Agreement such facilities are deemed to be inadequate by the City Engineer or if he reasonably determines that the public safety requires installation of facilities designed to prevent operating troubles, Mobil shall at its own expense make such changes or installations as shall be reasonably required by the City Engineer.

10. INSTALLATION OF UTILITIES. The City reserves the right, under permit by itself or to others, to install, maintain, repair or renew lines for gas, water or other utility lines or appurtenances under or contiguous to Mobil's pipeline without expense to Mobil and without loss or damage to said pipeline, except that Mobil shall bear the expense of all repairs to its pipeline made necessary by the renewal or repair of any such utilities that have been installed prior to the construction of Mobil's pipeline, provided that said work of renewal or repair is done in a first class and workmanlike manner. In all cases where such utilities are placed under or contiguous to said Mobil's pipeline, Mobil shall furnish inspection during the course of such construction work, and when completed if the work has been done in a workmanlike manner and satisfactory to Mobil, Mobil shall furnish to the City or the permittee performing such work, a certificate of acceptance of such work. The provisions of this paragraph do not apply to the installation of utility, sewer, or other facilities owned by City.

11. REPAIR OF STREET DAMAGE. Mobil shall promptly repair any leaks or breaks in its pipeline and if any street shall be damaged by reason of such leaks or breaks, or by reason of any other cause arising from the operation or existence of said pipeline, Mobil shall, at its own cost and expense, immediately repair any such damage and restore said street to as good a condition as before said leak or other cause of damage occurred and do all the work necessary to remove or clean all soil and groundwater contaminated by reason of said breaks or leaks in the pipeline to the satisfaction of the City Engineer. Such work shall be done under the direction of the City Engineer and to his satisfaction.

F68

12. INSTALLATION OF UTILITIES AND STREET IMPROVEMENTS BY CITY. City may pave, change the grade of, or realign any street or portion thereof in which the pipeline is located and may install, maintain, and repair sewers, culverts, drains, water mains, electric ducts, or other improvements or structures under, over, or contiguous to Mobil's pipeline. Mobil shall have no recourse whatsoever against City for any loss or damage to Mobil that may be occasioned by any such work. During the progress of any type of work specified above, the expense of any of the following items that may be necessary shall be borne by Mobil: protection of Mobil's property, competent inspectors to see that the work performed by or on behalf of City which may affect the pipeline is constructed in accordance with good practice and in a manner that will minimize the possibility of damage to said pipeline during and after construction; and labor, materials and supplies for temporary pipe supports.

13. RELOCATION OR ABANDONMENT OF PIPELINES FOR STREET IMPROVEMENTS. If the City Engineer shall determine that it is reasonable and necessary that any part of Mobil's pipeline be temporarily disconnected, abandoned, temporarily or permanently removed thereform, temporarily or permanently relocated or abandoned and substitute facilities installed in order that City, acting in a governmental capacity or as the owner of public utilities, or another governmental agency or instrumentality when acting in a governmental capacity only, may relocate, change grade, construct, use, maintain, or change any street improvement or City-owned utility facilities, said City Engineer shall give notice, in writing, to Mobil. Said notice shall state the determination of the City Engineer, identify the part of the pipeline affected, describe the work to be done and designate the new location when relocation or installation is required. Within ten (10) days after the service thereof upon Mobil, Mobil shall begin and diligently prosecute the designated work to completion and shall bear the entire cost and expense, and, upon failure to do so, said City Engineer may cause the work described in said notice to be completed, and Mobil shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

F69

In the event that any part of the pipeline is required to be abandoned or permanently removed from the street or portion thereof affected, the City Engineer shall designate such additional streets or portions thereof as may be necessary to permit the installation of substitute facilities.

In the event of abandonment required by the City Engineer, such abandonment shall be pursuant to the provisions hereof.

14. REMOVAL OR ABANDONMENT OF PIPELINE.

A. In the event of the expiration or termination of this Agreement, or of the permanent discontinuance of the use of the pipeline, or any portion thereof, Mobil shall, within thirty (30) days thereafter make written application to the City Engineer for instructions as to the disposal to be made of the pipeline. The City Engineer shall, within sixty (60) days of the receipt of such application, if he finds that the removal of such property will not materially injure or shorten the life of the remaining portion of the pavement, order said pipeline to be removed. Provided, however, that if said City Engineer shall determine that such removal will materially injure or shorten the life of the remaining portion of the pavement, said pipeline shall be required to be abandoned in place.

B. When the abandonment of the pipeline shall be permitted or required pursuant to the provisions hereof, the pipeline, or portions thereof, affected shall be capped, plugged, removed or otherwise abandoned in such manner as may be prescribed by the City Engineer. The ownership of all the pipeline so abandoned in place shall be transferred to the City after the completion of the required work.

C. All work done pursuant to the provisions of this Paragraph No. 14 shall be under the supervision of the City Engineer and to his satisfaction.

F70

15. COMPLETION OF WORK. If Mobil fails to complete any work required by City pursuant hereto within the time limits required, City may cause such work to be completed by City or, at the election of the City, by a private contractor. Mobil agrees to pay to City within ten (10) days after delivery of an itemized bill, the cost of performing such work plus the current rate of overhead being charged by City for reimbursable work. If Mobil is dissatisfied with the determination of said amount, it may petition the City Council to review the same within ten (10) days after such determination. The decision of the City Council shall be final and conclusive.

16. SALE, TRANSFER, ASSIGNMENT. Except with the consent of City, Mobil shall not sell, transfer or assign this Agreement or any part thereof, and any attempt to do so without said consent shall be null and void. This applies to any assignment, whether by operation of law, by voluntary act or otherwise. No such consent shall be required to any transfer by way of mortgage or hypothecation with all or a part of Mobil's other property for the purpose of securing any indebtedness of Mobil.

As a condition to the granting of consent to such sale, transfer, assignment or lease, City may impose such additional terms and conditions which City may deem to be in the public interest.

17. INDEMNIFICATION OF CITY. Mobil shall indemnify and hold harmless City, its officers, employees, servants and agents from any liability claims or demands arising out of any of the operations or activities of Mobil, its officers, employees, servants or agents, pursuant to this Agreement whether such liability results from negligence or otherwise, excepting any liability arising out of the negligence of the City, its officers, employees, servants or agents.

18. INSURANCE. Mobil at all times during the term of this Agreement and until the abandonment of the pipeline shall maintain full liability insurance without a deductible in an amount not less than $25,000,000 to cover any claim, expense or loss arising

F71

out of the operation, use, maintenance or other privilege exercised under this Agreement, including Mobil's contractual liability to indemnify City. Mobil at all times during the term of this Agreement and until the abandonment of the pipeline shall cause the City of Culver City, its City Council, officers, agents and employees to be named as additional insureds in the policy/policies described hereinabove as they may be held liable for injuries, deaths, or damage to property arising out of, directly or indirectly, the installation, use, maintenance or existence of said pipeline, whether or not caused by the additional insureds' sole or contributing negligence.

Said policy/policies of insurance at the outset of this Agreement shall be with the Lexington Insurance Company. Any substitution of another insurance company shall be with a company with a rating equal to or better than said Lexington Insurance Company and the substituted policy/policies shall be subject to approval of the City Attorney as to form and content. Any such substituted insurance company shall be authorized to do business within the State of California. A copy of said Lexington Insurance Company policy shall be furnished to the City Attorney as soon as reasonably possible after execution of this Agreement.

Said policy/policies of insurance shall contain the following provisions or endorsements:

A. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured; and

B. An additional insured named herein shall not be held liable for any premium or expense of any nature on this policy or any extension thereof; and

C. The provisions of the policy will not be changed, suspended, cancelled or otherwise terminated as to the

F72

interest of an additional insured named herein without first personally delivering to City twenty (20) days written notice of such intention.

D. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

19. NOTICE. Any notice to be given under the terms hereof, the manner of service of which is not specifically provided for, may be served as follows:

A. Upon the City by addressing a written notice to the City Clerk, City Hall, Culver City, California 90230 and mailing such notice by Certified Mail, Return Receipt Requested.

B. Upon Mobil by addressing a written notice to Mobil Oil Corporation, West Coast Pipe Lines, Attention: Manager, Rights of Way and Claims, 3700 West 190th Street, Torrance, California 90503 and mailing such notice by Certified Mail, Return Receipt Requested.

The time of such notice shall begin with and run from the date of delivery by the United States mail.

MOBIL OIL CORPORATION

6/6/77

By H. H. Hinkle

H. H. HINKLE ASST. CONTROLLER (AUTHORIZED OFFICER)

DATED: JUN 9 1977

By G. D. Frost

G. D. FROST ASS'T. SECRETARY

CITY OF CULVER CITY, CALIFORNIA

DATED: June 17, 1977

By

MAYOR

ATTEST:

APPROVED AS TO FORM:

AGNES V. CHRISTENSEN
City Clerk

ROBERT D. OGLE
City Attorney

By Virginia G. Desch
VIRGINIA G. DESCH
DEPUTY CITY CLERK

F73

RECEIVED
99 OCT 26 PM 3:56
CITY OF CULVER CITY

Mobil FAX

Date: October 26, 1999
No. of Pages: 3 (including cover)

From: Ms. Teri Shinde
Rights of Way and Claims Specialist

Mobil Oil Corporation
West Coast Supply & Logistics
3700 W. 190th Street (TPT3)
Torrance, CA 90504

(310) 212-1794 (WK)
(310) 212-1788 (FAX) (Big MAT 339)

TO: Ms. Vin Low (310) 253-5664
Culver City

Per my voice mail of today, the following fax contains a copy of Culver City's Resolution No. 97-R 080 which granted Mobil an additional 5 year term (1997-2002) to Franchise Ordinance No. 92-014. (original term 1992-1997). Should you require additional information, I may be reached at the number listed above.

