



**RESOURCE MANAGEMENT  
AGENCY  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One  
PETE VANDER POEL  
District Two  
AMY SHUKLIAN  
District Three  
EDDIE VALERO  
District Four  
DENNIS TOWNSEND  
District Five

**AGENDA DATE:** January 7, 2020

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Celeste Perez    PHONE: (559) 624-7010		

**SUBJECT:** Indemnification Agreement with SE Land, LLC

**REQUEST(S):**

That the Board of Supervisors:

1. Approve the Indemnification Agreement with SE Land, LLC in connection with an application for an encroachment permit to place an underground irrigation pipeline within County rights-of-way of Road 88 between Avenue 56 and Avenue 64, for the period of January 7, 2020 to January 7, 2045; and
2. Authorize the Chairman to sign the Indemnification Agreement; and
3. Adopt the Categorical Exemption prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures for the placement of the underground irrigation pipeline; and
4. Authorize the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk.

**SUMMARY:**

SE Land, LLC is proposing to construct a one-mile underground irrigation pipeline within County rights-of-way along Road 88 between Avenue 56 and Avenue 64 (Deer Creek). The intent of the project is to convey fresh water from Deer Creek for farming operations on private property.

The scope of the project consists of the installation of a single 36-inch polyvinyl chloride (PVC) pipeline to be installed in twenty-foot sections, a minimum of three

**SUBJECT:** Indemnification Agreement with SE Land, LLC

**DATE:** January 7, 2020

feet below the existing ground surface (with minor trenching and backfilling) along the one-mile length of the pipeline. The surface conditions shall be restored to its original state following backfilling. The pipeline installation underneath Avenue 56 shall be completed by method of jack-and-bore to minimize transportation disruption and ensure project safety. The upstream end of the pipeline (north end of project limit) shall be a small turnout structure at Deer Creek to convey water to the landowner.

In accordance with the California Environmental Quality Act (CEQA), the County has determined that the Categorical Exemption is applicable to the proposed action: State CEQA Guidelines (14 Cal. Code Regs.) Section 15303.

Though the County has deemed the project to be categorically exempt from CEQA, if the project is located in part or in whole within the jurisdictional boundary of a regulatory agency such as the California Department of Fish and Wildlife and the California Regional Water Quality Control Boards, it shall be the responsibility of SE Land, LLC to acquire the necessary permits and comply with the requirements, rules, regulations, and conditions applicable to the project.

In addition, approval of the Indemnification Agreement does not grant SE Land, LLC the water right to use water from Deer Creek.

**FISCAL IMPACT/FINANCING:**

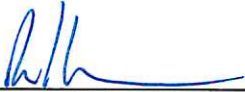
No Net County Cost.

SE Land, LLC will be solely responsible for the cost of installation and maintenance of the water line.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

Strategic Initiative No. 2 Economic Well Being includes the goals of protecting the county's agriculture-based economy, which is provided for in this agreement by accommodating an irrigation line for the purposes of supporting agricultural activities.

**ADMINISTRATIVE SIGN-OFF:**



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Reed Schenke, P.E.

Director

cc: County Administrative Office

Attachment(s): Attachment A – Vicinity map  
Attachment B – Indemnification Agreement  
Attachment C – Notice of Exemption

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF INDEMNIFICATION ) Resolution No. \_\_\_\_\_  
AGREEMENT WITH SE LAND, LLC ) Agreement No. \_\_\_\_\_

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD JANUARY 7, 2020,  
BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

