

**CALENDAR ITEM
INFORMATIONAL**

83

A	17	02/09/16 W 26721 PRC 4307.1 PRC 4449.1 D. Simpkin P. Huber
S	35	C. Oggins

INFORMATIONAL UPDATE REGARDING APPLICATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO CONSIDER A GENERAL LEASE – INDUSTRIAL USE FOR A COOLING WATER DISCHARGE CHANNEL, WATER INTAKE STRUCTURE, BREAKWATERS, AND ASSOCIATED INFRASTRUCTURE AT THE DIABLO CANYON POWER PLANT, NEAR AVILA BEACH, SAN LUIS OBISPO COUNTY

APPLICANT:

Pacific Gas and Electric Company
142 Cross Street, Suite 200
San Luis Obispo, CA 93401

BACKGROUND:

The Pacific Gas and Electric Company (PG&E) owns and operates the Diablo Canyon Power Plant (DCPP), a two-unit nuclear power plant located near Avila Beach, San Luis Obispo County. A portion of the facilities, including the cooling water discharge channel, water intake structure and breakwaters, is located on State-owned sovereign land. DCPP Units 1 and 2 each operate under a U.S. Nuclear Regulatory Commission (NRC) license. The NRC licenses for Units 1 and 2 expire on November 2, 2024, and August 26, 2025, respectively.

On August 28, 1969, the State Lands Commission (Commission) authorized issuance of a 49-year lease to PG&E for the water intake structures and breakwaters associated with the DCPP (State Lands Lease No. PRC 4307.1, General Lease – Industrial Use). This lease expires on August 27, 2018. On May 28, 1970, the Commission authorized issuance of a 49-year lease to PG&E for a cooling water discharge channel associated with the DCPP (State Lands Lease No. PRC 4449.1, General Lease – Right-of-Way). This lease expires on May 31, 2019.

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LEASE APPLICATION:

PG&E has submitted an application requesting the termination of the two existing leases and the issuance of a new General Lease – Industrial Use for the continued use and maintenance of the water intake structures, breakwaters, cooling water discharge channel, and a number of other structures.

PG&E is seeking a new, consolidated lease that will coincide with the expiration of PG&E's current NRC licenses. In November 2009, PG&E submitted a license renewal application to the NRC. The NRC is conducting an environmental review under the National Environmental Policy Act (NEPA) and held two public environmental scoping meetings in August 2015. Additional information on the NRC's license renewal process can be found at:

www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html. PG&E has advised Commission staff that a formal decision regarding whether to continue to seek DCPD NRC license renewal has not yet been made.

At its December 18, 2015, public meeting, the Commission directed staff to defer action on the subject lease application for consideration at a future meeting. In addition, the Commission directed staff to analyze the level of review required under the California Environmental Quality Act (CEQA) and as trustee pursuant to the Public Trust Doctrine related to PG&E's application for a new lease.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

PG&E completed construction of the DCPD in 1973 and has operated the facility since 1985. The facility includes a once-through cooling system of seawater intake and outfall pipelines. As noted above, the leases for the intake and discharge structures expire in 2018 and 2019, respectively, and PG&E has applied to the Commission for a new lease for a term to expire in 2024. CEQA requires State agencies to consider project impacts to the existing conditions of the environment. (Pub. Resources Code, § 21080.) When a State agency determines that a proposed project will potentially have a significant effect on the environment, the agency, generally, must prepare an Environmental Impact Report (EIR). However, CEQA categorically exempts review of environmental impacts of existing facilities and provides as an example “[e]xisting facilities of both investor and publicly-owned utilities used to provide electric power. . . .” (Cal. Code Regs., tit. 14, § 15301, example (b).) PG&E asserts that the DCPD is an existing facility with no change or expansion of an existing use and that the Commission's decision to issue a new lease would, therefore, not require CEQA review.

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An exception to the general categorical exemption, however, applies where there is a “reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (Cal. Code Regs., tit. 14, § 15300.2, subd. (c).)

The California Supreme Court has recently held that:

[A] party invoking the [unusual circumstances] exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.

(Berkeley Hillside Preservation v. City of Berkeley (2015) 343 P.3d 834, 846.)

The DCPD's nuclear fuel source and proximity to fault lines distinguish it from other power plants in California and, essential to the plant's operation, is the DCPD cooling water system, with many components authorized under the CSLC leases. The DCPD is the only active nuclear power plant in California, supplying approximately 18,000 gigawatt-hours of electricity annually (nearly 10% of California's electricity generation¹). Power plants in the State with comparable production use natural gas fuel sources.

