

**CALENDAR ITEM
C19**

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04/06/10
PRC 8639.1
M. Clark
E. Milstein

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**CONSIDER EXECUTION OF A LEASE TERMINATION AGREEMENT AND
TERMINATION OF A GENERAL LEASE – RIGHT OF WAY USE**

APPLICANT/LESSEE:

ABA Energy Corporation
7612 Meany Avenue
Bakersfield, California 93308

AREA, LAND TYPE, AND LOCATION:

0.275 acres, more or less, of sovereign land in the San Joaquin River Stockton Ship Channel/ Stockton Deepwater Channel, near the city of Stockton, San Joaquin County.

AUTHORIZED USE:

Operation, use, and maintenance of a horizontal directionally drilled six-inch diameter steel natural gas gathering pipeline.

LEASE TERM:

20 Years, beginning October 20, 2005.

CONSIDERATION:

\$105 per annum; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIAL LEASE PROVISIONS:

Coverage of \$10,000,000 per each occurrence for bodily injury and property damage.

SURETY BOND:

\$50,000

CALENDAR ITEM NO. **C19** (CONT'D)

BACKGROUND:

On October 20, 2005, the Commission authorized Lease No. PRC 8639.1, a 20-year General Lease – Right of Way Use to ABA Energy Corporation for the construction, use, and maintenance of a horizontal directionally drilled six-inch diameter concrete encased steel natural gas gathering pipeline (pipeline). The lease will expire October 19, 2025.

In 2005, the pipeline was constructed to transport natural gas from four natural gas wells owned by ABA on the north side of the San Joaquin River Stockton Ship Channel (River) on Rindge Tract and crossing the River channel to Roberts Island in San Joaquin County. The pipeline was installed using a horizontal directional drilling method (HDD) with a length of approximately 800 feet and buried at a minimum depth of 65 feet below the channel bottom. The pipeline is a portion of a pipeline extending approximately 3.77 miles in length from the well sites to the statewide distribution system.

Because the gas wells are no longer producing and have been abandoned, ABA is now requesting to abandon the existing pipeline in place and terminate the lease. Commission engineering staff has reviewed the pipeline abandonment plan which will consist of excavating and cutting the pipeline approximately five feet below the surface at the entry and exit points on Rindge Tract and Roberts Island. The pipeline will then be pigged (cleaned) of all fluids and gas using water and when dry will be filled with a cement slurry mixture for the entire length of the River channel crossing and approximately 200 feet landward of the levees. The entry and exit points will then be capped and backfilled. All work will be performed approximately 500-feet landward of the toe of the levee on each side of the channel. Any contaminated fluid spillage will be collected and contained in a steel tank available at the entry and exit points on the upland.

Staff of the Commission is recommending abandonment of the pipeline in place, as opposed to removal, because it is the most environmentally safe option due to the depth of the pipeline and the concrete encasement of the pipeline which was required by Reclamation District (RD) 684 and RD 2037 for the original installation of the pipeline under the levees.

ABA has agreed to enter into a lease termination agreement and staff is recommending that the Commission approve termination of the lease and execution of the agreement, effective April 6, 2010.

SUMMARY OF LEASE TERMINATION AGREEMENT PROVISIONS:

1. ABA shall abandon the natural gas pipeline in place and within 30 days of abandonment provide a post-abandonment written report confirming completion in accordance with the approved plans, describing any field

CALENDAR ITEM NO. **C19** (CONT'D)

changes with the justification therefor, warranting that no accidents or spills occurred affecting the waterway and that no other extraordinary conditions occurred during the course of the abandonment.

2. Within 60 days from the date this Termination Agreement (Agreement) is fully executed, ABA shall record a deed which shall release, surrender, and quitclaim to the State Lands Commission, any and all right, title, or interest arising by virtue of the Lease, respecting the Lease Premises located in the San Joaquin River, San Joaquin.
3. When the improvements authorized under the Lease have been abandoned to the satisfaction of the Commission engineering staff, and upon the recordation of the lease quitclaim deed described above, ABA shall no longer be required to pay rent, post a security bond, or carry liability insurance and any and all bonds, certificates of deposit or other funds held by the Commission in satisfaction of such obligations shall be promptly released.
4. ABA shall indemnify, defend and hold harmless the Commission from and against any accident, injury, casualty, or claim arising out of or connected in any way with the abandoned pipeline on State sovereign land and give prompt notice to Commission staff of any accident, injury, casualty, or claim arising out of or connected in any way with the pipeline on State sovereign land.
5. In the event the abandoned pipeline located on State-owned sovereign land is lawfully determined by the Commission at some future time to be adverse to the public's health and safety ABA shall, at no cost to the Commission, remediate in a reasonable and timely manner the condition found to be causing such threat to the public's health and safety. ABA shall be given adequate notice and an opportunity to be heard prior to the determination by the Commission that the abandoned pipeline on State-owned sovereign land is adverse to the public's health and safety.
6. No remediation activities by ABA will be authorized on the Lease Premises until ABA provides copies to the Commission of all necessary permits from all Federal, State, and local permitting agencies having jurisdiction over the abandoned improvements on State sovereign land and ABA shall be responsible to and observe all rules and regulations of any such agency (ies) having jurisdiction over the abandoned improvements on State sovereign land.
7. The terms of this Agreement shall extend to, be binding upon, and inure to

