

CALENDAR ITEM

C29

A Statewide

09/20/13
PRC 5439.1
PRC 9040.1
PRC 9041.1
PRC 9042.1
D. Jones

**TERMINATION OF HOLDOVER TENANCY AND ACCEPTANCE OF A QUITCLAIM
DEED OF A GENERAL LEASE – RIGHT-OF-WAY USE, AND ISSUANCE OF THREE
NEW GENERAL LEASES – RIGHT-OF-WAY USE**

APPLICANT:

SFPP, L.P.
1100 Town and Country
Orange, CA 92868

AREA, LAND TYPE, AND LOCATION:

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

AUTHORIZED USE:

Continued use and maintenance of existing pipelines to transport petroleum products as follows:

PRC 9040.1: Two pipelines [a 10" pipeline (LS 95) and a 12" pipeline (LS 103)] located in the Carquinez Strait.

PRC 9041.1: Two pipelines [a 10" pipeline (LS 41) and a 12" pipeline (LS 42)] located in San Francisco Bay.

PRC 9042.1: 31 pipelines measuring from 4" to 20" located in various waterways.

LEASE TERMS FOR THREE LEASES:

20 years, beginning April 1, 2013.

CONSIDERATION FOR THREE LEASES:

PRC 9040.1: \$28,000 per year.
PRC 9041.1: \$238,000 per year.
PRC 9042.1: \$15,050 per year.

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Subject to the right of the State to fix a different rent periodically during the term of the lease as provided below:

Adjusted Annual Rent: Beginning on April 1, 2014, 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 October CPI value for All Urban Consumers will be used in the Adjustment Formula. If that value is not available, the most current value at the time of the notification will be used. The adjusted annual rent for each lease will never be lower than the prior year's adjusted annual rent.

New Base Annual Rent on 10th Anniversary: On the 10th anniversary of each lease, the new Base Annual Rent may be established through the use of an appraisal or such other generally accepted methodology for determining the fair market rental value of the Lease Premises. If the Commission fails to establish a new Base Annual Rent at the 10th anniversary, Commission may do so during any of the next nine lease years. If a new Base Annual Rent is not established through an appraisal, SFPP, L.P. (SFPP) will pay the Commission an adjusted rent based on the above CPI.

SPECIFIC LEASE PROVISIONS:

Insurance: Self-insurance or third-party liability insurance coverage of no less than \$25,000,000 per occurrence per lease. It is the intent of the Commission and SFPP that the \$25,000,000 shall simultaneously satisfy Lessee's general liability and property insurance obligation in Lease Nos. PRC 9040.1, PRC 9041.1, and PRC 9042.1.

Pollution Liability Insurance: \$100,000,000 or documentation that SFPP has a Certificate of Financial Responsibility (COFR) issued pursuant to California Government Code section 8670.37.51, et seq. or any succeeding statute providing for the same level of responsibility for spills and remediation resulting from SFPP's prior or current activities on the Lease Premises.

Bond or Other Security Device: Bond in the amount of \$1,500,000, accompanied by a Parent Guaranty from Kinder Morgan (SFPP's parent company); with the State reserving the right to revise the amount periodically during the lease term, as provided in the lease. The amount of the Bond and the Parent Guaranty shall simultaneously satisfy SFPP's bond obligations in Lease Nos. PRC 9040.1, PRC 9041.1, and PRC 9042.1.