Seismologists discovered some of the fault lines after PG&E designed and constructed the DCPD. For example, a geologist from the United States Geological Survey (USGS) discovered the Shoreline fault in 2008, decades after PG&E constructed the plant. To date, there is substantial disagreement between the USGS and PG&E regarding the risks associated with the proximate faults. According to PG&E, the DCPD can withstand earthquakes up to a magnitude of 7.5 and the faults do not pose significant threats to the DCPD's integrity, but a USGS seismologist believes that a joint seismic event of the Hosgri and Shoreline faults could exceed DCPD's design capacity for safe operation, possibly reaching a magnitude of 7.7.²

¹ Pacific Gas & Electric Co. *Diablo Canyon's low-cost & carbon-free energy*. Retrieved February 1, 2016, from <http://www.pge.com/en/safety/systemworks/dcpd/aboutus/index.page>

² Hardebeck, Jeanne L. "Geometry and Earthquake Potential of the Shoreline Fault, Central California." *Bulletin of the Seismological Society of America* 103 (2013): 447, 458. Print. Public Broadcasting Service. (2011, July 11). *Diablo Canyon* [Video file]. 8:40-9:19; 12:20-13:55. Retrieved from <http://www.pbs.org/video/2056655205/> California Energy Commission. (2011, July 26). Committee Workshop on California Nuclear Power Plant Issues [Workshop transcript]. Pages 16; 52-53. Retrieved from http://www.energy.ca.gov/2011_energy_policy/documents/2011-07-26_workshop/2011-07-26_Transcript.pdf.

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Staff continues to expect developments over the next year relating to the operation, permits, and licensing of the DCPD that could inform any decision the Commission may make on this lease application. Additionally, staff continues to evaluate the appropriate environmental review pursuant to CEQA for this application.

Public Trust Analysis for the DCPD

The origins of the Public Trust Doctrine are traceable to Roman law concepts of common property. Under Roman law, the air, the rivers, the sea, and the seashore were incapable of private ownership because they were dedicated to the use of the public (Institutes of Justinian 2.1.1). Under English Common Law, this principle evolved into the Public Trust Doctrine whereby the sovereign held the navigable waterways and submerged lands, as a trustee, for the benefit of the people. Upon admission to the Union in 1850, California, as a sovereign state, received title to public trust lands (i.e., the tide and submerged lands and navigable waterways) within its borders, in trust, for the benefit of the public. These lands are to be used to promote the public's interest in water-dependent or water-oriented activities. Traditional public trust uses included water-borne commerce, navigation, and fisheries. As a common law doctrine, the courts have expanded these uses to include water-related recreation, habitat preservation, visitor-serving amenities, and open space. The Public Trust Doctrine and California's Constitution establish the right of the public to access and use public trust lands, as well as the public's right to fish on public trust lands (Cal. Const. Article X, Section 4; Cal. Const. Article I, Section 25).

The California Legislature has delegated to the CSLC exclusive control and jurisdiction over ungranted public trust lands. (Pub. Resources Code, §§ 6216, 6301). The Commission also retains the remaining State authority over lands that have been legislatively granted in trust to other governmental agencies (Pub. Resources Code, § 6301). The Commission implements the Public Trust Doctrine through careful consideration of its principles and the exercise of discretion within the specific context and location of proposed uses. In administering its trust responsibilities, the Commission exercises its discretionary authority in the best interests of the State, accommodating the changing needs of the public while preserving the public's right to use public trust lands for the purposes to which they are uniquely suited.

Notwithstanding the appropriate CEQA consideration required, the Commission must prepare an analysis of how the DCPD affects Public Trust resources and values.³ Unlike an EIR, the Analysis of Public Trust Resources and Values

³ Note that, regardless of whether a CEQA exemption applies, the Commission must perform a Public Trust analysis. CEQA cannot exempt the Commission's Public Trust duties.

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(APTR) is not limited to examining the DCP's impacts on the existing conditions. Instead, the APTR would consider the ongoing impacts to Public Trust resources. The Commission must consider impacts to the various Public Trust resources and values and balance them in the best interests of the State.

STATE WATER RESOURCES CONTROL BOARD (SWRCB):