Teri

Mobil 1 RACING

F74

RESOLUTION NO. 97-R 080

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, ACCEPTING THE EXTENSION OF THE FRANCHISE OF MOBIL OIL CORPORATION TO OPERATE AND MAINTAIN A CERTAIN PIPELINE AND APPURTENANCES FOR THE TRANSPORTATION OF HYDROCARBON SUBSTANCES IN THE CITY OF CULVER CITY.

WHEREAS, on October 26, 1992, the City Council adopted Ordinance No. 92-014, which granted Mobil Oil Corporation a Franchise to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City; and

WHEREAS, an initial term of five years was specified under the provisions of the Franchise, and this initial term is scheduled to expire on November 25, 1997, with Mobil Oil Corporation having an option to extend the Franchise for three additional five year terms for a fee as agreed to by Mobil Oil Corporation and the City of Culver City; and

WHEREAS, also under the provisions of the Franchise, to exercise its right to extend the Franchise, Mobil Oil Corporation must notify the City in writing of its intention to exercise such right not less than ninety days prior to the expiration of the then current term; and

WHEREAS, on May 12, 1997, Mobil Oil Corporation provided such a notice of intent to exercise its right to extend the term of the Franchise for a second five year term in a timely manner; and

WHEREAS, Mobil Oil Corporation has been and is in compliance with the terms and conditions of the Franchise; and

WHEREAS, the franchise fees paid by Mobil Oil Corporation are reasonable in light of franchise fees being charged by jurisdictions for rights-of-way of similar size and type; and

F75

WHEREAS, as verified by the Office of the State Fire Marshal there have not been and are not now any violations of pipeline safety.

NOW, THEREFORE, the City Council of the City of Culver City, DOES HEREBY RESOLVE as follows:

1. Pursuant to the terms of Ordinance No. 92-014, the franchise of Mobil Oil Corporation to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City is hereby extended for one additional five-year term beyond the current term, which is due to expire on November 25, 1997.

2. The new Franchise term shall begin on November 26, 1997 and the expiration date for the Franchise shall be November 26, 2002, unless written notification is given by Mobil Oil Corporation to the City as set forth in the Ordinance, provided that Mobil Oil Corporation is in compliance with the terms and conditions of the Franchise, and provided further that the Office of the State Fire Marshal verifies that there are no violations of pipeline safety.

3. The franchise fees for the second term shall be maintained as provided for in Ordinance no. 92-014, subject to the annual increases to the specified base rate. All other terms and conditions of the Franchise Ordinance shall remain in full force and effect.

APPROVED and ADOPTED this 22nd day of September 1997.

ALBERT VERA, MAYOR
City of Culver City, California

ATTEST:

9/22/97

TOM CRUNK, City Clerk

APPROVED AS TO FORM:

CAROL SCHWAB, Acting City Attorney

DM/CAS

F76

City of Culver City, California

City Council Agenda Item Report

Meeting Date: 02/04/2008	Item Number: A-1
AGENDA ITEM: (1) Adoption of a Resolution Granting a Five Year Extension of an Existing Oil Pipeline Franchise Agreement with ExxonMobil and (2) Adoption of a Resolution Declaring City Council's Intent to Consider Granting an Oil Pipeline Franchise to ExxonMobil and Setting the Time and Place for the Related Public Hearing.	
Contact Person/Dept.: Nick Kimball, Budget & Finance	Phone Number: (310) 253-6013
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (01/30/08); ExxonMobil (01/24/08)	
Department Approval: Martin R. Cole (01/23/2008)	City Attorney Approval: Carol Schwab (by R. Miranda) (01/23/08)
Fiscal Impact Review: Jeff Muir (by M. Noller) (01/23/08)	City Manager Approval: Jerry B. Fulwood (01/23/2008)

RECOMMENDATION:

Staff recommends the City Council adopt a resolution granting ExxonMobil's third five-year extension and adopt a resolution declaring its intent to grant an oil pipeline franchise to ExxonMobil and setting the time and place for holding the related public hearing.

BACKGROUND:

ExxonMobil operates a 16" oil pipeline which carries San Joaquin Valley crude oil from the Grapevine area to ExxonMobil's Torrance refinery. A portion of this pipeline runs underneath Culver City, for approximately 2.7 miles. Culver City originally authorized this pipeline when it granted a franchise to Mobil Oil in 1992. Mobil Oil subsequently became ExxonMobil, which currently operates this pipeline.

The initial term of the franchise was five years, from 1992 to 1997. The franchise gave the pipeline owner the option to renew the franchise for three additional five-year terms. The pipeline operator exercised its first option to renew the franchise in 1997, extending the franchise from 1997 to 2002. The pipeline operator exercised its second option to renew the franchise in 2002, extending the franchise from 2002 through November 25, 2007.

ExxonMobil has notified the City that it wishes to exercise its third option, which would extend ExxonMobil's franchise from November 2007 to November 2012. In addition, ExxonMobil has proposed that the City consider granting ExxonMobil the

~~right to exercise two additional five-year options after expiration of the third option.~~ Granting ExxonMobil the right to exercise two additional five-year options would extend the franchise agreement to 2022.

In November 2007, the City Council authorized extending the current agreement through January 31, 2007 to give staff an opportunity to negotiate with ExxonMobil regarding their request for the two additional five-year options. Pursuant to that authority, the City Attorney's Office executed a Letter Agreement with ExxonMobil to ~~extend the current franchise agreement until January 31, 2008.~~

DISCUSSION:

In December 2007, staff met with ExxonMobil's representatives to discuss their request to exercise the third option of their current agreement, as well as their proposal to be granted the right to exercise two more five-year options after expiration of the third option. As a result of those discussions, staff and ExxonMobil's representatives have tentatively agreed that the City will grant ExxonMobil's third option and that ExxonMobil will pay the City a $10,000 administrative fee to cover the costs associated with ExxonMobil's exercising of its third option.

Regarding ExxonMobil's request that it be granted the right to exercise two additional five-year options after expiration of their third option, staff and ExxonMobil's representatives have tentatively agreed on the terms and conditions relating to the granting of such options. However, the City granting ExxonMobil the right to exercise two additional five-year options would constitute the granting of a franchise. Prior to the granting of any franchise, the City Charter requires the adoption of a resolution declaring the City Council's intent to grant the franchise and the setting of a public hearing to consider such a matter. Therefore, staff has also prepared and attached such a resolution for the City Council's consideration. Should the City Council adopt this resolution, staff will return with an ordinance amending the franchise agreement to reflect the granting of the fourth and fifth five-year options and outlining the terms and conditions relating thereto.

FISCAL ANALYSIS:

Under the current franchise agreement, ExxonMobil pays the City a flat fee annually as compensation for use of the City's right-of-way. The flat fee was set at $64,139.85 when the franchise agreement was first executed in 1992 and is subject to an annual increase based on the Producer Price Index for All Commodities.

Additionally, ExxonMobil pays a throughput penalty, based on the average daily flow of crude oil through the Culver City pipeline. If in any calendar year, the throughput of crude oil averages more than 95,000 barrels per day, then ExxonMobil must pay the City a throughput penalty in the amount of five cents ($0.05) per barrel in excess of 95,000 times the number of days in that year. The following table summarizes the City's flat fee and throughput penalty receipts since 2004-05:

	2004-05	2005-06	2006-07
Flat Fee	$80,420	$88,151	$90,057
Throughput Penalty	3,504	26,950	0
Total Receipts	**$83,924**	**$115,101**	**$90,057**

Assuming a 3.5% annual increase in the Producer Price Index for All Commodities, the receipts for the next five years of the current franchise agreement are as follows:

	2007-08	2008-09	2009-10	2010-11	2011-12
Flat Fee	$93,210	$96,470	$99,850	$103,345	$106,960
Throughput Penalty	TBD	TBD	TBD	TBD	TBD
Total Receipts	**$93,210**	**$96,470**	**$99,850**	**$103,345**	**$106,960**

Administrative Fee

Based on the estimated staff time to review, research and process ExxonMobil's third option, an administrative fee of $10,000 has been tentatively agreed upon. Staffing cost estimates include direct salary and benefits costs for each staff member involved in the process as well as indirect overhead costs (such as payroll, IT services, workers' comp and liability insurance costs, management oversight, etc.).

ATTACHMENTS:

1. Resolution Extending the Franchise of ExxonMobil Oil Corporation to Operate and Maintain a Certain Pipeline and Appurtenances for the Transportation of Hydrocarbon Substances in the City of Culver City of Culver City

2. Resolution Declaring Intent to Grant a Franchise to Operate and Maintain a Certain Pipeline and Appurtenances for the Transportation of Hydrocarbon Substances and Setting the Time and Place for the Related Public Hearing

MOTION:

City of Culver City, California

City Council Agenda Item Report

1. Adopt a resolution granting a five-year extension of the existing oil pipeline franchise with ExxonMobil; and

2. Adopt a resolution declaring the City Council's intent to consider granting an oil pipeline franchise to ExxonMobil and setting the time and place for the related public hearing.

