

**STAFF REPORT  
C36**

A 6, 8  
S 1, 4

06/21/18  
W 26608  
A. Franzoia

**CONSIDERATION OF AN INDEMNIFICATION AGREEMENT**

**PARTIES:**

Pacific Gas and Electric Company (PG&E)  
  
California State Lands Commission

**BACKGROUND:**

On April 30, 1959, the Commission authorized Lease No. PRC 2393.9 to the County of Sacramento (County) for the construction, use and maintenance of two parallel bridges, containing public and private utility conduits, riprap, and temporary construction trestles at the Sunrise Boulevard Bridge over the American River ([Item 9, April 30, 1959](#)). The new bridges were completed in 1960 with natural gas utility conduits to serve the Rancho Cordova, Fair Oaks, and Orangevale communities. On August 14, 2012, the Commission authorized a new lease to the County for the Sunrise Boulevard Bridge that expires April 29, 2033 ([Item C32, August 14, 2012](#)).

PG&E owns and operates an 8-inch-diameter natural gas pipeline within a 12-inch-diameter steel casing on the Sunrise Avenue Bridge. 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. Because Lease No. PRC 2393.9 is a right-of-way granted to the County, the PG&E improvements are a valid and consistent use within that lease. Consequently, Commission authorization of a separate lease with PG&E for the pipeline is not required.

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 pipeline on the bridge.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

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

STAFF REPORT NO. **C36** (CONT'D)

**Public Trust and 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 these sovereign lands within the bed of the American River.

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 pipelines attached to bridge structures. 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 pipeline and any PG&E facilities or improvements located within the lease premises of Lease No. PRC 2393.9

Based on a review of the project design plans for the bridge and PG&E's pipeline, Commission staff believes the pipeline is attached in a fashion that does not interfere, inhibit or cause an unreasonable risk to public access or navigation on sovereign land.

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

Staff believes that the PG&E pipeline on the Sunrise Avenue Bridge over the American River does not substantially interfere with the Public Trust needs and values in the area at this location at this time. Further, the proposed Indemnification Agreement will provide sufficient liability protection for the State.

For all the reasons above, Commission staff believes approval of the Indemnification Agreement is consistent with the common law Public Trust Doctrine and in the best interests of the State.

STAFF REPORT NO. **C36** (CONT'D)

**OTHER PERTINENT INFORMATION:**

1. This Indemnification Agreement shall continue indefinitely or upon termination of PG&E's franchise agreement with the County, or as mutually agreed upon by PG&E and the Commission.
2. 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.
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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

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

Find that the proposed Indemnification Agreement will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, 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 June 21, 2018, and ending upon termination of PG&E's franchise agreement with the County of Sacramento, or as mutually agreed upon by the Parties; concerning the installation, use, operation, and maintenance of an 8-inch-diameter natural gas pipeline within a 12-inch-diameter steel casing on the Sunrise Avenue Bridge, as described in Exhibit A and shown on Exhibit B (for reference purpose only), attached and by this reference made a part hereof.

**EXHIBIT A**

**W 26608**

**LAND DESCRIPTION**

A strip of submerged land 120 feet wide situated in the bed of American River in Sacramento County, California, lying 60 feet on the right and 60 feet on the left of the following described line:

COMMENCING at a point on the centerline and the north end of the American River Bridge at Fair Oaks, said point being further described as "Engineers Station C 22+72 Fair Oaks Bridge Approach", from which a 1-1/4 inch iron pipe stamped LS 2217 bears N 23°45'12" W 323.28 feet and S 59°00'00" W 90.73 feet, said iron pipe marks the southeasterly corner of the lands of Harold A. Spellman being the portion of Lot 2, Block 40, Fair Oaks City, as shown on the "Record of Survey of Wilson Street Approach to American River Bridge" recorded September 8, 1955 in Book 11 of Surveys, Survey No. 41, records of said county; thence S 23°45'12" E 257.00 feet to a point on the right bank of the American River and the POINT OF BEGINNING; thence S 23°45'12" 359.00 feet to a point on the left bank of said river and the end of this herein described line.

The sidelines of said strip shall be lengthened or shortened so as to terminate on the low water mark on the left and right banks of the American River.

EXCEPTING THEREFROM any portions lying landward of the low water mark of the left and right banks of the American River.

