

## STAFF REPORT

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10/24/19

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### CONSIDERATION OF AN INDEMNIFICATION AGREEMENT

#### PARTIES:

Pacific Gas and Electric Company (PG&E)

California State Lands Commission

#### IMPROVEMENT, LAND TYPE, AND LOCATION:

An existing natural gas pipeline located on the Hickman Road Bridge over sovereign land in the Tuolumne River, near Waterford, Stanislaus County.

#### BACKGROUND:

On December 6, 1962, the Commission authorized a Bridge Easement to Stanislaus County (County) for the construction, operation, and maintenance of a two-lane concrete bridge crossing the Tuolumne River near Waterford, Stanislaus County ([Item 9, December 6, 1962](#)). This easement expired December 5, 2011. On October 19, 2012, the Commission authorized a General Lease - Public Agency Use to the County for the continued use and maintenance of the bridge, known as the Hickman Road Bridge ([Item 56, October 19, 2012](#)). That lease, Lease No. PRC 2961.9, will expire on December 5, 2036. On February 4, 2019, the Commission amended the lease to authorize the construction of a new bridge and to remove the existing one ([Item 49, February 4, 2019](#)).

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. PG&E is proposing to install a 4-inch-diameter natural gas pipeline within an 8-inch-diameter steel casing attached to the bridge. Because Lease No. PRC 2961.9 is a right-of-way leased to the County, the PG&E improvements are a valid and consistent use within that lease. And because of PG&E's franchise agreement with the County, Commission authorization of a separate lease with PG&E for the gas pipeline is not required.

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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 gas pipeline on the bridge.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, and 6301.

**Public Trust and the 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. 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 the sovereign land within the bed of the Tuolumne River.

In 2013, a question arose regarding the Commission's authority to require a lease or sublease for pipelines installed by PG&E on city- or county-maintained rights-of-way. The pipelines were installed pursuant to a locally granted utility franchise which, for a franchise fee, provides broad authority to install utility infrastructure to any city or county rights-of-way. After considering the broad franchise rights granted to municipalities under the California Public Utilities Code section 6201 et seq. and issues of administrative efficiency, Commission staff and PG&E agreed, in lieu of a lease or sublease, to enter into indemnification agreements.

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's 4-inch-diameter natural gas pipeline within an 8-inch-diameter steel casing attached to the bridge. 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 gas pipeline and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 2961.9.

Based on a review of the bridge plans and PG&E's gas pipeline, staff believes the gas pipeline will be attached in a manner that will not interfere, inhibit, or cause an unreasonable risk to public access or navigation on sovereign land.

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PG&E inspects gas distribution pipelines for leaks every 5 years and conducts gas pipeline corrosion inspections every 3 years. The California Public Utility Commission (CPUC) General Order 112-E requires gas pipeline operators to submit to the CPUC annual reports required by title 49, Code of Federal Regulations, parts 191.11 and 191.17.

Staff believes that the PG&E gas pipeline on the Hickman Road Bridge over the Tuolumne River will not substantially interfere with the Public Trust needs and values in the area at this location, at this time. Further, the proposed Indemnification Agreement should provide sufficient liability protection for the State. For all the reasons above, staff believes approval of the Indemnification Agreement is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. The proposed Indemnification Agreement will be in effect concurrently with the term of Lease No. PRC 2961.9 that expires on December 5, 2036, 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.
3. Authorizing the Indemnification Agreement between the Commission and PG&E is not a project as defined by the California Environmental Quality Act 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
- C. Franchise Agreement

STAFF REPORT NO. 27 (CONT'D)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed Indemnification Agreement will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of Lease No. PRC 2961.9; 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 Commission and PG&E, beginning October 24, 2019, and ending December 5, 2036, or sooner termination of Lease No. PRC 2961.9, 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 of a 4-inch-diameter natural gas pipeline within an 8-inch-diameter steel casing on the Hickman Road Bridge, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof.

**EXHIBIT A**

**W 27224**

**LAND DESCRIPTION**

A strip of land 200 feet wide across the bed of the Tuolumne River in Section 33, T3S, R11E, MDM, Stanislaus County, the centerline being described as follows:

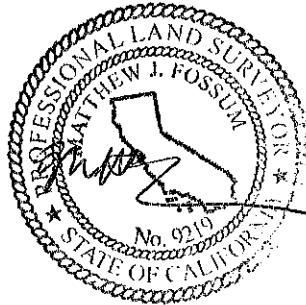
BEGINNING at the southeast corner of said Section 33, thence N 0°55' W along the east line thereof, 1,836.62 feet; thence N 18°27'16" W, 2,608 feet more or less to the low water mark along the left bank of the Tuolumne River, being the TRUE POINT OF BEGINNING of the herein described centerline; thence continuing N 18°27'16" W, 308 feet more or less to the low water mark along the right bank of the Tuolumne River.

Sidelines of said strip shall begin and terminate at low water on the right and left bank of said river.

