

Staff Report 67

LESSEE:

El Paso Natural Gas Company, LLC

APPLICANTS:

El Paso Natural Gas Company, LLC
Cadiz Real Estate LLC

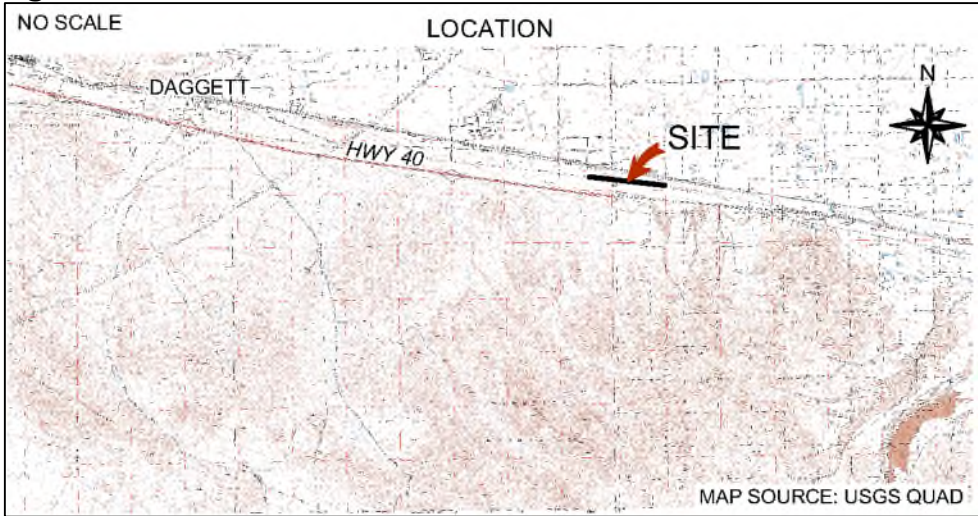
PROPOSED ACTION:

Termination of existing General Lease – Right of Way Use and Issuance of a new caretaker General Lease – Right-of-Way Use.

AREA, LAND TYPE, AND LOCATION:

7.1 acres, more or less, of State indemnity school land in Sections 26 and 27, Township 9 North, Range 2 East, SBM, southeast of Barstow, San Bernardino County (as shown in Figure).

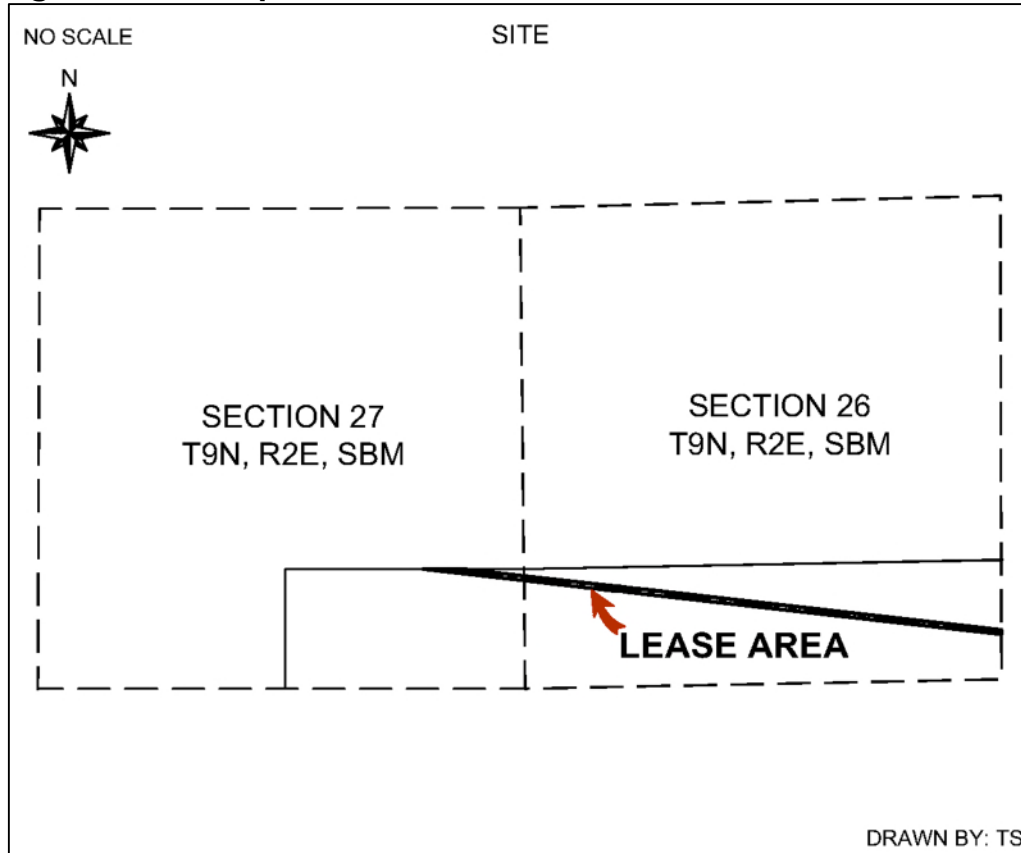
Figure 1. Location



AUTHORIZED USE:

Maintenance of an existing idle 30-inch-diameter crude oil 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:

3 years, beginning December 17, 2024.

CONSIDERATION:

\$9,275 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Lessees are authorized only to maintain the authorized improvements in a caretaker status, consistent with the standard of a reasonable and prudent

operator, including maintaining any existing safety and monitoring systems. Lessee is prohibited from using the lease premises and authorized improvements for the transportation and conveyance of petroleum, natural gas, water, or any other product.

- Any proposed future use, other than maintenance of the pipeline in an idle state, requires Lessor's prior approval.
- No later than December 15, 2025, Lessee shall submit an application and an approximate expense deposit for the decommissioning and removal of the authorized improvements. Lessee shall also submit a decommissioning and removal plan prepared by a third party with the application.
- If Cadiz proposes to repurpose the authorized infrastructure on state school lands, no later than December 15, 2025, Cadiz shall submit a) a lease application and approximate expense deposit for a use of the authorized improvements, other than continued maintenance, and b) if the application is for use of the authorized improvements for water conveyance, an application for review of a proposed conveyance of water pursuant to Water Code §1815, unless a court of competent jurisdiction determines that Water Code §1815 does not apply. Should Cadiz seek judicial relief regarding the applicability of Water Code § 1815, no later than September 30, 2025, the December 15, 2025 application due date will be tolled until judgment is rendered.
- Lessee acknowledges that Lessor does not intend to authorize long-term maintenance of idle infrastructure by issuing this Lease.

BACKGROUND:

The State acquired portions of Sections 26 & 27, Township 9 North, Range 2 East, San Bernardino Meridian, from the United States by a Patent dated September 28, 1989, subject to a right-of-way issued to All American Pipeline Company (All American). The Commission designated this right-of-way as Lease 7527. The federal right-of-way/Lease 7527 authorized All American to construct, use, and maintain a 30-inch-diameter petroleum pipeline, which was part of a distribution system that transported petroleum across California and into Arizona and Texas. The right-of-way was effective May 18, 1985, for a 30-year term.

On November 27, 2000, the Commission authorized the assignment of the right-of-way/Lease 7527 from All American to El Paso Natural Gas Company (EPNG) ([Item 5, November 27, 2000](#)). On August 8, 2005, the Commission authorized termination

of the federal right-of-way and issuance of a new 30-year, General Lease – Right-of-Way Use to EPNG, also designated Lease 7527 ([Item 44, August 8, 2005](#)). Along with the lease authorization, the Commission certified an Environmental Impact Report (EIR) for the El Paso Line No. 1903 Conversion Project pursuant to the California Environmental Quality Act (CEQA). This EIR analyzed converting the pipeline from crude oil transport to natural gas transport and evaluated pipeline route alternatives. The Commission approved and made findings for an alternative that did not propose to convert any portion of the pipeline in Lease 7527 from crude oil to natural gas. However, the authorized use of the pipeline in Lease 7527, both in the Commission authorization and the signed lease, was conversion and maintenance of an existing 30-inch diameter crude oil pipeline to natural gas service. This long-standing error was only recently discovered as part of the recent application process. Since the pipeline was never converted to natural gas, the error was never noticed. A primary reason for the proposed termination and issuance action is to correct this long-standing error.

The pipeline was purged of crude oil, filled with nitrogen gas, and sealed before EPNG acquired the line in 2000. In the 19 years since the Commission authorized Lease 7527 the pipeline has been maintained in idle status.

In 2014, EPNG sold part of the pipeline, including the portion occupying Lease 7527, to Cadiz Inc. (Cadiz). Cadiz applied for consent to an assignment of Lease 7527 in June 2023, causing staff to begin lease compliance review. During review, staff identified the apparent inconsistency between Lease 7527's stated purpose and the Commission's CEQA findings. Because of questions about the purpose of Lease 7527, EPNG applied for consensual termination of Lease 7527, and Cadiz voluntarily withdrew its application for assignment of Lease 7527 in October 2024.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6501.1, and 8705; California Code of Regulations, title 2, sections 2000 and 2003.

STATE'S BEST INTERESTS:

An application was submitted for a General Lease – Right-of-Way Use for the continued maintenance of the idle, non-operational 30-inch-diameter crude oil pipeline. The terms of the proposed lease only allow for the Applicants to maintain

the pipeline in a caretaker status. The transport of any commodity, including crude oil, natural gas, or water, is prohibited. The purpose of the short-term caretaker lease is to correct issues in the existing lease to EPNG, recognize that while EPNG is the Commission's lessee, Cadiz currently owns the pipeline infrastructure, and require EPNG to submit an application for the future decommissioning of the pipeline. The proposed lease also confirms the process for Cadiz, like any prospective applicant, to submit an application if it proposes to use the pipeline infrastructure for an alternative use.

The proposed caretaker lease requires EPNG and Cadiz to submit independent applications no later than December 15, 2025. The Lessees are required to submit an application for the decommissioning and removal of the authorized improvements, including a decommissioning and removal plan prepared by a third party. Additionally, Cadiz must submit both a lease application if it desires to repurpose the authorized improvements, other than continued maintenance, and an application for a proposed water conveyance pursuant to Water Code §1815, unless a court of competent jurisdiction determines that Water Code §1815 does not apply to the proposed use. These applications will be evaluated by the Commission and considered at a future public meeting.

With respect to the application for a proposed water conveyance, Water Code § 1815 requires, in part ... "(a) Notwithstanding Section 1810, a transferor of water shall not use a water conveyance facility that has unused capacity to transfer water from a groundwater basin underlying desert lands that is in the vicinity of a national monument, a national preserve, a national park, a state or federal wilderness area, or state lands to outside of the groundwater basin **unless the State Lands Commission, in consultation with the Department of Fish and Wildlife and the department, finds, upon receipt of an application pursuant to subdivision (b), that the transfer of the water will not adversely affect the natural or cultural resources, including groundwater resources or habitat, of those federal or state lands.**" For additional information about the Commission's specific obligations regarding water conveyances please see Chapter 169, Statutes of 2019 ([SB 307, Roth](#)).

The proposed caretaker lease also requires the Applicants to pay annual rent and provide adequate commercial liability insurance. Additionally, the surety bond has been increased from \$50,000 to \$2,500,000 to cover the costs of fully removing the pipeline.

CLIMATE CHANGE:

The combination of more frequent and longer duration weather patterns contributing to high winds, low humidity, extreme heat, and thunderstorm and lightning events for California’s desert regions has contributed to an increasingly aggressive wildland fire season as a related product of climate change. 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, drought, and storms. The lease area is open lands with moderate to low vegetation fuels, and is vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased lands and surrounding land may be vulnerable to these weather events.

Pursuant to the proposed lease, the Applicants acknowledges that the lease premises are in an area that may be subject to effects of climate change.

CONCLUSION:

For all the reasons above, staff believe the proposed lease termination and issuance of a lease are in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Termination and issuance of the lease is a discretionary action by the Commission. Each time the Commission approves or rejects the use of school land, it exercises legislatively delegated authority and responsibility as trustee of the State’s School lands as authorized by law. The Applicants also have no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the “address current and future risk and liabilities” in the Strategic Focus Areas of the Commission’s 2021- 2025 Strategic Plan.
3. Neither EPNG, nor Cadiz, desire to use the Lease 7527 premises for its previously authorized purpose. Cadiz, Inc., a water-conveyance company with no business interest or experience in natural gas or crude oil transport, is proposing the Cadiz Water Project. Cadiz has represented in [filings with the federal Securities and Exchange Commission](#) that it intends to use the pipeline crossing state school lands (the “Northern Pipeline”) for water conveyance. Cadiz has entered into [contracts for water delivery](#) that require it to convey water through the pipeline. The terms of the sale of the pipeline and the deed from EPNG to Cadiz

specifically restrict Cadiz's use to transportation of water, and EPNG reserved an explicit right to repurchase the pipeline if it was used for anything other than water transport. ("[Cadiz] shall not use the [Northern Pipeline] for any use other than the transportation of water.") The permit for the portion of the pipeline that crosses federal public lands (subject to the [Bureau of Land Management](#)) requires that the pipeline be used for oil or natural gas transport by December 15, 2025, or it will be terminated.

4. While this short-term caretaker lease only provides the Lessees with obligations to maintain the infrastructure, but no right to operate, it does require that Cadiz submit future applications for both the use of state school lands and for evaluation of a water conveyance under Water Code §1815 if Cadiz proposes to repurpose the authorized infrastructure.
5. The authorization of a General Lease – Right-of-Way Use for the maintenance of the idle 30-inch-diameter crude oil pipeline in a caretaker status does not confer any rights or entitlements related to the Cadiz Water Project, nor does it address the analysis that the Commission will undertake, in compliance with the requirements of Water Code §1815. The Commission will assess compliance with Water Code §1815 after an application has been submitted, along with a full project description, and all relevant information has been gathered and analyzed. Cadiz disputes that Water Code § 1815 applies to water conveyances through the Northern Pipeline. The Commission disagrees with Cadiz.
6. Nothing in this authorization or the proposed lease prohibits the Commission from accepting and considering a new lease application for these school lands from another entity, other than the Applicants. Nothing in this authorization or the proposed lease gives the Applicants a priority right in application processing and consideration.
7. EPNG is a subsidiary of Kinder Morgan, Inc. Mojave Pipeline Company, LLC (Mojave), another subsidiary of Kinder Morgan, Inc., owns and operates the Mojave Mainline natural gas pipeline, an interstate natural gas pipeline active since the early 1990s. Staff recently learned that the Mojave Mainline parallels the EPNG pipeline and crosses the same school lands discussed in this staff report. Mojave is not authorized to use these lands. Mojave has now applied for a lease for this use. Staff are processing the application. The Commission will consider Mojave's lease application related to this unauthorized infrastructure at a future meeting.

8. Termination of the lease is not a project as defined by 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

9. Staff recommend that the Commission find that the issuance of the lease 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 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 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 14, section 15301.

STATE'S BEST INTERESTS:

Find that the proposed actions are in the best interests of the State.

AUTHORIZATIONS:

1. Terminate Lease 7527, a General Lease – Right-of-Way Use issued to El Paso Natural Gas Company, effective December 17, 2024.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicants beginning December 17, 2024, for a term of three years, for the maintenance of an idle 30-inch-diameter crude oil pipeline in a caretaker status; annual rent in the amount of \$9,275, with an annual Consumer Price Index adjustment; surety bond in the amount of \$2,500,000; and liability insurance in an amount no less than \$1,000,000 per occurrence.

3. The Applicants have no right to a new lease or a renewal of any previous lease.
4. Rescind the lease authorization if the Applicants do not execute the authorized lease by January 16, 2025.
5. Authorize Commission staff and the Office of the Attorney General to take all actions necessary and appropriate, including litigation, to remove unauthorized improvements from State land if the Applicants do not accept and execute the lease.