



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: July 9, 2009

Agenda Item No. 4: Approval of a Reclamation Plan and Financial Assurance Cost Estimate 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 all surface mine operations in the County of Yuba that are subject to the Surface Mining and Reclamation Act (SMARA, Public Resources Code (PRC) Section 2710, et seq.). The Feather River Levee Repair Project (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.

BACKGROUND: The Feather River Levee Repair Project Segment 2 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 by SMGB staff 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



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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.

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 Project, 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 Financial Assurance Cost Estimate (FACE) for the two sites. It was agreed that upon submittal, the Reclamation Plan and FACE were to be expeditiously reviewed, and placed on the SMGB's July 9, 2009 Regular Business Meeting agenda for approval consideration. 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, a FACE for the Ella and Platter Borrow Sites, as prepared by Resource Design Technology, Inc. The FACE will be further discussed below.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REQUIREMENTS: For the Feather River Levee Improvement Project, TRLIA is the lead agency, that is, the public agency that has the principal responsibility for carrying out or approving the project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15367. Under CEQA Guidelines Section 15381, the SMGB is a responsible agency, that is, a public agency that proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or Negative Declaration, and has discretionary approval power over the project.

Title 14 of the California Code of Regulations, Section 15096(e)-(i) states “A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved.” In this case, TRLIA is the CEQA lead agency and has the principal responsibility for the environmental review of the entire Feather River Levee Repair Project pursuant to CEQA Guidelines Section 15367, and for preparing and adopting the Draft Environmental Impact Report (DEIR) and the Final Environmental Impact Report (FEIR). The SMGB is a CEQA Responsible Agency and the SMARA lead agency. TRLIA is the lead agency under CEQA Guidelines Section 15381. The SMGB is a responsible agency, that is, a public agency that proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or Negative Declaration, and has discretionary approval power over the project encompassed by the proposed Ella and Platter Borrow Sites Reclamation Plan. As a responsible agency under CEQA, the SMGB can make its own findings and determinations pertaining to the approval of the Reclamation Plan, and can rely on the DEIR and FEIR in support of its decision to approve the Reclamation Plan.

The DEIR and FEIR prepared for the Feather River Levee Repair Project is subject to review by the SMGB acting as the SMARA lead agency. The DEIR and FEIR (State Clearinghouse No. 2006062071) for the Feather River Levee Repair Project was certified on February 6, 2007 by TRLIA. An Addendum to the FEIR pertaining to soil borrowing activities at the Platter Borrow Site was prepared in April of 2008. An Addendum 2 to the FEIR pertaining to soil borrowing activities at the Ella Borrow Site was prepared in May of 2008. Both Addendums are considered minor clarifying changes and additions to the Feather River Levee Repair Project, and therefore preparation of a subsequent EIR, per Sections 15162 and 15164 of the CEQA Guidelines, was not required.

RECLAMATION PLAN: As noted above, on September 23, 2008, the SMGB received a proposed Reclamation Plan pertaining to the Feather River Levee Improvement Project. This reclamation plan addressed activities relating to construction of the new setback levee, deconstruction of the existing levee, extraction of soil materials from several borrow pits



within parcels immediately adjacent to the new setback levee footprint, and extraction of soil materials within the Platter/JTS borrow site. Soil extraction activities within the Ella borrow site were not addressed.

Upon further review by the OMR and SMGB staff, it was determined that only the proposed soil extraction activities proposed at the Ella and Platter/JTS borrow sites needed to be included in a reclamation plan in order to meet the requirements of SMARA. After deliberation by the Surface Mining Standards Committee on March 25, 2009, and subsequent consideration by the whole SMGB on April 9, 2009, TRLIA was ordered to submit a reclamation plan and financial assurance cost estimate covering the surface mining activities at the Ella and Platter Borrow sites.

In response to the SMGB's Order to Comply, on May 13, 2009 the SMGB received the *Ella and Platter Borrow Sites Reclamation Plan*, prepared by Resource Design Technology, Inc., and dated May 2009. Several issues were identified following review by OMR and SMGB staff that required revisions to the subject reclamation plan. On July 1, 2009, the revised Reclamation Plan was received at the SMGB office. On July 2, 2009, following a preliminary review by SMGB staff, the revised Reclamation Plan was deemed adequate.

FINANCIAL ASSURANCE COST ESTIMATE: On April 20, 2009 the SMGB office received from TRLIA, in response to the SMGB's directive, an interim 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 interim 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 reflected 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. On May 14, 2009, the SMGB approved the interim FACE amount of \$157,775.00, and requested an adequate interim financial assurance mechanism to be provided within 30 days. On June 30, 2009, the SMGB office received documentation from TRLIA showing that a special fund had been created by the Yuba County Auditor/Controller, in the amount of \$157,775.00, for the purpose of reclaiming the Ella and Platter Borrow sites. Such financial assurance mechanism was subsequently deemed adequate by SMGB staff.

On July 1, 2009, the SMGB office received a revised FACE for the Ella and Platter Borrow Sites, which reflects recent revisions to the Reclamation Plan. It was noted that the FACE included a cost of \$1,515.15 for scarification of six (6) acres on the Platter Borrow site.

