

Staff Report 17

APPLICANT:

BNSF Railway Company

PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Tuolumne River adjacent to Santa Fe Avenue, near Empire, Stanislaus County.

AUTHORIZED USE:

Continued use and maintenance of an existing railroad bridge, known as the Santa Fe Avenue Railroad Bridge.

TERM:

25 years, beginning February 23, 2021.

CONSIDERATION:

\$5,821 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on every 5th anniversary of the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Surety in an amount no less than \$60,000.
- 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.

- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

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:

On May 26, 1994, the Commission authorized a 25-year General Lease – Right-of-Way Use to the Atchison, Topeka, and Santa Fe Railway Company for the construction and maintenance of a railroad bridge in the Tuolumne River ([Item C15, May 26, 1994](#)). That lease expired on May 25, 2019. The Atchison, Topeka, and Santa Fe Railway Company merged with the Applicant. The Applicant is now applying for a General Lease – Right-of-Way Use, for the continued use and maintenance of the existing railroad bridge on the Tuolumne River.

The bridge, known as the Santa Fe Avenue railroad bridge, is used by the Applicant for transporting a range of consumer products derived from manufacturing, agricultural, and natural resource industries. The Applicant's rail operations are subject to the regulatory jurisdiction of the Surface Transportation Board, the Federal Railroad Administration of the U.S. Department of Transportation, the Occupational Safety and Health Administration, as well as other federal and state regulatory agencies. In addition, the Applicant's rail operations are subject to extensive federal, state, and local environmental regulation covering discharges to water, air emissions, toxic substances, and the generation, handling, storage, transportation, and disposal of waste and hazardous materials. The proposed lease will require the Applicant to maintain the railroad bridge.

The Tuolumne River at this location is moderate in size. The public can use the Tuolumne River for recreational boating and other activities. Promotion of public access and use of California's navigable waters is a mandate of the California Constitution (article X, section 4), a condition of statehood in the Act of Admission of the State of California into the Union (9 Stat. 452, Sept. 9, 1850), and a responsibility of all involved public agencies pursuant to the common law Public Trust Doctrine. The immediate surrounding area does not allow public access to the Tuolumne River. The operation of freight trains on railroad tracks does not allow the public to walk underneath or along the railroad tracks. However, the public is not

impeded from using the waterway that flows underneath the railroad bridge for access to the Tuolumne River.

Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$10,208 for the period beginning May 25, 2019, through February 22, 2021, the day before the proposed new lease would become effective.

Staff reviewed environmental justice data that indicated high pollution burdens to the surrounding communities. These burdens may result in impacts to health such as low birth weight and cardiovascular disease. In addition, the same data showed high burdens in air and water quality. Furthermore, the data revealed the neighboring communities are disadvantaged. Staff believes that the lease for the continued use and maintenance of the railroad bridge may add to the current air and water quality burdens. The impacts will be short in duration, limited to the emissions and potential spills associated with the train moving through the area, and will dissipate through the larger air basin and waterway. As part of an environmental justice outreach effort, staff contacted via letter on October 29, 2020, several environmental justice organizations in Contra Costa, Sacramento, San Joaquin, Solano, Stanislaus, and Yolo Counties providing notification of the proposed lease and other right-of-way crossings for railroad bridges. The letter included a brief description of the bridge and included the name of a staff person as a point of contact. No comments have been received as a result of the environmental justice outreach.

The proposed lease does not alienate the State's fee simple interest, is limited to a 25-year term, and does not grant the lessee exclusive rights to the lease premises. Furthermore, the lease requires that the lessee insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

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 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 railroad bridge could need reinforcement in the future to withstand higher levels of flood exposure, more frequent or intensified scouring, 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 approval of the proposed right-of-way 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 lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
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. The land uses near the bridge are agricultural, industrial, and residential.
4. 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 proposed lease will not substantially impair the public rights to navigation and fishing, or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$10,208 for unauthorized occupation of State lands for the period beginning May 25, 2019, through February 22, 2021, from the Applicant.
2. Authorize a General Lease – Right-of-Way Use to the Applicant beginning February 23, 2021, for a term of 25 years, for the continued use and maintenance of an existing bridge, known as the Santa Fe Avenue railroad bridge, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$5,821, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$2,000,000 per occurrence; and a surety in the amount of \$60,000.

EXHIBIT A

LEASE 7767

LAND DESCRIPTION

A hundred (100) foot wide strip of submerged land, situated in the bed of the Tuolumne River, lying adjacent to Section 32, Township 3 South, Range 10 East and Section 5, Township 4 South, Range 10 East, Mount Diablo Meridian, County of Stanislaus, State of California, and the center line of which more particularly described as follows:

COMMENCING at Station 147+00 on the centerline of Santa Fe Avenue as shown on the survey of the Empire Bridge County Survey No. 1246; thence S 78° 10' 10" W, 100.00 feet to the centerline of the Santa Fe Railroad right-of-way, also being the POINT OF BEGINNING; thence along said centerline S 11° 49' 50" E 750.00 feet to the TERMINUS of said centerline.

The sidelines of said strip to be lengthened or shortened so as to begin and terminate at the ordinary low water marks of the left and right banks of said river.

EXCEPTING THEREFROM any portions lying landward of low water marks of said Tuolumne River.

END DESCRIPTION

Prepared 09/22/2020 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



APN
018-001-082

APN
009-020-016

TUOLUMNE

SANTA FE

SANTA FE AVE

RIVER

APPROX.
SHORELINE

APPROX.
SHORELINE

RAILROAD

**LEASE
AREA**

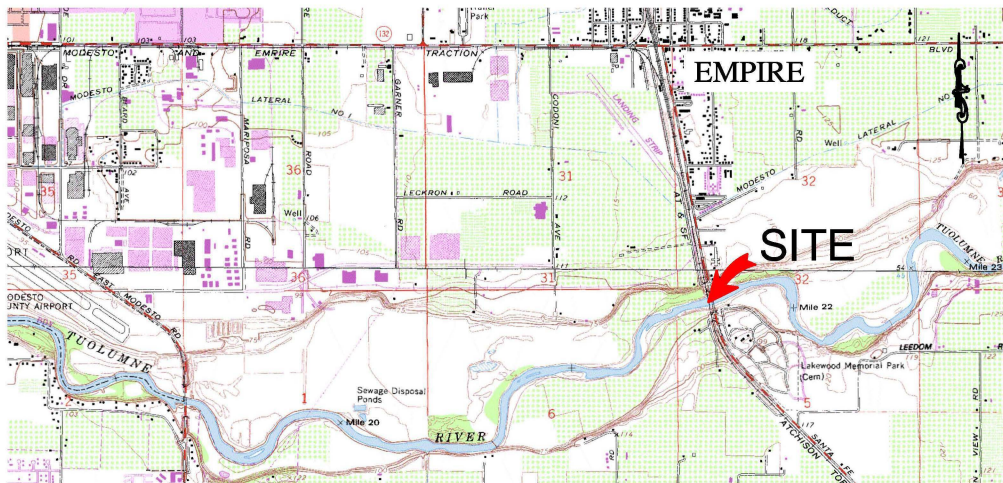
APN
018-001-079

APN
018-001-074

SANTA FE AVENUE RAILROAD BRIDGE AT TUOLUMNE RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

LEASE 7767
BNSF RAILWAY COMPANY
APNs 018-001-074, -079, -082
& 009-020-016
GENERAL LEASE -
RIGHT-OF-WAY USE
STANISLAUS 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.

TS 09/22/2020