Meeting Date: 06/07/24
Lease Number: 7510
Staff: J. Toy

Staff Report 53

APPLICANT:

Mojave Pipeline Company, LLC

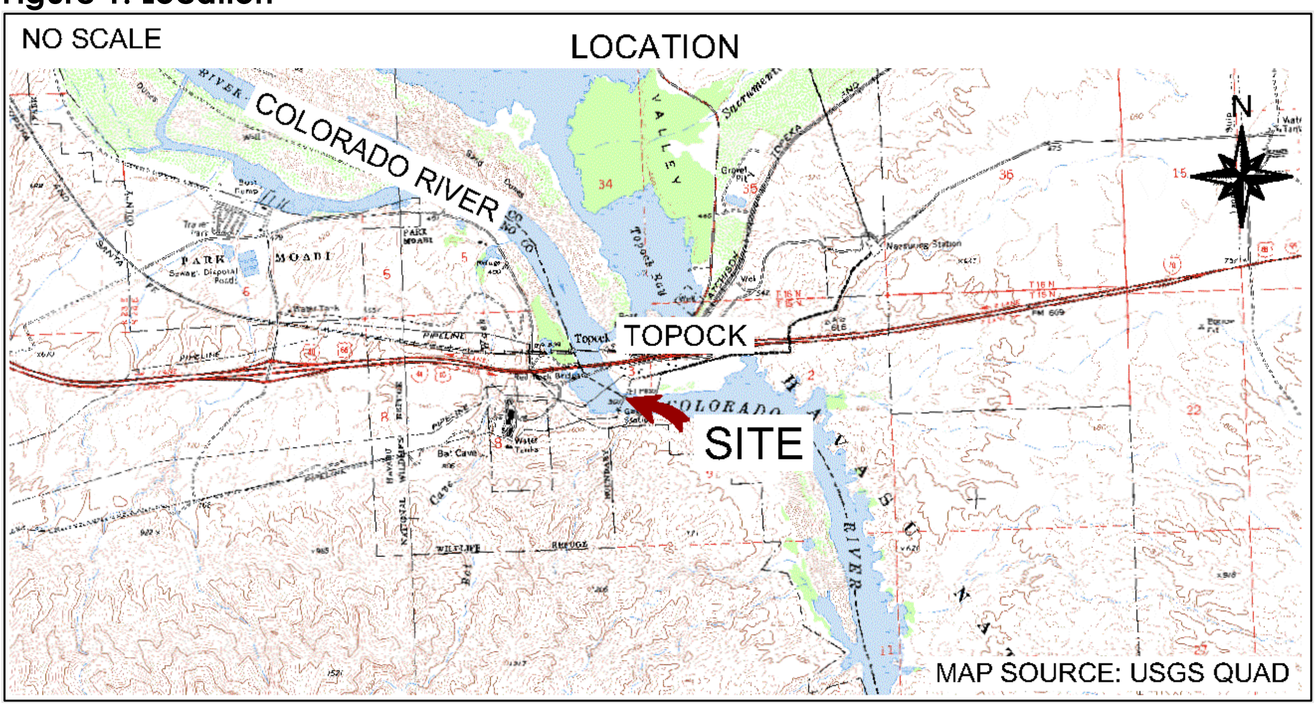
PROPOSED ACTION:

Recission of Approval of a General Lease – Right-of-Way Use and Issuance of General Lease – Right-of-Way Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Colorado River, adjacent to Assessor's Parcel Number 650-161-12, near Topock, San Bernardino County (as shown in Figure 1).