E80

MEETING DATE: February 4, 2008

AGENDA ITEM : Adoption of a Resolution Granting a Five Year Extension of an Existing Oil Pipeline Franchise Agreement with ExxonMobil and Adoption of a Resolution Declaring City Council's Intent to Grant an Oil Pipeline Franchise to ExxonMobil and Setting the Time and Place for the Related Public Hearing.

ATTACHMENTS

RESOLUTION NO. 2008-R ___________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, APPROVING A THIRD OPTION OF THE FRANCHISE OF EXXONMOBIL OIL CORPORATION TO OPERATE AND MAINTAIN A CERTAIN PIPELINE AND APPURTENANCES FOR THE TRANSPORTATION OF HYDROCARBON SUBSTANCES IN THE CITY OF CULVER CITY.

WHEREAS, on October 26, 1992, the Culver City City Council adopted Ordinance No. 92-014, which granted Mobil Oil Corporation a franchise to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City ("City"); and

WHEREAS, an initial term of five years and three five-year options were provided for under the terms of that franchise; and

WHEREAS, Mobil Oil Corporation exercised its first five-year option in 1997; and

WHEREAS, Mobil Oil Corporation changed its name to ExxonMobil Oil Corporation ("ExxonMobil") on June 1, 2001; and

WHEREAS, ExxonMobil exercised its second five-year option in 2002; and

WHEREAS, ExxonMobil has provided the City timely notice of its desire and intent to exercise its third five-year option; and

WHEREAS, ExxonMobil has been and is in compliance with the terms and conditions of its franchise; and

F82

WHEREAS, as verified by the Office of the State Fire Marshall, there ha not been and are not now any violations of pipeline safety.

NOW, THEREFORE, the City Council of the City of Culver City, Californ DOES HEREBY RESOLVE, as follows:

1. Pursuant to the terms of Ordinance No. 92-014, the franchise of Exxon Mobil to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City is hereby extendec for a third five-year option, beyond the second five-year option which expired on November 25, 2007.

2. The term of the third five-year option began on November 26, 200 and the expiration date for the third five-year option shall be November 25, 2012.

3. An administrative fee in the amount of $10,000 for processing costs shall be paid to the City, by ExxonMobil, before this option can become effective.

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4. The annual franchise fees for the third term shall be maintained a provided for in Ordinance No. 92-014, subject to the annual increases to the specified base rate. All other terms and conditions of the Franchise Ordinance shall remain in force and effect.

APPROVED and ADOPTED this ______day of ________________, 200

____
ALAN CORLIN, MAYOR
City of Culver City, California

ATTEST:

____
CHRISTOPHER ARMENTA,
City Clerk
A08-00029

APPROVED AS TO FORM:

____
CAROL A. SCHWAB, City Attorney

F84

RESOLUTION NO. 2008-R_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, DECLARING ITS INTENT TO CONSIDER GRANTING A FRANCHISE TO EXXONMOBIL OIL CORPORATION TO OPERATE AND MAINTAIN A CERTAIN PIPELINE AND APPURTENANCES FOR THE TRANSPORTATION OF HYDROCARBON SUSBSTANCES AND SETTING THE TIME AND PLACE FOR THE RELATED PUBLIC HEARING.

WHEREAS, on October 26, 1992, the Culver City City Council adopted Ordinance No. 92-014, which granted Mobil Oil Corporation a franchise to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City ("City"); and

WHEREAS, an initial term of five years and three five-year options were provided for under the terms of that franchise; and

WHEREAS, Mobil Oil Corporation changed its name to ExxonMobil Oil Corporation ("ExxonMobil") on June 1, 2001; and

WHEREAS, Mobil Oil Corporation and ExxonMobil have completed the initial term of five years and exercised their three five-year options; and

WHEREAS, the third five-year option will expire in 2012; and

WHEREAS, ExxonMobil has requested that the City agree to consider granting a fourth and a fifth five-year option, which requires an amendment to the franchise agreement and granting of a franchise; and

WHEREAS, the City Council of the City of Culver City desires to conduct a public hearing, in compliance with Section 1700 of the City Charter, to consider any

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F85

protests or other comments from the public before making its decision regarding the granting of a franchise (to include the two additional five-year options) to ExxonMobil.

~~NOW, THEREFORE, the City Council of the City of Culver City D~~ HEREBY RESOLVE as follows:

1. The City hereby declares its intent to consider granting a franchise (to include the two additional five-year options) to ExxonMobil.

2. The terms and conditions upon which it is proposed that this franchise be granted are as follows:

   a. The fourth and fifth options may be granted or denied at the City's sole discretion;

   b. ExxonMobil shall continue to pay the annual franchise fee and any other costs or penalties provided for in the existing franchise;

   c. Upon the exercise of the fourth and fifth option, ExxonMobil shall pay a non-refundable fee to the City to cover the City's administrative costs in processing such options.

3. The related public hearing is hereby set for February 25, 2008 at 7:00 pm in the City Hall Council Chambers, located at 9770 Culver Boulevard, Culver City, California.

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4. The City Clerk is hereby directed to publish this resolution in the Culver City News at least once within 15 days of its passage.

APPROVED and ADOPTED this _____ day of ___________, 2008.

____
ALAN CORLIN, MAYOR
City of Culver City, California

ATTEST:

____
CHRISTOPHER ARMENTA, City Clerk
A08-00029

APPROVED AS TO FORM:

____
CAROL A. SCHWAB, City Attorney

6

F87

City of Culver City, California

City Council Agenda Item Report

Meeting Date: 9/22/97

Agenda Item Title:
Approval and Adoption of a Resolution Accepting the Extension of the Pipeline Franchise He[ld] by Mobil Oil Corporation for a Second Five-Year Term With the Same Terms and Provisions [as] the Current Five-Year Term of the Pipeline Franchise

Department/Division City Attorney's Office	**Report Researched By / Date** David M. McCarthy 8/22/97	**Public Hearing** ....
Fiscal Impact No [x] Yes [ ] **General Fund** [ ] **Enterprise** [ ] **Grant/RDA** [ ] **Budgeted Item** [ ] **Transfer of Funds Required** ... [ ]	**Reviewed By / Date** Cynthia A. Asheim 9/1/97 **CAO Approval / Date** 9/10/97	**Discussion/Action Item** **Consent Item** .... **Other** .... **Packet Enclosure(s)**

Public Notification:
Notice has been provided to the Office of the State Fire Marshal and to Mobil Oil Corporation. Notice of Public Hearing has been published in the Outlook.

ISSUE

Shall the City Council adopt a resolution accepting the extension of the term of the pipeline franchise held by Mobil Oil Corporation for a second five-year term with the same terms and provisions as the initial five-year term now in effect.

For more information regarding this item, contact David M. McCarthy at 253-5660.

BACKGROUND

On October 26, 1992, the City Council adopted Ordinance No. 92-014, which granted a Pipeline Franchise to Mobil Oil Corporation. Under the terms of the franchise, an initial term of five years was specified, expiring on November 25, 1997. Mobil Oil Corporation retained the option to extend the franchise for three additional five-year terms, providing Mobil has complied with all of the terms and conditions of the franchise. The fees for each successive five year term are agreed to by Mobil and the City, and are determined to be reasonable in light of franchise fees being charged by jurisdictions for rights-of-way of similar size and type. In addition, under the terms of the franchise, to exercise its right to extend the franchise, Mobil must notify the City in writing not less than ninety days prior to the expiration of the then current term. Mobil has provided this notice of intent to the City to extend the term of the franchise for a second five-year term in a timely manner.

Mobil has been in compliance with all of the terms and conditions of the franchise, and has proposed that the franchise fees for this second term be maintained as provided in the Franchise Ordinance, subject to the annual increases to the specified base rate, which are in direct proportion to changes in the Producer Price Index. The second five-year term will expire, unless extended by Mobil for a third five-year term, on November 25, 2001

Staff has discussed the status of the Mobil pipeline with a Pipeline Safety Engineer for the Office of the State Fire Marshal of the California Department of Forestry and Fire Protection, who revealed that Mobil's pipeline is a relatively new pipeline which has been, and continues to be, continuously monitored and tested. This Pipeline Safety Engineer characterized ~~Mobil's pipeline as the best line in the County.~~

RECOMMENDATION

Staff recommends that the City Council discuss and accept Mobil Oil Corporation's exercise of its option for a second, five-year term for the Pipeline Franchise with the franchise fees for the second term maintained as provided in the initial five-year term now in effect, subject to the annual increases to the specified base rate, in direct proportion to changes in the Producer Price Index.

Staff recommends that the City Council approve and adopt the resolution extending the pipeline franchise held by Mobil for a second five-year term with the same terms and provisions as the initial five-year term now in effect.

MOTION:

That the City Council approve and adopt the resolution accepting the extension of the pipeline franchise held by Mobil Oil Corporation for a second five-year term with the same terms and provisions as the current five-year term now in effect.

