



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT



ARNOLD  
SCHWARZENEGGER  
GOVERNOR

For Meeting Date: May 14, 2009

**Agenda Item No. 5: Approval of an Interim Financial Assurance Amount for the Feather River Levee Improvement Project (CA Mine ID #91-58-00XX), Three Rivers Levee Improvement Authority (Operator), Paul Brunner (Agent), County of Yuba.**

**INTRODUCTION:** The State Mining and Geology Board (SMGB) acts as the lead agency for the County of Yuba, pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710, et seq.). SMARA requires that each surface mining operation maintain a financial assurance in an amount adequate to reclaim, in accordance with the requirements of an approved reclamation plan, all lands disturbed by the mining operation. SMARA lead agencies are required to annually review the financial assurance amounts for each surface mining operation, and adjust the amount, as necessary, to account for new land disturbed, inflation, or land reclaimed. In any event, the lead agency must ensure that the approved amount is adequate to reclaim the mine site in accordance with the approved reclamation plan (PRC Sections 2770 and 2773.1, and California Code of Regulations (CCR) Section 3804).

**STATUTORY AND REGULATORY AUTHORITY:** Financial assurance cost estimate adjustment requirements are discussed under SMARA, and fall within the SMGB's regulations and guidelines. Lead agencies are required to ensure that financial assurances for reclamation are sufficient pursuant to Division 2, Chapter 9, Article 5 of PRC Section 2770(d) which states:

*"The lead agency's review of reclamation plans submitted pursuant to subdivision (b) or of financial assurances pursuant to subdivision (c) is limited to whether the plan or the financial assurances substantially meet the applicable requirements of Sections 2772, 2773, and 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, but, in any event, the lead agency shall require that financial assurances for reclamation be sufficient to perform reclamation of lands remaining disturbed. Reclamation plans or financial assurances determined to substantially meet these requirements shall be approved by the lead agency for purposes of this chapter. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. Reclamation plans or financial assurances determined not to substantially meet these requirements shall be returned to the operator within 60 days. The*



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*operator has 60 days to revise the plan or financial assurances to address identified deficiencies, at which time the revised plan or financial assurances shall be returned to the lead agency for review and approval.”*

In addition, PRC Section 2773.1(a) states:

*“...Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:*

*(3) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.”*

Furthermore, the SMGB's regulations pursuant to Article 11 of the CCR Section 3804, Calculation of Financial Assurance Amount, states:

*“(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:*

- (1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;*
- (2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;*
- (3) the number of units of each of these activities, if applicable;*
- (4) a contingency amount not to exceed 10% of the reclamation costs.*

*(b) The calculated amount should not include the cost of completing mining of the site.*

*(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).”*

**BACKGROUND:** The Feather River Levee Repair Project is one component of a multi-year regional levee improvement project along the Feather, Yuba, and Bear rivers, and the Western Pacific Interceptor Canal. For this particular project, Three Rivers Levee Improvement Authority (TRLIA) has commenced construction of a new 5.7-mile long setback



levee approximately 0.5 miles east of the existing left (east) bank Feather River levee in South Yuba County to enhance flood protection.

The Feather River Levee Repair Project Segment 2 (Project) is utilizing five borrow sites: Nordic/H&H Borrow, Naumes Borrow, Uppal Borrow, Platter/JTS Borrow, and Ella Borrow. TRLIA proposed, and has subsequently commenced, mining of subsurface clay materials suitable for levee construction on approximately 300 acres composed of several distinct borrow sites adjacent to and in close proximity to the 1,500-acre levee setback area. The borrow excavations will encompass approximately 177 acres within the levee setback area and 106 acres outside (east of) the levee setback area. It is estimated that 3.6 million cubic yards of compacted borrow material, or approximately 4.2 million “bank” cubic yards, will be needed for levee construction. To the west of the new levee construction site, the borrow sites are proposed to be reclaimed to conditions suitable for riparian and wildlife habitat, and to agricultural uses. On the landward, or eastern side, final end uses of the borrow sites may include an enhanced detention basin, agricultural operations, and/or possible future residential development.