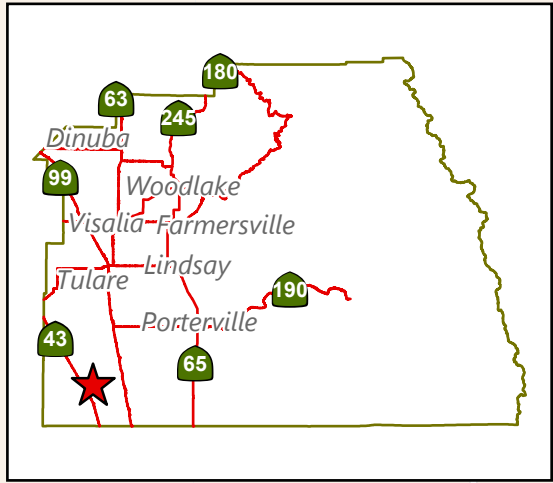
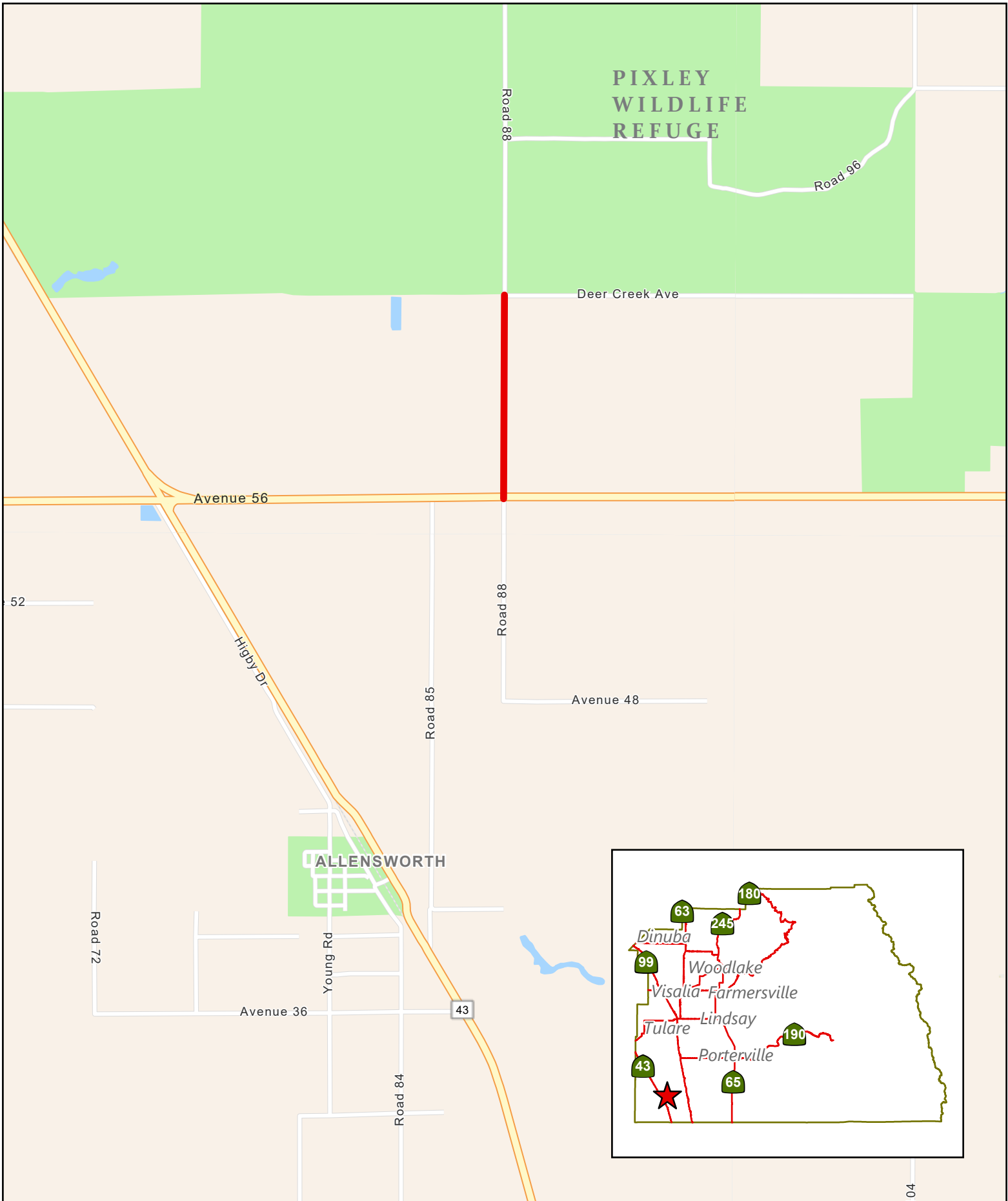
ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Approved the Indemnification Agreement with SE Land, LLC in connection with an application for an encroachment permit to place an underground irrigation pipeline within County rights-of-way of Road 88 between Avenue 56 and Avenue 64, for the period of January 7, 2020 to January 7, 2045; and
2. Authorized the Chairman to sign the Indemnification Agreement; and
3. Adopted the Categorical Exemption prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures for the placement of the underground irrigation pipeline; and
4. Authorized the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk.

Attachment A  
Vicinity Map



Attachment B  
Indemnification Agreement

Recording Requested by  
and Return to:  
Reed Schenke  
RMA Director  
Attn: Craig Anderson

INDEMNIFICATION AGREEMENT  
In Connection with  
Application for Encroachment Permit

THIS INDEMNIFICATION AGREEMENT (“AGREEMENT”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between SE LAND, LLC (“APPLICANT”) with its principal place of business at P.O. Box 964, Visalia, CA, 93279 and the COUNTY of Tulare (“COUNTY”).

WHEREAS, APPLICANT has submitted an application for an encroachment permit attached as EXHIBIT A, to COUNTY for a permit granting APPLICANT an encroachment for the construction of approximately one mile of 36-inch diameter Polyvinyl Chloride Irrigation Pipe with Turnout Outlet (“PROJECT”). APPLICANT intends to construct said PROJECT within the COUNTY rights-of-way of Road 88 between Avenue 56 and Avenue 64 shown in EXHIBIT “A”; and

WHEREAS, APPLICANT will make certain covenants to COUNTY in connection with the proposed PROJECT and whereby APPLICANT will indemnify COUNTY for damages or claims related to spill, leaks or other problems associated with the proposed PROJECT.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereto agree as follows:

1. Indemnification.

- (a) APPLICANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees or assigns from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with this AGREEMENT or permit including but not limited to construction of the PROJECT, actual, alleged or threatened spill, leak or other release of waste water. This indemnification obligation shall continue beyond the term of this AGREEMENT or permit as to any acts or omissions of APPLICANT occurring during the term of this AGREEMENT or any extension of this AGREEMENT.
- (b) APPLICANT shall indemnify, defend and hold harmless the COUNTY from and against any claims, actions, or proceedings against the COUNTY to attach, set aside, void, or annul any findings, entitlements, certification of California

TULARE COUNTY AGREEMENT NO. \_\_\_\_\_

Environmental Quality Act (“CEQA”) or other environmental review, and/or approvals by the COUNTY given in regard to the PROJECT described or identified in this Application, AGREEMENT or permit and/or any other related proceedings, or to impose personal liability against such COUNTY officials, agencies, departments, commissions, agents, officers, or employees resulting from their official involvement in any proceedings, including any claims and actions for attorneys’ fees, private attorney general fees and/or costs awarded to any party and against the COUNTY.

2. Registration of Project Location. Upon completion of the PROJECT and prior to the acceptance of work in connection with the Permit Application, APPLICANT will register the location of the PROJECT with USA North 811 or an equivalent underground service locating organization, and shall renew annually to continue to provide for underground service locating. APPLICANT shall provide proof of registration set forth in Paragraph 15. This obligation runs so long as the PROJECT exists passes to any future owner of the PROJECT.
3. Plans. A set of engineered plans detailing the PROJECT construction shall be submitted to and reviewed by the COUNTY. Construction shall be according to the approved set of plans and shall not deviate from said plans. Design and construction standards shall be substantially similar to irrigation PROJECT installations or engineered equivalents.
4. As-builts. Upon completion of construction, and prior to the PROJECT being placed in any service, APPLICANT shall provide COUNTY with an as-built plan set which reflects the location of the PROJECT, its depth, diameter and the location within COUNTY right-of-way, prepared by and stamped by a Registered Civil Engineer in good standing in the State of California. APPLICANT shall provide COUNTY with any supplemental surveys to reflect any subsequent corrections and/or changes to the PROJECT.
5. Abandonment. APPLICANT shall provide the COUNTY thirty (30) days written notice set forth in Paragraph 9 below prior to abandoning PROJECT. PROJECT abandonment shall be capped and filled with flowable fill consisting of a controlled low-strength material consisting of fluid mixture of cement, fly ash, aggregate, water and with admixtures as necessary to provide workable properties to the satisfaction of the COUNTY.
6. Effectiveness: Term and Termination. The effectiveness of this AGREEMENT is conditioned on the issuance of an encroachment permit pursuant to the Permit Application. The term of this AGREEMENT shall be the same as the term of the Project Permit Application and any extensions thereof. This indemnification obligation will continue beyond the term of this AGREEMENT or the permit as to any acts or omissions occurring during the term of this AGREEMENT or permit or any extensions of this AGREEMENT or permit.
7. Amendment. This AGREEMENT shall not be modified or amended except by means of a writing signed by each of the parties to this AGREEMENT.



8. Assignment. Subject to Tulare County Ordinance 3-07-1270, APPLICANT will not assign or transfer their rights or obligations under this AGREEMENT unless the COUNTY has given its prior written consent; such consent will not be unreasonably withheld.

9. Notices.

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**COUNTY:** Tulare County Resource Management Agency  
5961 S. Mooney Blvd.  
Visalia, CA 93277  
**Phone No.:** 559-624-7000  
**Fax No.:** 559-730-2653

**APPLICANT:** SE Land, LLC  
P.O. Box 964  
Visalia, CA 93279  
**Phone No.:** 559-786-1996  
**Email:** [steve@etchegarayfarms.com](mailto:steve@etchegarayfarms.com)

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

10. Power to Grant. The Parties acknowledge that the COUNTY may authorize an encroachment permit under Streets and Highway Code § 1460 et seq. and Tulare County Ordinance Code 3-07-1160 et seq. The Parties also acknowledge that the encroachment permit is not a lease and that under Streets and Highways Code § 1463, the permit may be revoked on five (5) days notice.

11. Insurance. Prior to approval of this AGREEMENT by COUNTY, APPLICANT shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in EXHIBIT B attached. Insurance policies shall not be used to limit APPLICANT liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. Repairs. APPLICANT will make all repairs on the project as soon as is possible. In the event APPLICANT has not commenced a repair referred to in a written notice from COUNTY to APPLICANT within thirty (30) days after date of notice, COUNTY will have the right to repair or contract to repair and to be reimbursed by

APPLICANT. The full amount of the reimbursement is to be paid within thirty (30) days after COUNTY's delivery to APPLICANT or a written statement or bill evidencing the cost of the repair.

13. Damages. APPLICANT is solely responsible for any damages to the PROJECT and any subsequent repairs to the PROJECT and the COUNTY's facilities including, but not limited to, road shoulder, and pavement in the COUNTY right of way should any excavation, construction, or road work, either by COUNTY or any entities permitted by the COUNTY to work in COUNTY right of way, damage the PROJECT.
14. Lawful Permit. The encroachment permit may become invalid if APPLICANT has not obtained all necessary permits, if any permits become invalid, or if APPLICANT fails to comply with the conditions of any permit or this AGREEMENT.
15. Encroachment Fee and Registration. APPLICANT agrees to pay to the COUNTY an annual encroachment fee not to exceed six hundred dollars (\$600) dollars on a reimbursement basis for actual expenditures incurred for AGREEMENT preparation and Permit Application processing. APPLICANT shall submit payment to the COUNTY within 30 days of the date of COUNTY's invoice for said payment, and shall provide proof of registration with USA North 811 or an equivalent underground service locating organization with said payment.
16. Exhibits and Recitals. The Recitals and the Exhibits to this AGREEMENT are fully incorporated into and are integral parts of this AGREEMENT.
17. Conflict with Laws. This AGREEMENT is subject to all applicable laws and regulations. If any provision of this AGREEMENT is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the AGREEMENT to either party is lost, the AGREEMENT may be terminated at the option of the affected party. In all other cases the remainder of the AGREEMENT shall continue in full force and effect.
18. Compliance with Law. APPLICANT shall provide services in accordance with applicable Federal, State and local laws, regulations and directives.
19. Governing Law. The construction and interpretation of this AGREEMENT shall be governed by and construed according to the laws of the State of California.
20. Counterparts. This AGREEMENT may be executed and delivered in multiple counterparts, all of which, when executed and delivered, shall have the full force and effect of an original.
21. Bond. APPLICANT will file a bond that guarantees the full performance of the work authorized by the permit. The bond must be in a form approved by the COUNTY. The amount of the bond will be based on estimated costs to complete the work and repair the highway.

22. Maintenance. APPLICANT will be responsible for all maintenance, monitoring, repair and up-keep of the PROJECT insuring that it is safe and leak-free.
23. Property Taxes. APPLICANT acknowledges and understands that this AGREEMENT may create a possessory interest subject to property taxation. APPLICANT will pay any property taxes levied upon that interest before they become delinquent.
24. Effect of Annexation. If the land on which the PROJECT is to be constructed is annexed to a city, the COUNTY may assign to the annexing city all of its rights and responsibilities under this AGREEMENT. The city council or its designee shall be deemed to have all of the rights and responsibilities conferred upon the COUNTY by this AGREEMENT.
25. Renewal. This AGREEMENT shall be renewable at the end of twenty-five (25) years from the date of the AGREEMENT unless either party gives written notice of its intention not to renew before expiration of the twenty-five (25) years. COUNTY shall notify APPLICANT of any changes in the terms of this AGREEMENT at least thirty (30) days prior to the notice period for renewal or termination.
26. Recordation. Upon execution of this AGREEMENT by the COUNTY and APPLICANT, this AGREEMENT shall be recorded in the Office of the Tulare County Recorder. From and after the date of recordation, the terms and conditions of this AGREEMENT shall be binding upon the heirs, executors, administrators, grantees, successors and assigns of APPLICANT as covenants running with the land.

IN WITNESS WHEREOF, the undersigned have executed this AGREEMENT as of the date set forth above.

[remainder of page intentionally blank]

COUNTY OF TULARE  
RESOURCE MANAGEMENT AGENCY

By: \_\_\_\_\_  
Chairman Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By: \_\_\_\_\_  
Deputy Clerk

SE Land, LLC

By: San. Etcheberry

Title: Member

Approved as to form  
County Counsel

By: [Signature] 12/30/11  
Deputy

20192012

Attachment C  
Notice of Exemption

# Notice of Exemption

To:  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

Tulare County Clerk  
Room 105, Courthouse  
221 South Mooney Boulevard  
Visalia, California 93291

<i>Date Filed by Tulare County Clerk</i>

**Lead Agency:** Tulare County – Resource Management Agency  
5961 South Mooney Blvd.  
Visalia, CA 93277  
Attn: [hguerra@co.tulare.ca.us](mailto:hguerra@co.tulare.ca.us)

Ph: 559-624-7000

**Applicant(s):** Matthew Razor, Project Engineer  
324 S Santa Fe Suite A  
Visalia, CA, 93292

Ph: (559)802-3052

**Activity/Project Title:** Underground Pipeline Project

**Activity / Project Location – Specific:** On Road 88 Between Avenue 56 and Avenue 64

**Activity / Project Location- Section, Township, Range:** A Sections 27 & 28, Township 23S., Range 24E. and Sections 33 & 34, Township 23 S., Range 24E, Mount Diablo Base and Meridian

**Activity / Project Location – City:** N/A, nearest community is unincorporated Allensworth, CA

**Activity / Project Location - County:** Tulare County, CA

**Description of Nature, Purpose, and Beneficiaries of Activity / Project:** The activity/project location is the intersection of Avenue 56 and Road 88 in Tulare County, CA. From this location, the pipeline shall extend one (1) mile north along Road 88 to the intersection with Deer Creek. The activity/project is located on three parcels: 313-020-006, 313-020-007, and 313-030-003. The activity/project scope consists of a single 36" PVC pipeline to convey fresh water from Deer Creek to a private farming operation. The pipeline shall be installed in twenty (20) foot sections, a minimum of three (3) feet below the existing ground surface, with minor trenching and backfilling along the one (1) mile length of the pipeline. The surface condition shall be restored to its original state following backfilling. The pipeline installation underneath Avenue 56 shall be completed by method of jack-and-bore to minimize transportation disruption and ensure project safety. The upstream end of the pipeline shall be a small turnout structure at the Deer Creek to convey water to the landowner. The activity/project location is the intersection of Avenue 56 and Road 88 in Tulare County, CA. From this location, the pipeline shall extend one (1) mile north along Road 88 to the intersection with Deer Creek.

## Exempt Status:

**X Categorical Exemption: 14 Cal. Code Regs. Section 15303 (New Construction or Conversion of Small Structures)**

**Reasons Why Activity/Project are Exempt from CEQA:** The activity/project is consistent with Guidelines Section 15303 because the activity/project is an undergrounded pipeline to convey water to a private farming operation using trenching and backfilling (with surface conditions restored to original condition) and jack-and-bore (to minimize traffic disruption and for safety). Further, the activity/project will be required to comply with permitting, regulations, etc., from any entity with jurisdictional authority as applicable. Therefore, it can be reasonably concluded that proposed activity/project is exempt from California Environmental Quality Act per Section 15301

**Name of Public Agency Approving Activity / Project:** Tulare County Resource Management Agency

**Activity/Project Representative:** Reed Schenke, Resource Management-Director **Telephone:** (559) 624-7142

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: Chief Environmental Planner  
Hector Guerra

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: Resource Management Agency - Director  
Reed Schenke P.E. Environmental Assessment Officer

Signed by Lead Agency

Date received for filing at OPR: N/A