STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

ARNOLD SCHWARZENEGGER
GOVERNOR

For Meeting Date: November 13, 2008

Agenda Item No. 8: Appeal Hearing: Consideration of Low Gross Exemption, Gundlach Mine (CA Mine ID #91-47-0042), Greg Gundlach (Operator), Greg Gundlach (Agent), Siskiyou County.

INTRODUCTION: For the calendar reporting year, a single operator or mining company may file with the Department of Conservation, Office of Mine Reclamation (OMR), a written request for an exemption from the method of fee assessment set forth in the State Mining and Geology Board's (SMGB) regulations pursuant to Article 8 California Code of Regulations (CCR), Section 3698. If OMR determines that an exemption is not warranted, the operator may appeal that determination to the SMGB.

PETITIONER'S REQUEST: The petitioner requested a Low Gross Exemption Appeal in correspondence dated August 18, 2008, following denial by the Department of Conservation Office of Mine Reclamation (OMR) in their correspondence dated August 4, 2008.

DIRECTOR'S ACTIONS: The Director has denied the Petitioner's request because the operator's submittal of their 2007 Mining Operation Annual Report stated the "*mining operation has not submitted an annual financial assurance cost estimate*."

STATUTORY/REGULATORY/BYLAWS CONSIDERATIONS: Pursuant to the California Code of Regulations (CCR) Article 8, Section 3699:

> *"(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:*

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than $100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of four hundred dollars ($400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member) shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).”

EXECUTIVE OFFICER’S REVIEW AND ANALYSIS: The Gundlach Mine is a small surface mining operation in the County of Siskiyou (County). The reclamation plan was approved by the County in 1996. The site includes approximately 55 acres, of which 7

acres are deemed disturbed. The financial assurance amount of $5,000 was approved in 2002 by the County, serving as lead agency pursuant to SMARA. The County last reviewed this amount on February 2, 2006.

The SMGB, based on all the evidence in the record, **does** have jurisdiction for the purpose of this Low Gross Exemption Appeal. This determination is based on:

(1) The Exemption request **was** completed and filed in a timely fashion:
CCR Section 3699(a) states that any exemption requests must be filed and received by DOC (OMR) by July 1, following the calendar reporting year. The request in this case was filed and received by OMR by July 1.

(2) The request **did** specifically relate to the exemption criteria outlined in PRC Section 3699:
Material at the site is extracted from a single surface mining operation. The operation is situated on one site, has a reclamation plan and financial assurance approved by the County, which serves as the lead agency under SMARA. The amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than $100,000. An annual reporting fee of $400 adjusted for cost of living has been provided. The exemption request, thus, specifically relates to criteria outlined in CCR Section 3699(a)(1).

The basis for denial by OMR is that the operator "*has not submitted an annual financial assurance cost estimate*." Exemption Criteria No. 2 requires that the operation has an approved reclamation plan and financial assurance. The criteria do not require that the operator submit an annual financial assurance cost estimate. Regardless, such information was provided by the operator in correspondence dated September 3, 2008.

(3) The request **did** specify the appellant's arguments for granting the exemption:
The operator has an approved financial assurance instrument for the amount of $5,000 which was approved by Siskiyou County on September 17, 2002. This instrument was subsequently reviewed by the Siskiyou County on February 24, 2006, and deemed adequate.

CONCLUSIONS: In light of the foregoing and the body of evidence submitted by the petitioner, Greg Gundlach, with its Appeal for a Low Gross Exemption, the Chairman concludes that:

1. The Exemption request **was** completed and filed in a timely fashion pursuant to CCR Section 3699(c).

The appeal under this regulation **is** accepted.

2. The Appeal **did** specifically relate to the exemption criteria as outlined in PRC Section 3699:

The appeal under this regulation **is** accepted.

3. The Appeal did specify the appellant's arguments for granting the exemption pursuant to PRC Section 3699:

The appeal under this regulation **is** accepted.

CONSIDERATIONS BEFORE THE SMGB: The SMGB is to determine the following:

(1) Based on evidence presented by the Petitioner and the Director, and any other interested parties, are the Director's determinations to deny the Low Gross Exemption substantially true and correct;

(2) If the Director's findings are substantially true and correct, the SMGB must uphold the denial and order the Petitioner to pay the annual fee calculated under CCR Section 3698 within 30 days of notification.

or

If the Director's findings are **not** substantially true and correct, the SMGB may grant the Low Gross Exemption based on its own findings.

LOW GROSS EXEMPTION APPEAL PROCEEDINGS

FOR:

Gundlach Mine
California Mine ID #91-47-0042
Greg Gundlach (Operator)
Greg Gundlach (Agent)

The purpose of this Proceeding is to allow the Petitioner and the Department of Conservation to present arguments regarding the denial by the Director of a request for a Low Gross Exemption. Pursuant to California Code of Regulations Section 3699 the SMGB may affirm the denial of the Low Gross Exemption, or may by its own actions grant the request for Low Gross Exemption.

Following the presentations, the SMGB will consider the issues before it and may ask questions of the participants.

<u>The Order of the Proceedings will be as follows:</u>

1. Identification of the Record by the Department of Conservation;

2. Statements on Behalf of the Petitioner;

3. Statements on Behalf of the Director;

4. Statements on Behalf of the Lead Agency;

5. Statements on Behalf of the Public;

6. Rebuttal on Behalf of the Petitioner;

7. Rebuttal on Behalf of the Director;

8. Motion to close the public hearing.

Notwithstanding the above, the Chairman or the Chairman's designee for the purposes of conducting these procedures may, in the exercise of discretion, determine the order of these proceedings, and set time limits.

To uphold the Director's findings:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board determine that the Director's findings are substantially true and correct, and that the Board uphold the denial and order the Petitioner, on behalf of the Gundlach Mine, to pay the annual fee calculated under CCR Section 3698 within 30 days of notification.

OR,

To not uphold the Director's findings:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board determine that the Director's findings are ***not*** *substantially true and correct, and the SMGB grant the Low Gross Exemption to Gundlach Mine, based on its own findings.*

Respectfully submitted:

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Stephen M. Testa
Executive Officer