

# Staff Report 36

**LESSEE:**

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Pacific Gas and Electric Company

**PROPOSED ACTION:**

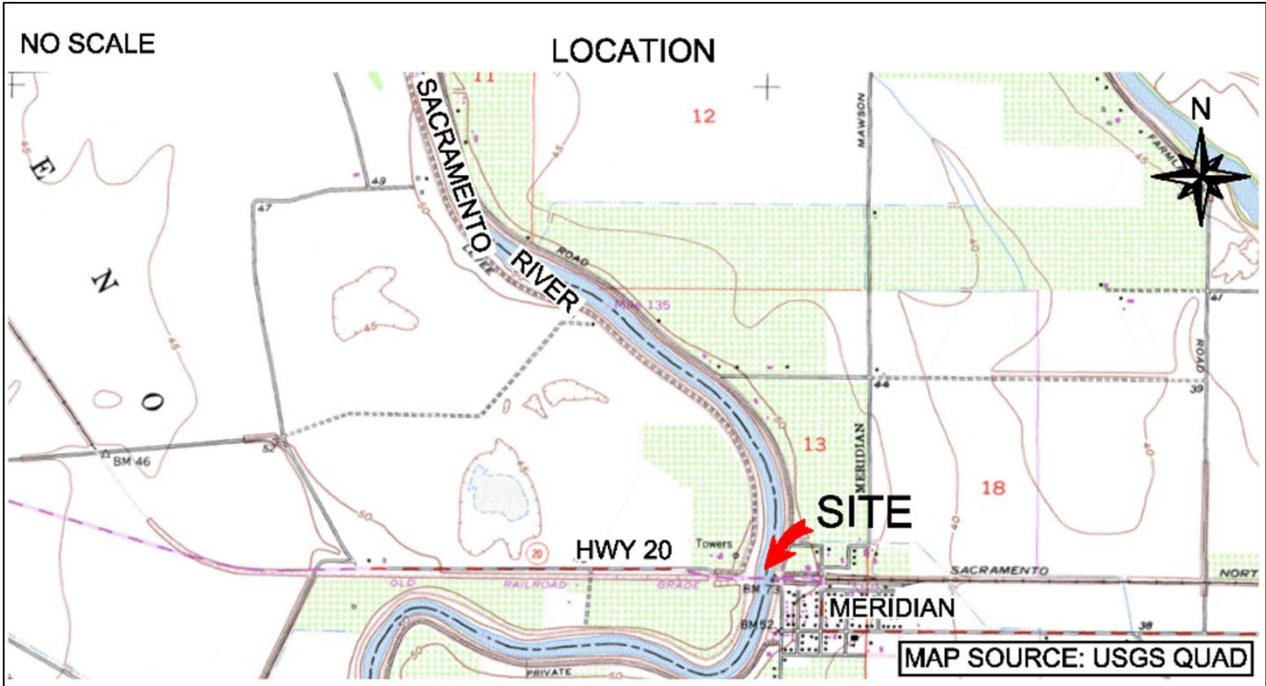
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Amendment of a General Lease – Right-of-Way and Protective Structure Use

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Sacramento River, adjacent to 7895 State Highway 20, near Meridian, Colusa, and Sutter Counties (as shown in Figure 1).