NORMAN Y. HERRING
CITY ATTORNEY

714-760-
Fax-

OFFICE OF THE CITY ATTORNEY

CITY OF CULVER CITY

4095 OVERLAND AVENUE, CULVER CITY, CALIFORNIA 90232-0507

(310) 202-58
FAX (310) 839-

P.O. BOX 50

714-
760-

February 13, 1992

Norman Cantor
Donahue Corporation Inc
23 Corporate Plaza Drive, Suite 160
Newport Beach, California 92660

Re: Appraisal Services
Mobil M-70 Pipelines

Dear Mr. Cantor:

I would like to request that you review the enclosed materials of Culver City for purposes of preparing a proposal for appraisal services. As we discussed on the telephone Mobil Oil Company proposes to place a 16" pipeline in City streets to replace an existing pipeline. The proposed right of way would be four feet wide and 15,455 lineal feet. I am enclosing an area map of the proposed pipeline route.

I am also enclosing a description of the pipeline's proposed route through Culver City. After reviewing these documents I would request that you submit a proposal for appraisal services to show the market value of the pipeline right-of-way and the methodology used to arrive at a valuation.

I would also appreciate your thoughts on evaluation of the right-of-way for subsurface implacement of the pipeline in City streets. Mobil has proposed a 25% right-of-way valuation formula for the subsurface rights for a temporary right-of-way.

Mobil then proposes a rate of return would be applied to the reduced land value. Mobil has suggested that while a 12.5% rate of return is high it would agree to such a rate of return. If you are able to do so, the City would also appreciate your evaluation of this proposed formula to set the franchise fee.

Mobil has indicated it will be ready to install the pipeline in Culver City in July. We expect we will notice the City's intent to grant the franchise in late March or April. The franchise hearings will occur at least sixty (60) days after the notice is given. Please advise me in your proposal of the length of time required for your appraisal services and your availability.

F90

If there are additional matters that need to be clarified, please advise me. I look forward to your response to this request.

Very truly yours,

Norman Y. Herring

NORMAN Y. HERRING
City Attorney

NYH:jm

Enclosures

cc: Mrs. Jody Hall-Esser,
Chief Administrative Officer
James S. Davis, City Engineer
Evelyn Keller, Deputy City Attorney

714-
760-
3166-

NORMAN Y. HERRING

CITY ATTORNEY

CITY OF CULVER CITY

TRANSMITTAL SHEET

DATE:

TO: Vinh

RE:

___ Please see me	___ As discussed	___ Type
___ For your information	___ Review/comment	___ Zerox
___ For your file	___ Prepare reply	___ Send to (se
___ For your approval	___ Return to me	___ File

NOTE:

Vinh
Please call
Norman Cantor
at Donahue Corp.
re: our request for
proposal for
appraisal services
Jim Davis has
phone no. — Thx, n

F92

CITY OF CULVER CITY
4095 Overland Avenue
Culver City, California 90232-0507

Date: Mon - March 2

To: Norman Cantor

Company: /

Fax No.: 714-760-5496

Total Pages (including this page):

From: Norman Herring

Phone No.: 310-~~6700~~ 202-5835 Fax No.: 310-839-58

Message: Per our conversation - pls find a copy of the letter. Tks.

If you experience any problems receiving this transmission, please contact sender.

F93

Exhibit "A"

Beginning at the intersection of Venice Blvd., and Sepulveda Blvd.

thence South along Sepulveda Blvd., to the intersection of Culver Blvd.;

thence Westerly along Culver Blvd., to Sawtelle Blvd.;

thence South along Sawtelle Blvd., to the Culver City/ LA City boundaries;

Reenter Culver City boundary at Sawtelle Blvd., North of McDonald St.;

thence Southeasterly along Sawtelle Blvd., to the Alley East of Segrell Way;

thence South along Alley East of Segrell Way to Slauson Avenue;

thence East along Slauson Avenue to Sepulveda Blvd;

thence South along Sepulveda Blvd., to a point where the pipeline enters Centinela Creek Channel Right of Way, (excluding approximately 477 feet of Sepulveda Blvd, which is under LA City jurisdiction).

Reenter Culver City at Bristol Pkwy., crossing Bristol Pkwy, and proceeding Southerly to Centinela Blvd.;

thence Southeasterly along Centinela Blvd., to the Culver City Boundary.

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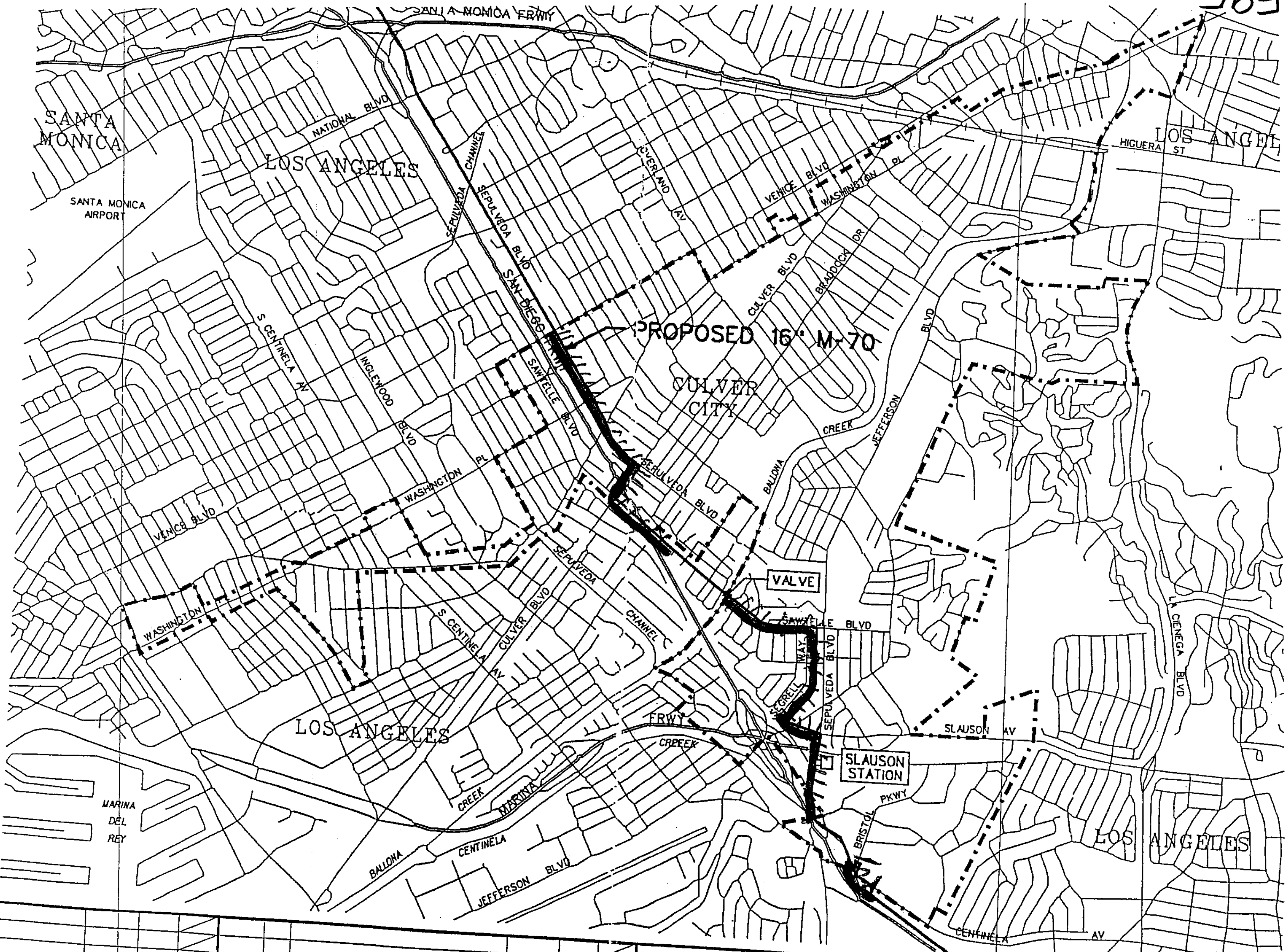


NO.	REVISION	DATE	CHK	APR	W.O. NO.	NO.	REVISION	DATE	CHK	APR

Mobil Oil Corporation
M70 PIPELINE REPLACEMENT PROJECT

DRAWN			
DRAFTING CHECK		PROJECT ENGR	
DRAFTING SUPV		SECTION SUPV	

PROPOSED 16"
PIPELINE LOC
CULVER

SCALE NONE | DWG NO.

