**CALENDAR ITEM**
# C33

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|---|---|---|
| A | Statewide | 01/26/12 |
| S | Statewide | WP 5438.1A |
| | | 5438.1B |
| | | 5438.1C |
| | | 5438.1D |
| | | 5438.1E |
| | | 5438.1F |
| | | D. Jones |

## TERMINATION OF HOLDOVER TENANCY OF GENERAL LEASE – RIGHT-OF-WAY USE, LEASE NO. PRC 5438.1 AND ISSUANCE OF SIX NEW GENERAL LEASES - RIGHT-OF-WAY USE

**APPLICANT**:

Pacific Gas and Electric Company
245 Market Street, Mail Code N10A
San Francisco, California 94105

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

Sovereign lands in various waterways, in various counties, statewide.

**AUTHORIZED USE**:

Continued use and maintenance of existing transportation, distribution, and gathering pipelines to transport natural gas.

**LEASE TERMS FOR SIX LEASES**:

20 years, beginning January 1, 2012.

**CONSIDERATION FOR SIX LEASES**:

**First Year Rent**: For the period January 1, 2012, through December 31, 2012, the annual rent will be $10,000 per year per lease, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

**New Base Rent**: During the 2012 lease year, the Commission will establish a new Base Rent for each lease which will be effective retroactive to January 1, 2012. The new base rent will be established by an appraisal of the leased lands funded by the Applicant. If the Commission fails to establish a new Base Rent during 2012, Commission may do so during any of the next nine lease years and the Base Rent will be effective on the following January 1 lease anniversary.

**Adjusted Annual Rent:** Beginning on January 1, 2013, the annual rent for each lease will be adjusted using the Consumer Price Index (CPI) established by the California Department of Industrial Relations' "California Consumer Price Index (1955-2011) All Items 1982-1984 = 100". The August CPI value for All Urban Consumers will be used in the Adjustment Formula. The adjusted annual rent for each lease will never be lower than the prior year's adjusted annual rent.

**New Base Rent on Tenth Anniversary**: On the 10th anniversary of each lease , the new Base Rent may be established through the use of an appraisal funded by the Applicant. If the Commission fails to establish a new Base Rent during 2021, the Commission staff may do so during any of the next nine lease years. If a new Base Rent is not established through an appraisal, the Applicant will pay the Commission an adjusted rent based on the above CPI described above.

**SPECIFIC LEASE PROVISIONS FOR SIX LEASES**:

**Insurance:** Self-insurance or third party liability insurance coverage of no less than $10,000,000 per occurrence per lease.

**Bond or Other Security Device:** In the total aggregate amount of $2,600,000 for six leases, proportioned per lease by the number of crossings per lease; with the State reserving the right to revise the amount periodically during the lease term, as provided in the lease.

Other: The lease contains various provisions, some of which are described as follows:

1. Pacific Gas and Electric Company (PG&E) shall comply with the applicable provisions of the Pipeline Safety Act (Title 49 of the United States code Section 60101 et seq), Title 49 of the Code of Federal Regulations Part 192, the California Natural Gas Pipeline Safety Act of 2011, and General Order 112-E and General Order 58-A of the California Public Utilities Commission (CPUC) or their successor statutes and regulations and other state and federal Statutes and regulations as they pertain to interstate and intrastate natural gas pipelines within the lease premises. Beginning on July 1, 2012, and every two years thereafter on the lease anniversary date, PG&E will provide Commission staff with a report certified by a duly authorized representative of PG&E that all interstate and intrastate natural gas pipelines located within the lease premises are in compliance with Title 49 and CPUC GO 112-E and GO 58-A.

2. Except for pipelines which have been horizontally-directional drilled (HDD), PG&E will perform three different types of initial surveys over a five-year period on each of the pipelines in all six leases. These will include pipeline bathymetric surveys to determine the underwater topography of the pipeline crossing, pipeline burial surveys to determine the depth of the pipelines, and geodetic position surveys to determine the precise location of the pipelines. The schedule for these initial surveys has been staggered over the first five years of the leases with all initial surveys being completed no later than December 31, 2016.

3. Following the initial surveys, PG&E will conduct new bathymetric surveys every five years. Within 90 days of completion of the initial or subsequent surveys, PG&E will submit a report of the findings to Commission staff. If any survey, initial or subsequent, determines a pipeline has suffered a loss of pipeline cover due to erosion or other causes, PG&E will submit to a remediation plan to the Commission for its review and approval. PG&E must submit within 120 days of completion of the survey the remediation plan.