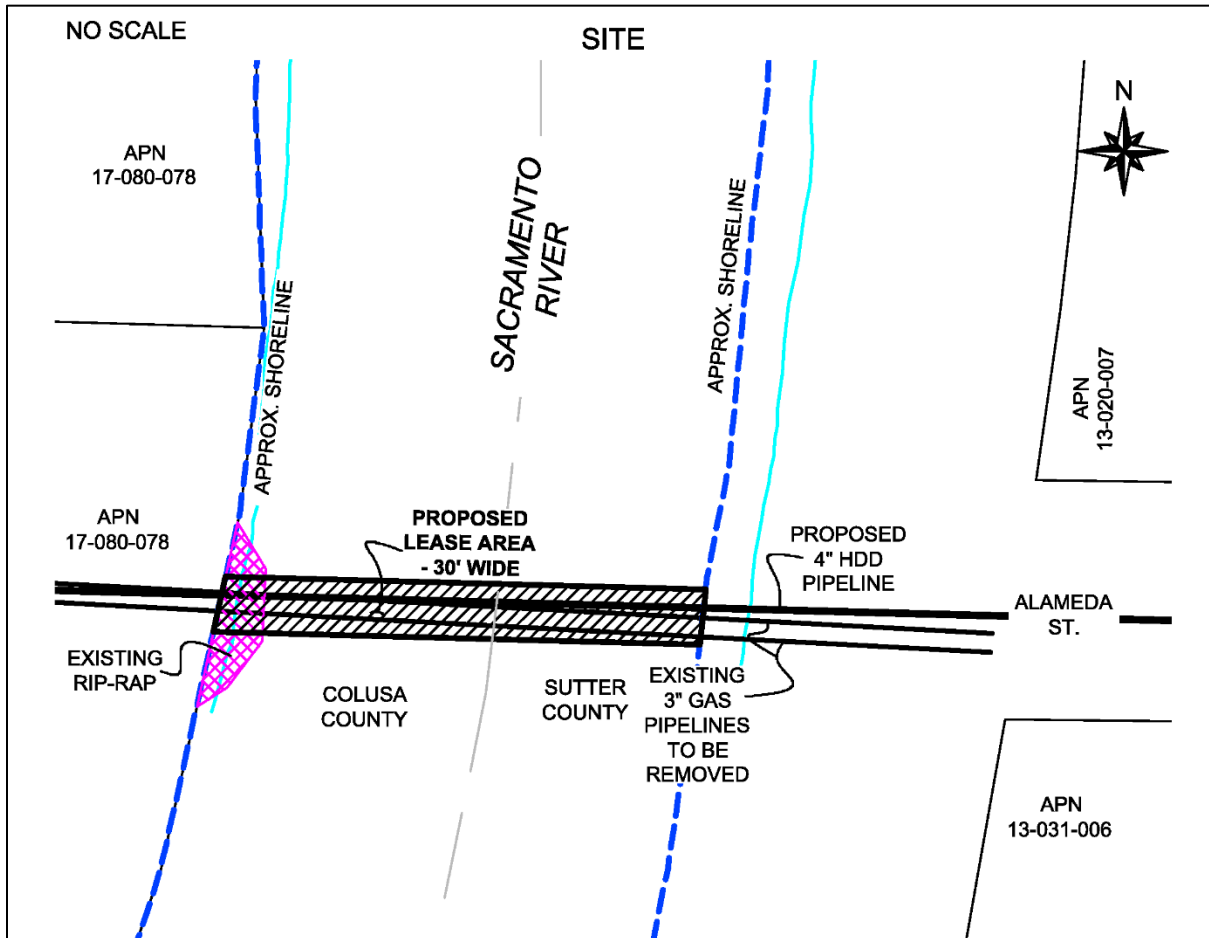
**Figure 1. Location**



**AUTHORIZED USE:**

Use, maintenance, and repair of existing rock riprap; installation of a Horizontal Directionally Drilled (HDD) gas pipeline; and decommissioning and removal of two gas pipelines (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

20 years, beginning August 23, 2022.

**CONSIDERATION:**

\$503 per year, with an annual Consumer Price Index adjustment as provided for in the lease.

**PROPOSED AMENDMENT:**

1. The Lease shall henceforth be a General Lease – Right-of-Way Use, and shall not be considered a lease for Protective Structure Use.
2. Lease Exhibit A, Land Description, is replaced with a new Exhibit A, Land Description.
3. Section 1, Basic Provisions, Land Use or Purpose is amended to delete the following: Use and maintenance of existing rock riprap.
4. Section 1, Basic Provisions, Authorized Improvements, Existing, is amended to delete the following: rock riprap.
5. Section 2, Special Provisions, paragraph 3 – Insurance, subparagraph (h), is deleted and replaced with the following: If a pipeline is deactivated and/or abandoned in place, Lessee will continue to provide self-insurance or third-party liability insurance coverage, and indemnify Lessor according to General Provisions, Paragraph 8, for the pipeline. If a pipeline is deactivated, Lessee will also continue to pay annual consideration.
6. Section 2, Special Provisions, paragraph 18 – Pipeline Monitoring and Maintenance Activities, subparagraph (e), Non-emergency Non-routine Maintenance and Operation Activities within the Lease Premises, is deleted and replaced with the following: In accordance with Section 3, General Provisions, Paragraphs 5(c) and 5(d) and Section 2, Special Provisions, Paragraph 17, Non-emergency Non-routine Maintenance and Operation Activities such as those listed below shall require Lessor's prior review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Lessee shall provide at least 120 days advance notice to Lessor for Lessor's approval of any non-emergency non-routine repair or modification to the pipelines within the Lease Premises including:
  - Installation of new pipeline(s) within existing lease boundaries.
  - Removal or permanent abandonment of a pipeline.
  - Replacement/major repair of pipeline segments.
  - Replacement of valves/tap/fittings.
  - Any modification or replacement of any pipeline safety and monitoring systems.
7. Section 2, Special Provisions, which includes 31 numbered paragraphs, is amended to add the following numbered paragraph pertaining to the R-1385 pipeline:
  32. **ABANDONMENT AND/OR REMOVAL OF PIPELINES:** Notwithstanding Section 3, General Provisions, Paragraphs 5(a), 12(a)(3) and 13, at its discretion and only

with the prior written approval of Lessor considered at a regularly noticed Commission meeting, Lessee may abandon in place pipeline(s) located within the Lease Premises in accordance with the provisions of Title 49, GO 112-E and GO 58-A, and the conditions set forth in this Section 2, Paragraph 32.