M-70 PIPELINE REPLACEMENT PROJECT

Mobil Oil West Coast Pipe Lines
3070 Old Ranch Parkway, Suite 200
Seal Beach, California 90740-27[illegible]

Telephone (213) 493-7270 BIG MAT 620-7270

FAX - (213) 493-7264 BIG MAT - 620-7264

F A X COVER SHEET

DATE: 3-2-92

TIME: 2:10 pm

NUMBER OF PAGES: 1 + COVER

FROM: Ruth Cronin-Frewitt

PLEASE DELIVER THE FOLLOWING DOCUMENT(S) TO:

City Attorney's Office, FAX: 839-5895
Attn: Lynn FAX:

FAX:

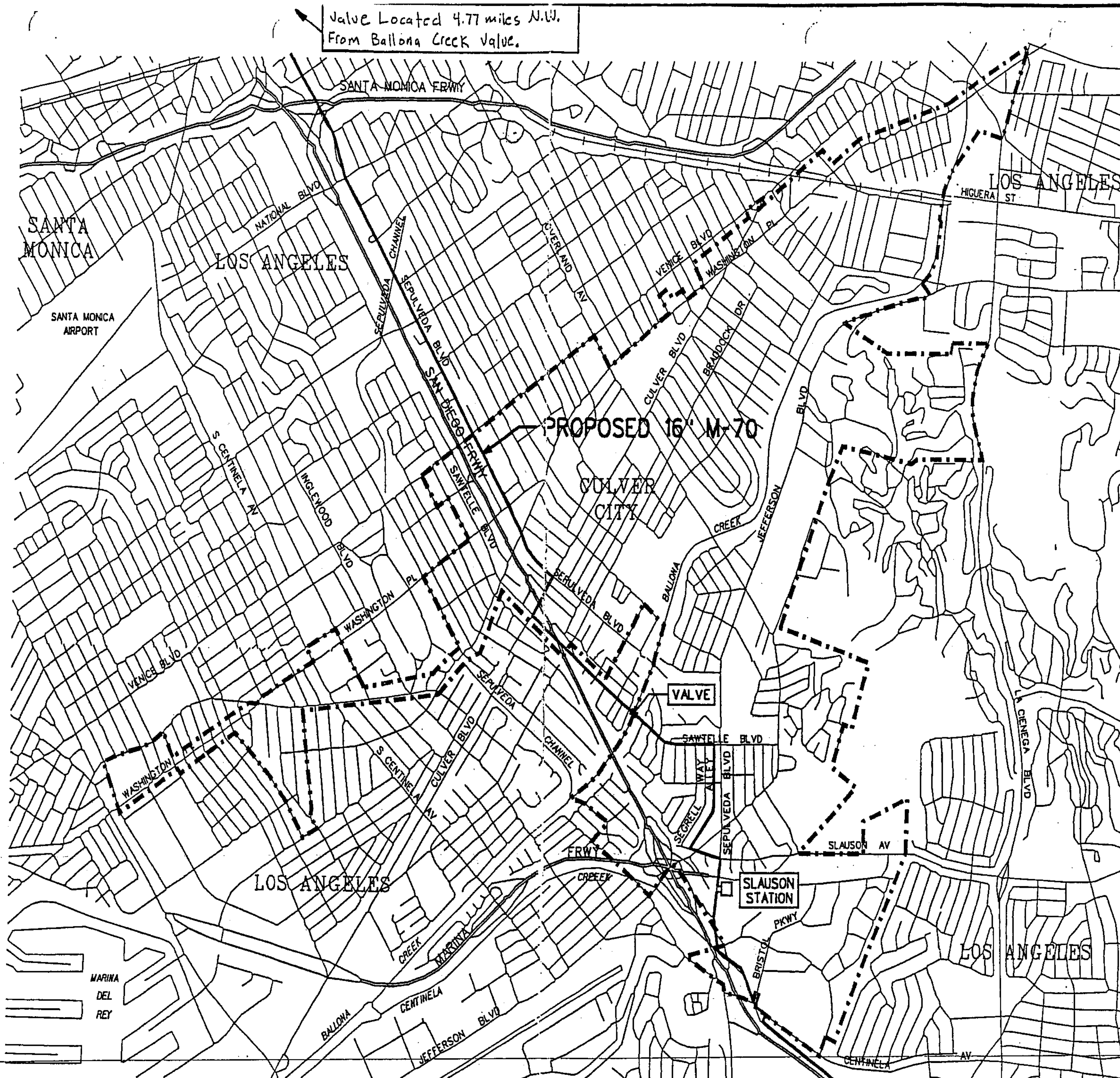
FAX:

FAX:

NOTE: Legal description of Mobil's M-70 Pipeline within Culver City

IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL ASAP (213) 493-7270 OR BIG MAT 620-7270.

F96



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Mobil Oil Corporation
M70 PIPELINE REPLACEMENT PROJECT

PROPOSED 16" CRUDE OIL PIPELINE LOCATION MAP

F97

CITY OF CULVER CITY
4095 Overland Avenue
Culver City, California 90232-0507

Date: 3/3/92

To: Norman Cantor

Company: Donahue /

Fax No.: ~~213-839-5895~~ 714-760-54

Total Pages (including this page): 3

From: Vinh Low

Phone No.: Fax No.:

Message: Re Proposal for Property Apprais

If you experience any problems receiving this transmission, please contact sender.

F98

RESOLUTION NO. 97-R 080

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, ACCEPTING THE EXTENSION OF THE FRANCHISE OF MOBIL OIL CORPORATION TO OPERATE AND MAINTAIN A CERTAIN PIPELINE AND APPURTENANCES FOR THE TRANSPORTATION OF HYDROCARBON SUBSTANCES IN THE CITY OF CULVER CITY.

WHEREAS, on October 26, 1992, the City Council adopted Ordinance No. 92-014, which granted Mobil Oil Corporation a Franchise to operate and maintain a certain pipeline and appurtenances for the transportation of hydrocarbon substances in the City of Culver City; and

WHEREAS, an initial term of five years was specified under the provisions of the Franchise, and this initial term is scheduled to expire on November 25, 1997, with Mobil Oil Corporation having an option to extend the Franchise for three additional five year terms for a fee as agreed to by Mobil Oil Corporation and the City of Culver City; and

WHEREAS, also under the provisions of the Franchise, to exercise its right to extend the Franchise, Mobil Oil Corporation must notify the City in writing of its intention to exercise such right not less than ninety days prior to the expiration of the then current term; and

WHEREAS, on May 12, 1997, Mobil Oil Corporation provided such a notice of intent to exercise its right to extend the term of the Franchise for a second five year term in a timely manner; and

WHEREAS, Mobil Oil Corporation has been and is in compliance with the terms and conditions of the Franchise; and

WHEREAS, the franchise fees paid by Mobil Oil Corporation are reasonable in light of franchise fees being charged by jurisdictions for rights-of-way of similar size and type; and

F99

NORMAN Y. HERRING
CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY
CITY OF CULVER CITY
4095 OVERLAND AVENUE, CULVER CITY, CALIFORNIA 90232-0507

(310) 20
FAX (310)

P.O. BO

March 10, 1993

Mobil Oil Corporation
West Coast Pipelines
Attn: Ruth Cronin-Fruitt, Manager Rights of Way & Claims
3020 Old Ranch Parkway, Suite. 200
Seal Beach, California 90740-2751

Re: Claim of Ernest Carpenter
D/L: February 10, 1993

Dear Mrs. Cronin-Fruitt:

Attached please find a copy of Mr. Carpenter's claim, a copy of the incident report and a copy of the City's Notice of Rejection of Claim and Rejection of Claim. Please be advised that your firm submitted insurance to the City to indemnify and to provide liabilities, if any, during the performance of its contract. Therefore, we refer this claim to you for handling.

Also enclosed is a copy of the Insurance Certificate and the Insurance endorsement.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

Norman Y. Herring

NORMAN Y. HERRING
City Attorney

NYH:jm
Enclosures

cc: Ed Garbo, Claims. Admin.
Ward-THK
Ernest Carpenter

ACORD. # CERTIFICATE OF INSURANCE

ISSUE DATE (M
1/8/9

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION O
CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CE
DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORD
POLICIES BELOW.

PRODUCER

Marsh & McLennan, Inc.
1166 Avenue of the Americas
New York, NY 10036

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A Lloyds and British Companies

COMPANY LETTER B National Union Fire Ins. Co.

COMPANY LETTER C

COMPANY LETTER D

COMPANY LETTER E

INSURED

Mobil Oil Corporation
3225 Gallows Road
Fairfax, VA 22037

APPROVED AS TO FO
CITY ATTORNEY

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHI CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				GENERAL AGGREGATE	$50,C
A	X COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG.	$
	CLAIMS MADE OCCUR.	06-0037-93	1/1/93	1/1/94	PERSONAL & ADV. INJURY	$
	OWNER'S & CONTRACTOR'S PROT.				EACH OCCURRENCE	$50,0
					FIRE DAMAGE (Any one fire)	$
					MED. EXPENSE (Any one person)	$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	$
	ANY AUTO					
	ALL OWNED AUTOS				BODILY INJURY (Per person)	$
	SCHEDULED AUTOS					
	HIRED AUTOS				BODILY INJURY (Per accident)	$
	NON-OWNED AUTOS					
	GARAGE LIABILITY				PROPERTY DAMAGE	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	UMBRELLA FORM				AGGREGATE	$
	OTHER THAN UMBRELLA FORM					
					STATUTORY LIMITS	
	WORKER'S COMPENSATION				EACH ACCIDENT	$ 1,0
B	AND	WC 1238753	1/1/93	1/1/94	DISEASE—POLICY LIMIT	$ 1,0
	EMPLOYERS' LIABILITY				DISEASE—EACH EMPLOYEE	$ 1,0
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS Including Culver City, its City Council, bo and commissions, officers, agents, servants, and employees as Additional Insureds as their interests may appear. Limits apply excess of a $10MM pe occurrence deductible.

CERTIFICATE HOLDER

Culver City
Attn: City Clerk
4095 Overland Avenue
Culver City, CA 90232

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFO EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEA MAIL 60 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGA LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENT

Mobil Oil Corporation

WEST COAST PIPE LINES

3020 OLD RANCH PARKWAY
SUITE 200
SEAL BEACH, CALIFORNIA 90740-27

October 22, 1992

Norman Y. Herring, Esq.
City Attorney
City of Culver City
4095 Overland Avenue
Culver City, California 90232-0507

RE: MOBIL M-70 PIPELINE FRANCHISE

Dear Mr. Herring:

Based upon your conversation with Mobil's Regional Attorney, Richard J. Lacouture, it is our understanding that the date of adoption set forth in Section 17 of the Franchise as well as the reference elsewhere in the Franchise to date of approval will be based upon the date of the second reading which is scheduled for October 26, 1992. Nevertheless, please take this letter as Mobil's indication of its intent to accept the franchise as has been prepared in accordance with the vote of the City Council at its meeting on October 12, 1992.

In accordance with the agreement reached between you and our attorneys, enclosed please find Mobil's check number 01490 in the amount of $500.00 in payment of the administrative assessment in complete resolution of the matter which arose on October 6, 1992 in connection with activities of Mobil's contractor in the area of the Los Angeles Flood Control District adjacent to Sepulveda Boulevard. This resolution shall not constitute an admission of liability.

Very truly yours,

Ruth Cronin-Fruitt

Ruth Cronin-Fruitt, Manager
Rights of Way & Claims

RCF:mtc

cc: J. R. Jeffries
W. E. Ham
R. J. Lacouture
D. E. Novitski

102292l.rcf/miscii

F102

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

LATHAM & WATKINS
ATTORNEYS AT LAW
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763
TLX 590773
ELN 62793268
CABLE ADDRESS LATHWAT

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

LONDON OFFICE
ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE 071-374 4444
FAX 071-374 4460

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFI
650 TOWN CENTER DRIVE, SU
COSTA MESA, CALIFORNIA 92
TELEPHONE (714) 540-1
FAX (714) 755-8290

SAN DIEGO OFFICE
701 "B" STREET, SUITE 2
SAN DIEGO, CALIFORNIA 921
TELEPHONE (619) 236-12
FAX (619) 696-7419

SAN FRANCISCO OFFIC
505 MONTGOMERY STREET, SU
SAN FRANCISCO, CALIFORNIA 9
TELEPHONE (415) 391-06
FAX (415) 395-8095

WASHINGTON, D.C. OFFIC
1001 PENNSYLVANIA AVE., N.W., S
WASHINGTON, D.C. 20004-2
TELEPHONE (202) 637-22
FAX (202) 637-2201

October 7, 1992

9 1992

BY FEDERAL EXPRESS

Norman Y. Herring, Esq.
City Attorney
City of Culver City
4095 Overland Avenue
Culver City, California 90232-0507

Re: Mobil M-70 Pipeline

Dear Norm:

In response to your letter of September 25, 1992, set forth below is Mobil's position with respect to the additional proposed conditions of the franchise. Also enclosed are marked up copies of the relevant pages of the franchise reflecting the changes to which Mobil is agreeable. Where the agreed upon revision involves an additional mitigation measure, that is also included.

In responding to the conditions initially requested by the City beginning with our negotiations in January, the conditions included in your letter of June 4 proposed by Councilman Gourley, and the conditions proposed at the hearing of September 14, 1992, Mobil has made every effort to try to accommodate the City. In many respects, Mobil believes that the conditions requested, including some of those previously agreed to, went beyond that which the City is authorized by law to request. In an effort to bring this matter to closure and provide the city as much comfort and protection as possible, Mobil accepted the conditions. While Mobil believes that some of those conditions are not authorized by law, Mobil nevertheless will still accept mitigation measures CC-1 through CC-27, and previous changes to the text of the franchise.

The conditions suggested by the Council on September 21, when taken together, significantly affect the project. In that regard, Mobil refers you to Public Resources Code Section 21004 which addresses the authority the City has in attempting to mitigate or avoid a significant environmental effect. CEQA grants the City no authority that it does not otherwise have to regulate. In addition, the holding in the Shell v. Santa Monica case makes it clear that despite

F103

what may be considered privity of contract, the City is subject to constitutional restraints, and Mobil entitled to the constitutional protections, which are normally afforded in the context of regulatory rulemaking. While the City has police power pursuant to the constitution of the Stat of California, that power has geographical limitations. The City's power is also subject to explic preemption pursuant to the Government Code provisions vesting exclusive jurisdiction in the State Fire Marshall, and further that in many areas the Government Code and regulations of th State Fire Marshall fully occupy the field so as to preempt further regulation. We also note tha some of the conditions appear to run afoul of the commerce clause or violate due process. The comments below address each individual condition. If you have any questions, please call.

1. This item is acceptable. Amended language for Sections 18 and 23 of the franchise and Mitigation Measure CC-24 is enclosed. I trust specifying JAMS in Section 23, to comport with CC-24, will be acceptable.

2. This item had been previously complied with, but see Item 1 above.

3. This item is acceptable, and see Item 1 above.

4. Mobil cannot agree to this requirement because it is unwarranted given the lack of incidents on the existing line in Culver City. In light of the posting of insurance certificates in the amount of $50 million dollars, and the financial worth of Mobil Oil Corporation, the posting of a fund for unnamed third party beneficiaries with unliquidated claims is not only inappropriate, but may violate due process.

5. The terms of mitigation measure CC-18 are that a bond will be maintained for the period of the franchise. Hence, this item is already addressed. The bond itself, must have a set penal amount.

6. This item is acceptable. See the enclosed amendment to Section 4.B.

7. The definition of emergency contained in the franchise is appropriate and Mobil is not agreeable to a revision.

8. This condition is not legally permissible nor acceptable to Mobil. Section 51010 of the Government Code vests the State Fire Marshal with exclusive safety regulatory and enforcement authority over intrastate hazardous liquid pipelines. In addition, Section 51018.6 specifically authorizes the State Fire Marshal to deal with the issues of penalties for violation of pipeline safety regulations.

9. The first sentence of this item is not legally permissible nor acceptable to Mobil. In addition to the grant of exclusive jurisdiction to the State Fire Marshal, Section 51013.5 specifically authorizes the State Fire Marshal to identify testing requirements for pipelines.

Mobil is, however, agreeable to the extent that the State Fire Marshal's office or another agency of the State or Federal government shall no longer exercise jurisdiction over the pipeline. In that case, the City may impose testing requirements at the current level. Language amending Section 3.D. of the franchise agreement is enclosed.

10. Mobil is agreeable to this item provided it is able to reserve its rights against other responsible parties. Language amending CC-19 is enclosed.

11. Enclosed is revised language for Section 7.E of the franchise covering abandonment.

12. Mobil is agreeable to this request, and language in the form requested has been enclosed amending Section 8.B of the franchise.

13. Mobil is agreeable to a condition that if Mobil has not abandoned the existing pipeline, as required by law, the existing bond and insurance agreements would cover the costs of the city securing proper abandonment. Appropriate language reflecting this change to Section 8.C of the franchise is enclosed.

14. Mobil will remain responsible to remediate any contamination which has been caused by the existing M-70 pipeline. However, Mobil is unaware of any line leaks within the city of Culver City, and does not believe that it is appropriate to test for soil contamination. The appropriate action is contained in mitigation measure RU-20 which specifies that Mobil shall conduct a hydrostatic test before abandonment of the line, and accomplish any required clean-up.

15. This condition is acceptable to Mobil provided the indication is that the payment of any penalty or interest does not cure any "other" default under the franchise. Appropriate language modifying Section 7.G is enclosed.

16. This condition is not legally permissible nor acceptable to Mobil. The State Fire Marshal exercises exclusive jurisdiction pursuant to Sections 51010 and 51013.5 of the Government Code.

17. This condition is not legally permissible nor acceptable to Mobil. Once again the State Fire Marshall exercises exclusive jurisdiction. Prior Government Code Section 51018.5 has been repealed. As such, the City is not in a position to be authorized to enforce any of these conditions.

18. This condition is acceptable to Mobil. Appropriate language modifying Section 10 is enclosed.

19. This condition is not acceptable to Mobil. Insurance is only available on a yearly basis, as a result, it is impossible to perform this suggested condition. In addition, the city is provided with a mechanism for advance notice before the termination of any insurance, and it is a continuing obligation of Mobil to provide insurance.

20. Fifty million dollars in insurance is more than adequate. In Mobil's experience no incident has approached even the $25 million dollars in insurance coverage which has been provided to other cities through which the M-70 pipeline passes.

21. Mobil will accept the condition that the City has the ability to shut off the flow of oil in the event the franchise is forfeited. See Section 13.A. This of course must be with notice to Mobil and the State Fire Marshal's office so as to not create a dangerous situation.

A condition that the City may declare an emergency or the City may desire for reasons of public safety to shut off the values located within the City is not legally permissible nor acceptable to Mobil. Operation of the pipeline is within the exclusive jurisdiction of the State Fire Marshall pursuant to Government Code Section 51010 and the right to shut down the line is exclusive to the State Fire Marshal pursuant to Section 13107.5 of the California Health & Safety Code.