Review of the revised Reclamation Plan indicates that approximately twenty (20) acres may require scarification on the Platter Borrow site, which would equate to a cost of approximately \$5,060 based on rates used within the FACE, or a difference of about \$3,545. However, it was also noted that the revised FACE includes costs for hydroseeding 12 acres of the Platter Borrow site at a cost of \$28,200.00, whereas the Reclamation Plan only requires hydroseeding of approximately 9 acres of the Platter Borrow site. Based on rates used within the FACE, hydroseeding of 9 acres would equate to a cost of \$21,150.00, or a reduction of \$7,050.00. Therefore, SMGB staff concludes that the underestimate for scarification is more than offset by the overestimate for hydroseeding at the Platter Borrow site, and that the total costs for reclamation for both borrow sites, as presented in the revised FACE, of \$157,770.78 is adequate.

The following tables summarize estimated costs for reclamation of the Ella and Platter Borrow sites as provided by the operator:

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

I.	Direct Costs:	
	Primary Reclamation Activities	\$ 1,801.68
	Revegetation	\$ 7,050.00
	Plant Structures and Equipment Removal	\$ -0-
	Miscellaneous Costs	\$ 2,198.80
	Monitoring	\$ 2,200.00
	Total Direct Costs	\$ 13,250.48
II.	Indirect Costs	
	Supervision (6.8%)	\$ 901.03
	Profit/Overhead (14.7%)	\$ 1,947.82
	Contingencies (10%)	\$ 1,325.05
	Mobilization (2%)	\$ 265.01
	Total Indirect Cost	\$ 4,438.91
	Total Direct and Indirect Costs	\$ 17,689.39
III.	Lead Agency administrative cost (15%)	\$ 2,653.41
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	Total Estimated Cost for Reclamation	\$ 20,342.80

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

I.	Direct Costs:		
	Primary Reclamation Activities	\$ 59,193.55	
	Revegetation	\$ 28,200.00	
	Plant Structures and Equipment Removal	\$ -0-	
	Miscellaneous Costs	\$ 2,331.52	
	Monitoring	\$ 2,200.00	
	Total Direct Costs	\$ 91,925.07	
II.	Indirect Costs		
	Supervision (5.8%)	\$ 5,331.65	
	Profit/Overhead (12.2%)	\$ 11,214.86	
	Contingencies (10%)	\$ 9,192.51	
	Mobilization (2%)	\$ 1,838.50	
	Total Indirect Cost	\$ 27,577.52	
	Total Direct and Indirect Costs	\$ 119,502.59	
III.	Lead Agency administrative cost (15%)	\$ 17,925.39	
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	Total Estimated Cost for Reclamation	\$ 137,427.98	
	 Grand Total Estimated Cost for Reclamation of Ella and Platter Borrow Sites	 \$157,770.78	

As noted above, on June 30, 2009, and acceptable Financial Assurance mechanism in the amount of \$157,775.00 was received at the SMGB office.

CONSIDERATIONS BEFORE THE SMGB: The SMGB is being requested to review the FEIR and FEIR Addendums, the Reclamation Plan, and the financial assurance cost estimate, for their consistency and completeness in meeting the minimum requirements CEQA, and SMARA, CCR Section 3500 et seq. and Section 3700 et seq. The SMGB may:

1. Approve the documents as meeting these requirements; or
2. Modify the documents with conditions of approval, and then approve the documents as adequate; or
3. Reject the documents as inadequate and remand them back to the operator for additional adjustments and revisions.

EXECUTIVE OFFICER'S RECOMMENDATION: Violations noted as of December 2008 with regards to the Feather River Levee Improvement Project's required compliance with SMARA have been adequately addressed in the recently submitted Ella and Platter Borrow Sites Reclamation Plan. The FEIR and FEIR Addendums, the Reclamation Plan, and the revised financial assurance cost estimate were reviewed by OMR and SMGB staff, and are considered consistent and complete in meeting the minimum requirements of the CEQA, SMARA and the SMGB's regulations. Approval of the subject Reclamation Plan by the SMGB would bring the ongoing Feather River Levee Improvement Project into compliance with SMARA (PRC Section 2710, et seq.) and the SMGB's regulations for surface mining and reclamation practice (CCR Title 14, Chapter 8, Article 1, Section 3500, et seq.; Article 9, Section 3700, et seq.). Since the initiation of this process in September of 2008, TRLIA has acted in good faith to bring the Project into compliance with the requirements of SMARA. The Executive Officer therefore recommends that the SMGB approve the FEIR and FEIR Addendums, the Reclamation Plan, and the revised financial assurance cost estimate.

SUGGESTED MOTION LANGUAGE:

Part A. Motion to approve the Adopted EIR and EIR Addendums:

Mr. Chairman, in light of the information before the Board today, I move that the Board approve of the analysis, findings, and recommendations contained in the Executive Officer's Report, and that the Board, acting as a responsible agency with authority provided under CEQA Guidelines Section 15381, approve the Environmental Impact Report and Environmental Impact Report Addendums for the Feather River Levee Repair Project (CA State Clearinghouse No. 2006062071), and adopt the Mitigation Monitoring and Reporting Plan, as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975, and the California Environmental Quality Act.

Part B. Motion to approve the June 2009 Reclamation Plan:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve of the analysis, findings, and recommendations contained in the Executive Officer's Report, and the Board, acting as lead agency with authority provided under PRC Section 2710 et seq., adopt Resolution 2009-06 and approve the June 2009 Reclamation Plan for the Ella and Platter Borrow Sites as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975, and the California Environmental Quality Act.

Part C. Motion to approve the adjusted financial assurance cost estimate:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve of the analysis, findings, and recommendations contained in the Executive Officer's Report, and the Board, acting as lead agency with authority provided under PRC Section 2710 et seq., approve the financial assurance cost estimate of \$157,770.78 for reclamation of the Ella and Platter Borrow Sites.

Respectfully submitted:

Stephen M. Testa
Executive Officer