

**CALENDAR ITEM
C35**

A 12
S 8

06/28/16
W 26990
A. Franzoia

CONSIDERATION OF AN INDEMNIFICATION AGREEMENT

PARTIES:

Pacific Gas and Electric Company (PG&E)

California State Lands Commission

BACKGROUND:

On December 18, 2015, the Commission authorized Lease No. PRC 9301.9 to the County of Stanislaus (County) for the demolition and removal of an existing bridge and construction of a new bridge at Santa Fe Avenue on the Tuolumne River. The new bridge will be constructed with approximately 50 feet of clearance from the river bottom and provides adequate clearance for recreational boats. Upon construction, a 6-inch-diameter natural gas distribution pipeline within a 10-inch-diameter steel casing (PG&E Pipeline) will be attached underneath the bridge. PG&E maintains a franchise agreement with the County for the right to use County easements and rights-of-way adjoining the lease premises for the installation, operation, and maintenance of gas pipes, mains, and appurtenances for the conveyance, distribution, and supply of natural gas to the public. Consequently, Commission authorization of a separate lease with PG&E for the pipeline is not required.

The proposed Indemnification Agreement is intended to indemnify the State for any harm that may occur or arise from the installation, operation, and maintenance of the PG&E Pipeline on the new bridge.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850.

CALENDAR ITEM NO. **C35** (CONT'D)

The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of these sovereign lands within the bed of the Tuolumne River.

Commission staff and PG&E have negotiated an Indemnification Agreement indemnifying the State for any harm that may occur or arise from the installation, operation, and maintenance of PG&E Pipelines attached to bridge structures. PG&E agrees to indemnify the State, without limitation, for any claim or liability arising from the installation, use, operation, or maintenance of the PG&E Pipeline and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 9301.9.

Based on a review of the proposed project design plans for the new bridge, Commission staff believes the PG&E Pipeline improvements are to be attached in a fashion that does not interfere, inhibit or cause an unreasonable risk to public access or navigation on sovereign land.

PG&E inspects distribution pipelines for leaks every five years and conducts pipeline corrosion inspections every three years. The existing 6-inch diameter pipeline was last inspected for leaks on August 8, 2012 and inspected for corrosion on September 6, 2013 and determined to be in good condition. The next leak inspection is expected in 2017 and the next corrosion inspection is expected in September 2016. The California Public Utility Commission (CPUC) General Order 112-E requires pipeline operators to submit to the CPUC annual reports required by Title 49, Code of Federal Regulations, Part 191.11 and 191.17. The most recent annual report submitted to the CPUC is dated March 13, 2015.

Commission staff believes that the PG&E Pipeline on the new bridge does not substantially interfere with the Public Trust needs and values in the area at this location at this time. Further, the proposed Indemnification Agreement will provide sufficient liability protection for the State.

For all the reasons above, Commission staff believes approval of the Indemnification Agreement is consistent with the common law Public Trust Doctrine and in the best interests of the State.

CALENDAR ITEM NO. **C35** (CONT'D)

OTHER PERTINENT INFORMATION:

1. This Indemnification Agreement shall run concurrently with the term of Lease No. PRC 9301.9 that expires December 17, 2040, or upon the sooner termination of that lease, or upon termination of PG&E's franchise agreement with the County, or as mutually agreed upon by PG&E and the Commission.
2. 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.
3. Authorizing the Indemnification Agreement between the Commission and PG&E is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Indemnification Agreement will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

Authorize the Indemnification Agreement, substantially in the form on file at the Sacramento office of the Commission, between the State Lands Commission and PG&E, beginning June 28, 2016 and ending December 17, 2040, or sooner termination of Lease No. PRC 9301.9, or upon termination of PG&E's franchise agreement with the County of Stanislaus, or as mutually agreed upon by the Parties; concerning the installation, use, operation, and maintenance a 6-inch-diameter natural gas pipeline

CALENDAR ITEM NO. **C35** (CONT'D)

within a 10-inch-diameter steel casing on the new Santa Fe Avenue Bridge, as described in Exhibit A and shown on Exhibit B (for reference purpose only), attached and by this reference made a part hereof.

EXHIBIT A

W 26990

LAND DESCRIPTION

A parcel of submerged land situated in the bed of the Tuolumne River, lying adjacent to Section 32, Township 3 South, Range 10 East and Section 5, Township 4 South, Range 10 East, Mount Diablo Meridian, County of Stanislaus, State of California, and more particularly described as follows:

BEGINNING at Station 147+00 on the centerline of Santa Fe Avenue as shown on the survey of the Empire Bridge County Survey No. 1246; thence N 78° 10' 10" E, 80.00 feet to the northeasterly right-of-way line of Santa Fe Avenue; thence along said line and southerly prolongation thereof, S 11° 49' 50" E 750.00 feet; thence leaving said prolongation S 78° 10' 10" W, 130.00 feet to the southwesterly line of Santa Fe Avenue; thence along said line N 11° 49' 50" W 750.00 feet; thence leaving said line N 78° 10' 10" E, 50.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of low water marks of said Tuolumne River.

