

**STAFF REPORT
C87**

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08/23/18
PRC 4175.9
L. Pino

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:

Merced County

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Merced River, near Cressey, Merced County.

AUTHORIZED USE:

Operation and maintenance of an existing bridge known as the Santa Fe Drive Bridge crossing the Merced River.

LEASE TERM:

25 years, beginning February 1, 2018.

CONSIDERATION:

Public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

Lessee shall not place, attach, or authorize placement or attachment of any utilities or other improvements on the Bridge or within the lease premises without the Commission's prior review and approval. Separate leases or subleases are required and shall be obtained for all utilities not operated by Lessee.

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.

Public Trust and State's Best Interests Analysis:

On April 1, 1969, the Commission authorized the issuance of a 49-year Public Agency Permit to Merced County (County), for the construction, use, and maintenance of the Santa Fe Drive Bridge (Bridge), a 32-foot by 300-foot reinforced concrete box girder bridge crossing the Merced River.

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The term of that lease began February 1, 1969, ([Item 3, April 1, 1969](#)) and expired on January 31, 2018. The County is now applying for a new lease.

The last inspection of the Bridge, conducted by the California Department of Transportation, was completed in January of 2016. The inspection identified a few areas near the abutments in need of minor repairs. The County is currently working to address the recommended repairs. The next inspection is anticipated to occur in 2019.

Promotion of the public's right to access and use California's navigable waters is a mandate of the California Constitution (article X, section 4), a condition of statehood in the Act of Admission (Vol.9, Statutes at Large, page 452), and a responsibility of all involved public agencies pursuant to the common law Public Trust Doctrine. Bridges are often the most logical location for the public to access a waterway because kayakers, rafters, and others may legally utilize the public access easements around bridges to enter and exit navigable waterways. Furthermore, bridges and roads are critical infrastructure that are necessary to facilitate the movement of goods, people, and services throughout the State. The movement of goods is a critical part of local, state and national commerce; and the creation and maintenance of the instrumentalities of commerce is essential to a thriving economy. While the existing Bridge does not currently facilitate water-dependent activities, bridges are not inconsistent with Public Trust uses and values because they facilitate commerce, and the existing Bridge does not interfere with navigation, water-dependent recreation, or other Public Trust uses along the Merced River in any substantive way.

The proposed lease does not alienate the State's fee simple interest, or permanently impair public rights. The lease requires the County to conduct all repair and maintenance work safely and indemnify the Commission in the event of any liability resulting from lessee's activities within the lease premises. The lease does not grant the lessee exclusive rights to the lease premises and is limited to a 25-year term, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time.

Climate Change:

The project area is not tidally influenced and therefore would not be subject to sea-level rise. However, as stated in the *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and

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storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

Due to these potential changes, the Bridge could need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. In addition, the structure is not adaptable to variable water levels and may require more frequent maintenance to ensure continued function during and after storm seasons or to avoid dislodgement of any appurtenant facilities.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

Conclusion:

For the reasons stated above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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 and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Central Valley Independent Network, LLC (CVIN) maintains a fiber-optic conduit located within the lease premises, along the eastern side of the Santa Fe Drive Bridge. CVIN currently has a 20-year Master Lease with the Commission, Lease No. PRC 9296.9, covering various conduit crossings, including the Santa Fe Drive Bridge, which will expire on December 17, 2035.

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3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease, and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to Merced County beginning February 1, 2018, for a term of 25 years, for an existing Bridge crossing the Merced River, as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

EXHIBIT A

PRC 4175.9

LAND DESCRIPTION

A strip of submerged land, 50 feet in width, lying in the bed of the Merced River, adjacent to Swamp and Overflowed Survey 96, patented November 21, 1874, County of Merced, State of California, the centerline of said strip more particularly described as follows:

BEGINNING at a point on the centerline of Santa Fe Drive, said point bearing S17° 15' 07"E, 2369.04 feet from the North ¼ Corner of Section 8, Township 6 South, Range 12 East, MDM., thence N15° 05' 07"W, 316.32 feet to the TERMINUS of said strip.