- a. Except in cases of emergency, Lessee agrees to give Lessor 90-days written notice of its intent to abandon all or any portion of a pipeline. Lessor's approval shall be subject to a finding by the State Lands Commission supported by reasonable evidence that abandonment of a pipeline would not be materially adverse to public health and safety, and/or the Public Trust for commerce, navigation and fisheries.
- b. Notice shall be accompanied by: 1) a full set of drawings stamped by a licensed California civil/structural engineer; 2) a work plan detailing abandonment of the pipeline(s); and 3) a burial survey of the pipelines performed within 12 months of the abandonment application submission date.
- c. Lessee agrees to reasonably cooperate with Lessor's compliance with all applicable requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and to comply with applicable permitting requirements of all Federal, State, and local agencies having lawful authority and jurisdiction over the pipelines.
- d. Lessee agrees to bear all costs associated with the abandonment of all or any portion of a pipeline, including but not limited to, permitting, environmental review, engineering, and Lessor's staff costs reasonably incurred in the review of such proposed abandonment.
- e. If at any time a pipeline abandoned is determined by Lessor, based upon reasonable supporting evidence, to be adverse to public health or safety or inconsistent with the Public Trust for commerce, navigation or fisheries, Lessee shall in a timely manner take all steps, including removal of the pipeline, reasonably necessary to remediate that condition to the satisfaction of Lessor.
- f. Upon the completion of the abandonment of a pipeline in its entirety on the Leased Premises, Lessee shall be relieved of its obligation under this Lease to pay rent.
- g. Notwithstanding anything to the contrary in this Section 2, Paragraph 32, Lessee shall not be required to remove any Horizontally Directionally Drilled pipeline(s) within the Lease Premises unless it shall reasonably be determined that the continued presence of the pipeline is adverse to

public health or safety or inconsistent with the Public Trust for commerce, navigation or fisheries.

8. Section 3, General Provisions, Paragraph 5(b), "Continuous Use" is amended to delete the following: Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.
9. Section 3, General Provisions, Paragraph 13(a)(1) is amended to delete the following: Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

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

On August 23, 2022, the Commission authorized a General Lease – Right-of-Way and Protective Structure Use to the Lessee for the use, maintenance, and repair of existing rock riprap; installation of an HDD gas pipeline; and decommissioning and removal of two gas pipelines ([Item 22, August 23, 2022](#)). That lease will expire on August 22, 2042. The Lessee is now requesting an amendment to the lease to remove the rock riprap as an authorized use and improvement in the lease and to provide a procedure to allow for abandonment in place of the HDD pipeline upon expiration or earlier termination of the lease. The Lessee is now requesting an amendment to the lease to remove the rock riprap as an authorized use and improvement in the lease and to provide a procedure to allow for abandonment in place of the HDD pipeline upon expiration or earlier termination of the lease, as discussed below. These amendments are requested by Lessee and recommended by staff in order to reconcile the lease terms with factual realities that were clarified following initial lease approval.

The lease authorized by the Commission on August 23, 2022 includes continued use, maintenance, and repair of rock riprap at the project site. Following the Commission's authorization of the lease, the Lessee informed staff that the Lessee did not place the original rock riprap at the site and instead is only removing and replacing it as part of a project requirement in order to remove the old gas pipelines from the lease premises, and so Lessee should not be responsible for

continued maintenance and repair of such riprap, or for any eventual removal of such riprap. In order to remove the existing pipelines as contemplated by the project and Lease, the Lessee needs to remove rock riprap at the site that was placed there previously by an unknown party. As part of Lessee's project, the Lessee applied to the Central Valley Flood Protection Board (CVFPB) for an encroachment permit for the project. The CVFPB required endorsement from the local reclamation district, the Sacramento River Westside Levee District (SRWSLD). SRWSLD required replacement of the rock riprap following removal of the old pipelines and existing riprap as a condition of the District's endorsement of the project. After Lessee clarified these facts, staff determined that SRWSLD, rather than the Lessee, should be under lease for the rock riprap, as SRWSLD has jurisdiction of the levee in this area and thus will be the entity maintaining and repairing the riprap as needed. Staff reached out to SRWSLD requesting an application for the rock riprap and will continue to follow up with SRWSLD to bring them under lease for that improvement. As Lessee had no obligations with respect to the initial riprap, is only removing and replacing the riprap as a Project requirement, has no need for the riprap moving forward, and is not in the business of levee and riprap repair and maintenance, staff recommends removing the provisions to the riprap and any obligations with respect thereto from the Lease.