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Other: The leases contain various provisions, some of which are described as follows:

1. SFPP shall comply with the applicable provisions of the Pipeline Safety Act (49 USC 60101 et seq.), Title 49 of the Code of Federal Regulations (CFR) Part 195 – Transportation of Hazardous Liquids by Pipeline, the California Pipeline Safety Act for Intrastate Hazardous Liquids Pipeline (California Pipeline Safety Act) (Government Code section 51010 et seq.) and their successor statutes and regulations and all other State and federal statutes and regulations as they pertain to interstate and intrastate petroleum products pipelines located within the Lease Premises. Beginning at the execution of this Lease and beginning with the Lease anniversary date of April 1, 2015, and every two years thereafter on the lease anniversary date, SFPP will provide Commission staff with a statement certified by a duly authorized representative of SFPP that all interstate and intrastate natural gas pipelines located within the Lease Premises are in compliance with Title 49, Part 195 and the California Safety Act and other applicable law.
2. Except for pipelines which have been horizontally-directional drilled (HDD), SFPP will perform three different types of initial surveys over a five-year period on each of the pipelines. 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 surveys will be completed on a detailed schedule as set forth in the Lease.
3. Following the initial surveys, SFPP will conduct new bathymetric surveys every five years. Within 90 days of completion of the initial or subsequent surveys, SFPP will submit a report of the findings to Commission staff. For those pipelines where the pipelines are found to be in good condition and where Title 49 CFR 195.412 does not call for more frequent surveys and where at least 80 percent of their depth of cover is still present, future surveys may be done on a 10-year interval basis. If any survey, initial or subsequent, determines a pipeline has suffered a loss of pipeline cover due to erosion or other causes, SFPP will submit a remediation plan to the Commission for review and approval. Within 120 days of survey completion, SFPP must submit the remediation plan to the Commission for its review and approval.

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4. No later than December 31, 2014, SFPP 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, changes in classification; a requirement for submittal of SFPP's, Operations and Maintenance 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.

BACKGROUND:

On January 26, 1978, the Commission authorized a General Lease – Right-of-Way Use, No. PRC 5439.1, with Southern Pacific Pipelines, which, after a merger, changed its name to SFPP, L.P. The lease authorized numerous petroleum pipelines for a term of 20 years, with two 10-year renewal options. The lease was a compilation of all the existing, previously authorized petroleum pipeline right-of-way leases the Commission had issued to Southern Pacific Pipelines at that time (approximately 19 leases) and was referred to as the Master Lease. Since 1978, the Commission has approved five 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 were sold to other companies.

On January 29, 1997, SFPP submitted an application for the first 10-year option after which lease negotiations began. The lease then expired on December 31, 1997, and was placed in holdover status. During the following years, Commission staff and SFPP worked toward negotiating a new lease but were unable to agree on new terms. SFPP continued to pay annual rent during the holdover tenancy (1998 through 2012). On February 5, 2012, Commission staff notified SFPP that pursuant to the terms of the existing lease, staff was terminating the holdover tenancy of Lease No. PRC 5439.1 as of March 31, 2012. SFPP and Commission staff has now concluded negotiations. Both parties have agreed as follows:

1. SFPP agreed to relinquish the two 10-year renewal options in the original lease.
2. SFPP submitted and Commission staff accepted rent in the amount of \$63,180 for occupancy of the lease premises for the period April 1, 2012, through March 31, 2013.

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3. SFPP agreed to execute a Quitclaim Deed, quitclaiming all of its right, title, and interest, present and future, in Lease PRC 5439.1 effective March 31, 2013.
4. Commission staff and SFPP have agreed to enter into three separate leases as described in the Authorized Use for a term of 20 years beginning April 1, 2013.

Based on the above, staff is recommending that the Commission ratify the March 31, 2012 termination of the holdover tenancy; accept a quitclaim deed for the existing lease; and authorize three new 20-year leases,

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the upland adjoining the lease premises.
2. **Termination of Holdover Tenancy and Acceptance of a Quitclaim Deed for PRC 5439.1:** The staff recommends that the Commission find that the subject termination of holdover tenancy and acceptance of a quitclaim deed does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

3. **Issuance of Three 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 subdivision (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.