**END OF DESCRIPTION**

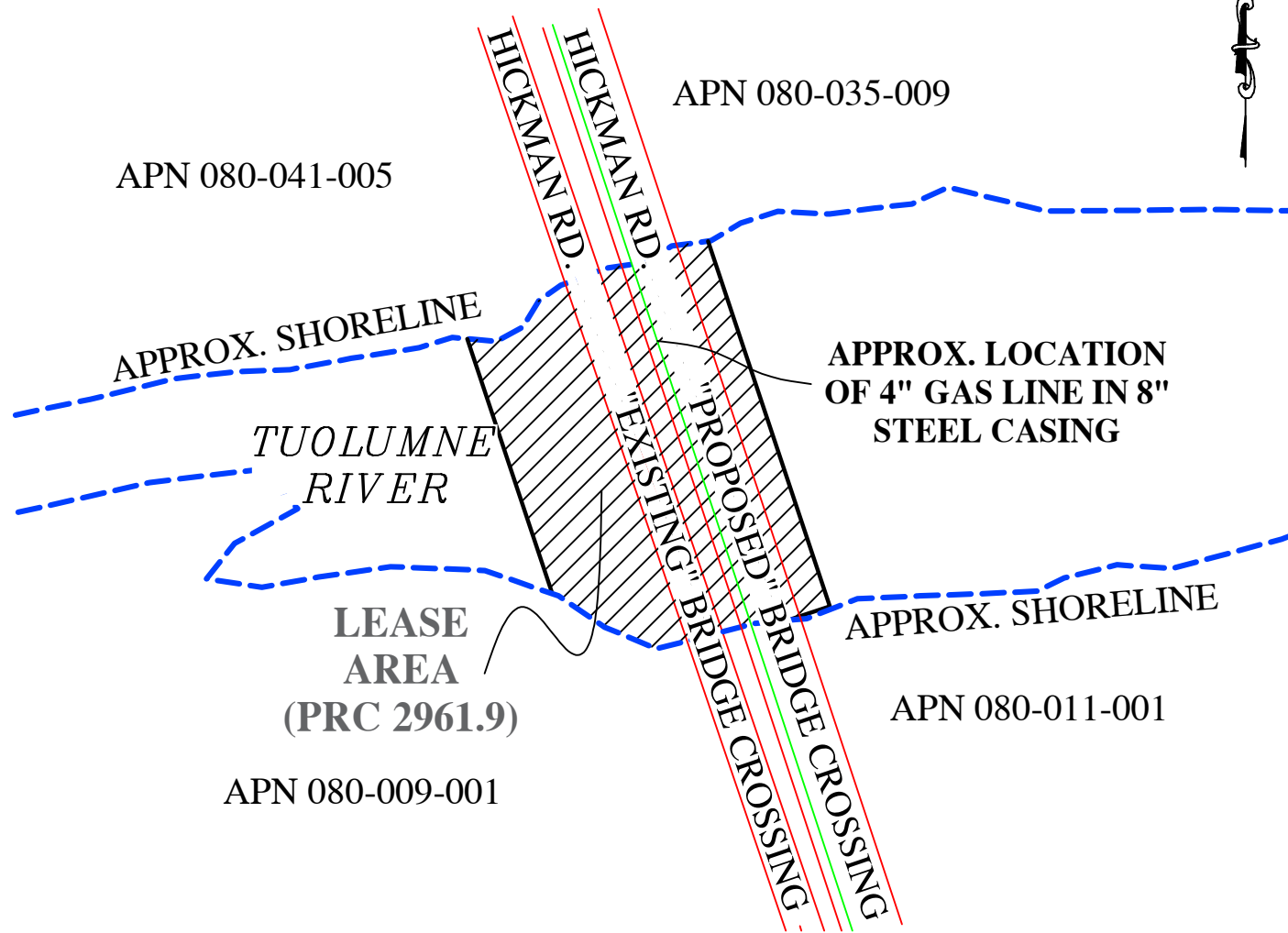
PREPARED 3/5/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT

REVISED BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT 3/5/2012. ORIGINAL DESCRIPTION AS FOUND IN PRC FILE, MINUTE ITEM 9, DECEMBER 6, 1962.



NO SCALE

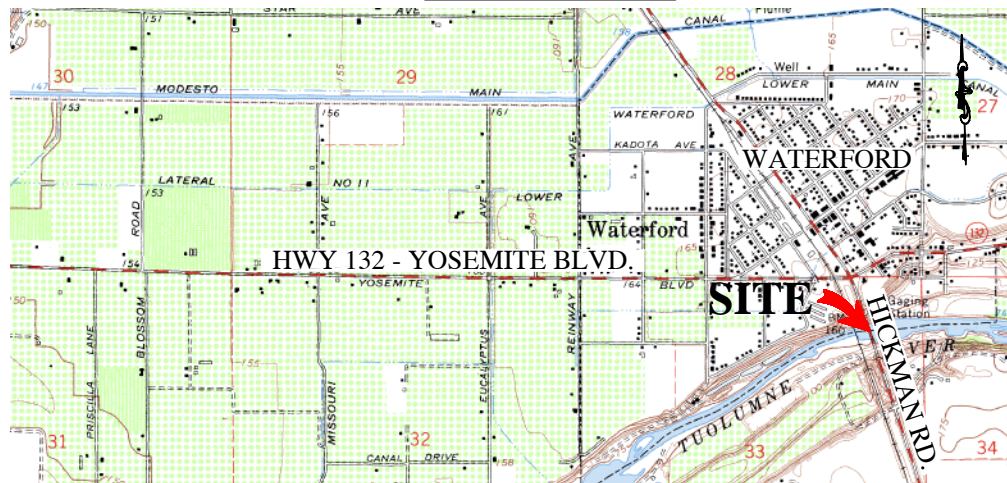
### SITE



Hickman Road Bridge, Waterford

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

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.