4. Within five years of the commencement of the leases, PG&E will submit to Commission staff as-built plans or profile drawings for all HDD crossings.

5. The leases also contain provisions involving levels of staff review of non-routine maintenance and operation activities, emergency repairs, and changes in classification; a requirement for submittal of PG&E's Work Practices and Procedure Manual upon request; inspection of pipeline records; reporting of pipeline leaks and emergency pipeline incidents; and procedures and approval requirements for sale of a pipeline, pipeline abandonment and/or removal.

6. Where the lease calls for the approval of the Commission, that approval, except as provided hereafter, may be given by the Commission's Executive Officer or his/her delegate, and such approval shall not be unreasonably withheld. If the Executive Officer or his/her delegate denies approval, except as provided hereafter, PG&E may appeal that denial to the Commission at the Commission's next available noticed public meeting. Commission's Executive Officer shall not have the delegated authority to approve increases or decreases in the base rent, adjustments in bond and insurance coverage, nor the authority to approve any assignment,

quitclaim or abandonments involving all or part of the lease premises.

**BACKGROUND:**

On January 26, 1978, the Commission authorized a General Lease – Right-of-Way Use, PRC 5438.1, with PG&E for the use, and maintenance of existing transportation, distribution, and gathering pipelines to transport natural gas. The lease term was 20 years, with two 10-year renewal options. The lease was a compilation of all the existing previously authorized natural gas pipeline right-of-way leases the Commission had issued to PG&E at that time (approximately 89 leases) and was referred to as the Master Lease. Since 1978, the Commission has approved 17 amendments to the lease, including amendments associated with the existing pipelines, addition of new pipelines to the lease, or deletion of existing pipelines from the lease that have been sold to other companies.

On August 26, 1997, PG&E submitted an application for the first 10-year option after which lease negotiations began. The lease expired on December 31, 1997, and has been in holdover status since its expiration. During the following years, Commission staff and PG&E worked toward negotiating new terms; however, they were unable to agree on new terms. On August 22, 2011, Commission staff notified PG&E that pursuant to the terms of the existing lease, staff was terminating the holdover tenancy of Lease No. PRC 5438.1 as of December 31, 2011. PG&E continued to pay annual rent during the holdover period of the lease (1998 through 2011).

PG&E and the Commission staff have now concluded negotiations on new leases and PG&E has agreed to relinquish the two 10-year renewal options in the original lease. Both parties have agreed to terms for six new leases which will include approximately 128 existing right-of-way crossings. The separation of the original Master Lease into six leases will allow for better management and monitoring of the leases and their provisions. The new leases will be referred to as PRC 5438.1A, PRC 5438.1B, PRC 5438.1C, PRC 5438.1D, PRC 5438.1E, and PRC 5438.1F. The number of existing right-of-way crossings per lease are 28, 39, 12, 10, 28, and 11, respectively. They are segregated according to those pipelines which have been given priority for surveys to be performed, as required in the lease, due to their location and pipeline type, i.e. major waterways, local transmission pipelines, distribution feeder lines, gas gathering lines, and deactivated and abandoned lines.

The leases are being entered into with the understanding that each or all of the leases may not include all of PG&E's pipeline crossings on sovereign lands and with the agreement that, upon the location of additional existing pipeline crossings not under lease, a new land description(s) will be prepared and the appropriate lease will be brought before the Commission for amendment to bring the pipeline crossing(s) within that lease. Rent, bond, and insurance amounts have been calculated based on the number of pipeline crossings known at the time of the execution of the leases. These amounts will be increased at the time of any amendment of the leases to reflect any additional existing pipeline crossings previously not under lease. PG&E and the Commission staff have agreed that the amendment of the rental calculation formula, bond amount per pipeline crossing, and insurance in one lease should be equally applicable to each and all of the leases in such a manner that the amendment of one lease will be considered an amendment of the other five leases.

**OTHER PERTINENT INFORMATION:**

1. Applicant has the right to use the upland adjoining the lease premises.

2. **Termination of Holdover Tenancy of Lease PRC 5438.1:**
   Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15060, subd. (c)(3)), the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

3. **Issuance of Six New Leases:**
   Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 14, section 15301(b).

   Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

**EXHIBITS:**

A. PRC 5438.1A: Site Map and Location Map
B. PRC 5438.1B: Site Map and Location Map
C. PRC 5438.1C: Site Map and Location Map
D. PRC 5438.1D: Site Map and Location Map
E. PRC 5438.1E: Site Map and Location Map
F. PRC 5438.1F: Site Map and Location Map

**RECOMMENDED ACTION**:
It is recommended that the Commission:

**CEQA FINDING:**

**Ratification of Termination of Lease PRC 5438.1:**
Find that the activity is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**Issuance of Six New Leases:**
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 14, section 15301(b).