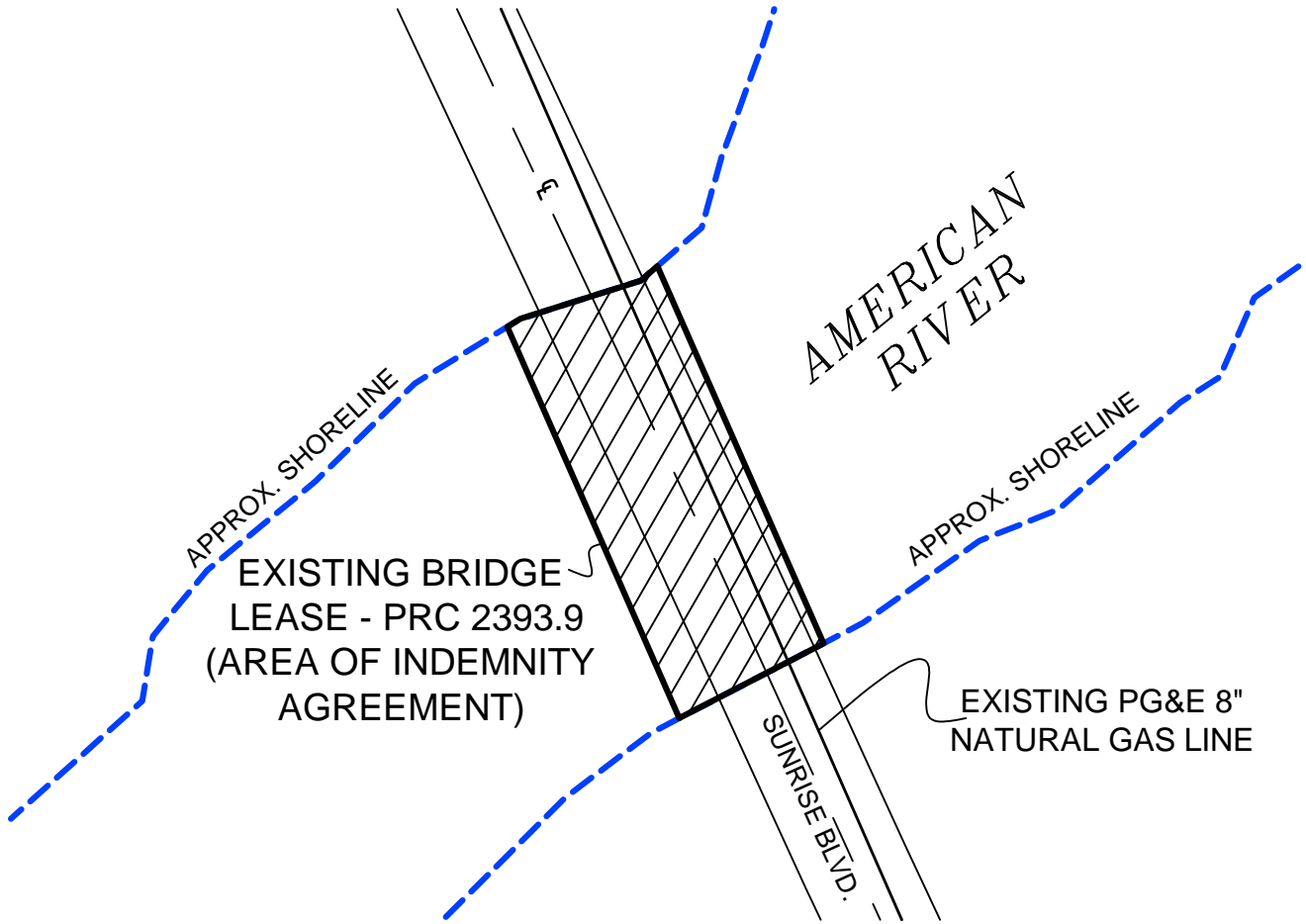
**END OF DESCRIPTION**

REVISED 9/24/14 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT. ORIGINAL DESCRIPTION AS FOUND IN CALENDAR ITEM C09 DATED 4/02/91 REVISED MARCH, 1991 BY LLB IN CALIFORNIA STATE LANDS COMMISSION LEASE FILE PRC 2393.



NO SCALE

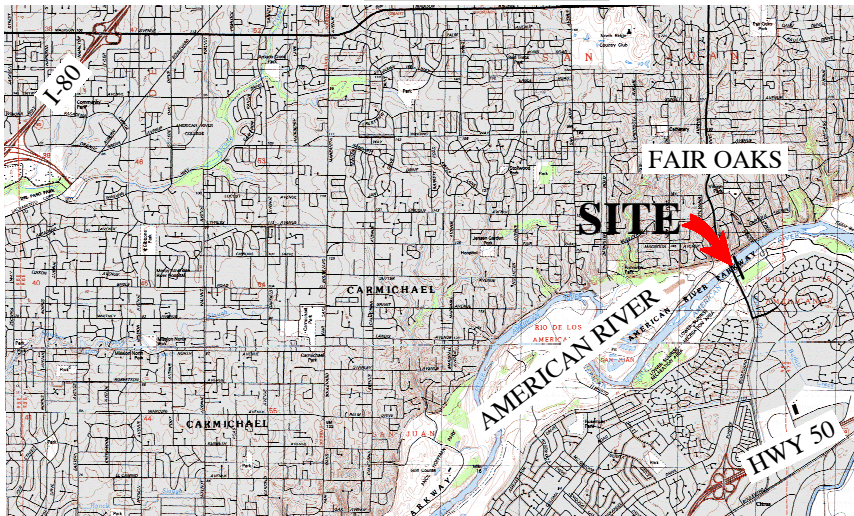
# SITE



AMERICAN RIVER SUNRISE BRIDGE CROSSING,  
NEAR RANCHO CORDOVA AND FAIR OAKS

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

INDEMNITY AGREEMENT  
FOR W26608  
PG&E  
SACRAMENTO COUNTY



Exhibit C

ORDINANCE NO. 341

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 SACRAMENTO, 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 SACRAMENTO  
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 SACRAMENTO 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 SACRAMENTO 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 County Road Commissioner 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, and 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 DAILY RECORDER, a newspaper published in said County of SACRAMENTO.

PASSED this 15th day of November, 1948, by the following vote:

AYES:	Supervisors	<u>BONETTI, CHAMPLIN, CONRAD, ELMER</u> <u>and GARLICK</u>
NOES:	Supervisors	<u>NONE</u>
ABSENT:	Supervisors	<u>NONE</u>

JAMES R. GARLICK  
Chairman of the Board of Supervisors  
of the County of Sacramento

ATTEST:

C. C. LaRUE  
County Clerk of the County of  
Sacramento.