Issuance of Notice of Violation: On September 23, 2008, the SMGB received a proposed *Reclamation Plan for the Three Rivers Levee Improvement Authority, Feather River Levee Repair Project, Segment 2* (Reclamation Plan), prepared by PBS&J, dated September 2008. Following receipt of this document, a preliminary review was undertaken by the SMGB and the Office of Mine Reclamation (OMR), and a site visit to the project area was conducted on November 14, 2008. Based on our preliminary review and site visit, SMGB staff concluded that portions of the project were indeed subject to SMARA, and that surface mining operations had already commenced. On December 23, 2008, a Notice of Violation was issued by the Executive Officer to the TRLIA for operating a surface mine without possession of a lead agency approved Reclamation Plan and Financial Assurance, and County Permit to Mine.

Review of Reclamation Plan: As noted above, on September 23, 2008, the SMGB received the proposed Reclamation Plan. Upon review of the proposed Reclamation Plan and associated environmental reports, OMR and SMGB staff determined that the proposed reclamation plan included provisions for reclaiming all but the Ella Borrow site pursuant to SMARA. The Ella Borrow site was not included in the proposed reclamation plan because the project operator claimed an exemption from SMARA.

Applicability of SMARA: Based on review of the 2008 Reclamation Plan, it was determined by OMR and SMGB staff that the Nordic/H&H Borrow, Naumes Borrow, and Uppal Borrow were onsite excavation and onsite earth moving activities that are an integral and necessary part of the levee construction project, all required permits had been obtained and applicable environmental analysis completed, and no surplus materials were to be exported from the construction site; therefore, these borrow pits met all the criteria for the onsite construction exemption pursuant to PRC Section 2714(b)(1) through 2714(b)(4). However, the Ella and



Platter/JTS Borrow sites were not considered onsite excavations or onsite earth moving activities, and were determined to be subject to the requirements of SMARA.

March 25, 2009, Surface Mining Standards Committee Meeting: A meeting of the SMGB's Surface Mining Standards Committee (Committee) was held on March 25, 2009. The Committee concluded that the ongoing and proposed activities of the Platter/JTS and Ella Borrow sites, which are a part of the FRLIP, were subject to the requirements of SMARA. The Committee noted that public safety and the project's early commencement in the spring of 2009 is essential for completion of the project in a safe manner for the public. The Committee moved to recommend that the full SMGB grant a temporary, one-time exemption, if appropriate, to allow surface mining activities at the two borrow sites to continue. The Committee agreed that, should a temporary exemption be deemed inappropriate, the operator should proceed with submittal of a reclamation plan, associated environmental documents, and financial assurance cost estimate, to be considered for SMGB approval no later than the SMGB's regular business meeting scheduled for July 9, 2009.

April 9, 2009, SMGB Regular Business Meeting: At its meeting held on April 9, 2009, the SMGB determined that the Ella and Platter/JTS Borrow Sites were indeed subject to SMARA, and moved to issue an Order to Comply to the TRLIA to submit a Reclamation Plan and FACE for the two sites. The SMGB further requested that TRLIA provide an interim FACE within thirty days of the April 9, 2009 meeting.

On April 20, 2009 the SMGB office received from TRLIA, in response to the SMGB's directive, the Financial Assurance Cost Estimate (FACE) for the Ella and Platter Borrow Sites, as prepared by Resource Design Technology, Inc., and dated April 2009. The FACE proposed a total reclamation cost for the Ella Borrow Site of \$17,457.66, and a total reclamation cost of the Platter Borrow Site of \$126,028.60, for a grand total estimated financial assurance amount of \$143,486.26.

