

**CALENDAR ITEM
C45**

A 73
S 36

12/06/16
PRC 8651.9
C. Hudson

AMENDMENT OF LEASE

LESSEE:

Municipal Water District of Orange County

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, offshore of the city of Dana Point, Orange County.

AUTHORIZED USE:

The construction, installation, and use of a test slant well extending from the uplands at Doheny State Beach to an area offshore and beneath the Pacific Ocean for the purpose of conducting a subsurface intake system feasibility investigation in connection with the Dana Point Ocean Desalination Project; subsequently amended to include the installation of a buried discharge pipeline, outfall diffuser, and installation of a submersible pump in the existing test slant well.

LEASE TERM:

Initial term: 5 years, beginning December 8, 2005; subsequently amended to extend the term to May 31, 2019.

CONSIDERATION:

The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

PROPOSED AMENDMENT:

Section 1, Land Use or Purpose, is amended to delete all current activities and authorize the removal of the existing test slant well, buried discharge pipeline, submersible pump, and other appurtenant facilities, and for the continued maintenance of the existing outfall diffuser.

Section 1, Authorized Improvements, is amended to delete all currently authorized improvements except the existing outfall diffuser.

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Section 2, Special Provisions of the Lease is amended to add the Mitigation Monitoring Program and replace two similar provisions in the Lease with the following:

- a. Lessee must obtain Lessor's authorization prior to removing the outfall diffuser or assigning its interest in the Lease to a third party.
- b. 12 months prior to the expiration of the Lease, Lessee shall submit a plan for removal of the outfall diffuser.
- c. Lessee agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's, or Responsible Party's responsibility as set forth in the Mitigation Monitoring Program (MMP) attached hereto as Exhibit C and by this reference made a part of this Lease, or as modified by Lessor as permitted by law. All removal activities are subject to the Mitigation Monitoring Program.

Section 3, Land Description of the Lease is amended to delete the existing Section 3, Land Description, and replace it with the attached Exhibit A, Land Description.

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, and 6501.1, and; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On December 8, 2005, the Commission authorized a General Lease – Public Agency Use, Lease No. PRC 8651.9 ([Calendar Item C64, December 8, 2005](#)), to the Municipal Water District of Orange County (District) for the construction and installation of a test slant well extending offshore from Doheny State Beach. On August 22, 2008, the Commission authorized an amendment to the lease to extend the term of the lease to May 31, 2012 ([Calendar Item C42, August 22, 2008](#)), amend the description of the lease premises, and authorize the installation of a buried discharge pipeline, outfall diffuser, and temporary installation of a

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submersible pump in the existing test slant well, in connection with the Phase 3 Extended Pumping and Pilot Plant Test.

On March 29, 2012, the Commission authorized an amendment to the lease extending the lease term to May 31, 2014 ([Calendar Item C93, March 29, 2012](#)). The District completed testing on May 3, 2012, and has maintained the slant test well for public information and educational tours. On June 19, 2014, the Commission authorized an amendment to the lease to extend the term of the lease to May 31, 2019 ([Calendar Item C71, June 19, 2014](#)), and authorize the continued maintenance of the test slant well, discharge pipeline, outfall diffuser, and submersible pump for public information and educational tours.

The District is now applying for a fourth amendment to the Lease to remove the existing test slant well, discharge pipeline, and submersible pump. The District will then maintain the outfall diffuser in a non-operational state for the duration of the lease. The District desires to keep the outfall diffuser in place in the event it can assign the lease to the South Coast Water District which could use the diffuser if it constructs an ocean desalination intake facility. Any future assignment or removal activity would need to be considered by the Commission under a separate action.

The outfall diffuser is protected by the existing rock groin maintained by the California Department of State Parks, which is covered under a separate lease. Both the District and State Parks are requesting to leave the outfall diffuser in place for future use because of the impact it would cause by having to move the rock groin in order to remove the outfall diffuser.

Removal of the facilities is anticipated to begin in January 2017 and is expected to require approximately two weeks for completion. The removal of the slant well consists of excavating trenches to access the discharge line, power supply conduit, instrument conduits, and nitrogen supply line from the slant well to the mobile test facility. Excavations will be made using a backhoe excavator. The pipe will be removed from the inside by cutting small sections of the pipe pulling it from the inside of the slant well. The proposed removal of the test slant well will not substantially interfere with the Public Trust needs at this time and at this location, and is consistent with the common law Public Trust Doctrine because it is the

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Commission's responsibility as trustee of the sovereign lands to take actions to protect and preserve those lands.

For all the reasons above, staff believes the authorization of the lease amendment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action 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. A Mitigated Negative Declaration, State Clearinghouse No. 2008051050, was prepared by the Municipal Water District of Orange County and adopted on June 18, 2008, for this project. Staff reviewed this document in 2008 for lease approval of project construction and in 2012 for extension of the lease term.

