MEMORANDUM OF UNDERSTANDING

Surface mining and reclamation coordination in the State of California in accordance with California's Surface Mining and Reclamation Act (SMARA) of 1975, as amended,

by and between the

STATE OF CALIFORNIA, DEPARTMENT OF CONSERVATION AND THE STATE MINING AND GEOLOGY BOARD,

the

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE, PACIFIC SOUTHWEST REGION,

and the

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CALIFORNIA

THIS AGREEMENT is made and entered into by and between the State of California, Department of Conservation, through its Director, and the State Mining and Geology Board, through its Chairman (jointly referred to herein as "the State"), the Pacific Southwest Region of the United States Forest Service, through its Regional Forester ("the Forest Service"), and the Bureau of Land Management, through its State Director, California ("BLM"), for the purposes of: (1) assuring the application of adequate and appropriate reclamation throughout the State of California; (2) simplifying the administration of surface mining and reclamation practice requirements on Federal lands and on a combination of Federal and private lands; (3) achieving coordination of activity governing reclamation; and (4) eliminating duplication among the aforementioned agencies and counties serving as lead agencies ("lead agencies" pursuant to the Surface Mining and Reclamation Act, Public Resources Code Section 2728) in implementing State and Federal requirements.

WITNESSETH:

WHEREAS, local, State, and Federal agencies have certain legal requirements in regulating the effects of surface mining on Federal lands and on combinations of Federal and private lands, it is deemed advisable to develop an understanding between BLM, the Forest Service, and the State to serve as guidance for local agencies, BLM, the Forest Service, and the State in fulfilling their agency regulatory responsibilities in such situations.

WHEREAS, for purposes of this agreement, the following are exempt from SMARA pursuant to Public Resources Code Section 2714:

(1) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less;

(2) Surface mining operations that are required by federal law in order to protect a mining claim (i.e. annual assessment work), if such operations are conducted solely for that purpose; and

(3) Such other surface mining operations which the State determines to be of an infrequent nature and which involve only minor surface disturbances.

WHEREAS, a Memorandum of Understanding (MOU) between the State, the Forest Service, and BLM, governing surface mining and reclamation coordination in the State of California, was signed in 1979 and remains in effect until this new agreement is signed by each party.

WHEREAS, the 1979 MOU was completely rewritten and resigned by the Bureau of Land Management and the State of California on February 7, 1990; and, that the purpose of this updated agreement is to make minor amendments to the 1990 MOU and to add the U.S. Forest Service as signatory.

WHEREAS, several acts of Congress provide for persons to prospect and mine on Federal lands which are administered by the Forest Service and BLM, and which are open to the operation of the United States mining, mineral leasing and mineral materials laws, providing they comply with the rules and regulations covering the Federal lands involved (applicable regulations include 25 CFR 211, 36 CFR 228 et seq., 43 CFR 3802, 3809, 3500, and 3600).

WHEREAS, Federal laws and regulations require that operations authorized under Federal mining, mineral leasing, and mineral material laws shall be conducted so as to minimize adverse environmental impact, or prevent unnecessary or undue degradation caused by such operations, and that the land be reclaimed to a second productive use, where practicable.

WHEREAS, BLM and the Forest Service are authorized to work with the State for purposes of coordinating Federal, State and local regulatory activities for environmental protection [applicable regulations include 43 CFR 3809.3-1(a)-(c) and 36 CFR 228.8 and 228.46].

WHEREAS, for proposed mineral operations, the purpose of both the National Environmental Protection Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA) is to assure the identification, analysis, and disclosure of significant environmental impacts associated with proposed projects and the incorporation of feasible mitigation to address significant adverse environmental impacts.

WHEREAS, the statutory requirements of the National Environmental Protection Act of 1969 (NEPA) for the Forest Service and BLM, and the California Environmental Quality Act (CEQA) for State and local agencies are largely equivalent.

WHEREAS, city and county "lead agencies" have the responsibility under the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710-2795), as amended, and State policy for surface mining and reclamation practice (California Code of Regulations Sections 3500-3505), to regulate surface mining and reclamation within their jurisdictions to assure that:

(1) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses;

(2) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment; and

(3) Residual hazards to the public health and safety are eliminated.