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EXHIBITS:

- A. PRC 9040.1 Site and Location Map
- B. PRC 9041.1 Site and Location Map
- C. PRC 9042.1 Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Ratification of Termination of Holdover Tenancy and Acceptance of Quitclaim Deed for PRC 5439.1: Find that the subject ratification of termination of holdover tenancy and acceptance of a quitclaim deed is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of Three 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 subdivision (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.

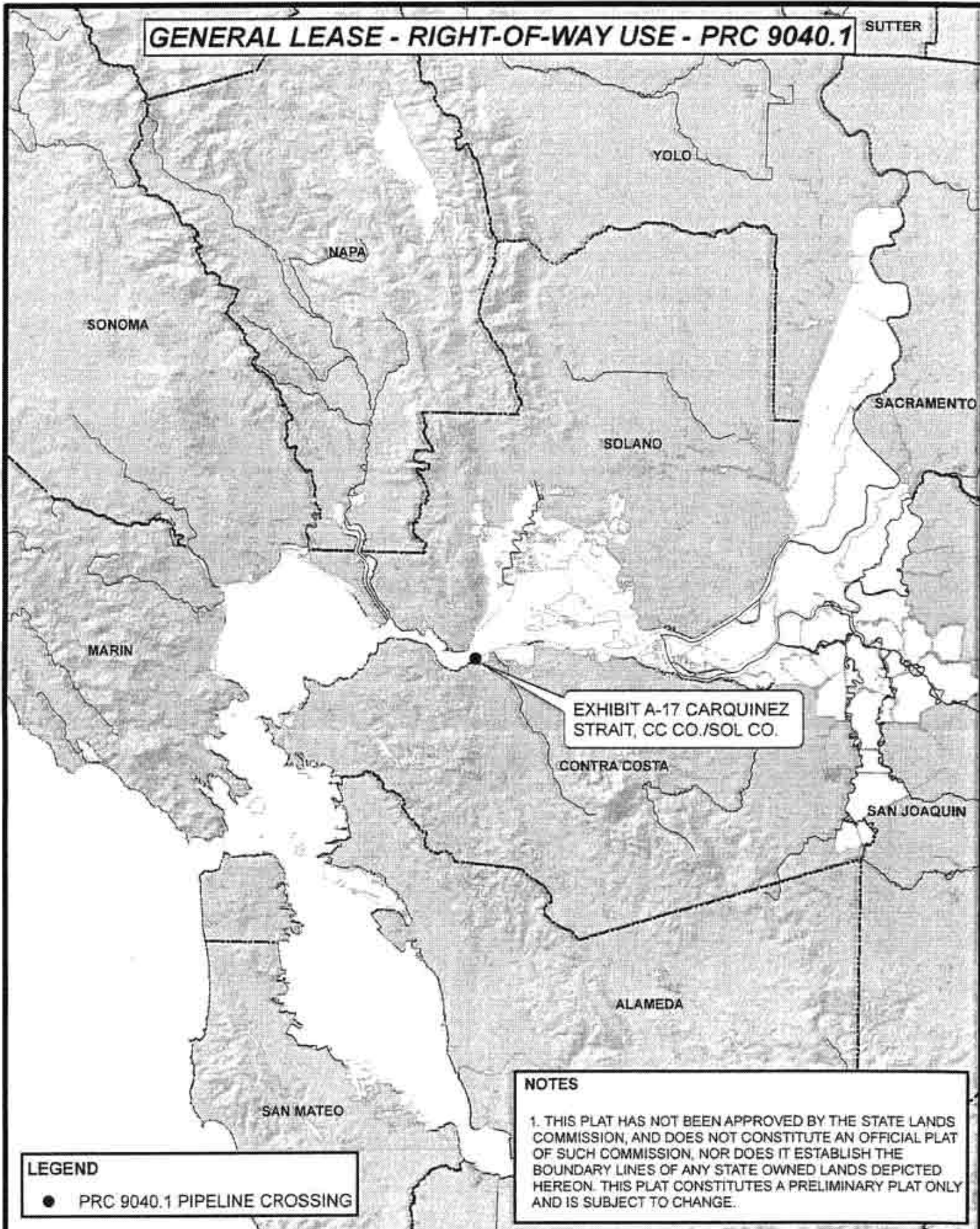
AUTHORIZATION:

1. Ratify termination of holdover tenancy of General Lease – Right-of-Way Use, No. PRC 5439.1, effective March 31, 2012, and ratify acceptance of \$63,180 for occupancy of sovereign lands between April 1, 2012 and March 31, 2013.
2. Authorize acceptance of quitclaim deed for Lease No. PRC 5439.1, effective March 31, 2013.
3. Authorize issuance of General Lease – Rights-of-Way Use, Nos. PRC 9040.1, PRC 9041.1, and PRC 9042.1, to SFPP, L.P., beginning April 1, 2013, for a term of 20 years, for the continued use and maintenance of existing pipelines to transport petroleum products as shown on Exhibits A-C (for reference purposes)

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attached and by this reference made a part hereof substantially in the form as set forth in the lease document on file in the Commission's offices, including the following terms: consideration to be (1) annual rent for Lease No. PRC 9040.1 in the amount of \$28,000, annual rent for Lease No. PRC 9041.1 in the amount of \$238,000, annual rent for Lease No. PRC 9042.1 in the amount of \$15,050, (2) beginning April 1, 2014, and every lease anniversary thereafter, the annual rent shall be adjusted using the Consumer Price Index, effective on April 1 of each year of the lease with the adjusted annual rent never lower than the prior year's adjusted annual rent, and 3) on the 10th anniversary of each lease, establish a new base annual rent; self-insurance or third party liability insurance of no less than \$25,000,000 per occurrence for each lease, and pollution liability insurance in the amount of \$100,000,000 or documentation that SFPP, L.P. has a Certificate of Financial Responsibility (COFR) issued pursuant to California Government Code Section 8670.37.51, et seq.; and a surety bond in the amount of \$1,500,000, accompanied by a Parent Guaranty, with the State reserving the right to revise the amount periodically during the lease term, as provided in the lease.

GENERAL LEASE - RIGHT-OF-WAY USE - PRC 9040.1



LEGEND

- PRC 9040.1 PIPELINE CROSSING

NOTES

1. THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION, AND DOES NOT CONSTITUTE AN OFFICIAL 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.

**CALIFORNIA STATE
LANDS COMMISSION**



**EXHIBIT A
PRC 9040.1, SFPP, L.P.**

BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION,
BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE



Drawn By: J. KOEPKE

Date: AUGUST 5, 2013

GENERAL LEASE - RIGHT-OF-WAY USE - PRC 9041.1

SUTTER

YOLO

NAPA

SONOMA

SACRAMENTO

SOLANO

MARIN

CONTRA COSTA

SAN JOAQUIN

EXHIBIT A-18 GUADALUPE
CANAL, SM CO.

ALAMEDA

SAN MATEO

LEGEND

- PRC9041.1 PIPELINE CROSSINGS

NOTES

1. THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION, AND DOES NOT CONSTITUTE AN OFFICIAL 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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EXHIBIT B
PRC 9041.1, SFPP, L.P.

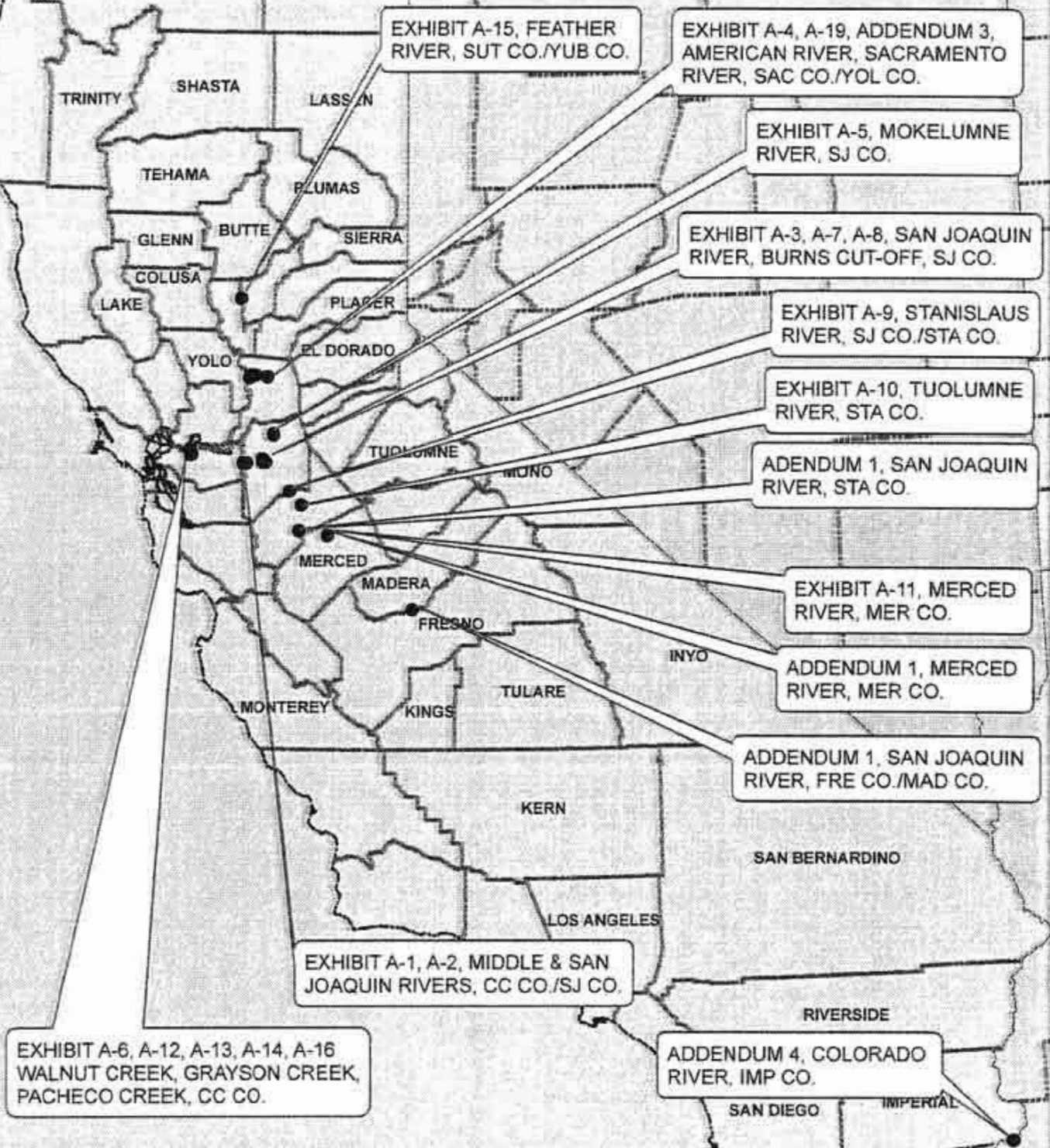
BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION,
BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE



Drawn By: J. KOEPKE

Date: AUGUST 5, 2013

GENERAL LEASE - RIGHT-OF-WAY USE - PRC 9042.1



LEGEND

- PRC9042.1 PIPELINE CROSSINGS

NOTES

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CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT C
PRC 9042.1, SFPP, L.P.

BASEMAP SOURCES: CALIFORNIA STATE LANDS COMMISSION,
BUREAU OF LAND MANAGEMENT, CAL-ATLAS GEOSPATIAL CLEARINGHOUSE



Drawn By: J. KOEPKE

Date: AUGUST 5, 2013