does not grant the lessee exclusive rights to the lease premises. The lease requires the Lessee to insure and indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises and to maintain the improvements at its sole expense. The lease also requires the payment of annual rent and a surety bond or other security.

CLIMATE CHANGE:

California is in the midst of the climate crisis, caused in large part by carbon emissions from the production of fossil fuels and their subsequent use. According to the State's Fourth Climate Change Assessment (Governor's Office of Planning and Research 2018), climate change is making extreme conditions in California more frequent and severe. For example, an estimated 4.2 million acres of land burned in wildfires in California in 2020, more than the previous 4 years combined, and the last 3 years (2020-2022) is the driest 3-year period on record (CAL FIRE, in 2021 SB 100 Joint Agency Report, California Energy Commission; Water Year 2022: The Drought Continues, Department of Water Resources). Average annual temperatures are on the rise in California, and if greenhouse gas emissions are not lowered substantially, air temperatures could increase by an average of 5.8°F by 2050 and 8.8°F by 2100 (California Natural Resources Agency 2022). These impacts endanger natural resources and public health.

The most effective way to prevent the worst impacts of the climate crisis is to reduce greenhouse gas emissions by transitioning the State's energy portfolio from fossil fuels to renewable, non-emitting sources such as solar, wind, and geothermal. The state is already on its way, securing 33 percent of its energy from renewable sources in 2020 (2021 SB 100 Joint Agency Report, California Energy Commission). SB 1020 requires that at least 90 percent of California's energy come from renewable, zero-carbon sources by 2030, 95 percent by 2035, and 100 percent by 2045. The primary action to achieve these targets is to reduce and eliminate the use of fossil fuels in the state, including oil and natural gas[1].

Although the SYU pipelines have operated for many years without incident, in general methane leaks are the most common emission from the transportation of oil and gas through pipelines. A recent study, conducted by NASA's Jet Propulsion Laboratory and the California Institute of Technology, found offshore oil and gas infrastructure, including pipelines, can emit methane at much higher rates than comparable onshore infrastructure. Methane is the primary contributor to the formation of ground-level ozone, a hazardous air pollutant and greenhouse gas. It is also a major driver of global warming – it is 80 times more potent at warming the planet than carbon dioxide.

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 facilities are located in the Pacific Ocean and the Santa Barbara Channel, which are tidally influenced sites.

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 current emission trajectories as well as the location and structures. The Santa Barbara tide gauge was used for the projected sea level rise scenario for the region as listed in Table 1.

[1]There are many additional ongoing and planned actions that have to co-occur in order to achieve these goals and reduce harms to the people and natural resources of California. These include increasing energy efficiency, transforming the electrical grid to have more load flexibility, decarbonizing buildings, and electrifying the transportation sector. Learn more in the 2021 SB 100 Joint Agency Summary Report: https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity.

Table 1. Projected Sea Level Rise for Santa Barbara

Year	Projection (feet)
2030	0.7
2040	1.1
2050	1.8
2100	6.6

Source: Table 22, *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 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.

For the most part, the existing pipelines and cables lie underneath the surface of the bed of the ocean channel but are exposed in several areas on the ocean floor. However, per the Lessee, the pipeline buried near the shoreline is not exposed. Therefore, it is not likely to be affected by flooding or storm conditions that may occur within the lease area given future projected scenarios of climate change.

Regular monitoring and maintenance, as referenced in the lease amendment, may reduce the likelihood of severe structural degradation or dislodgement.

CONCLUSION:

For all the reasons above, staff believes the proposed amendment will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with Public Trust needs and values at this location and at this time; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the amendment 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 amendment, the Lessee must remove the authorized improvements. The Lessee has no right to a new lease or to renewal of any previous lease.

2. 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.

3. In a letter dated October 19, 2023, Exxon contacted the federal Bureau of Safety and Environmental Enforcement (BSEE), Office of Production & Development for the Pacific Outer Continental Shelf region seeking a request for extension to resume operations. Specifically, Exxon requested "an additional 365 days to resume operations at the Santa Ynez Unit (the "Unit")." BSEE replied in a letter dated November 14, 2023, approving Exxon's request for additional time that expires at midnight on December 13, 2024. BSEE's approval included, in part, the following regulatory consideration:

   "Section 250.180(e) also requires that the request for a longer period of time to resume operations is determined to be in the National interest and that it conserves resources, prevents waste, or protects correlative rights. BSEE reviewed the statements made in ExxonMobil's request noting that there are sizeable additional remaining reserves in the Hondo, Pescado, and Sacate Fields and that the infrastructure needed to continue producing those reserves has been in place since 1976. The continued development of these proven reserves from established infrastructure would help meet the Nation's energy needs without the impacts associated with new infrastructure installations or exploration and development of unproven fields. Continued production would likewise benefit taxpayers through the continued revenue streams derived from production, including royalties and direct and indirect tax revenue to the Federal Government. Continued production would also ensure the conservation of proven oil and gas reserves from these fields, the prevention of waste, as well as protect correlative rights of the lessee, as required by 30 CFR 250.180(e). Accordingly, I determine that approving ExxonMobil's request is in the National interest and would conserve resources and prevent waste."

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 and 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 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 amendment will not substantially impair the public rights to navigation or substantially interfere with the Public Trust needs and values at this location and at this time; and is in the best interests of the State.

AUTHORIZATION:

Authorize amendment of Lease Number PRC 7163, effective December 5, 2023, to extend the lease hold-over period; increase the bond to $15,000,000 and modify the Lease Provisions substantially in the form described in the "Proposed Amendment" portion of this Staff Report, concerning the lands described in Figure 2 (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.