WHEREAS, "lead agencies" are cities, counties, or other agencies designated by the Board which have the principal responsibility for approving a surface mining operation or reclamation plan (as defined by SMARA and other relevant regulations and ordinances) pursuant to the provisions of SMARA, and the use herein of the words "lead agencies" shall signify the Board's approval for lead agencies to use the guidance in this MOU to satisfy the requirements of applicable State laws and regulations for surface mining and reclamation on lands in California.

WHEREAS, lead agency surface mining and reclamation ordinances certified by the Board include and comply with applicable provisions of State laws and regulations for surface mining and reclamation practice.

NOW, THEREFORE BE IT RESOLVED that the parties to this memorandum hereby understand and agree that the following will satisfy the aforesaid requirements of the aforesaid laws and are acceptable to both the Forest Service, BLM and the State. It is agreed that in regulation of surface mining of minerals on Federal lands and on combinations of Federal and private lands that:

(1) Lead agencies and the Forest Service and/or BLM will work cooperatively to insure that conditions required of operators (as defined by Federal law, and by SMARA and any other relevant regulations and ordinances) in minimizing adverse environmental impacts conform to all applicable local, State, and Federal regulations.

(2) Lead agencies may accept as functionally equivalent documents to meet their requirements under SMARA, operating plans, reclamation plans and environmental studies that meet the requirements of Forest Service and BLM regulations [submitted pursuant to federal regulation provided such plans and studies meet or exceed lead agency requirements as included in the lead agency's State-certified surface mining and reclamation ordinance and any other applicable laws and regulations]; and alternatively, Forest Service and BLM may accept as functionally equivalent documents to meet their requirements, operating plans, reclamation plans and environmental studies [submitted to the lead agency when such plans and studies meet or exceed requirements set by the BLM] that meet SMARA requirements.

(3) Lead agencies may accept as functionally equivalent, documents prepared under NEPA (40 CFR 1500-1508) that meet the requirements of CEQA.

(4) Lead agencies may enter, and in fact are encouraged to enter, into specific area agreements (including but not limited to, joint powers agreements and MOUs) with the Forest Service and/or BLM for purposes of implementing this agreement, coordinating reviews, avoiding duplication, and facilitating participation by affected agencies. Issues that may be addressed by such agreements include, but are not limited to, the filing, review, and procedures for approval of reclamation plans, fees, public inspection and enforcement activities, and bonding requirements. Such specific area agreements shall be in conformance with the lead agency's certified surface mining and reclamation ordinance and Federal law and regulation.

(5) By written agreement BLM may delegate authority to lead agencies to be solely responsible for processing, to approval, all mining operations which are subject to federal mining law in accordance with 43 CFR 3809. A delegation agreement may provide, among other things, for lead agencies to forward copies of submitted exploration and development permit applications to the BLM; to provide a 10-day comment period to the BLM; and prior to approval, or rejection, to provide BLM 5 working days to comment on proposed reclamation and other requirements.

(6) For the purposes of this agreement, assessment work required to protect claims under federal law is defined as prospecting or exploration work completed for the purposes of discovering an ore body. It does not include development drilling or extraction of minerals for commercial purposes, which are not exempted from the provisions of SMARA.

(7) For BLM's Notices (written notification required to be provided to the BLM under 43 CFR 3809.1-3) for those operations of 5 acres in size or less, within 5 days after receipt by the BLM of an accepted Notice, the BLM will forward a copy of the Notice to the lead agency for appropriate action by the lead agency. The lead agency may correspond directly with the operator for purposes of approval in accordance with SMARA, including any and all additional conditions and requirements, and will send copies of all correspondence and requirements to the BLM.

(8) For mining operations requiring a Plan of Operations for projects solely on Federal land, that are not exempt from SMARA, BLM and the Forest Service will provide lead agencies notice and the opportunity for early participation, consultation, and submission of information and recommendations for the development of environmental documents and reclamation plans.

(9) Within 30 days of receipt of notification under paragraph (8) above and copies of relevant informational documents, lead agencies will provide comments and recommendations to the Forest Service and/or BLM so that they may be considered and incorporated, as appropriate, as part of the environmental review and proposed Forest Service and/or BLM decision.