The lease authorized by the Commission on August 23, 2022 further provides for installation of a new HDD gas pipeline. As part of the Commission's standard lease terms and conditions, the lease includes a provision requiring removal of all improvements, including the new HDD pipeline, at the end of the lease term. After Commission approval of the Lease, the Lessee submitted information to staff on the infeasibility of removal of the HDD pipeline due to the depth of burial and method of installation, and requested amendment of the lease in order to provide a process allowing for abandonment of the HDD pipeline in place upon expiration or other termination of the lease. The HDD pipeline will be installed by drilling a borehole approximately 50 feet below the riverbed. After the HDD pipeline is in operation for a length of time, the bentonite used to install the pipeline will harden, and the earth will settle around the pipeline. Removal of the HDD pipeline would likely break the pipeline into smaller pieces resulting in a pipeline that cannot be pulled out. Excavation down to approximately 50 feet below the riverbed to reach the HDD pipeline would likely be required for removal and staff believe, based on the evidence provided, that any such excavation would be significantly disruptive of the environment and may not be in the best interests of the State. Therefore, when the time comes to abandon the pipeline, the Lessee will propose to fill the HDD pipeline with slurry or concrete and abandon in place rather than remove the pipeline.

Given these facts, staff recommends amending the lease to remove the standard removal requirement and instead set forth a process by which the Lessee may request to abandon the HDD pipeline in place. The proposed amendment includes a provision requiring the Commission's written approval prior to abandoning the HDD pipeline in place. In addition, the proposed amendment provides that abandonment in place may not be allowed if it is reasonably determined the continued presence of the HDD pipeline is adverse to public health or safety or inconsistent with the Public Trust for commerce, navigation or fisheries.

Staff believes the proposed amendment is consistent with the common law Public Trust Doctrine and in the best interests of the State. The lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. Furthermore, the proposed amendment does not alienate the State's fee simple interest or permanently impair public rights.

For the reasons above, staff believes the issuance of the lease amendment will not substantially interfere with the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the amendment of lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the amendment of lease, the Lessee will be required to comply with the terms of the existing lease. The Lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Amendment of the lease to modify certain Lease Provisions 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).

**EXHIBIT:**

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A. Land Description

**RECOMMENDED ACTION:**

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It is recommended that the Commission:

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

Find that the proposed lease amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interest of the State.

**AUTHORIZATION:**

Authorize the amendment of Lease 9695, a General Lease – Right-of-Way and Protective Structure Use, effective April 07, 2023, to convert the lease to a General Lease – Right-of-Way Use and modify the Lease Provisions in the form described in the “Proposed Amendment” portion of this Staff Report, concerning the lands shown on the location map (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.



## EXHIBIT A

A 3325

### LAND DESCRIPTION

A thirty (30) foot wide strip of submerged land, situate in the bed of the Sacramento River lying adjacent to fractional Lot 5 of fractional Section 13, T15N, R1W, MDM as shown on official U.S. Government Township Plat approved on January 18, 1868 on the left bank, County of Sutter, and Rancho Jimeno approved March 26, 1861, County of Colusa, lying ten (10) feet northerly of and twenty (20) feet southerly of the following described centerline:

COMMENCING at a cadmium disk on "T" bar stamped "B", Monument "B", as shown on that State of California Highway Transportation Agency, Department of Public Works, Division of Highways 101.5 map dated January 8, 1965 and on file with the California State Lands Commission as map CXB 4237, having CCS 27, Zone 2, coordinates Northing: 538,667.776 feet, Easting: 2,023,796.433 feet and from which a cadmium disk on "T" bar stamped "C", Monument "C" bears South 89°26'41" East 2954.18 feet; thence North 06°12'04" East 535.95 feet to a point on the left bank of the Sacramento River and the POINT OF BEGINNING; thence North 88°25'19" West 331.00 feet to a point on the right bank of said river and the termination of said strip.

The sidelines of said strip are to be lengthen or shortened so as to terminate on the low water mark of said river.

EXCEPTING THEREFROM any portion lying landward of the low water mark of said river.

This description is based on Applicant provided design plans found for the removal of existing gas lines and installation of an HDD pipeline. This description is to be updated once final as-built plans are submitted.

### END OF DESCRIPTION

PREPARED 3/1/2023 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT