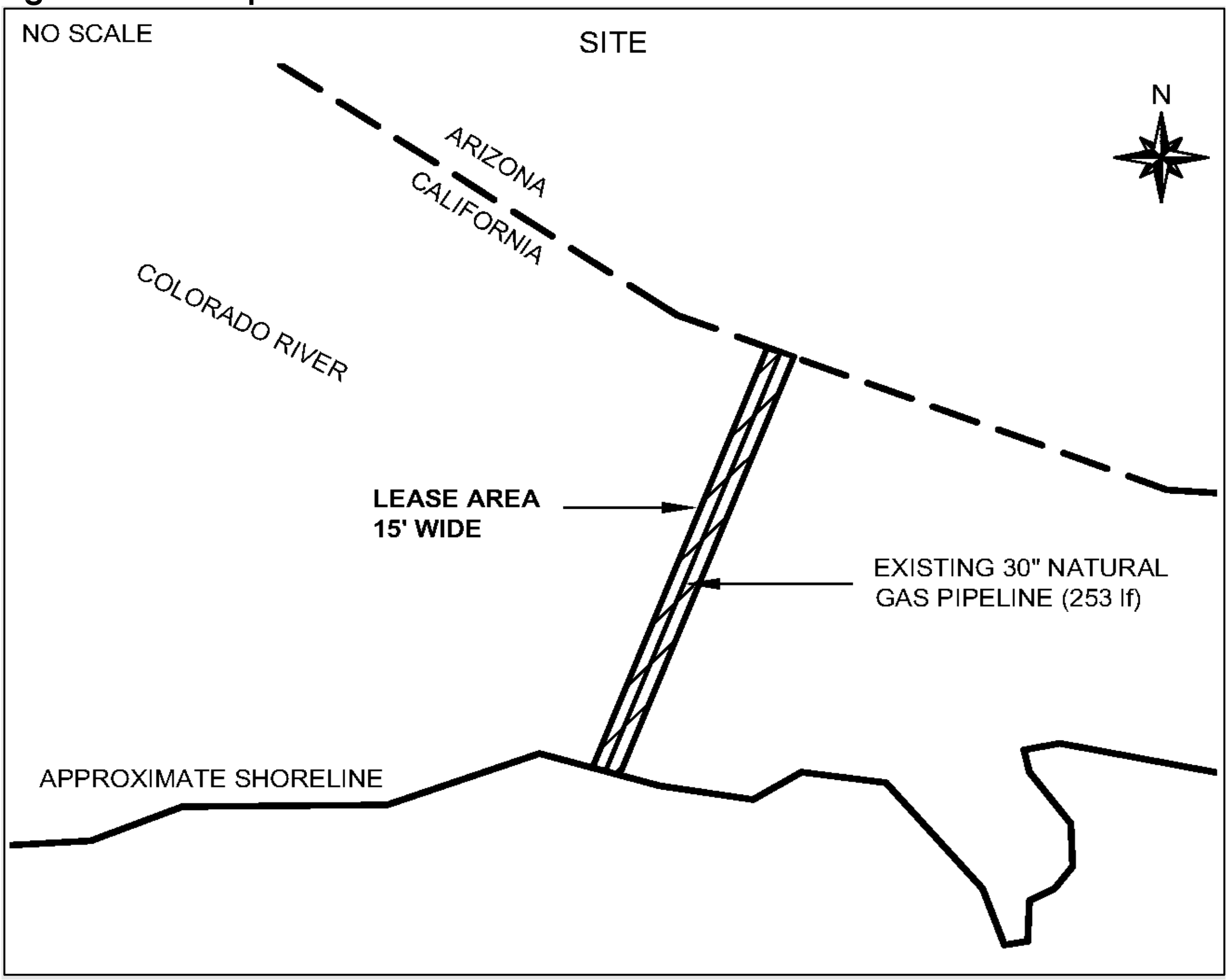
Figure 1. Location



AUTHORIZED USE:

Use of an existing 30-inch-diameter natural gas pipeline (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:

20 years, beginning March 7, 2021.

CONSIDERATION:

Rent in the amount of $503 per year, with an annual Consumer Price Index adjustment, 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:

- Insurance: Liability insurance in an amount no less than $5,000,000 per occurrence.
- Bond: Surety bond in the amount of $100,000.
- Lessee shall implement all recommendations in the February 29, 2024 Kleinfelder memorandum, as of the date of the memorandum, on the bridge condition, continue to monitor the cracks at the southern bridge abutment, and shall provide to Lessor the results as specified in the Lease.
- Lessee shall perform inspections of the pipeline, pipe supports, and associated bridge structure and shall provide to Lessor results of the inspections including a report, findings, and recommended repairs as specified in the 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 9, 2022, the Commission authorized a General Lease – Right-of-Way Use to the Applicant for the continued use of the existing 30-inch-diameter natural gas pipeline beginning on March 7, 2021 (Item 48, December 9, 2022). The pipeline was constructed in 1992 and is attached to the Old Trails Bridge which spans over the Colorado River. The lease required a site investigation of the entirety of the southern base foundation of the bridge, including existing cracks, by January 31, 2023. This foundation is located on the California side, above the river and outside of the Commission's leasing jurisdiction but is a concern for the Commission since failure of the bridge could adversely impact the integrity of the Applicant's pipeline, as well as sovereign land and Public Trust values in the Colorado River. An inspection was performed but the lease was never signed. Mojave Pipeline Company, LLC, a Kinder Morgan, Inc. company, is now requesting recission of the 2022 approval and issuance of a revised General Lease – Right-of-Way Use to include updated inspection provisions.

The bridge was built in 1914 as part of the historic U.S. Route 66. In 1947, traffic shifted to the new Interstate 40 bridge. Eventually, the Old Trails Bridge was converted from a vehicular use bridge to a pipeline bridge. The portion of the bridge within Arizona is owned and maintained by El Paso Natural Gas, LLC, a Kinder Morgan Inc. company. The portion of the bridge within the Commission's jurisdiction was also previously owned by El Paso Natural Gas, LLC, but it conveyed ownership to Pacific Gas and Electric Company (PG&E) in 1949. PG&E maintains the California side of the bridge, which is authorized under Lease Number PRC 5438.