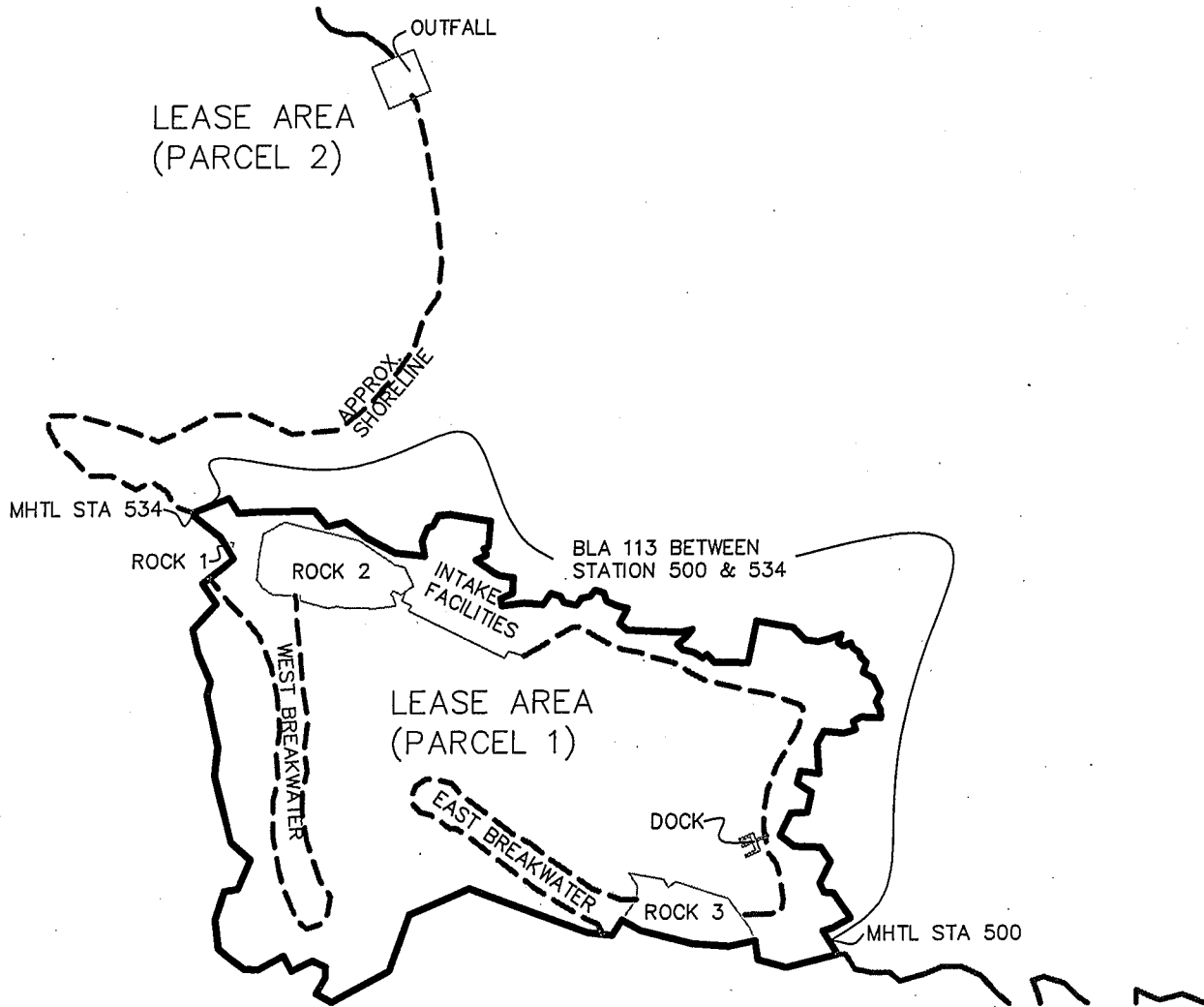
The SWRCB's existing policy requires PG&E to come into compliance with closed cycle wet cooling by 2024. An informational item on once-through cooling, originally scheduled for January 2016, was rescheduled and may be heard by the Board in Spring 2016. It is Commission staff's understanding that the Board will not take any action at this workshop. Staff will have a better idea on future steps following the discussion at the SWRCB workshop.

EXHIBIT:

- A. Site and Location Map

NO SCALE

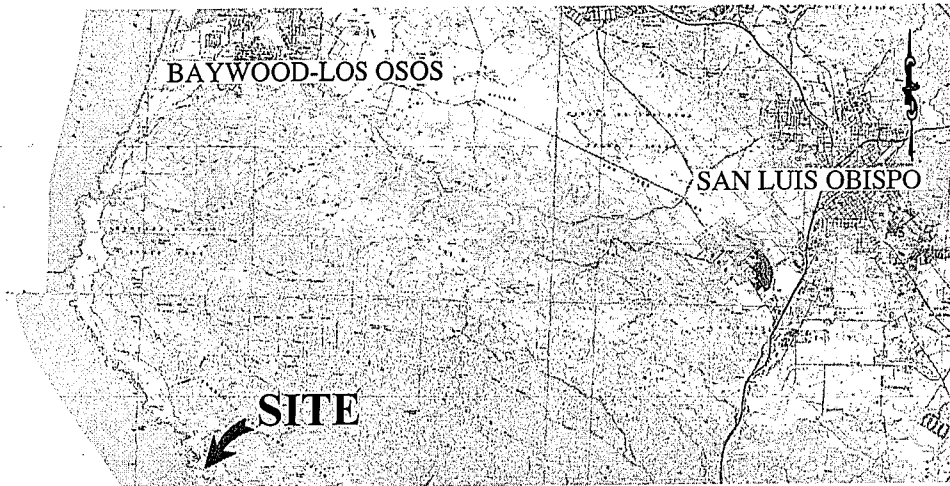
SITE



Diablo Canyon NPP, south of Baywood-Los Osos, Pacific Ocean

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

W 26721
 PG&E
 GENERAL LEASE -
 INDUSTRIAL USE
 SAN LUIS OBISPO COUNTY



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.

MJF 2/01/16