22. Strikes and riots should be included in the force majeure provisions. Performance is only excused if it is impossible for Mobil to perform in any event.

23. This provision is acceptable to Mobil. Amended language for Section 12.A.1.C. is enclosed.

24. This change is acceptable to Mobil. Enclosed is amended language for Section 13.D. of the franchise.

25. Mobil is willing to accept the first sentence of this item. Amended language for Section 6 of the franchise is enclosed. The second and third sentences of item 25 are not acceptable because of the State Fire Marshall's exclusive jurisdiction and regulations detailing the interval of inspections.

It should also be noted, however, that there are no vaults within the jurisdiction of Culver City. While inquiry was made as to the presence of vaults and their inspection during the most recent City Council meeting, the nearest vaults are located on City of Los Angeles property. The vaults are only located where valves are located below ground. The sole valve within the limits of Culver City is at the Slauson Pump Station. However, that valve is in the pump station and not in a vault. While there is a valve at Ballona Creek, it is located on City of Los Angeles property.

26. This condition is acceptable to Mobil and enclosed is a revision to Section 16 to the franchise.

27. This change is acceptable to Mobil, and enclosed is a revision to Sections 18 and 23 of the franchise.

F106

28. This condition is acceptable to Mobil and enclosed is a revision to Mitigation Measure CC-19.

29. Sufficient noise mitigation measures have been provided. I would call youı attention to Mitigation Measures N-1, N-2, N-3, CC-1, and CC-9.

30. The city is without authority to allow the Fire Marshall to waive inspection requirements. The Fire Marshal exercises exclusive jurisdiction over inspection of pipelines pursuant to Sections cited above. As a result this condition is not legally permissible nor acceptable to Mobil.

31. This condition is not acceptable to Mobil. A flow meter at the Slauson station is unnecessary. Appropriate flow meters are located at the Torrance terminus of the pipeline. There are no facilities for oil to be diverted at the Slauson pump station, such that the flow through the Slauson pump station reaches Torrance. As a result, Torrance is the appropriate station at which to monitor the amount of oil pumped. Adequate provisions have been made for an independent audit by an accounting firm with requisite experience at Mitigation Measure CC-22, as a result of the Council's request on September 14.

32. Mitigation measure RU-21 addresses valves on the M-1 Pipeline and their being automated. The valves being installed in and around Culver City are automated, remote control valves. Culver City is receiving the same types of valves that other locations along the pipeline are receiving.

33. With respect to mitigation measure T-8, the city engineer has determined that it is appropriate to open cut and not bore in any streets within Culver City. As a result such boring studies need not be done.

34. This condition is not legally permissible nor acceptable to Mobil. The franchise fee being paid in this instance was determined by an independent appraiser hired by the City of Culver City utilizing the value of lands abutting the transportation carrier. Pursuant to the Shell v. Santa Monica, that is the highest and most favorable rate to the City that may be employed in a franchise agreement. Utilization of a favored nation clause would exceed the fees which are allowed to be charged for franchises pursuant to the Shell case, and unduly burden commerce.

35. This condition is not legally permissible nor acceptable to Mobil. The State Fire Marshal has exclusive jurisdiction to monitor pipeline operation, and as such Culver City is not authorized to do so. With respect to the volumetric charge on pipeline throughput, I call your attention to the case of WOGA v. Cory, (726 F.2d 1340) which specifically held such charges are unconstitutional.

36. Without addressing the appropriateness of the barrel fees, Mobil will accept these conditions. See CC-23.

F107

37. The 10", 12" and no project alternatives were reviewed in the environmental impact report prepared by Dames & Moore under agreement with the U.S. Fores Service and the Los Angeles Department of Transportation. Those alternatives were rejected as being environmentally inferior to the proposed 16" pipeline. That decision was upheld by the Lo Angeles Superior Court. The authority of a lead agency to determine the project is greater than the authority of a responsible agency. While the responsible agency may adopt mitigation measures within its jurisdiction, it is further limited by Section 21004 of the Public Resources Code to exercise only those expressed or implied powers provided by law other than CEQA. Pursuant to The CEQA Guidelines, responsible agencies have limited avenues of approach available if the project as approved by the lead agency and for which the environmental impact report is prepared is not acceptable to them.

38. The capital improvement plan was requested by the City of Culver City in order for it to plan with respect to Mobil's pipeline.

39. Mobil will comply with measure RU-4 when the time is appropriate. Advice concerning construction schedules can only be given once a franchise has been issued, contracts let, and work scheduled.

40. This condition is not legally permissible nor acceptable to Mobil. The State Fire Marshal exercises exclusive jurisdiction with respect to valve spacing pursuant to Section 51016 of the Government Code.

41. Mobil is agreeable to reporting leaks or spills to the City Engineer, see Section 5, however, Mobil will not agree to conditions that a leak or spill would be grounds for consideration of revocation of the franchise. As noted in Shell and Cory, restrictions on publicly controlled transportation corridors are impediments to commerce in violation of the United States Constitution as well as State Constitution. Allowing the City the opportunity to revoke a franchise in the event of a leak or spill, given the nature of this pipeline, would cause extraterritorial affects in violation of the California Constitution and would burden intrastate and interstate commerce.

42. Mobil does not believe that this condition is appropriate for the franchise in that it lacks any rational relationship to the approval of the project. Nevertheless, Mobil will consider leasing the City's land at appropriate values for storage of pipe during construction in Culver City. However, that cannot be embodied as a term of the franchise.

43. Mobil is agreeable to a mitigation measure, CC-28, in the form attached t respond to the September 22, 1992, request of Jim Davis concerning inspection.

Very truly yours,

David E. Novitski
of LATHAM & WATKINS

F109

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

PETE WILSON, *Governor*

STATE FIRE MARSHAL
PIPELINE SAFETY DIVISION
7171 BOWLING DRIVE, SUITE 600
SACRAMENTO, CA 95823-2034

(916) 262-1957
ATSS 8-469-1957

September 29, 1992

Norman Y. Herring, City Attorney
City of Culver City
4095 Overland Avenue
Culver City, California 90232-0507

I am pleased to respond to your September 25, 1992 letter to Robert Gorham of my staff, asking for our comments regarding Mobil's proposed M-70 replacement pipeline through the city of Culver City.

I would first like to outline our pipeline safety program and then make specific answers to your list of questions and statements.

The California State Fire Marshal's (CSFM) Pipeline Safety Program was created by legislation known as the "California Pipeline Safety Act of 1981" (CAPSA), authored by Assembly Member Dave Elder. The Act vests CSFM with exclusive safety, regulatory and enforcement authority over intrastate pipelines used for the transport of hazardous liquid substances and highly volatile liquid substances. Hazardous liquid pipelines include pipelines which carry crude oil and refined hydrocarbons.

Through an agreement with the U.S. Department of Transportation (DOT) the Pipeline Safety Division, within CSFM's department, is the state entity charged with the responsibility of ensuring the safe design, construction, operation and maintenance of all intrastate hazardous liquid pipelines, including Mobil's pipelines in California.

Our Pipeline Safety Division has emergency response, inspection, enforcement and investigative authority over these pipelines, which presently includes 66 intrastate pipeline operators with over 5500 miles of intrastate pipelines.

The existing and new Mobil M-70 pipeline is an intrastate pipeline and therefore subject to our jurisdiction.

Our staff of engineers and inspectors have spent 90 persondays inspecting the design, construction, testing and operation of the M-70 pipeline system since construction began in September 1991.

F110

FAX (916) 262-1962

Following are our responses to the specific questions you directed to the State Fire Marshal:

8. **Mobil should be penalized for failure to maintain the pipeline in a good workerlike manner. (Mobil has agreed to a $500.00 fine per incident for violations of mitigation measures, and City ordinances. The operation and safety of the pipeline are under the supervision of the State Fire Marshal.)**

   I assume the $500 fine is related to permitting conditions and not the actual construction of the pipeline. The city cannot impose any pipeline safety requirements on Mobil.

9. **The pipeline testing program should remain at the levels required in current statutes, regulations or this franchise ordinance or enhanced as provided by superseding legislation, regulations, or ordinance. The elimination of the State Fire Marshal's office, removal of this pipeline from State Fire Marshal or its successor's control should not reduce or eliminate the current level of testing. Should any of these events occur the franchise may be amended to allow funding of a City retained monitor/expert to conduct and review the required testing.**

   In 1979, Congress enacted comprehensive hazardous liquid pipeline safety legislation entitled, The Hazardous Liquids Pipeline Safety Act of 1979, 49 U.S.C. 2001 et seq. (HLPSA).

   The HLPSA provides for exclusive Federal authority to regulate the transportation of hazardous liquid pipelines. The HLPSA also states that a State may assume the regulation and enforcement responsibilities of intrastate pipelines through an annual certification agreement. Therefore, if the State of California ceases to regulate the pipeline, the Federal Government, through the Office of Pipeline Safety, would continue to exert regulatory and enforcement authority over the pipeline.

10. **Mobil should agree to specifically pay for costs of or perform all clean up of any spills which may result in damage or injury to property of the City or the public.**

    This is not a State Fire Marshal issue.

11. **Mobil should submit agreeable language which will clarify the partial abandonment language at P.9 11 7-15 of the franchise agreement.**

    Having not seen the abandonment language, we can only state that federal regulations provide for "...the safe disconnection from an operating

F111

pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards."