A Mitigation Monitoring Program was adopted by the Municipal Water District of Orange County.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the California Environmental Quality Act (CEQA) review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

California Coastal Commission
U.S. Army Corps of Engineers
San Diego Regional Water Quality Control Board
California Department of Parks and Recreation

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2008051050, and a Mitigation Monitoring Program were prepared by the Municipal Water District of Orange County and adopted on June 18, 2008, for this Project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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 section 6370 et seq.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 8651.9, a General Lease – Public Agency Use, effective December 6, 2016, to delete all activities authorized under Section 1, Land Use or Purpose, and include the removal of the existing test slant well, buried discharge pipeline, submersible pump, and appurtenant facilities, and for the continued maintenance of the existing outfall diffuser; to amend Section 2, Special Provisions, to add Exhibit C, Mitigation Monitoring Program, to the lease and revise provisions pertaining to the disposition of the existing facilities and outfall diffuser; and to amend Section 3, Land Description to delete Section 3, Land Description, and replace it with the attached Exhibit A, Land Description; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 8651.9

LAND DESCRIPTION

Parcel A

A parcel of tide and submerged land in the Pacific Ocean adjacent to Doheny State Park, situate in Orange County, State of California, being more particularly described as follows:

BEGINNING at the northeast corner of "Parcel 1" as said parcel is described in that certain lease W26120 approved by the California State Lands Commission 12/08/05; thence along the east boundary of said parcel S 10°06'24" W 200 feet more or less to an existing concrete groin; thence along said groin N 22°13'55" E 205 feet more or less to a point lying S 79°53'36" E from said point of beginning; thence N 79°53'36" W 43 feet more or less to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of said Pacific Ocean.