**SIGNIFICANT LANDS INVENTORY FINDING:**
Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.

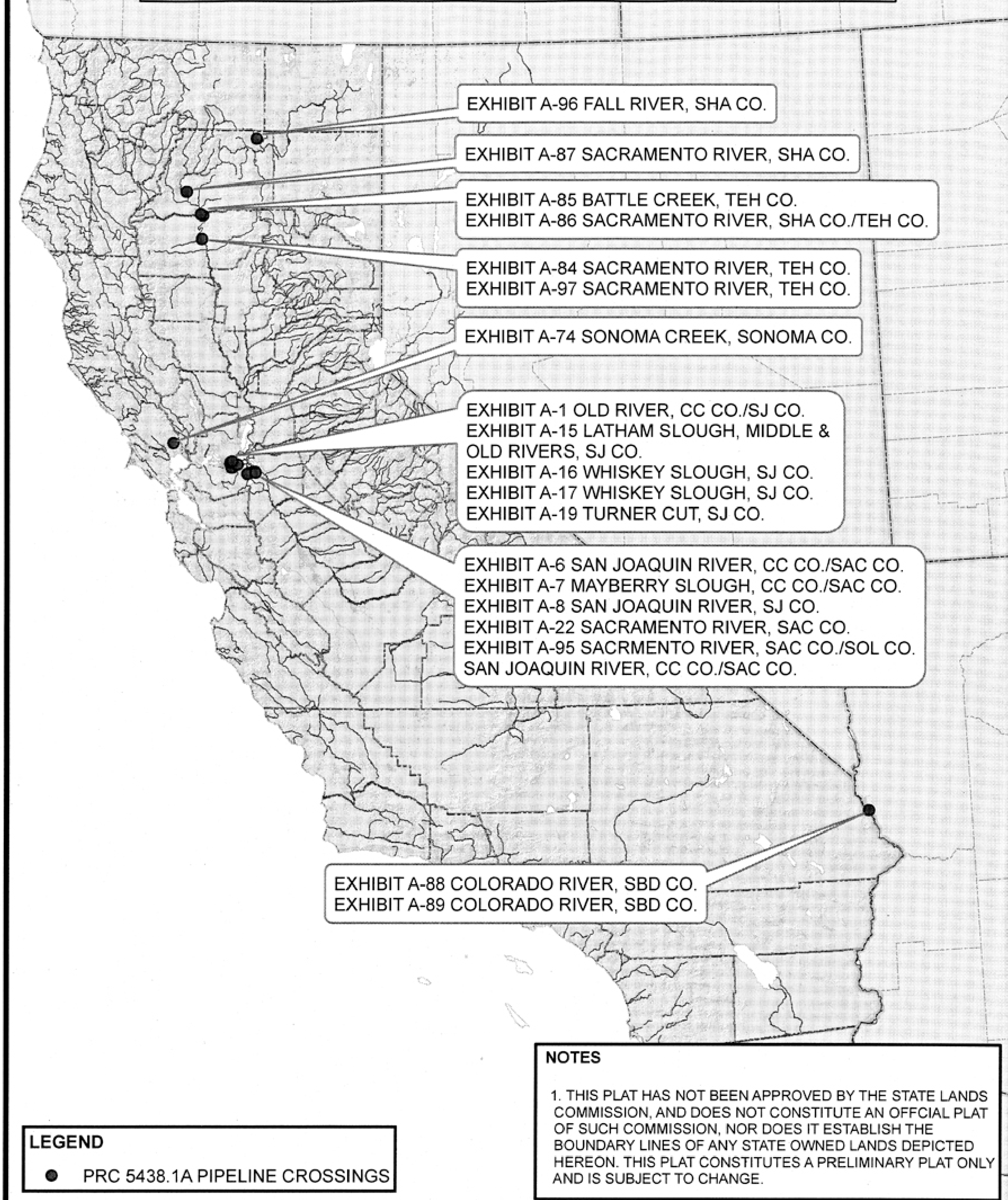
**AUTHORIZATION:**

1. Ratify termination of holdover tenancy of General Lease – Right-of-Way Use, Lease No. PRC 5438.1, effective December 31, 2011.

