

Staff Report 66

APPLICANT:

Kern River Gas Transmission Company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

11.5 acres, more or less, of State school land in a portion of Section 16, Township 17 North, Range 14 East, SBM, near Mountain Pass and in a portion of Section 36, Township 14 North, Range 6 East, SBM, west of Baker, San Bernardino County.

AUTHORIZED USE:

Operation, use, and maintenance of an existing 36-inch-diameter underground natural gas pipeline.

TERM:

20 years, beginning August 1, 2021.

CONSIDERATION:

\$18,027 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$10,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease.
- Surety bond or other security in an amount of \$1,000,000.
- All repairs or structural modifications to any portion of the pipeline located within the Lease Premises requires the prior review and approval of the Lessor.
- Lessee shall submit to the Lessor an updated operation and maintenance plan that addresses internal and external maintenance inspections of the completed

facility, including details of integrity testing methods to be applied, corrosion monitoring and testing of the cathodic protection system, and leak monitoring.

- Lessee shall conduct a subsidence hazard assessment before 2032.
- Lessee shall submit a plan for the removal of improvements and restoration of Lease Premises no later than three years prior to the expiration of the Lease.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

STATE'S BEST INTERESTS:

On August 14, 2002, the Commission authorized a 19-year General Lease – Right-of-Way Use to Kern River Gas Transmission Company (KRG T) for the construction, operation, and maintenance of an expansion of KRG T's natural gas transmission pipeline system ([Item 1, August 14, 2002](#)). The Commission authorized two leases, PRC 8411 and PRC 8412. Both leases have expired, and staff is recommending the two leases be combined. The 717.5-mile-long pipeline transports natural gas from well fields in Wyoming through Utah, Nevada, and eventually to users in California. Recent survey, inspection, and testing reports provided by the Applicant indicate that the pipelines within the Lease Premises are operated and maintained in good condition.

As the Commission states in its Strategic Plan, "California is in the midst of a climate crisis due to the use of fossil fuels." California sees the effects of this crisis through increasing temperatures, rising sea levels, declining snowpack, frequent droughts, and severe wildfires. These effects led the California Legislature to enact Senate Bill 100 (SB 100, De León, Chapter 312, Statutes of 2018), which requires that renewable and zero-carbon energy resources supply 100 percent of electric retail sales to customers by 2045. To reduce greenhouse gas emissions and achieve this goal, the Commission committed to manage its lands to "[j]ustly transition activities responsible for carbon emissions." As the State and Commission transition to a cleaner energy future, many Californians rely on electricity generated with fossil fuel sources, including natural gas. Consequently, merely eliminating fossil fuel sources is not the solution. Instead, California must responsibly replace fossil fuels with clean renewable energy sources, such as solar and wind.

The proposed lease would allow the Applicant to import natural gas, a known greenhouse gas source, into California, but it would provide needed energy while

California transitions to cleaner sources. A denial of the lease application could lead to energy shortages in the State. Thus, staff believes that issuance of a lease is in the State's best interests. However, whereas the Applicant applied for a 30-year lease term, this duration may be too long. A 30-year lease would expire in 2051, but California's energy goals in SB 100 call for 100 percent clean energy by 2045. If California achieves these goals by 2045, there may be no need for the longer lease term or imported natural gas. To avoid authorizing the importation of more natural gas than is needed, staff recommends a shorter lease term of 20 years. Under this approach, the proposed lease might expire before California develops sufficient replacement of clean energy sources, but it would allow the Commission to reassess the State's energy needs and make an informed decision at a later date.

The proposed lease is limited to a 20-year term, does not alienate the State's fee simple interest, and does not grant the lessee exclusive rights to the lease premises. The lease requires the Applicant to insure and indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises and to maintain the buried natural gas pipeline at its sole expense. The lease also requires the payment of annual rent, which generates revenue for the California State Teachers' Retirement System, consistent with Public Resources Code section 6217.5.