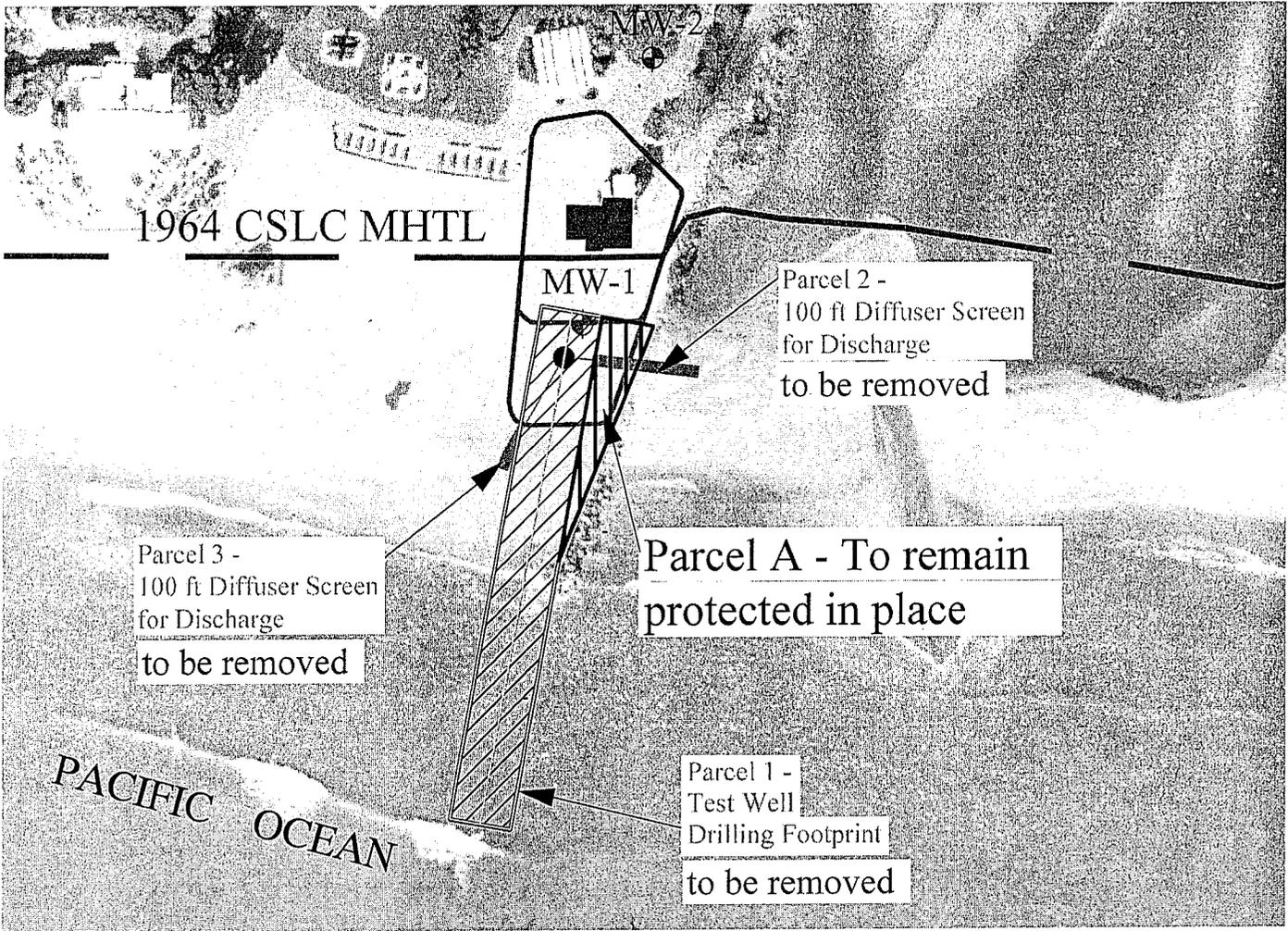
END OF DESCRIPTION,

Prepared August 1, 2008 by Boundary Unit of the California State Lands Commission



NO SCALE

SITE



DOHENY STATE BEACH,
APN 121-34-84

NO SCALE

LOCATION

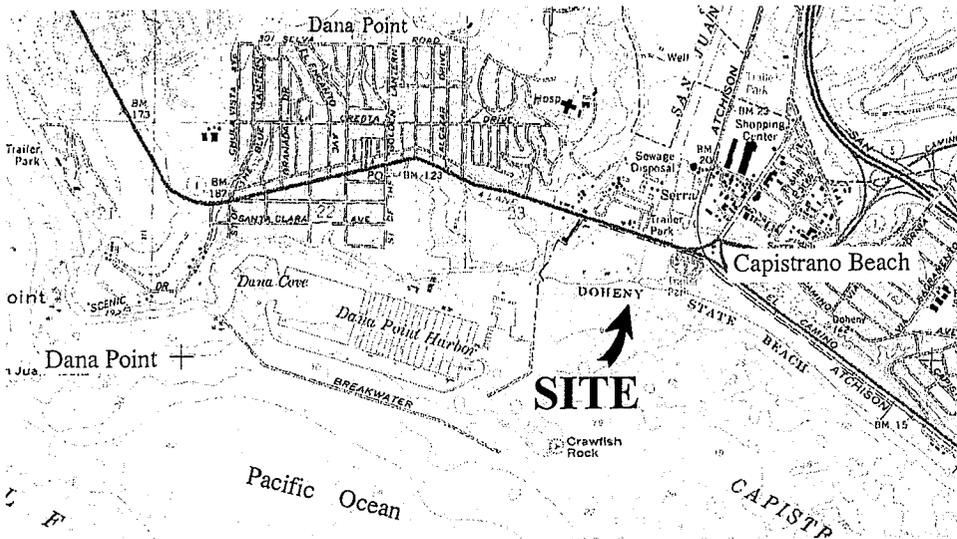


Exhibit B
 PRC 8651.9
 MUNICIPAL WATER
 DISTRICT OF
 ORANGE COUNTY
 GENERAL LEASE -
 PUBLIC AGENCY USE



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.

MAP SOURCE: USGS QUAD

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM

**DANA POINT OCEAN DESALINATION PROJECT PHASE 3 EXTENDED PUMPING
AND PILOT PLANT TESTING**

(PRC 8651, State Clearinghouse No. 2008051050)

The California State Lands Commission (Commission) is a responsible agency under the California Environmental Quality Act (CEQA) for the Dana Point Ocean Desalination Project Phase 3 Extended Pumping and Pilot Plant Testing (Project). The CEQA lead agency for the Project is Municipal Water District of Orange County.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to discuss feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency has adopted an MND, State Clearinghouse No. 2008051050, and adopted a MMP for the whole of the Project (see Exhibit C, Attachment C-1) and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission’s action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM)
Snowy Plover	BIO-1
Hazardous Materials	HAZ-1
Excessive Noise	N-1
Water Quality	WQ-1

* See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency. The measures have been numbered for easier reference.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

ATTACHMENT C-1

**Mitigation Monitoring Program Adopted by the
Municipal Water District of Orange County**

Mitigation Monitoring and Reporting Plan
Phase 3 Extended Pumping and Pilot Plant Testing
Dana Point Ocean Desalination Project

June 2008

MITIGATION MONITORING and REPORTING PLAN (MMRP)

In the following MMRP, each mitigation measure included in the Mitigated Negative Declaration for the Dana Point Ocean Desalination project is listed according to resource area. The project shall incorporate these environmental protection measures as part of the project and shall be carried forward and implemented in accordance with project activities.

