

STAFF REPORT

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06/28/19
PRC 9177.1
D. Simpkin

AMENDMENT OF LEASE

LESSEE:

California-American Water Company

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, Monterey Bay, near Marina, Monterey County

AUTHORIZED USE:

Construction, operation, continued maintenance, and decommissioning subject to a Lease Termination and Abandonment Agreement to be considered at a future Commission meeting, of a temporary exploratory test slant water well.

LEASE TERM:

5 years, beginning December 17, 2014.

CONSIDERATION:

\$450 per year, with an annual Consumer Price Index (CPI) adjustment.

PROPOSED AMENDMENT:

1. Amend **Section 1, Term**: Extend the term of the lease to December 16, 2022.
2. **Section 1, Land Use or Purpose** is deleted and replaced with the following: Construction, operation, and continued maintenance of a temporary exploratory test slant water well.
3. **Section 2, Special Provision, Paragraph 9** is deleted and replaced with the following:
 9. Disposition of Lease Facilities.
 - a. The parties acknowledge that the Lessee's use of the test well is subject to Coastal Development Permit (CDP) No. 9-14-1735 / A-3-MRA-14-0050, which currently includes an amendment requiring Lessee to, no later than February 28, 2020, cut off, cap, and bury the slant wellhead at least 40 feet below the

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ground surface, and completely remove all other temporary facilities approved by the CDP. Should this date be extended by the Coastal Commission, the deadlines listed in subparagraphs b and c below shall be automatically extended consistent with the revised date in the CDP amendment, Special Condition 6. In that event, Lessee shall provide Lessor with documentation of the CDP extension, consistent with Section 2, Paragraph 8 and Section 3, Paragraphs 5 and 7 of this lease, as amended.

- b. Should the Lessee decommission the slant test well, the termination of the lease and permanent disposition of the slant test well and any related lease facilities will be subject to separate review by the Commission, including but not limited to environmental review. Nothing in this lease shall be interpreted to restrict or waive Lessor's right or ability to require the Lessee, prior to the termination of this Lease, to remove any or all facilities or structures, including the slant test well. The ultimate disposition of the slant test well and any other lease facilities remaining within the Commission jurisdiction's will be considered by the Commission when the Lessee submits an application for termination of the lease. Lessee shall submit a Lease Application and Minimum Expense Deposit for the termination and abandonment of the lease no later than February 28, 2020.
- c. Should Lessee fail to obtain all necessary authorizations to maintain the slant test well beyond February 28, 2020, including but not limited to any required extension or renewal of Coastal Development Permit No. 9-14-1735 / A-3-MRA-14-0050, Lessee shall cease all maintenance pumping operations and submit a Lease Application and Minimum Expense Deposit for the termination of the lease and permanent disposition of the slant test well and any related lease facilities as specified in Section 2, Paragraph 9, subparagraph b and c, of this Lease.

All other terms and conditions of the lease shall remain in effect without amendment.

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.

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Public Trust and State's Best Interests Analysis:

On December 17, 2014, the Commission authorized issuance of a General Lease – Right-of-Way Use, for a 3-year term, to California-American Water Company (Lessee), for the construction, operation, and decommissioning, subject to a Lease Termination and Abandonment Agreement to be considered at a future Commission meeting, of a temporary exploratory test slant water well ([Item C71, December 17, 2014](#)). The authorized test well was constructed to determine the feasibility of using a subsurface intake system at the site or nearby for use in a future desalination project, the Monterey Peninsula Water Supply Project (MPWSP).

On November 29, 2017, the Commission authorized an amendment to the lease to extend the lease term an additional 2 years ([Item C57, November 29, 2017](#)) due to delays in environmental review of the proposed MPWSP. The lease expires on December 16, 2019. The Lessee is now requesting an amendment to the lease to extend the lease term an additional 3 years to December 16, 2022.

At the time of the Commission's November 29, 2017 authorization, the Marina Coast Water District had challenged the Commission's authorization of the lease in a lawsuit filed in Santa Cruz County Superior Court on January 15, 2015. The case was resolved through a settlement agreement in February 2018.

Full-time pump testing ceased on February 28, 2018. Only periodic maintenance pumping is authorized pursuant to the terms of the lease and Coastal Development Permit (CDP) No. 9-14-1735 / A-3-MRA-14-0050. Continued maintenance pumping is intended to preserve the well and circulate water through the well screen to prevent biological growth and encrustation. The test well is turned on once per month and operated for approximately 4 hours at a rate of 2,000 gallons per minute.