CLIMATE CHANGE:

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. The lease area is open lands with moderate to low vegetation fuels, and are vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased lands and surrounding land may be vulnerable to these weather events; however, these projected climate change effects are not expected to affect the use of the leased lands to operate, repair, and maintain an underground 36-inch-diameter steel pipeline and appurtenances to transport natural gas.

ENVIRONMENTAL JUSTICE:

As part of its review of the application, staff sent letters to 9 Environmental Justice organizations requesting comment/feedback on the issuance of the lease. One request to meet and confer was received. The comments received when staff engaged the organization centered around broader policy matters, specifically related to phasing out fossil fuels and embracing clean energy sources. The organization recommended a shorter lease term, which staff considered and now recommends.

CONCLUSION:

For the reasons stated above, staff believes issuance of this lease is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the pipeline and restore the Lease Premises. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Prioritizing Social, Economic, and Environmental Justice" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Description
- B-1. and B-2. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt

project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STATE'S BEST INTERESTS:

Find that the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning August 1, 2021, for a term of 20 years, for the use and maintenance of an existing 36-inch-diameter underground natural gas pipeline, as described in Exhibit A and shown on Exhibit B-1 and B-2 (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$18,027, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$10,000,000 per occurrence; Applicant may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease; and a surety bond or other security in the amount of \$1,000,000.

EXHIBIT A

LEASE 8412

LAND DESCRIPTION

PARCEL 1

A 50-foot wide strip of State School Land situate in Section 36, Township 14 North, Range 6 East, San Bernardino Meridian, as shown on the Official U.S. Government Township Plat approved on January 31, 1857, San Bernardino County, State of California, lying 25 feet on each side of a centerline more particularly described as follows:

BEGINNING at a point on the west line of said Section 36, said point bears South 04° 05' 30" East 1370.12 feet from a 5/8 inch Iron Rod with 2 inch aluminum cap stamped "E601, L334, LS3280 N.W. Cor. Sec. 36"; thence North 70° 36' 10" East, along the existing 36 inch Kern River Gas Transmission pipeline, 2147.77 feet; thence along said pipeline the following seven (7) courses:

1. South 63° 10' 21" East 706.39 feet;
2. South 74° 00' 54" East 40.00 feet;
3. South 84° 51' 27" East 40.00 feet;
4. South 84° 17' 59" East 40.00 feet;
5. North 73° 27' 26" East 40.00 feet;
6. North 62° 36' 53" East 40.00 feet;
7. North 51° 46' 19" East 1646.00 feet to the POINT OF TERMINATION on the north line of said Section 36, said point bears South 89° 26' 45" West 1365.54 feet from a 5/8 inch Iron Rod with 2 inch aluminum cap stamped "E601, L33V, LS3280 N.E. Cor. Sec. 36".

The sidelines of said strip of land to be lengthened or shortened so as to begin and terminate on the west and north lines of said Section 36.

EXCEPTING THEREFROM any portion lying within "Parcel 1 (507-S)", as said parcel is described in Patent recorded in Instrument No. 85-112532, Official Records of said County and "Parcel (514-S)", as said parcel is described in Patent recorded in Instrument No. 88-376851, Official Records of said County.

PARCEL 2

A 50-foot wide strip of State School Land situate in Section 16, Township 17 North, Range 14 East, San Bernardino Meridian, as shown on the Official U.S. Government

Township Plat approved on June 25, 1885, San Bernardino County, State of California, lying 25 feet on each side of a centerline more particularly described as follows:

BEGINNING at a point on the west line of said Section 16, said point bears North 01° 00' 42" West 1588.36 feet from a 5/8 inch Iron Rod with 2 inch aluminum cap stamped "E293, L33T, LS3280 S.W. Cor. Sec.16"; thence North 78° 29' 37" East, along the existing 36 inch Kern River Gas Transmission pipeline, a distance of 5315.01 feet to the POINT OF TERMINATION on the east line of said Section 16, said point bears North 01° 14' 26" West 2463.81 feet from a 5/8 inch Iron Rod with 2 inch aluminum cap stamped "E262, L33P, LS3280 S.E. Cor. Sec. 16".

The sidelines of said strip of land to be lengthened or shortened so as to begin and terminate on the west and east lines of said Section 16.

EXCEPTING THEREFROM any portion lying within "Parcel 4 (512-S)", as said parcel is described in Patent recorded in Instrument No. 85-112532, Official Records of said County.

BASIS OF BEARINGS AND DISTANCES shown hereon are grid and based on the California Coordinate System, NAD 83, Zone 5, established by a GPS Survey.

END OF DESCRIPTION

The description of PARCEL 1 is based on that original description prepared by Harvey D. Peterson, PLS 3513 on July 8, 2002 as found in PRC 8411 file. The description of PARCEL 2 is based on that original description prepared by Harvey D. Peterson, PLS 3513 on July 8, 2002 as found in PRC 8412 (W 25856) file.

Revised 09/20/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

PARCEL 1
(50' WIDE)

EXISTING
36" GAS
PIPELINE

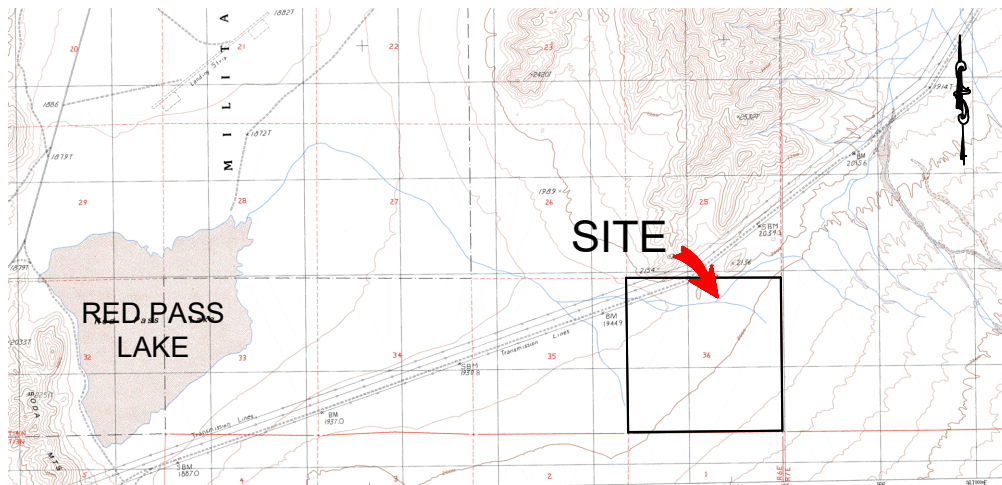
SECTION 36,
T14N, R6E, SBM



SECTION 36, TOWNSHIP 14 NORTH, RANGE 6 EAST, SBM

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-1

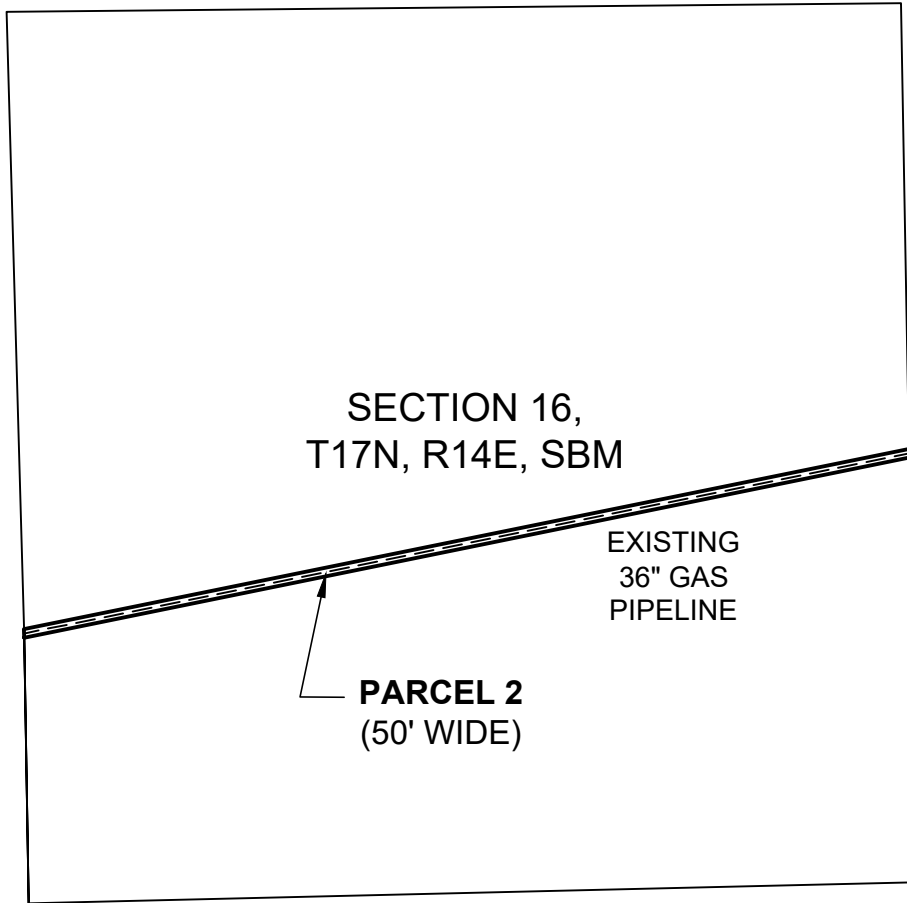
LEASE 8412
KERN RIVER GAS
TRANSMISSION COMPANY
GENERAL LEASE-
RIGHT-OF-WAY USE
SAN BERNARDINO COUNTY



TS 09/20/2021

NO SCALE

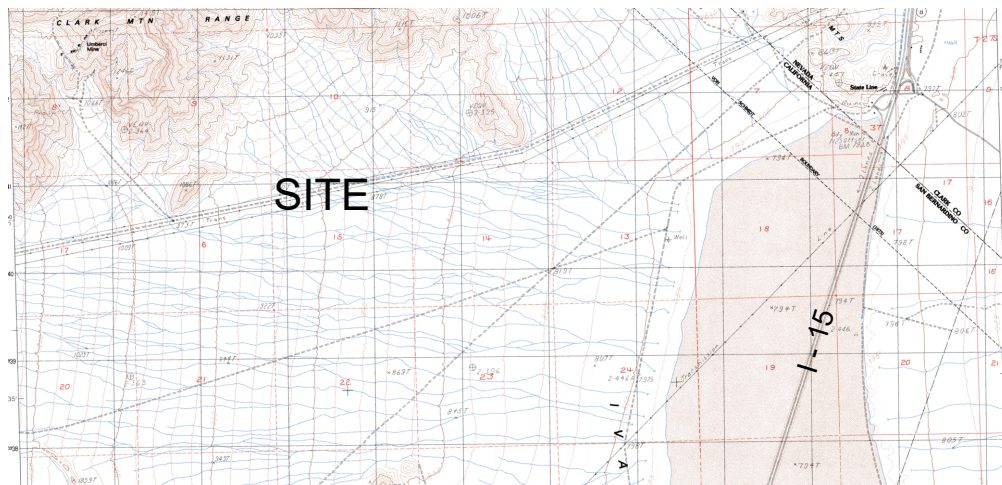
SITE



SECTION 16, TOWNSHIP 17 NORTH, RANGE 14 EAST, SBM

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit B-2

LEASE 8412
KERN RIVER GAS
TRANSMISSION COMPANY
GENERAL LEASE-
RIGHT-OF-WAY USE
SAN BERNARDINO COUNTY



TS 09/20/2021