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

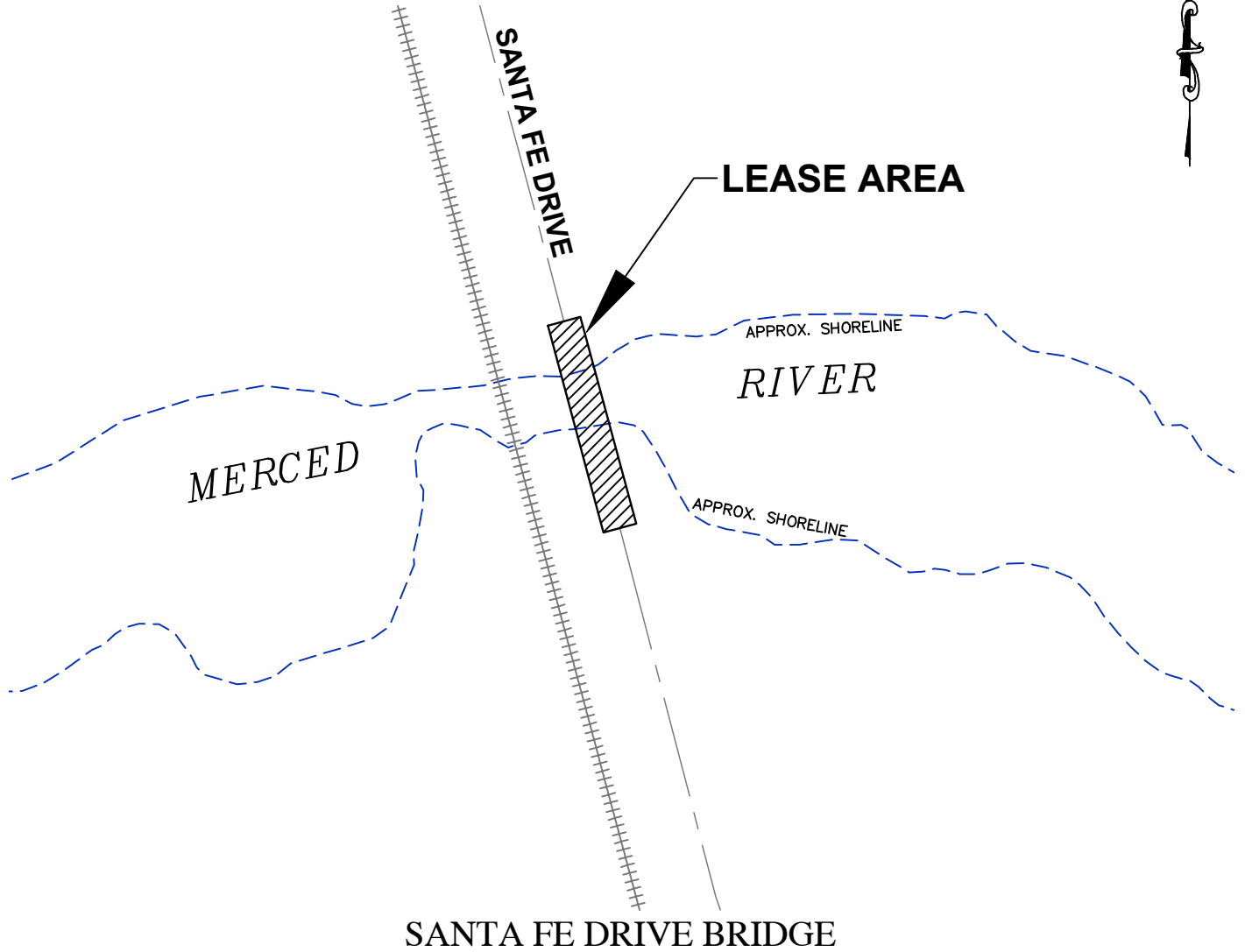
END OF DESCRIPTION

Prepared July 11, 2018 by the California State Lands Commission Boundary Unit.



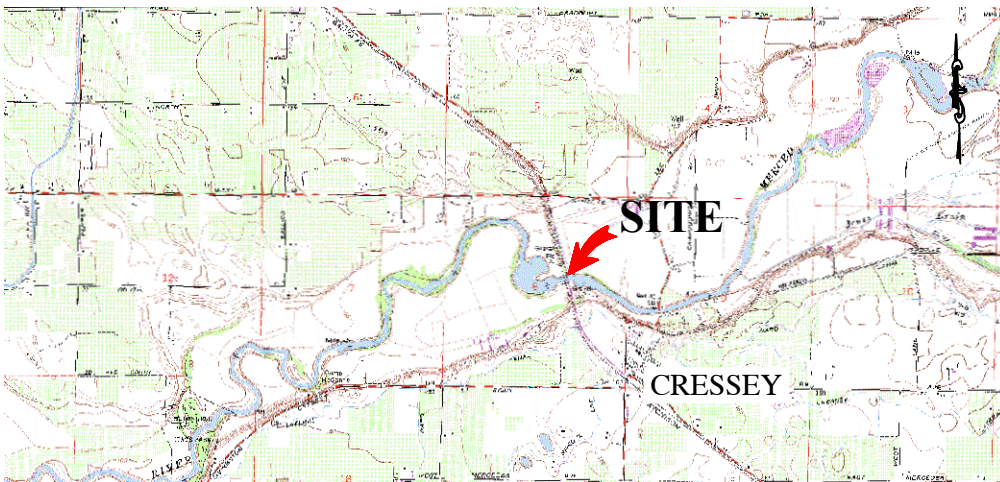
NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4175.9
 MERCED COUNTY
 APN 140-010-005
 GENERAL LEASE -
 PUBLIC AGENCY USE
 MERCED COUNTY



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.