The existing lease does not authorize the drilling of additional wells or the conversion of the test well into a permanent slant well. The California Public Utilities Commission (CPUC) analyzed permanent use of the test well in the MPWSP Final Environmental Impact Report/Environmental Impact Statement (FEIR/FEIS), certified on September 13, 2018.¹ However, conversion to permanent use would also require Commission authorization of a new lease and compliance with CEQA as a responsible agency. In addition, any proposed future pumping tests would also require

¹ The CPUC also issued the Lessee a Certificate of Public Convenience and Necessity.

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a lease amendment and Commission authorization. Should the Lessee choose not to convert the test well or fail to obtain the necessary authorizations, approvals, and permits to maintain it beyond February 28, 2020, then its disposition will be addressed pursuant to the terms of the lease and CDP No. 9-14-1735 / A-3-MRA-0050.² The Lessee anticipates submitting a lease application to the Commission for the full MPWSP in 2019, which would include conversion of the test well for use in the MPWSP. Commission consideration of the proposed MPWSP is currently anticipated to occur in early 2020 but is subject to change. The 3-year length of the proposed lease extension is meant to allow sufficient time for the Lessee to secure necessary permits and authorizations from other agencies for the MPWSP. This 3-year term also provides for efficient use of State and Commission resources because a shorter lease length could result in the need for the Lessee to apply for another lease extension simply to authorize further existing, status quo use of the current lease facilities.

The proposed lease amendment and continued maintenance of the test well do not alienate the State's fee simple interest and would not substantially impair Public Trust needs and values at this location. Approximately 230 feet of the 1,000-foot-long test well lies within the Commission's jurisdiction, approximately 290 feet below the seafloor. There is no development directly on the beach, on the surface of the seafloor, or in ocean waters within the Commission's leasing jurisdiction. Thus, the test well facilities would not interfere with navigation, recreation (including diving), fishing, or other Public Trust uses.

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 lease area is located in the Pacific Ocean, Monterey Bay, which is a tidally influenced site.

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," "low risk aversion" scenario to apply a

² If the test well is decommissioned, the CDP currently requires removal of the test well to at least 40 feet below the ground surface and complete removal of all other temporary facilities. See CDP No. 9-14-1735 / A-3-MRA-0050 Final Adopted Findings (Nov. 12, 2014) Special Condition 6 at p. 10 (Special Condition 6) and Exhibit 5, p. 16. (HYD/mm-3). See also Immaterial Amendment to Permit No. 9-14-1735-A2 / A-3-MRA-0050 (April 26, 2016) at p. 2.

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conservative approach based on both current emission trajectories and the lease location and structures. The Monterey tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Monterey¹

Year	Projection (feet)
2030	0.5
2040	0.8
2050	1.1
2100	3.3

Source: Table 16, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ 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, drought, 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 and near 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 beach erosion than previously experienced.

Rising sea levels can lead to increased flooding through regular inundation and larger flooding events, when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure.

The only portion (approximately 230 feet) of the test well facilities within the jurisdiction of the Commission lies below the seafloor. There is no development directly on the beach, on the seafloor, or in ocean waters within the Commission's leasing jurisdiction. The test well slants downward from the wellhead vault, extends approximately 1,000 feet into Monterey Bay, and terminates approximately 290 feet below the seafloor. Therefore, the portion of the test well facilities within the lease area is not likely to be vulnerable to the impacts from sea-level rise, or frequent and intense storms that are the result of climate change. However, the 3-year

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lease term will provide both the Commission and the lessee an opportunity to evaluate the effects of sea-level rise in order to make incremental adaptation steps as necessary and appropriate.

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 foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease 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 application, the Applicant may be required to remove the test well and restore the premises to their original condition. Upon expiration or prior termination of the lease, the Lessee also has no right to a new lease or to renewal of any previous lease.
2. These actions are consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction
3. Staff recommends that the Commission find that extension of the lease term is exempt from the requirements of California Environmental Quality Act (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.

APPROVALS OBTAINED:

California Coastal Commission

EXHIBIT:

- A. Site and Location Map

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that extension of the lease term 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:

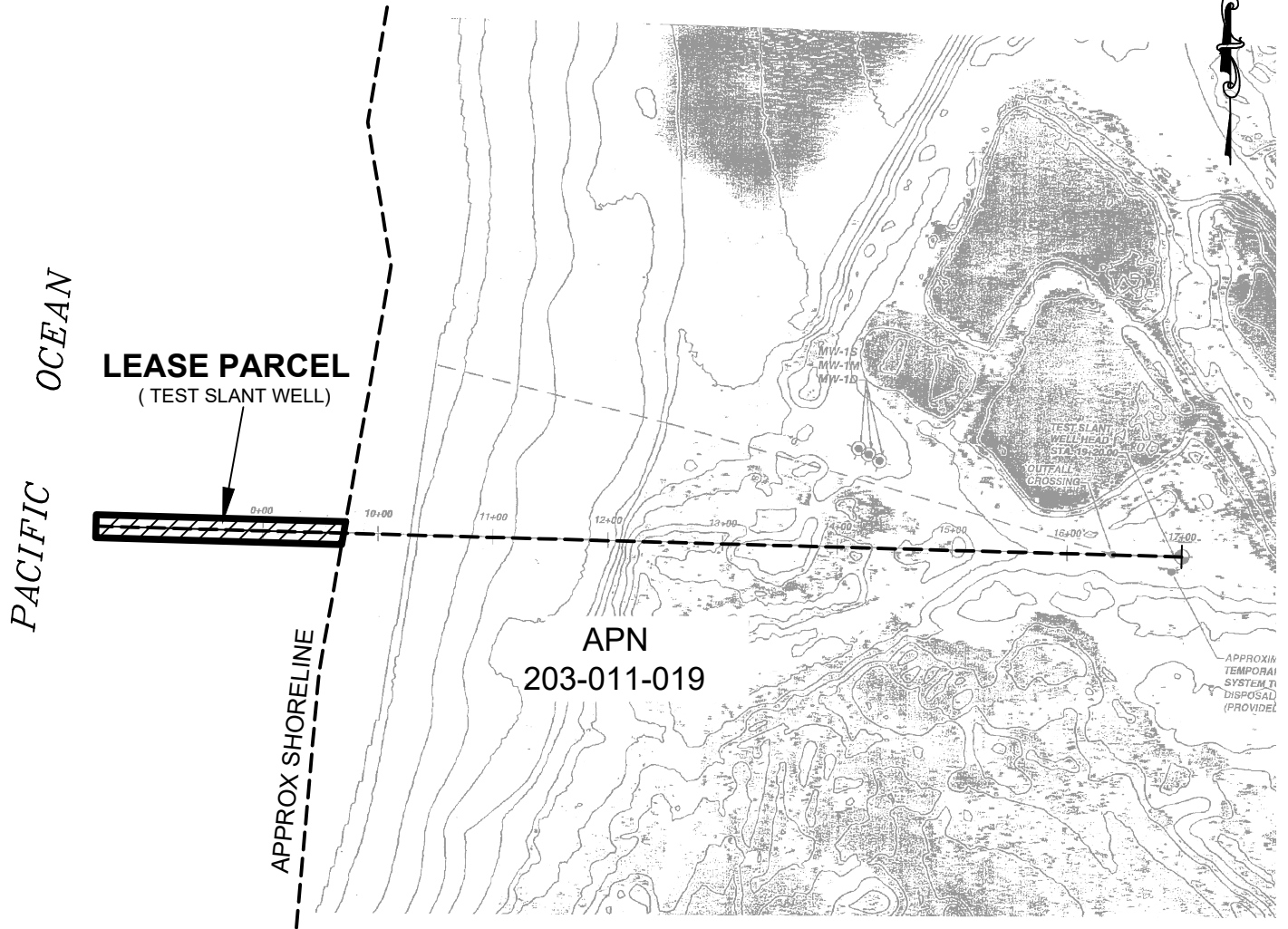
Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 9177.1, a General Lease – Right-of-Way Use, for land shown on Exhibit A attached and by this reference made a part hereof, effective June 28, 2019, to modify the Land Use or Purpose, Lease Special Provisions as described in the “Proposed Amendment” portion of this Staff Report, and extend the lease term to December 16, 2022; all other terms and conditions of the lease will remain in effect without amendment.

NO SCALE

SITE



PACIFIC OCEAN, NEAR THE CITY OF MARINA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 9177.1
 CALIFORNIA AMERICAN
 WATER
 APN 203-011-019
 GENERAL LEASE -
 RIGHT-OF-WAY USE
 MONTEREY COUNTY



TS 05/20/19

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.