

**STAFF REPORT
C57**

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11/29/17
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 the city of Marina, Monterey County.

AUTHORIZED USE:

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.

LEASE TERM:

3 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, 2019.
2. Amend **Section 1, Land Use or Purpose** to include continued maintenance of the test slant well.
3. Amend **Section 2, Special Conditions** to include the following:
 - a. Lessee shall cease all pumping tests by February 28, 2018, pursuant to Coastal Development Permit No. 9-14-1735. Thereafter, Lessee shall maintain the test slant well for the remainder of the lease term.

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

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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 Analysis:

On December 17, 2014, the Commission authorized a General Lease – Right-of-Way Use, for a 3-year term, to California American Water Company (CalAm), 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](#)). That lease will expire on December 16, 2017.

Following the Commission's December 17, 2014 authorization, CalAm constructed the temporary slant test well in early 2015 and began pumping tests in April 2015. The test well extends approximately 230 feet onto sovereign land beneath Monterey Bay. The test well was constructed to determine the feasibility of using a subsurface intake system at the project site or nearby for use in a future desalination facility.

The Marina Coast Water District challenged the Commission's authorization of the lease in a lawsuit filed in Santa Cruz County Superior Court on January 15, 2015. That case is currently pending; however, no injunction or other court order has been issued that would prevent the extension of the lease or other proposed lease amendments.

Environmental review for CalAm's desalination project, the Monterey Peninsula Water Supply Project (MPWSP), is being conducted by the California Public Utilities Commission (CPUC). On April 30, 2015, the CPUC published a Draft Environmental Impact Report (EIR). In a letter dated July 9, 2015, the CPUC extended the public comment period on the Draft EIR until September 30, 2015, and sought comments from the public on the advisability of recirculating the Draft EIR as a joint state/federal environmental document under both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in coordination with the Monterey Bay National Marine Sanctuary. A Draft EIR/Environmental Impact Statement (EIS) was released in January 2017, with the Final EIR/EIS anticipated in 2018. CalAm is also in the process of obtaining a Certificate of Public Convenience and Necessity from the CPUC.

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Long-term test pumping began on April 22, 2015, but ceased on June 5, 2015, when monitoring showed that groundwater levels were approaching the allowable thresholds pursuant to CalAm's Coastal Development Permit (CDP). Pumping resumed on October 27, 2015 after the California Coastal Commission approved an amendment to CalAm's CDP. Pumping ceased on March 4, 2016 due to a damaged discharge line, but resumed on May 2, 2016 after the discharge line was repaired.

CalAm is now requesting an amendment of the lease to extend the term of the lease by an additional 2 years to December 16, 2019, to account for delays in the environmental review. The extension would allow the continuation of full-time test pumping operations until February 28, 2018, with periodic maintenance pumping through the end of the lease term. CalAm's current CDP from the California Coastal Commission expires on February 28, 2018. Pursuant to the proposed amendment, CalAm would cease all pumping tests by February 28, 2018. CalAm would then maintain the test slant well for the remainder of the proposed lease term. CalAm anticipates obtaining an extension of the CDP for continued maintenance of the test slant well.

The existing lease does not authorize the drilling of additional wells or the conversion of the test well into a permanent well. Permanent use of the test well was addressed in the MPWSP Draft EIR/EIS, but would require a new lease and Commission authorization. In addition, any proposed pumping tests beyond February 28, 2018, would also require a lease amendment and Commission authorization. Should CalAm choose not to convert the test well, the well will be abandoned pursuant to the terms of the lease.

The proposed lease amendments and continued operation of the test well do not alienate the State's fee simple interest and would not substantially impair the Public Trust at this location. The only portion (approximately 230 feet) of the Project within the jurisdiction of the Commission lies 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. 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. Thus the Project would not interfere with navigation, recreation (including diving), fishing, or other Public Trust uses.

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Climate Change Analysis:

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. By 2030, the region could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). 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 portion of the Project 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 given its location underneath the seafloor and the absence of development directly on the beach. However, the 2-year lease term extension will provide both the Commission and the lessee an opportunity to check in at a relatively short-term interval, to evaluate the effects of sea-level rise in order to make incremental adaptation steps as necessary and appropriate.

Conclusion:

The lease amendment does not alienate the State's fee simple interest or permanently impair public rights. The recommended action will not substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the lease. For these reasons, staff recommends finding the proposed action is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This activity is 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.
2. Staff recommends that the Commission find that extension of the lease term 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).

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Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are significant by nature of their public ownership (as opposed to environmentally significant). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

FURTHER APPROVALS REQUIRED:

California Coastal Commission

EXHIBIT:

- A. Site and Location Map

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:

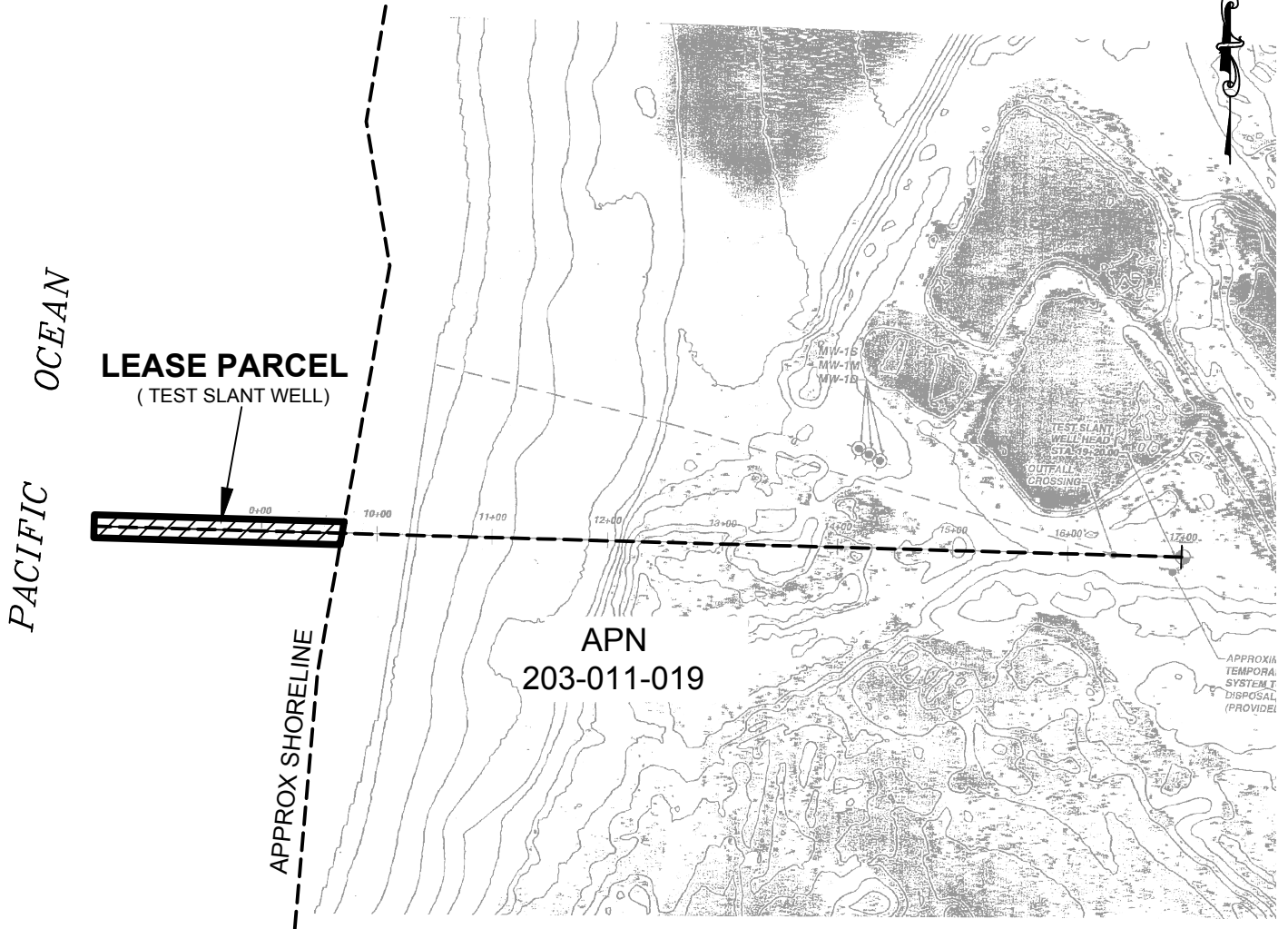
Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 9177.1, a General Lease – Right-of-Way Use, of land shown on Exhibit A attached and by this reference made a part hereof, effective November 29, 2017, to extend the term of the lease to December 16, 2019, amend Section 1, Land Use or Purpose, to include continued maintenance of the test slant well, and amend Section 2, Special Provisions; 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



SITE

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.

TS 10/03/17