

Staff Report 34

APPLICANT:

Level 3 Telecom of California, LP

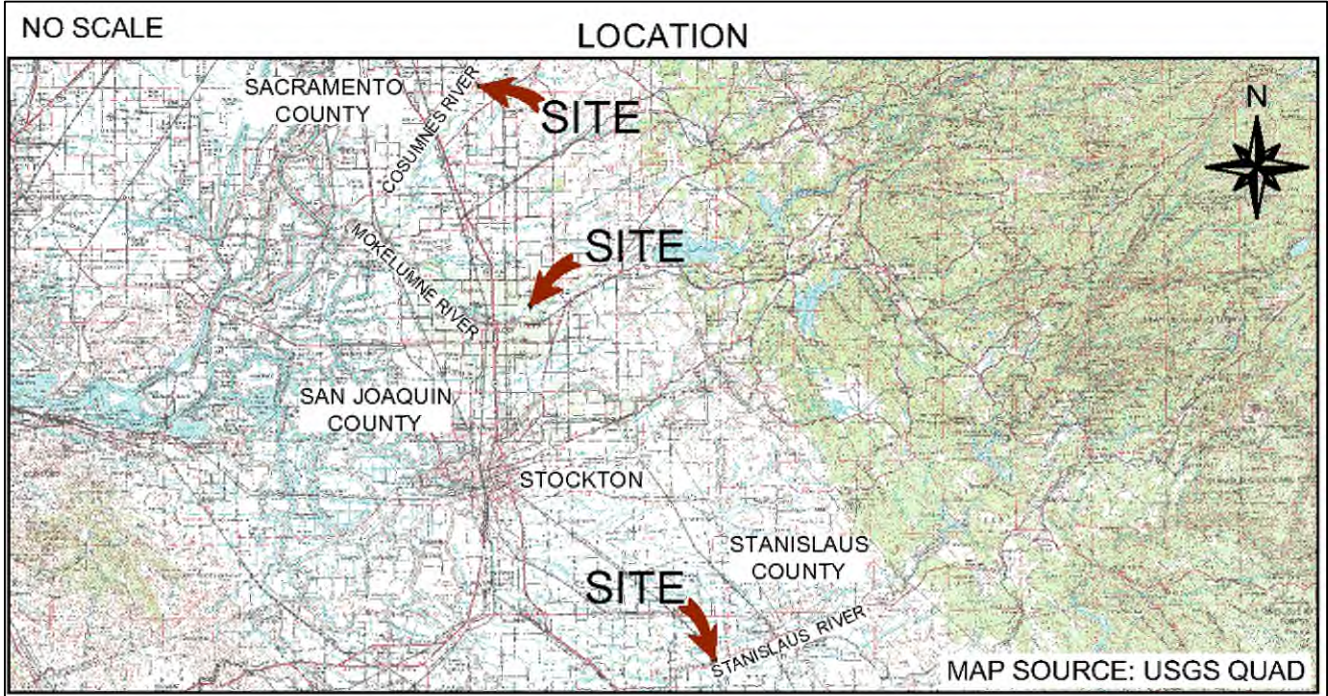
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

0.39 acre, more or less, of sovereign land in the Stanislaus River, near Riverbank, Stanislaus and San Joaquin Counties; the Mokelumne River, near Lodi, San Joaquin County; and the Cosumnes River, near Wilton, Sacramento County (as shown in Figure 1).

Figure 1. Location



CONSIDERATION:

\$1,415 with an annual Consumer Price Index adjustment; and with 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 \$1,000,000 per occurrence.
- Surety bond or other security in an amount of \$50,000 due within 30 days of lease authorization.
- The rights reserved to Lessor under Section 3, Paragraph 10.6, Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises to third parties for facilities or improvements that may cross over or under Lessee's authorized improvements.

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 16, 1998, the Commission authorized a 25-year General Lease – Right-of-Way Use to GST Telecom California, Inc. for directional boring, placement, and maintenance at three locations of a ten-inch-diameter by ¼-inch-thick steel casing containing six two-inch-diameter high density polyethylene conduit ducts; and the placement, use, and maintenance of a fiber optic cable within one of six two-inch-diameter high density polyethylene conduit ducts below the Stanislaus River, Mokelumne River, and Consumes River ([Item 47, December 16, 1998](#)).

On September 19, 2000, the Commission authorized an amendment and consent to co-location under Lease 8014 and Lease 8044 ([Item 19, September 19, 2000](#)). In 2001, GST Telecom California, Inc. filed bankruptcy and Time Warner Telecom purchased all assets and assumed the lease. On February 1, 2016, TW Telecom Holdings, LLC and its subsidiaries changed its name to Level 3 Telecom. According to documents provided with the lease application, the California Public Utilities

Commission and the California Secretary of State were notified of this change. The entity operating in this state is called Level 3 Telecom of California, LP. On October 18, 2018, staff conducted a rent review of lease terms and conditions. The annual rent was modified from \$1,350 per year to \$1,604 per year ([Item 51, October 18, 2018](#)). The lease expired on October 31, 2023.

The Applicant is applying for issuance of a General Lease – Right of Way Use for the existing improvements. The existing improvements are buried approximately 30 feet below the riverbed, and therefore do not impede surface use or interfere with Public Trust needs and values at this location, at this time, and for the term of the proposed lease. The public may navigate the river and use it for recreational activities such as fishing and boating. The improvements do not significantly alter the land, and the lease does not alienate the State's sovereign interest or permanently impact public rights. The land under and above the improvements remains available for leasing opportunities.

According to the Commission's accounting records, the annual rent is paid through October 31, 2024. Staff recommend starting the new lease on November 1, 2024, to align with the lease anniversary date and rent paid-through date. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation from November 1, 2023, to October 31, 2024, ensuring the State is fully protected.

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 or other security item in the amount of \$50,000, 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:

The project area is not tidally influenced and therefore, would not be subject to sea level rise. However, 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, drought, and storms. In rivers, more frequent and powerful storms can result in

increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

The existing conduits and associated fiber optic cables are located approximately 30 feet deep under the riverbeds. Due to this depth of burial, the telecommunication infrastructure installed beneath the rivers is not expected to be impacted by climate change events. 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 are located in an area that may be subject to effects of climate change.

CONCLUSION:

For all the reasons above, staff believes the issuance of the 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 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 Applicant may be required to remove the existing improvements and restore the land to its natural condition. 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 "Leveraging Technology" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommend 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

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 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce 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:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning November 1, 2024, for a term of 20 years, for the use of an existing buried steel casing containing six high-density polyethylene conduit ducts with fiber optic cable within one of the six ducts; annual rent in the amount of \$1,415 with an annual Consumer Price Index adjustment; and 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 \$1,000,000 per occurrence; and a surety bond or other security item in the amount of \$50,000.