2. Authorize issuance of six General Leases – Right-of-Way Use, Lease Nos. PRC 5438.1A, PRC 5438.1B, PRC 5438.1C, PRC 5438.1D, PRC 5438.1E, PRC 5438.1F to Pacific Gas and Electric Company each beginning January 1, 2012 for a term of 20 years, for the continued use, maintenance, and operation of existing transportation, distribution, and gathering pipelines to transport natural gas, as shown on Exhibits A through F attached and by this reference made a part hereof substantially in the form as set forth in the respective lease documents on file in the Commission's

offices, including the following terms; annual rent set forth for each lease as 1) for the period January 1, 2012, through December 31, 2012, the rent will be in the amount of $10,000, 2) establishment of a new base rent during the 2012 lease year effective retroactively to January 1, 2012, through an appraisal, 3) beginning January 1, 2013 and every lease anniversary thereafter, the annual rent shall be adjusted using the Consumer Price Index, effective on January 1 of each year of the lease with the adjusted annual rent never lower than the prior year's adjusted annual rent, and 4) on the 10th anniversary of each lease, establishment of a new base rent through the use of an appraisal; self-insurance or third party liability insurance for combined single limit coverage of no less than $10,000,000 per occurrence for each lease; and surety bond in the total amount of $2,600,000 for six leases.

# GENERAL LEASE - RIGHT-OF-WAY USE - PRC 5438.1A




**LEGEND**

● PRC 5438.1A PIPELINE CROSSINGS

**NOTES**

1. THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION, AND DOES NOT CONSTITUTE AN OFFCIAL PLAT OF SUCH COMMISSION, NOR DOES IT ESTABLISH THE BOUNDARY LINES OF ANY STATE OWNED LANDS DEPICTED HEREON. THIS PLAT CONSTITUTES A PRELIMINARY PLAT ONLY AND IS SUBJECT TO CHANGE.

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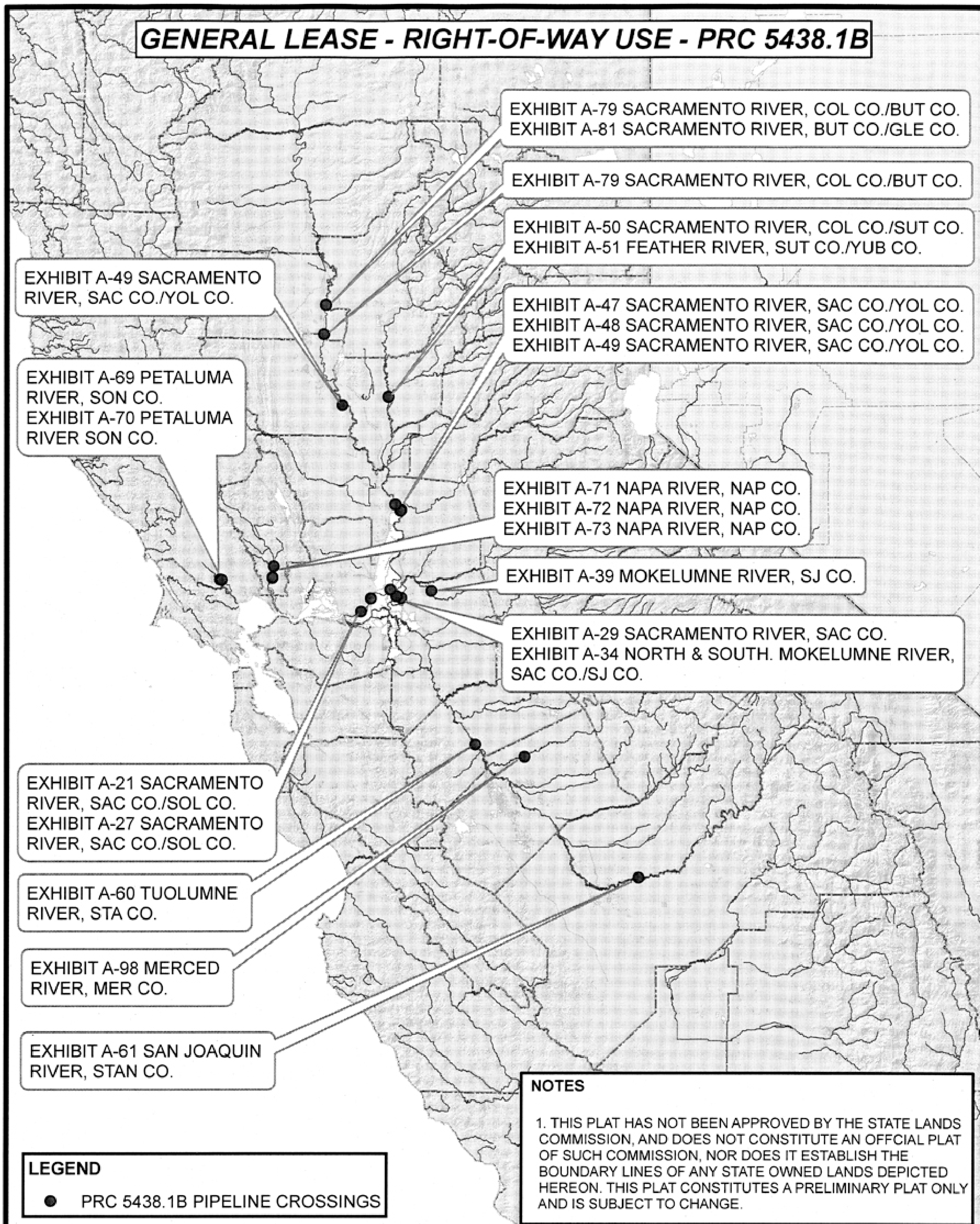
| CALIFORNIA STATE LANDS COMMISSION | **EXHIBIT A**<br>**PRC 5438.1A, PACIFIC GAS & ELECTRIC CO.**<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | **Drawn By:** J. KOEPKE<br>**Date:** JANUARY 17, 2012 |