The Applicant and PG&E, who each maintain their respective ends of the bridge, collaborated on the inspection required under the lease authorized at the December 2022 Commission meeting and for any needed repairs. On February 29, 2024, Kleinfelder, Inc. provided a memorandum to Kinder Morgan, Inc. stating no immediate repair is required and recommending further monitoring of the cracks and the addition of a weephole at the abutment stem.

An approximately 253-foot-long section of the pipeline is within the Commission's leasing jurisdiction. The pipeline is part of a larger interstate natural gas transportation system that supplies natural gas to the Bakersfield area for use in oil recovery projects. Natural gas is used as boiler fuel to create steam, which is injected into the oil fields to produce crude oil not recoverable by primary methods. The pipeline falls under the regulatory authority of the Federal Department of Transportation since it crosses state lines.

Staff recommends the proposed lease begin on March 7, 2021, the day after the previously fully executed lease expired. Although the Lessee failed to fully execute the lease, the Commission's accounting department issued invoices for the rent authorized at the December 9, 2022 Commission Meeting. The Applicant has paid these invoices, compensating the state for the unauthorized use of its land through March 6, 2025. Staff recommend that the previous payments be applied to the new lease such that rental payments will begin after March 6, 2025.

The pipeline is attached to the bridge that crosses over the bed of the Colorado River and does not impede surface use or interfere with Public Trust needs and values at this location, at this time. The existing pipeline does not significantly alter the land, and the lease does not alienate the State's fee simple interest or permanently impact public rights. The lease is limited to a 20-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

Additionally, the proposed lease requires the lessee to maintain a surety bond in the amount of $100,000, and 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 the public land involved.

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, there were 4.2 million acres of land burned in wildfires in California in 2020, more than the previous 4 years combined, and 2022 was the driest year on record (CAL FIRE, in 2021 SB 100 Joint Agency Report, California Energy Commission; National Integrated Drought Information System 2022). 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. Senate Bill (SB) 1020 (Laird) requires that at least 90 percent of California's energy come from renewable and zero-carbon sources by 2030, 95 percent by 2035, and 100 percent by 2045. The State is already on its way, securing over 37 percent of its energy from renewable sources in 2021, and over 21 percent from zero-carbon sources, for a combined 59 percent of total retail sales (California Energy Commission, 2023). The primary action to achieve these targets is to eliminate the use and physical presence of fossil fuels in the State, including natural gas[1]. The

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[1] There are many additional ongoing and planned actions that must 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 SB100 Joint Agency Summary Report.

proposed lease would expire before the 100 percent renewable, zero-carbon sources requirement date of 2045.

The pipeline system transports natural gas. Methane leaks are the most common emission from the transportation of natural gas through pipelines. 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.

In addition to atmospheric impacts, methane is highly flammable. Even though the lease area includes a pipeline attached to a bridge, the remainder of the pipeline passes through open lands with moderate to low vegetation fuels and disruption to the pipeline and release of methane could potentially increase the risk of wildland fires. The Applicant acknowledges the contribution of fugitive pipeline emissions to climate change and wildland fire risk. Regular pipeline inspections, as required by State and federal law and in compliance with the terms of the lease, will reduce the potential for methane leaks and associated atmospheric impacts.

ENVIRONMENTAL JUSTICE:

Staff reviewed environmental justice data that indicated high pollution burdens to the surrounding communities. These burdens may result in health impacts such as asthma, cardiovascular disease, and low birth weight. In addition, the same data showed high burdens related to groundwater threats, hazardous waste, cleanup sites, and solid waste. As part of an environmental justice outreach and engagement effort, staff sent letters to environmental justice organizations in San Bernardino County, providing notification of the proposed lease and requesting input. The letters included a brief description of the lease and conveyed a desire to learn from the perspectives of the local community. As of the posting of this staff report, no responses to the outreach letters have been received.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with 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 a 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 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. **Recission of Lease Approval:** Recission of the lease approval 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).

   Existing Pipeline: Staff recommend that the Commission find that issuance of the lease is exempt from the requirements of the 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 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 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 term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the recission of the Commission's December 9, 2022 approval of a General Lease – Right-of-Way Use.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning March 7, 2021, for a term of 20 years, for the use of an existing 30-inch-diameter natural gas pipeline crossing the Colorado River, as described in Exhibit A and as shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; rent in the amount of $503 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than $5,000,000 per occurrence; and surety bond in the amount of $100,000.