### Exhibit B

W 27224  
 PG&E  
 APN 080-009-001, 080-011-001,  
 080-035-009, 080-041-005  
 INDEMNIFICATION  
 AGREEMENT  
 STANISLAUS COUNTY



ORDINANCE NO. 266.

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE OF LAYING, CONSTRUCTING AND MAINTAINING GAS PIPES, MAINS AND APPURTENANCES IN SO MANY AND IN SUCH PARTS OF THE PUBLIC HIGHWAYS, STREETS, ROADS AND PLACES OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, AS THE GRANTEE OF SAID RIGHT, PRIVILEGE AND FRANCHISE MAY FROM TIME TO TIME ELECT TO USE FOR THE AFORESAID PURPOSES, AND OF USING SUCH GAS PIPES, MAINS AND APPURTENANCES FOR CONVEYING, DISTRIBUTING AND SUPPLYING GAS TO THE PUBLIC FOR ANY AND ALL PURPOSES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS DO ORDAIN AS FOLLOWS:

Section 1. The right, privilege and franchise (a) of laying, constructing and maintaining gas pipes, mains and appurtenances in so many and in such parts of the public highways, streets, roads and places of said County of STANISLAUS as the grantee of said right, privilege and franchise may from time to time elect to use for the aforesaid purposes, and (b) of using such gas pipes, mains and appurtenances for conveying, distributing and supplying gas to the public for any and all purposes, is hereby granted by said County of STANISLAUS to Pacific Gas and Electric Company, its successors and assigns.

Section 2. The term of said franchise shall commence with the effective date hereof, and continue and remain in full force and effect until such time as the grantee hereof, its successors or assigns, shall surrender or abandon same or said franchise shall be forfeited for noncompliance by the possessor thereof with its terms, or the State of California, said county or other public corporation thereunto duly authorized, shall purchase by voluntary agreement or shall condemn and take under the power of

eminent domain in accordance with then existing law all property actually used and useful in the exercise of said franchise situate within the unincorporated area of said county. Said franchise shall never be considered or taken into account, in fixing the value of said property, in excess of the actual cost to the grantee hereof in procuring the same.

Section 3. All gas pipes, mains and appurtenances which shall be laid and used under and pursuant to the provisions of this ordinance and in the exercise of said franchise shall be laid, constructed and maintained in a good and workmanlike manner under the direction of the <sup>County</sup> Road Commissioner ~~which such highways, streets, roads and places are~~ and shall be maintained in compliance with all valid laws and ordinances from time to time in force.

Section 4. The owner for the time being of said franchise shall, immediately upon laying, constructing, replacing or repairing the said gas pipes, mains and appurtenances, or any part thereof, at its own cost and expense place said highways, streets, roads and places or so much thereof as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purpose of laying, constructing, replacing, or repairing said gas pipes, mains and appurtenances, or any part thereof.

Section 5. The owner for the time being of said franchise shall have the right to maintain, repair and replace any or all of such gas pipes, mains and appurtenances from time to time as may be necessary and proper.

Section 6. The grantee of said franchise, its successors



and assigns, shall, during the term for which the same is granted, pay to said County two per cent (2%) of its or their gross annual receipts arising from the use, operation or possession thereof; provided, however that no percentage shall be paid for the first five (5) years succeeding the date of the grant of said franchise, but thereafter such percentage shall be payable annually, and if such payment shall not be made, such franchise shall be forfeited; provided, however, that if said franchise be a renewal of a right already in existence the payment of said percentage of gross receipts shall begin at once.

Section 7. The said right, privilege and franchise is granted under and pursuant to the provisions of the laws of the State of California which relate to the granting of rights, privileges and franchises by counties.

Section 8. This ordinance shall take effect and be in force upon the expiration of thirty (30) days after its passage, unless suspended from going into operation by a referendum petition filed as provided by law, and shall, before the expiration of fifteen (15) days after the passage thereof, be published, with the names of the members of said Board of Supervisors voting for and against the same, for one (1) week in the *MODESTO BEE* a newspaper published in

said County of STANISLAUS

PASSED this 24th day of February, 1928, by the following vote:

AYES:	Supervisors	George E. Swatzel, Kenneth G. [unclear], [unclear], [unclear], and Leo C. Harrett.
NOES:	Supervisors	None.
ABSENT:	Supervisors	C. C. Crowell.

Leo C. Harrett.

Chairman of the Board of Supervisors  
of the County of Stanislaus

ATTEST:

J. C. Eastin,  
County Clerk of the County of  
Stanislaus