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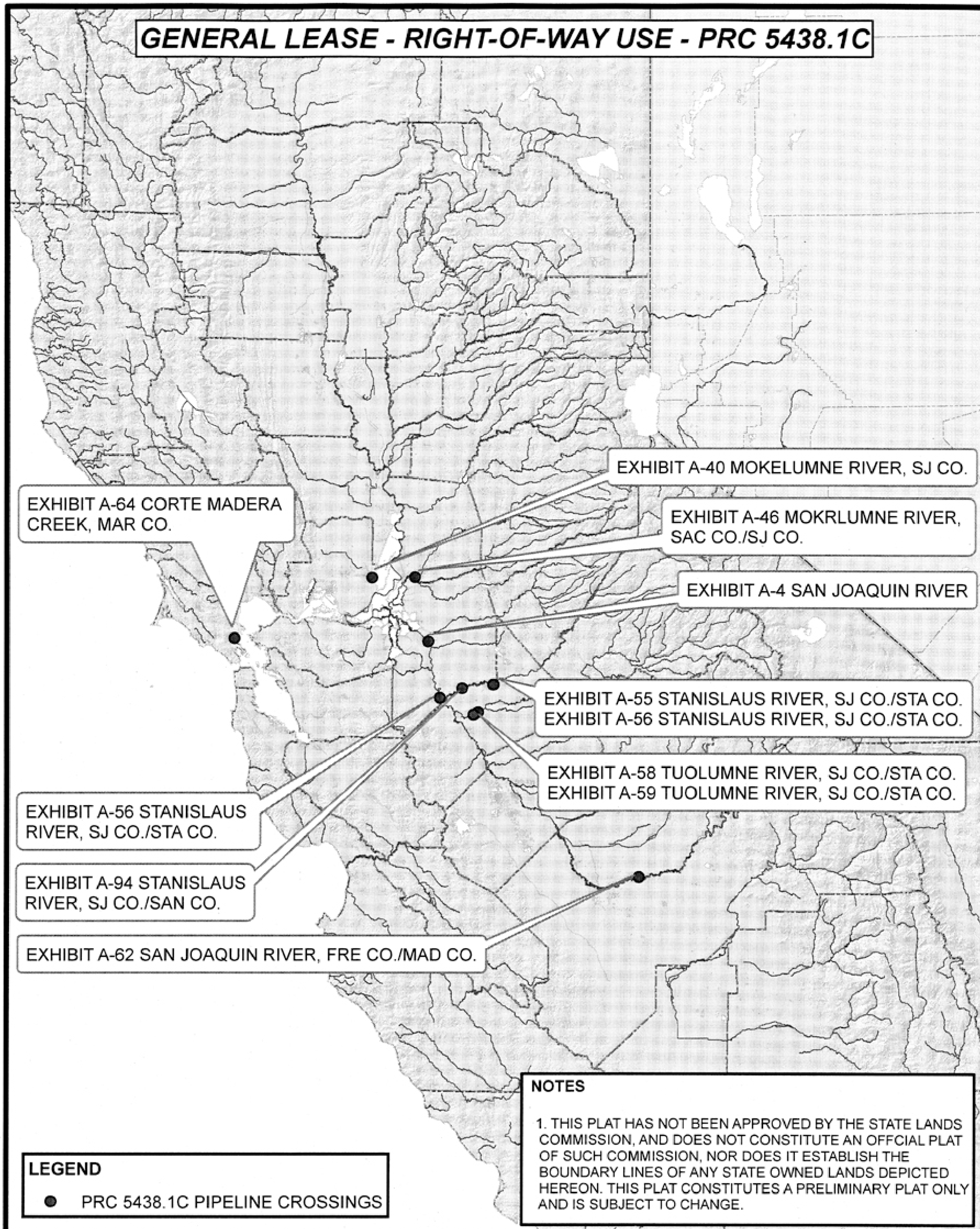
| CALIFORNIA STATE LANDS COMMISSION | EXHIBIT A<br>PRC 5438.1B, PACIFIC GAS & ELECTRIC CO.<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | Drawn By: J. KOEPKE<br>Date: JANUARY 17, 2012 |