(10) Public hearings for compliance with SMARA and the certified lead agency SMARA ordinance should be coordinated with the Forest Service and/or BLM.

(11) Forest Service and BLM will forward the environmental and decision documentation, which includes the reclamation plan requirements, to the lead agency for appropriate consideration. The lead agency will correspond directly with the applicant, and within 45 days of the date of the Forest Service or BLM decision, send copies to the BLM or the Forest Service of adopted conditions of approval which differ from conditions of BLM or Forest Service approval.

(12) Lead agencies will forward to the Forest Service and/or BLM copies of all surface mining proposals and draft reclamation plans they receive for operations located entirely on Forest Service and/or BLM lands.

(13) Implementation of measures to mitigate adverse environmental impacts to off-site, non-federal lands will be authorized, permitted, or otherwise directed by the lead agency or other responsible local or State agency.

(14) Lead agencies will notify the Forest Service and/or BLM whenever an application for approval of mining activities is received and a draft reclamtion plan is completed for an operation which comes under the purview of SMARA and lead agency requirements on areas adjacent to Forest Service and/or BLM public lands, and will give the Forest Service and/or BLM an opportunity to provide information and recommendations for such plans.

(15) Lead agencies and the Forest Service and/or BLM will review and coordinate Environmental Documents, Operating Plans, Reclamation Plans and Permits for those mining operations that include both Forest Service and/or BLM lands and private lands. The objective of the review and coordination process is to avoid conflicting and duplicative requirements in Operating Plans and Permits and to keep procedural impacts on the mining operators to a minimum necessary to meet all applicable requirements. Coordination responsibilities for operations encompassing two or more mixed private and Forest Service and/or BLM ownerships should be determined on a case-by-case basis by the parties involved.

(16) The Forest Service and/or BLM will approve the Plan of Operations when the operator agrees to the conditions and stipulations, including the appropriate measures to mitigate adverse environmental impacts, incorporated into the plan or permit to meet applicable Forest Service, BLM, State and local reclamation requirements. The operator must also comply with other applicable Federal, State, and local laws and regulations including those pertaining to hazardous substances.

(17) Where the Forest Service and BLM are the operators (i.e., for community pits), and where a Federal agency contractor will be the operator for surface mining activities on Federal lands that are not exempt from SMARA, requirements for reclamation and any other necessary environmental documentation will be prepared and approved in accordance with paragraphs 8 and 9 of this MOU.

(18) To the extent practicable, lead agencies and the Forest Service and/or BLM will coordinate their enforcement and monitoring responsibilities, and will cooperate in the correction and abatement of any violations of the conditions of operation imposed in accordance with the procedures described in this MOU.

(19) Financial assurances for reclamation are mandatory for surface mining operations that exceed the SMARA threshold. Any federally-required financial assurance may be used to satisfy local and State surety requirements.

Effective Date of this Agreement:

This agreement shall become effective upon each party by signature of that designated party and shall supersede the previously referenced 1979 and 1990 MOU's when signed by all parties.

Modification of this Agreement:

This agreement may be modified upon the initiative of any of the parties for the purpose of ensuring consistency with state or federal statutes or regulations, or for any other purpose mutually agreed upon. In order to be effective, any such modification must be in writing, subject to 30 days notice, and must be signed by all of the designated parties.

Termination of this Agreement:

This agreement shall continue in force until terminated by any party upon thirty (30) days written notice to the other parties. The parties intend to review this agreement at the end of 12 months, and periodically thereafter, as needed.

STATE OF CALIFORNIA:

Edward G. Heidig
Director,
Department of Conservation

DATE: Oct 19, 1992

BUREAU OF LAND MANAGEMENT:

Ed Hastey
Edward Hastey
State Director
California

DATE: 10/20/92

STATE OF CALIFORNIA:

James A. Anderson
Chairman,
State Mining and Geology Board

DATE: Ct 19, 1992

UNITED STATES FOREST SERVICE

Ronald E. Stewart
Ronald E. Stewart
Regional Forester,
Pacific Southwest Region

DATE: Oct. 19, 1992