The time frame for implementation of each mitigation measure is listed. The agency or agencies responsible for monitoring the satisfactory implementation of mitigation measures also is identified. The timing and method of verification also is included.

	Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
	Air Quality				
AQ-1	Reduce speeds on unpaved areas to 15 mph.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
AQ-2	Water unpaved construction areas 4x per day.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
AQ-3	All diesel-fueled equipment that is ten years or older shall have particulate traps with a minimum of 85 percent efficiency installed within the exhaust system.	Review of Plans and Specifications	Contractor shall provide evidence of installation of particulate traps with a minimum 85 percent efficiency in exhaust systems of ten year or older diesel fueled equipment	During project construction	MWDOC
	Biological Resources				
BIO-1	A snowy plover monitor will be present during project activities to insure that no activities occur if snowy plovers are present within any of the work areas until the plovers have left the site.	MWDOC will hire a qualified snowy plover monitor prior to construction activities on the beach	Monitoring reports shall be submitted by the qualified snowy plover monitor to MWDOC	During construction on the beach	MWDOC

	Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
	Hazardous Materials/Water Quality				
HAZ-1	Measures in the Spill Prevention and Response Plan shall be implemented. Prior to the commencement of drilling operations, a containment area underlain by heavy plastic sheeting will be constructed to enclose the drill rig and other equipment to minimize the potential for releasing fuel, hydraulic fluid, or water from drilling operations to the surrounding environment. Additionally, absorbent materials will be maintained onsite during work operations as part of a spill prevention plan. Fuel will be delivered by bulk truck to the site daily and will be handled in accordance with a fuel containment plan. No fuel or oil products, other than that which is in equipment fuel tanks, will be stored onsite.	Review of Plans and Specifications	Onsite supervisor to assure compliance with Spill Prevention and Response Plan	During construction and drilling	MWDOC
	Noise				
N-1	Drilling and other noisy construction activities only will be conducted between 10 am and 6 pm, Monday through Friday.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
N-2	Sound walls will be installed around the drilling rig's engine.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
	Recreation				
REC-1	Drilling areas and equipment staging areas will be fenced for public safety.	Review of Plans and Specifications	Site Safety officer to assure compliance with mitigation measure	During project construction	MWDOC

	Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
REC-2	Prior to drilling operations, there will be a meeting between MWDOC, its consultants, California State Parks personnel, and the Drilling Contractor to review the plan of work, park rules, safety considerations, and environmental commitments. Each exploratory borehole drilling site will be visited during the pre-construction meeting.	MWDOC will arrange meeting	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
REC-3	In addition to the drilling crew, there will be one person (Site Safety Officer) onsite to interact with the public and answer questions from the public. This person will not be integral to actual drilling operations. In addition to answering public inquiries, it will be this individual's job to ensure that the perimeter around the drilling operations is safe and secure.	MWDOC will hire Site Safety Officer	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC
REC-4	MWDOC will prepare signage to be posted at the site of drilling operations. The sign will explain the project and provide a MWDOC telephone number where public inquiries can be directed. MWDOC will mail an informational notice to the residents of the bluff overlooking the Doheny State Beach campground and all other property owners located near the Park prior to commencement of the pilot plant testing and exploratory borehole drilling.	MWDOC will prepare signs and notices	MWDOC and onsite supervisor to assure compliance with mitigation measure	Immediately prior to and during project construction	MWDOC
REC-5	MWDOC will comply with all measures requested by the California Department of Parks and Recreation as terms of the Right of Entry Permit.	Review of Plans and Specifications	Onsite supervisor to assure compliance with mitigation measure	During project construction	MWDOC

Mitigation Measure	Implementing Action	Method of Verification	Timing of Verification	Responsible Party
Traffic, Circulation and Parking				
<p>T-1</p> <p>Drilling operations will take place on the sand such that drilling equipment will not obstruct bike paths or other access roadways. Where bicycle paths and roadways may be temporarily blocked, an alternative route/detour will be clearly marked. The Site Safety Officer will also redirect pedestrian and bicycle traffic in the event that the drilling operations obstruct a traffic route.</p>	<p>Review of Plans and Specifications</p>	<p>Onsite supervisor and Site Safety Officer</p>	<p>During project construction</p>	<p>MWDOC</p>
Water Quality				
<p>WQ-1</p> <p>All discharges to the surf zone will meet NPDES permit requirements. Oxygen will be added to well discharge water to meet 5 mg/l dissolved oxygen requirement</p>	<p>Specified in operation plans and instructions</p>	<p>Monitoring of discharge water.</p>	<p>During operations</p>	<p>MWDOC</p>