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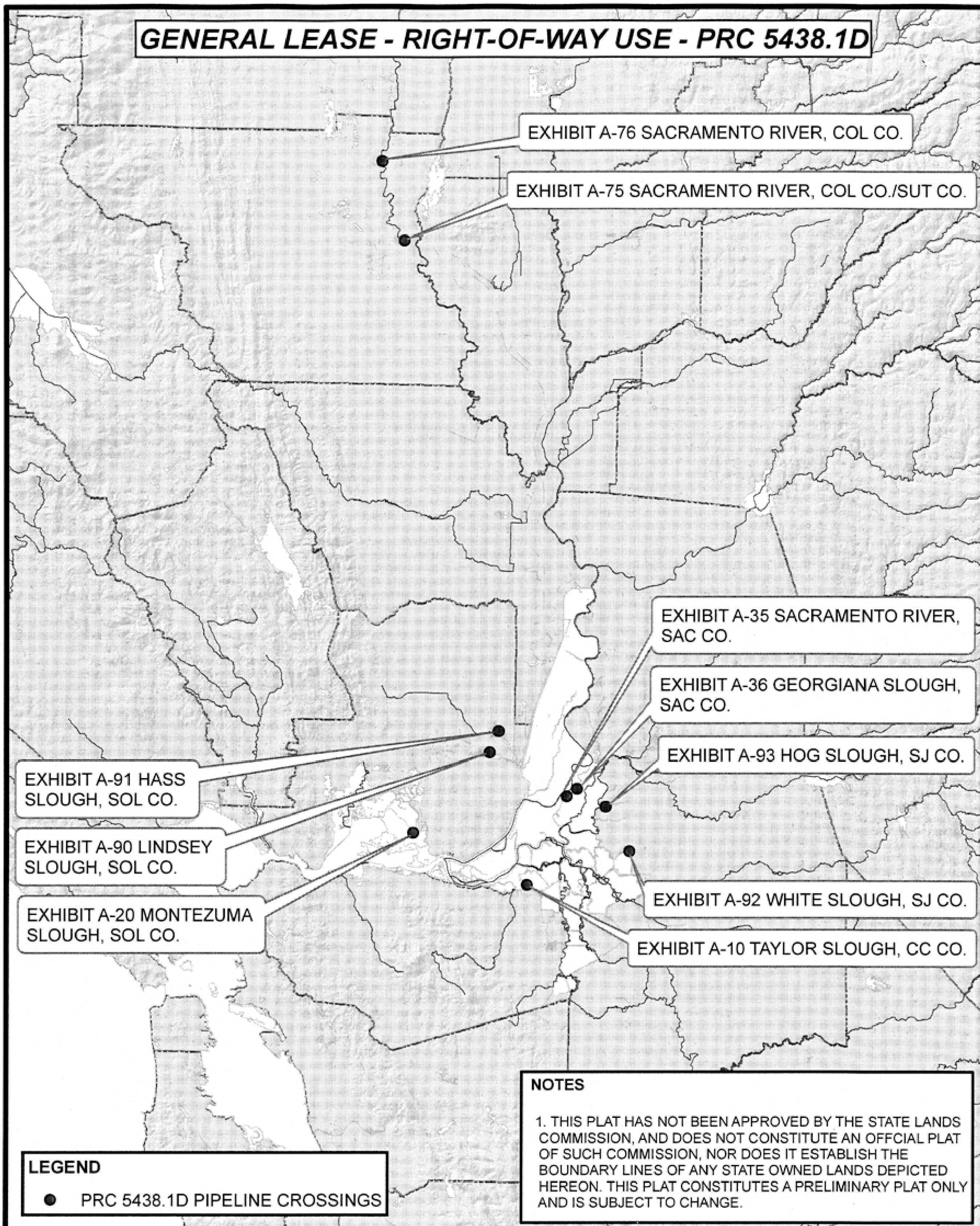
| CALIFORNIA STATE LANDS COMMISSION | EXHIBIT A<br>PRC 5438.1C, PACIFIC GAS & ELECTRIC CO.<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | Drawn By: J. KOEPKE<br>Date: JANUARY 17, 2012 |