Based on review of the recently submitted FACE, SMGB staff recommended that the Total Estimated Cost of Reclamation for the Ella Borrow Site be increased from the proposed \$17,457.66 to \$20,344.00. Similarly, staff recommended that the Total Estimated Cost of Reclamation for the Platter Borrow Site be increased from \$126,028.60 to \$137,431.00. These recommended increases reflect an additional year of revegetation monitoring at both sites, and revisions to the indirect costs for both sites, and result in a total recommended FACE amount for both the Ella and Platter Borrow Sites of \$157,775.00. The following tables summarize SMGB staff's recommended revisions:



**TABLE 1  
SUMMARY OF SMGB STAFF RECOMMENDED COSTS  
ELLA BORROW SITE**

I.	Direct Costs:	
	Primary Reclamation Activities	\$ 1,802
	Revegetation	\$ 7,050
	Plant Structures and Equipment Removal	\$ -0-
	Miscellaneous Costs	\$ 2,199
	Monitoring	\$ 2,200
	<b>Total Direct Costs</b>	<b>\$ 13,251</b>
II.	Indirect Costs	
	Supervision (6.8%)	\$ 901
	Profit/Overhead (14.7%)	\$ 1,948
	Contingencies (10%)	\$ 1,325
	Mobilization (2%)	\$ 265
	<b>Total Indirect Cost</b>	<b>\$ 4,439</b>
	<b>Total Direct and Indirect Costs</b>	<b>\$ 17,690</b>
III.	Lead Agency administrative cost (15%)	\$ 2,654
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	<b>Total Estimated Cost for Reclamation</b>	<b>\$ 20,344</b>



**TABLE 2  
SUMMARY OF SMGB STAFF RECOMMENDED COSTS  
PLATTER BORROW SITE**

I.	Direct Costs:		
	Primary Reclamation Activities	\$ 59,194	
	Revegetation	\$ 28,200	
	Plant Structures and Equipment Removal	\$ -0-	
	Miscellaneous Costs	\$ 2,332	
	Monitoring	\$ 2,200	
	<b>Total Direct Costs</b>	<b>\$ 91,926</b>	
II.	Indirect Costs		
	Supervision (5.8%)	\$ 5,332	
	Profit/Overhead (12.2%)	\$ 11,215	
	Contingencies (10%)	\$ 9,193	
	Mobilization (2%)	\$ 1,839	
	<b>Total Indirect Cost</b>	<b>\$ 27,579</b>	
	<b>Total Direct and Indirect Costs</b>	<b>\$ 119,505</b>	
III.	Lead Agency administrative cost (15%)	\$ 17,926	
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	<b>Total Estimated Cost for Reclamation</b>	<b>\$ 137,431</b>	
	 <b>Grand Total Interim Estimated Cost for Reclamation of Ella and Platter Borrow Sites</b>	 <b>\$157,775.00</b>	



**CONSIDERATION BEFORE THE SMGB:** The SMGB may consider the following actions:

1. Approve as adequate the proposed interim financial assurance amount, as provided by the operator, without additions;
2. Approve as adequate the proposed interim financial assurance amount, as provided by SMGB staff, without additions;
3. Modify the interim financial assurance amount, and then accept it as adequate;
4. Reject the proposed interim financial assurance amount as inadequate and order it to be redone.

**EXECUTIVE OFFICER'S RECOMMENDATION:** It is the recommendation of the Executive Officer that the proposed interim financial assurance amount as provided by the operator be revised as recommended by SMGB staff, and approved as an interim amount by the SMGB. The financial assurance cost estimate has been reviewed for its consistency and completeness in meeting the minimum requirements of SMARA, and the SMGB's regulations and guidelines. Based on the Executive Officer's knowledge of existing site conditions, the proposed FACE, with incorporation of SMGB recommended revisions, is deemed to be adequate.

**SUGGESTED MOTION LANGUAGE:**

To request an Interim Financial Assurance Amount:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board approve an interim financial assurance amount of \$157,775.00 for the Ella and Platter Borrow Sites, CA Mine ID # to be determined, located in the County of Yuba, as such amount is considered adequate, based on current site conditions, to reclaim the site in accordance with the minimum requirements of SMARA and the SMGB's regulations. Such amount should be provided to the SMGB no later than 30 days from this date.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer