

MINUTE ITEM
This Calendar Item No. C20
was approved as Minute Item
No. 20 by the State Lands
Commission by a vote of 3
to 0 at its 9-19-00
meeting.

CALENDAR ITEM
C20

A 8, 9

09/19/00

WP 8156.9

S 4, 6

WP 5439.1

D. Jones

AMENDMENT OF PERMIT

PERMITTEE:

Level 3 Communications, LLC
1025 El Dorado Blvd.
Broomfield, Colorado 80221

AREA, LAND TYPE, AND LOCATION:

Existing Permit: Sovereign lands in the Cosumnes River, Sacramento County; Carquinez Straits, Contra Costa County; the Sacramento River, Sacramento and Yolo counties; the Mokelumne River, Sacramento and San Joaquin counties; the Stanislaus River, Stanislaus and San Joaquin counties; the Tuolumne River, Stanislaus County; the Merced River, Merced County; the San Joaquin River, Madera and Fresno counties; the Kings River, Kings County and Cordelia Slough, Solano County,

Proposed Amendment:

Sovereign lands in the Sacramento River, in the cities of Sacramento and West Sacramento, Sacramento and Yolo counties.

AUTHORIZED USE:

Existing Permit: Cosumnes, Mokelumne, Stanislaus, Tuolumne, Merced, San Joaquin, and Kings Rivers and Cordelia Slough:

Installation, operation, maintenance and use of an 11-inch diameter high density polyethylene (HDPE) casing containing 12 (HDPE) innerducts, four of which will each contain one fiber optic cable with approximately 108 fiber strands.

REVISED 09/14/00

-1-

CALENDAR PAGE **000201**

MINUTE PAGE **009116**

CALENDAR ITEM NO. C20 (CONT'D)

Carquinez Straits:

Installation, operation, maintenance, and use of a 12-inch steel casing containing 20 HDPE innerducts, four of which will contain one fiber optic cable with approximately 108 fiber strands.

Proposed Amendment:

Addition to the Permit of 1) the northern most one-half of an existing right of way; 2) the operation, maintenance, and use of an existing 10-inch diameter pipeline contained within that portion of the right of way; and 3) the installation of 20 innerducts, 4 of which will contain one fiber optic cable each with approximately 108 fiber strands.

PERMIT TERM:

Continuous use plus one year, commencing April 20, 2000.

CONSIDERATION:

No monetary consideration shall be charged for the placement, use and maintenance of fiber optic cables or other similar transmission devices placed by those qualifying under the scope of Section 7901 of the Public Utilities Code.

PROPOSED AMENDMENT:

The proposed amendment will authorize 1) the inclusion into the Permit of a) the northern most one-half of an existing right of way; and b) the existing 10-inch diameter pipeline contained within that portion of the right of way; and 2) the installation into the pipeline of 20 innerducts, 4 of which will contain one fiber optic cable each with approximately 108 fiber strands; in the Sacramento River in the cities of Sacramento and West Sacramento, Sacramento and Yolo Counties. All other terms and conditions of the lease shall remain in effect without amendment.

OTHER PERTINENT INFORMATION:

1. Applicant shall obtain the right to use the uplands adjoining the lease premises.

CALENDAR ITEM NO. C20 (CONT'D)

2. SFPP, L.P. ("SFPP") and Level 3 Communications, LLC ("Level 3") entered into a Pipeline Purchase and Sale Agreement dated August 25, 2000, wherein SFPP has agreed to sell to Level 3 a 10-inch pipeline underneath the Sacramento River in the city of Sacramento. This pipeline was within a right of way leased to SFPP under Lease No. PRC 5439.1. The sale is contingent on Level 3 conducting due diligence and notifying SFPP of any objectionable matters. After the expiration of the due diligence period, Level 3 and SFPP will have ten days to close the purchase transaction. Level 3 intends to install a fiber optic cable through the pipeline. This installation by Level 3 is part of an integral portion of its fiber optic network in California.
3. Staff and SFPP have agreed that Lease No. PRC 5439.1 should be amended to delete the northern most one-half of the existing right of way and the 10-inch pipeline.
4. Approval of the amendment of Permit 8156.9 to include the northern most one-half of the right of way and the 10-inch pipeline included therein is conditioned on the approval of Calendar Item 18 which authorizes the deletion of the northern most one-half of the existing right of way and the 10-inch pipeline under Lease No. PRC 5439.1.
5. Staff has reviewed the Pipeline Purchase and Sale Agreement between SFPP and Level 3.
6. At its July 29, 1993, meeting, the Commission approved an Agreement and Consent to Encumbrancing of Lease for Lease No. PRC 5439.1 in favor of U. S. Bank Trust National Association and those additional institutional lenders listed on file in the Sacramento office of the State Lands Commission as the Secured Party Lender. In accordance with the Commission's action, the CSLC executed that certain Agreement and Consent to Encumbrancing Agreement, by and between the State of California, acting by and through the State Lands Commission, as Lessor, SFPP, L.P. as Lessee and Bank of America National Savings Association, as Trustee, dated July 27, 1993, and amended August 11, 1997, (hereinafter referenced to as the "Encumbrancing Agreement". Under the terms of the Encumbrancing Agreement, Lessor has agreed that no modification of Lease No. PRC 5439.1 shall be effective without the consent of the Secured Party Lenders. To date, the consent of the Secured Party Lenders has not been obtained. The authorization to

CALENDAR ITEM NO. C20 (CONT'D)

amend PRC 8156.9 as herein provided will become effective only if the consent of the Secured Party Lenders under the above-referenced Encumbrancing Agreement is obtained not later than 120 days following Commission action and submitted to the staff of the Commission.

7. Level 3 has represented to Permitter that (i) it is a "telephone corporation" within the meaning of Public Utilities Code Section 234, (ii) that the authorized improvements to be located within the right of way ("ROW") applied for herein constitute "telephone line" within the meaning of Section 233 of the Public Utilities Code, (iii) it is authorized to provide intrastate telephone services pursuant to its Certificate of Public Convenience and Necessity ("CPCN"), Decision 98-03-066, issued by the California Public Utilities Commission, (iv) it is authorized to handle interstate and international telecommunication traffic in accordance with 47 USC § 214, and (v) the authorized improvements will be operated by it as a public utility for the purpose of providing telephone service to the public on a non-discriminatory basis.
8. A Mitigated Negative Declaration and a Mitigation Monitoring Program were prepared and adopted for this project by the California Public Utilities Commission. The California State Lands Commission's staff has reviewed such document.
9. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

City of Sacramento, city of West Sacramento

EXHIBITS:

- A. Permit Description and Location Map

PERMIT STREAMLINING ACT DEADLINE:

February 28, 2001

REVISED 09/14/00

-4-

CALENDAR PAGE 000204

MINUTE PAGE 009119

CALENDAR ITEM NO. **C20** (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT A MITIGATED NEGATIVE DECLARATION AND A MITIGATION MONITORING PROGRAM WERE PREPARED AND ADOPTED FOR THIS PROJECT BY CALIFORNIA PUBLIC UTILITIES COMMISSION AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

ADOPT THE MITIGATION MONITORING PROGRAM ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE THE AMENDMENT OF PERMIT NO. PRC 8156.9, A PERMIT FOR TELEPHONE LINE RIGHT OF WAY, EFFECTIVE SEPTEMBER 19, 2000, TO AUTHORIZE THE INCLUSION INTO THE PERMIT OF A RIGHT OF WAY CONTAINING AN EXISTING 10-INCH PIPELINE; SAID RIGHT OF WAY DESCRIBED ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; AUTHORIZE THE APPLICANT TO INSTALL WITHIN SAID 10-INCH PIPELINE, OPERATE AND USE 20 INNERDUCTS, FOUR OF WHICH WILL CONTAIN ONE FIBER OPTIC CABLE EACH; SAID AUTHORIZATION BEING SUBJECT TO THE CONDITIONS PRECEDENT THAT: 1) PERMITTEE FURNISH COMMISSION STAFF, NOT LATER THAN 120 DAYS FOLLOWING COMMISSION ACTION WITH THE WRITTEN CONSENT TO THE FOREGOING COMMISSION ACTION OF U. S. BANK TRUST NATIONAL ASSOCIATION AND THOSE ADDITIONAL INSTITUTIONAL LENDERS LISTED ON FILE IN THE SACRAMENTO OFFICE OF THE STATE LANDS COMMISSION AS SECURED PARTY LENDERS WITH A SECURITY INTEREST UNDER THE AGREEMENT; AND 2) LESSEE SHALL FURNISH COMMISSION STAFF, NOT LATER THAN 120 DAYS FOLLOWING COMMISSION ACTION, THE BILL OF SALE EXECUTED BY ALL PARTIES

REVISED 09/14/00

-5-

CALENDAR PAGE **000205**

MINUTE PAGE **009120**

CALENDAR ITEM NO. **C20** (CONT'D)

AFFECTING THE CONVEYANCE OF THE 10-INCH PIPELINE TO
LEVEL 3 COMMUNICATIONS, LLC; ALL OTHER TERMS AND
CONDITIONS OF THE PERMIT WILL REMAIN IN EFFECT WITHOUT
AMENDMENT.

REVISED 09/14/00

-6-

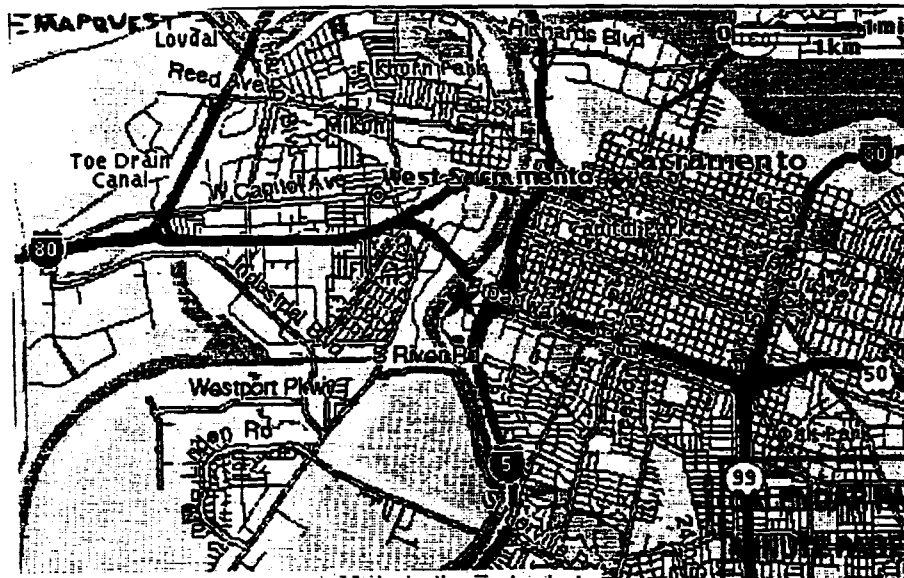
CALENDAR PAGE **000206**

MINUTE PAGE **009121**

The northern most one-half of a parcel of tide and submerged land 50 feet wide in the Sacramento River, Sacramento and Yolo Counties, within the City of Sacramento, lying 25 feet on either side of the following-described centerline:

Beginning at a point on the ordinary high water mark on the left bank of the Sacramento River which bears N. 42° 03' 45" E., 103.91 feet from Station "E 90", as shown on sheet 7 of 12 of that certain map entitled "Survey of the Ordinary High Water Mark Along the Sacramento River", prepared by the Division of State Lands and filed in Book 11, pgs. 48-50, and Book 12, pgs. 1-9 of surveys, Sacramento County Recorder's Office, said point of beginning having California Zone 2 Coordinates of X = 2,138,249.61, Y = 328,809.14; thence from said point of beginning N. 57° 20' 32" W., 675.87 feet more or less to a point on the ordinary high water mark on the right bank of the Sacramento River having California Zone 2 coordinates of X = 2,137,680.57, Y = 329,173.85, containing 0.776 acre, more or less.

LOCATION MAP



000207
009122

This exhibit is solely for purposes of generally defining the area to be leased, and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or other property.

EXHIBIT A
PRC 8156.9