12. **The franchise agreement should reference or include the conditions of abandonment of the pipeline from the Pipeline Safety Act, and/or those regulations of the State Fire Marshal or federal Hazardous Liquid Pipeline Safety Act of 1979 which refer to abandonment procedures.**

    Refer to our response to #11.

14. **When the existing (old) pipeline is abandoned, Mobil must agree to test for soil contamination and agree to remediate any contamination caused by leaks from the old M-70 pipeline.**

    This is not a State Fire Marshal issue.

16. **Mobil, the State Fire Marshal, or an independent expert hired by the City should advise whether the proposed testing procedure is credible and adequate. (The State Fire Marshal has exclusive authority over required testing as indicated in Government Code 51013.5 and 51014, also 51010.)**

    As stated above, the State Fire Marshal has exclusive authority over the testing procedure.

17. **Mobil should provide adequate funding to the City for ongoing monitoring of operational safety and testing. (Government Code 51018.5 implies that the State Fire Marshal could authorize the City to enforce provisions of pipeline safety. Otherwise, City requests for funding for this purpose is duplicative of State requirements to fund pipeline safety inspections.)**

    Government Code 51018.5 was repealed in 1988. Once again, the monitoring of operational safety and testing is exclusive to our office.

21. **The City wants authority to turn off the oil flow in the event the franchise is revoked, or the City or State declares an emergency and City personnel desire, for reasons of public safety to turn off valves located in the City.**

    The M-70 pipeline system begins in Kern County and passes through numerous cities on its way to Torrance. The closure of a valve by city personnel without the knowledge or permission of Mobil Oil could result in line ruptures or spills from the pipeline upstream of the valve. Section 13107.5 of the California Health & Safety Code authorizes the State Fire Marshal to immediately order any pipeline closed in the interest of public safety.

25. Vaults located in the City should be adequately secured. City emergency employees should be briefed on how to obtain access and manually turn off valves. The vaults should be checked weekly during the physical inspection of the pipeline route which would include a test for hydrocarbon vapors.

Title 49 Code of Federal Regulations Part 195.420(c) requires each operator to provide protection for each valve from unauthorized operation and from vandalism. Part 195.412 sets the right-of-way inspection interval at 26 times a year, not to exceed three weeks. The test for hydrocarbon vapors is used primarily for natural gas lines as a liquid line leak would be visible. The closure of pipeline valves by city personnel without the prior knowledge of Mobil Oil and prior to the shutting down of the shipping pumps could cause a pipeline spill upstream.

30. Should the City allow the Fire Marshal to waive inspection requirements? (See Nos. 16 and 17, above.)

The authority to inspect and enforce pipeline safety regulations and laws is exclusive to the State Fire Marshal's office and is not transferrable to the city.

31. Mobil should install a flow meter at the Slauson Station to monitor the amount of oil pumped through the pipeline which shall be accessible to the City Engineer.

The flow meter at Slausen Station is not necessary for the safe operation of the pipeline.

32. With regard to mitigation measure RU-21, Mobil should explain these terms and Mobil or someone other should explain why these type valves are not located in Culver City.

RU-21 refers to automating block valves on the existing M-1 pipeline system in Kern County. The block valves proposed for the Culver City area are located at Sawtelle Blvd. north of Ballona Creek Crossing, Slausen Station and at the Centinela Creek channel west of La Cienega Blvd.

F113

The same type of block valves will be installed in Culver City.

35. **There should be a volume charge against the pipeline in Culver City to pay for constant monitoring by a Culver City expert.**

The monitoring of the pipeline to insure its safe operation is the responsibility of the State Fire Marshal's office.

40. **An electric valve should be installed at Venice and Sepulveda.**

Our staff has reviewed the spacing of block valves along the pipeline route and believe that the current placement of valves on the new M-70 pipeline is adequate. A remotely operated eletric valve is located at Ballona Creek approximately 1.5 miles south of Venice and Sepulveda.

41. **All leaks or spills must be immediately reported to the City Engineer and will be grounds for consideration of revocation of the franchise.**

Current state law requires the pipeline operator to immediately report every rupture, explosion, or fire to the local fire department having fire suppression responsibilties. In your case, the Culver City Fire Department would be notified.

JAMES WAIT, Division Chief
Pipeline Safety

F114

NORMAN Y. HERRING
City Attorney

OFFICE OF THE CITY ATTORNEY

CITY OF CULVER CITY

4095 OVERLAND AVENUE, CULVER CITY, CALIFORNIA 90232-0507

(310) 202-5835
FAX (310) 839-5895

September 25, 1992

Robert Gorham,
Associate Pipeline Safety Engineer
Office of the State Fire Marshal
1501 West Cameron, South Bldg., Ste. C250
West Covina, California 91790

Dear Bob:

I have compiled a list of issues that our City Council has remaining regarding the grant of the Mobil pipeline franchise. Many of the issues relate to construction and operational safety as well as safety monitoring.

I have starred those issues which I think are your office's responsibility. Would you please review those issues and provide written comment regarding your enforcement provisions, construction supervision, design supervision, safety monitoring and overall experience with the installation of this pipeline, and its safety features.

Since you have been at our Council meetings on this matter you can gauge the significance of your responses. I also would appreciate if you could address your responses to me in time that I could provide them to the City Council on October 6, 1992, before the next hearing. I would also request that you be available to address the Council on October 12, 1992, regarding these issues.

Please advise me if you have any additional needs or cannot comply with my request in these matters.

Very truly yours,

Norm

NORMAN Y. HERRING
City Attorney

NYH:jm

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M bil Oil Corporation

RECEIVED
AUG 27 1992
CHIEF ADMINISTRATIVE OFFICE

Norm H FYI

WEST COAST PIPE LINES

3020 OLD RANCH PARKWAY
SUITE 200
SEAL BEACH, CALIFORNIA 90740

August 26, 1992

AUG 28

Mr. Jim Davis
City of Culver City
4095 Overland Drive
Culver City, CA

Mobil's 16" Pipe
<u>Replacement Project</u>
Responses to 7/13/92
Comments

Dear Mr. Davis:

Mobil has reviewed the comments made about our project at the City Council Meeting held on July 13, 1992, and find the same issues being raised in your city as was raised in Los Angeles, Hawthorne, Torrance, and, most recently, in Inglewood. All of these issues were thoroughly reviewed by the staffs of each of those entities and I am proud to say that Mobil has been granted approval by all of the aforementioned municipalities. In fact, construction has been completed and the replacement pipeline is in service in the cities of Torrance, Hawthorne, Los Angeles, parts of Los Angeles County.

While concern about the potential for explosions is valid, the product transported in the replacement pipeline as well as that transported in the existing pipeline is a low sulfur, low gravity, very thick crude oil which has the consistency of molasses. Coupling the viscosity of the crude oil with the fact that there are little, if any, light ends injected into the crude streams makes the likelihood of explosion, even in the event of a leak, remote. Owing to the difference between our below ground pipeline and oil platforms in Kuwait as well as the types of crude, there is no analogy between our existing pipeline or the planned replacement pipeline to the events witnessed in the Persian Gulf. Characterizations of our pipeline as a hydrogen or atom bomb are totally groundless.

The allegations that small leaks might go undetected which could result in soil and water contamination were addressed in all of the aforementioned hearings. Our pipeline monitoring system combines pressure monitoring along the line with volumetric line balance calculations performed by a state-of-the-art computer based Station Control and Data Acquisition (SCADA) system. The SCADA system updates its information and performs the line balance calculations on 5 second intervals. Additionally, the replacement as well as the existing pipeline fall under the scrutiny of comprehensive inspection by the California State Fire Marshall.

F116

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I have attached a copy of the State Fire Marshall's letter to the City of Torrance dated May 7, 1992, which responds to Mr. Schiffer's allegations regarding safety inspection during construction. Mobil has agreed to install seismic sensors at the pump stations which would be actuated in the event of a seismic event which registers 6 or greater on the Richter scale in the vicinity of the pipeline. The system will be shutdown in an orderly fashion, shutting down the stations first before closing the motor-operated valves. Hazards that the pipeline encounters and/or crosses have been addressed by separate geotechnical and environmental studies whose results were reported to the individual City engineers; these studies included slope failure, earthquake, liquefaction, and groundwater.

The issue of valve spacing seems to be a recurrent theme in comments at public meetings. Attached hereto is a letter from the California State Fire Marshall dated June 28, 1990, which addresses the spacing included in our pipeline design. CSFM letters dated October 29, 1990 and October 24, 1991, are also included to demonstrate the Fire Marshall's involvement throughout the development of the Environmental Impact Report (EIR). The Fire Marshall was contacted directly by Ms. Michelle Grumet after the hearings in the City of Inglewood and the CSFM's response is attached. Finally, I have attached a fact sheet entitled, <u>Safety Features of the M-70 Pipeline</u> for your use.

I hope this information helps in your evaluation of our project.

Very truly yours,

W. E. Ham

W. E. Ham
Project Manager

Attachments

cc: Jody Hall-Esser, Culver City, Chief Administrative Officer

Jim Wait, CSFM Division Chief, Pipeline Safety
Joan Jennings, CSFM Deputy Director
7171 Bowling Drive, Suite 600
Sacramento, CA 95823

(wh9268)

F117