END DESCRIPTION

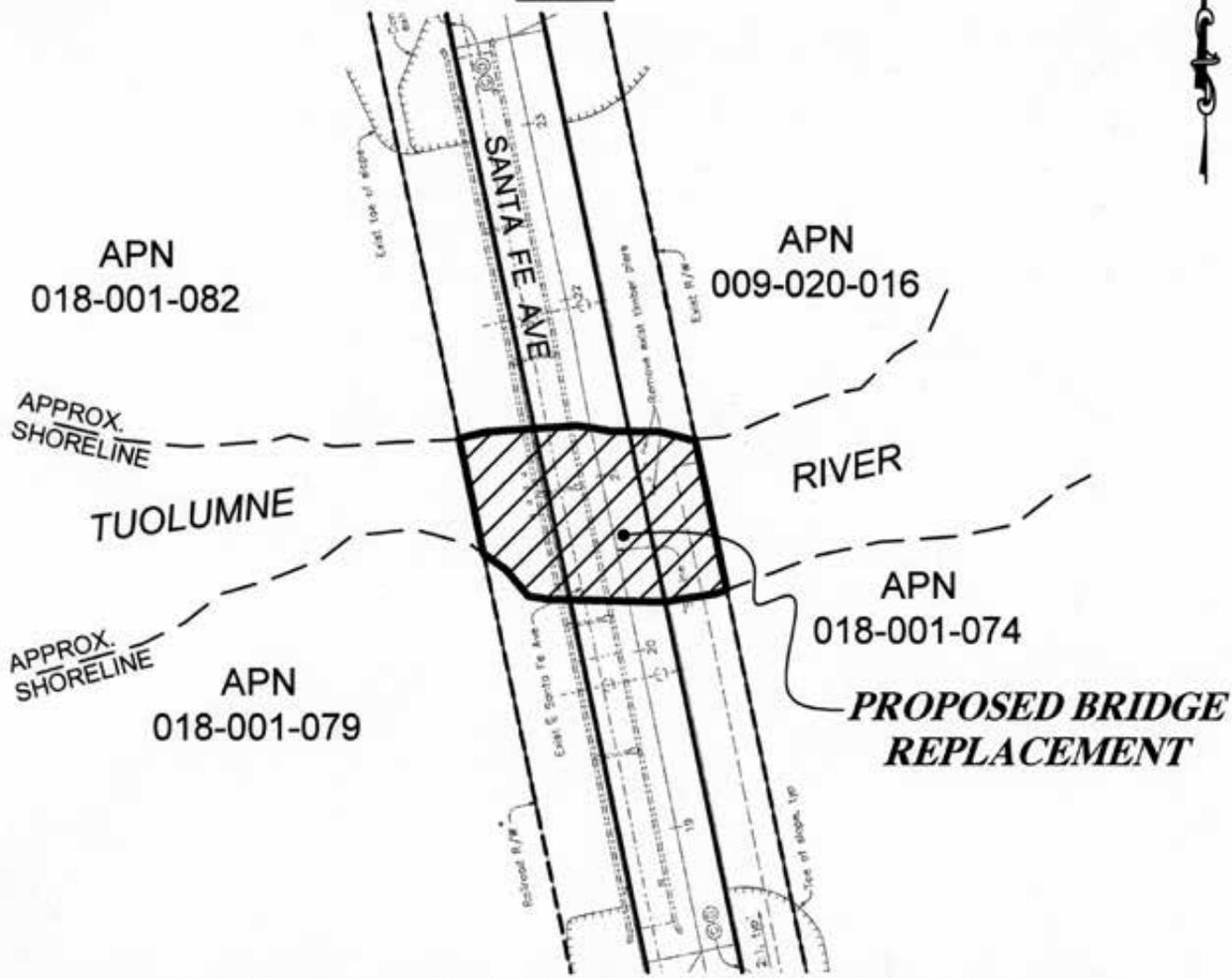
This description is based on Applicant provided design plans, by Stanislaus County Department of Public Works, Engineering and Operations Division, dated February 6, 2015, for a proposed replacement of the existing Santa Fe Avenue Bridge, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 11/05/15 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



SANTA FE AVENUE BRIDGE AT TUOLUMNE RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26990

PG&E

APNs 018-001-074, -079, -082
& 009-020-016

GENERAL LEASE -
PUBLIC AGENCY USE
STANISLAUS 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.