CALENDAR ITEM NO. **C19** (CONT'D)

the heirs, executors, administrators, successors, and assigns of the respective parties hereto

OTHER PERTINENT INFORMATION:

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

2. **Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(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 Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. **Lease Termination Agreement and Abandonment of Pipeline:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA under the general rule CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

Reclamation District No. 684, Reclamation District No. 2037, R.C Farms Inc., and Rindge Tract Partners, Inc.

APPROVALS REQUIRED:

U.S Army Corps of Engineers and Central Valley Flood Protection Board

CALENDAR ITEM NO. **C19** (CONT'D)

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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

Lease Termination Agreement and Abandonment of Pipeline: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 because there is no possibility that the activity may have a significant effect on the environment; Title 14, California Code of Regulations, section 15061 (b) (3).

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.

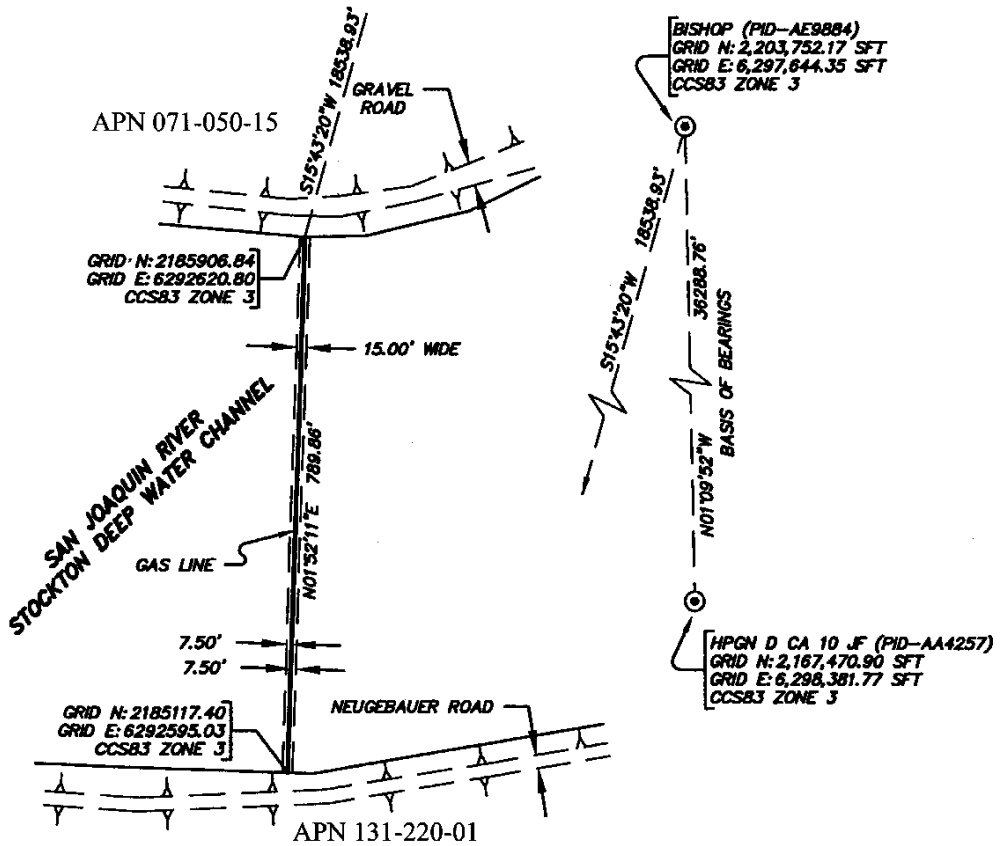
AUTHORIZATION:

Authorize the termination of Lease No. PRC 8639.1, a General Lease-Right of Way Use, and execution of a Lease Termination Agreement, of sovereign lands, as shown on Exhibit A (for reference purposes only) and described on Exhibit B attached and by this reference made a part hereof, and as set forth in the Agreement which is on file in the Office of the State Lands Commission, effective April 6, 2010.