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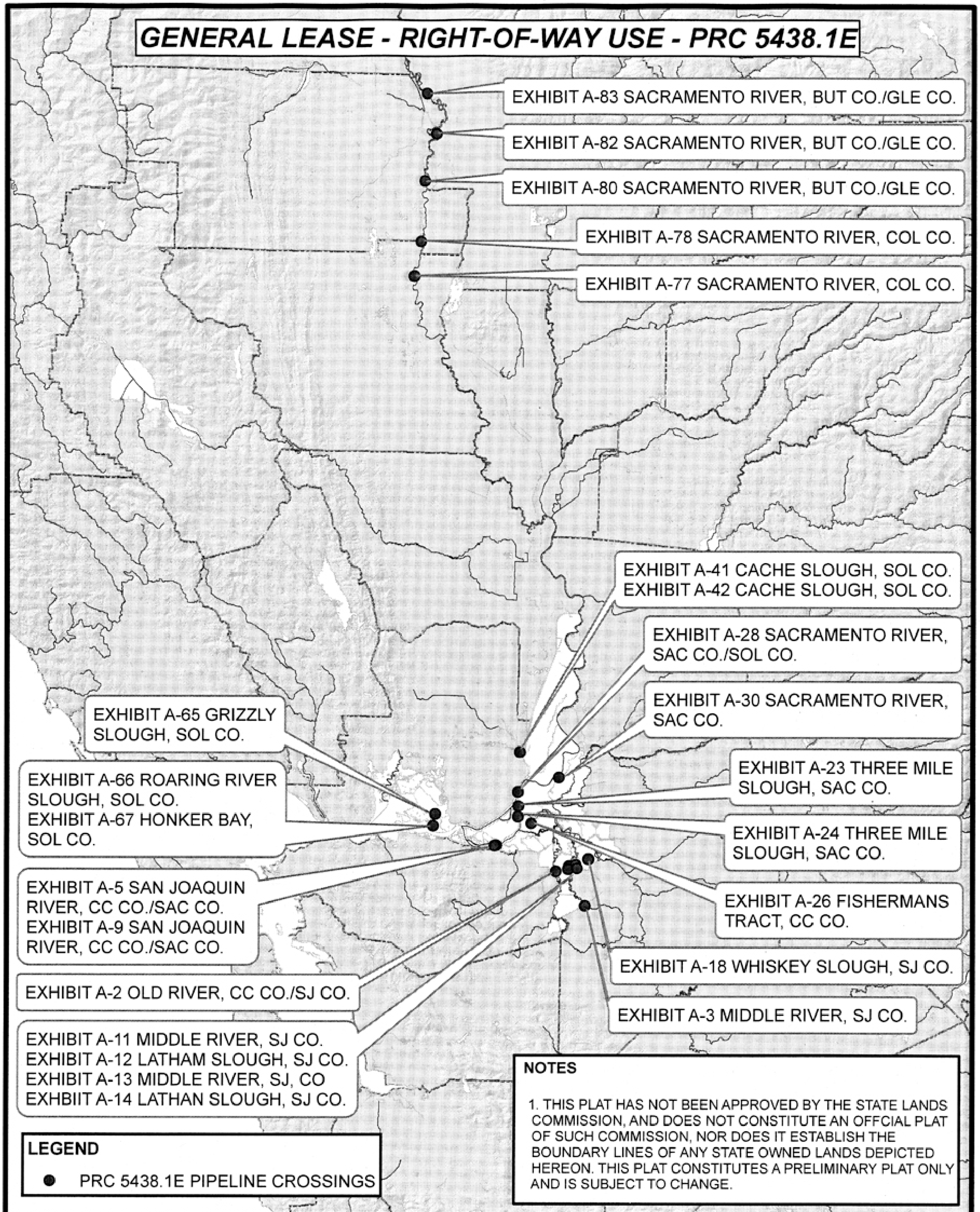
| CALIFORNIA STATE LANDS COMMISSION | EXHIBIT A<br>PRC 5438.1D, PACIFIC GAS & ELECTRIC CO.<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | Drawn By: J. KOEPKE<br>Date: JANUARY 12, 2012 |




| CALIFORNIA STATE LANDS COMMISSION | EXHIBIT A<br>PRC 5438.1E, PACIFIC GAS & ELECTRIC CO.<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | Drawn By: J. KOEPKE<br>Date: JANUARY 17, 2012 |
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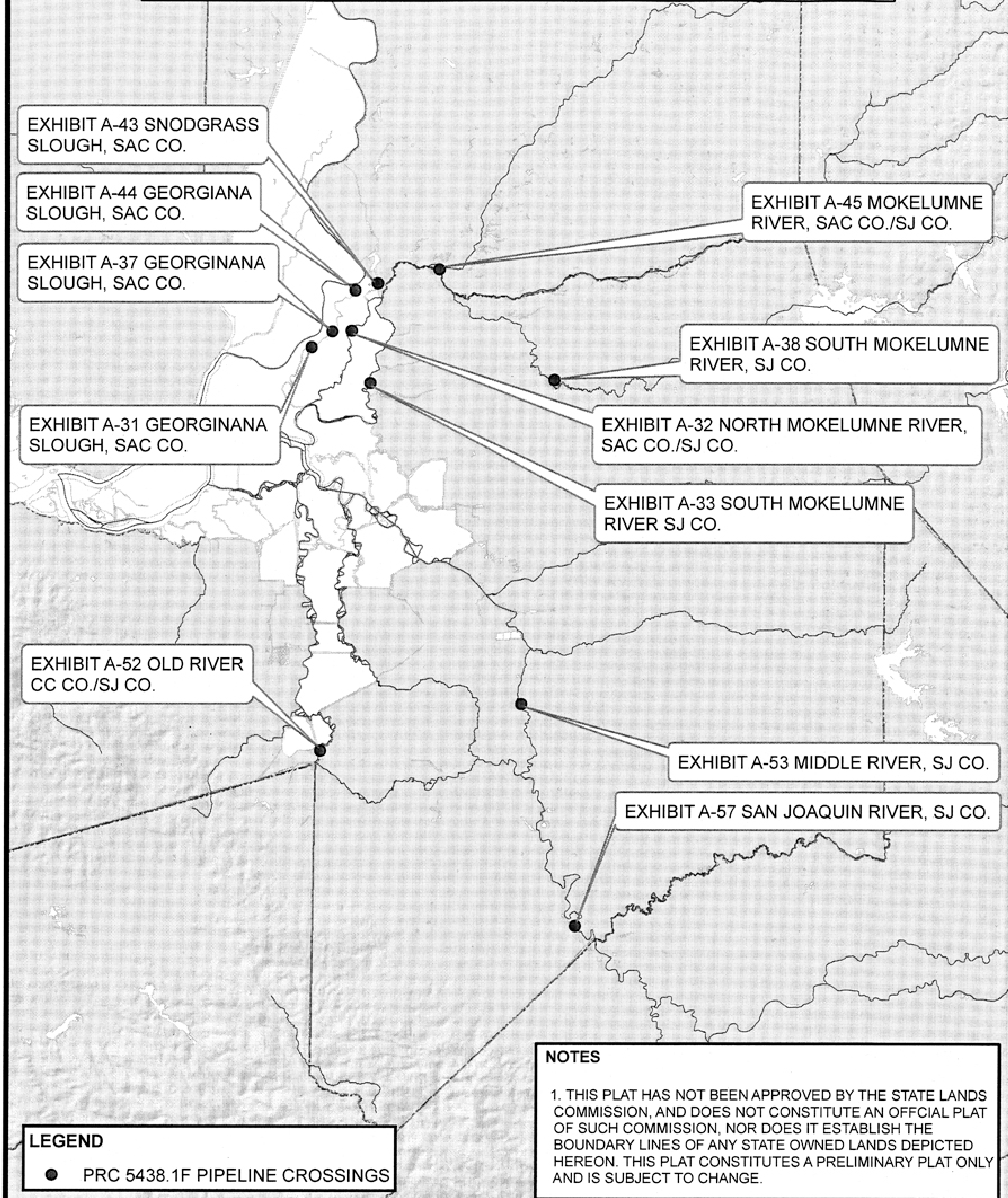
# GENERAL LEASE - RIGHT-OF-WAY USE - PRC 5438.1F

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| CALIFORNIA STATE LANDS COMMISSION | **EXHIBIT A**<br>**PRC 5438.1F, PACIFIC GAS & ELECTRIC CO.**<br>BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION, BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE | N | **Drawn By:** J. KOEPKE<br>**Date:** JANUARY 17, 2012 |