NO SCALE

SITE MAP

NOTE:
ALL DISTANCES, BEARINGS AND COORDINATES SHOWN HEREON ARE GRID, BASED ON CCS83 ZONE 3. TO OBTAIN GROUND DISTANCE, DIVIDE DISTANCE SHOWN HEREON BY THE COMBINED FACTOR OF 0.99994316.



NO SCALE

LOCATION MAP

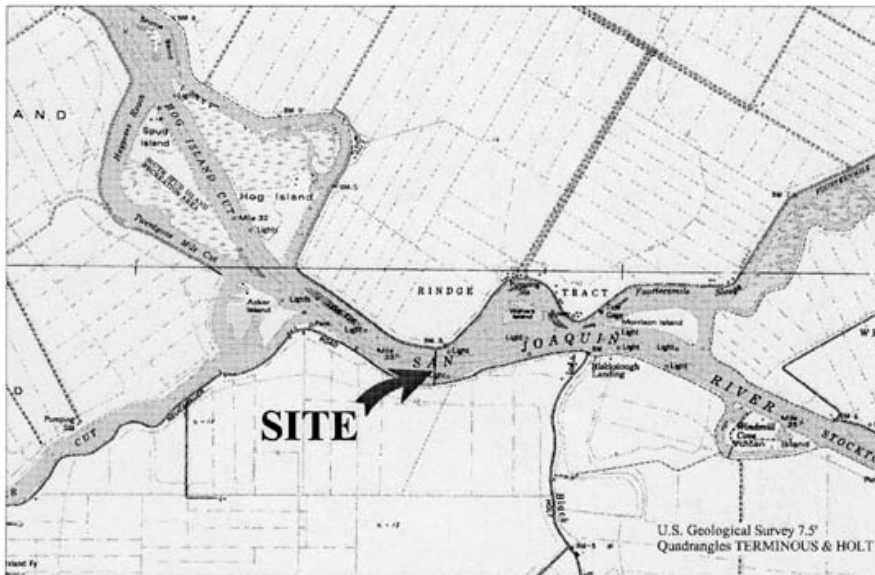


EXHIBIT A PRC 8639.1

APNs 071-050-15;
and 131-220-01
ABA Energy Corporation
San Joaquin County



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by 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
LAND DESCRIPTION

ALL that real property situate in the unincorporated area of San Joaquin County, State of California, and being a portion of projected Section 28, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, being more particularly described as follows:

A strip of tide and submerged land in the bed of the San Joaquin River - Stockton Deep Water Channel being fifteen (15.00) feet wide and lying seven and one half (7.50) feet on each side of the following described centerline.

BEGINNING at a point on the right bank of the San Joaquin River - Stockton Deep Water Channel; said point being distant from National Geodetic Survey Designation "HPGN D CA 10 JF" (PID-AA4257) the following two (2) courses and distances: (1) North $01^{\circ}09'52''$ West 36,288.76 feet to National Geodetic Survey Designation "Bishop" (PID-AE9884); and (2) South $15^{\circ}43'20''$ West 18,538.93 feet; thence, from said POINT OF BEGINNING, South $01^{\circ}52'11''$ West 789.86 feet to a point on the left bank of the San Joaquin River - Stockton Deep Water Channel.

EXCEPTING THEREFROM any portion lying landward of the left and right banks of the San Joaquin River - Stockton Deep Water Channel.

The basis of bearings for this description is the bearing between said Designations "HPGN D CA 10 JF" and "Bishop". Said Designation "HPGN D CA 10 JF" having coordinates of North (Y) 2,167,470.90 feet and East (X) 6,298,381.77 feet. Said Designation "Bishop" having coordinates of North (Y) 2,203,752.17 feet and East (X) 6,297,644.35 feet. Said bearing between Designations being North $01^{\circ}09'52''$ West as determined from National Geodetic Survey Data Sheets.

ALL bearings, distances and coordinates described herein are grid, based upon the California Coordinate System of 1983 (CCS83), Zone 3. To obtain ground distances, divide distances herein described by the combined factor of 0.99994316.

END OF DESCRIPTION.

