



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: March 11, 2010

Agenda Item No. 5: Approval Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) for the California Vision, Inc. Proposed Surface Mining Operation, County of Kern.

INTRODUCTION: The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one-time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. California Vision, Inc. has submitted a request for a one-time exemption from SMARA for the conduct of geologic testing in advance of completing a SMARA application in order to determine the commercial viability of a proposed mine located in Kern County. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

STATUTORY CONSIDERATIONS: Public Resources Code (PRC) Section 2735 defines surface mining operations and states:

“Surface mining operations” means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching.*
- (b) The production and disposal of mining waste.*
- (c) Prospecting and exploratory activities.”*

SMARA allows for a one-time exemption pursuant to Article 1 of Public Resources Code (PRC), Division 2, Chapter 9, Section 2714(f), which states:

“Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.”

Before exemptions from the provisions of SMARA are granted, the SMGB, pursuant to SMARA and SMGB Resolution No. 93-6, considers the following four criteria:



Executive Officer's Report

Criteria 1 - Compliance with the California Environmental Quality Act

(CEQA): Pursuant to PRC Section 2712(a), has an environmental review been completed for the proposed activity either separately or as part of a larger project? PRC Section 2712(a) states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) 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.*”

Criteria 2 - Local authority: Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency? PRC Section 2715 states “*No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:*

(a) *On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.*

(b) *On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.*

(c) *On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.*

(d) *On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.*

(e) *On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.*

(f) *On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”*

PRC Section 2770(a) states “*Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.*”

Criteria 3 - End use of the mining or borrow site: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity is proposed to occur defined? PRC Section 2711(b) states “*The Legislature*



further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.”

PRC Section 2712 states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:*

(a) 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.

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

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

Criteria 4 - Impacts of the operation on commercial activities: Pursuant to PRC Section 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered? PRC Section 2714(b) states “*Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:*

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency’s approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.”

BACKGROUND: In correspondence dated January 25, 2010, California Vision, Inc. has submitted a request for a one-time exemption from SMARA for the conduct of geologic testing in advance of completing a SMARA application in order to determine the commercial viability of a proposed mine located near the City of Maricopa, Kern County (County). The



proposed project is situated on Bureau of Land Management (BLM) land, and is for extraction of amorphous silica. BLM would serve as the lead agency for the Plan of Operations and /or Notice of Mining, whereas, the County would serve as the lead agency pursuant to SMARA. The BLM has reviewed a mining Notice for exploration trenching and bulk sampling to test mining claims with amorphous silica and provided comments and conditions as set forth in correspondence dated November 10, 2009 (Exhibit A).



Figure 1. General site vicinity map.

The proposed sampling, and subsequent testing, or representative samples are from five distinct areas, and adjacent to pre-existing drill holes and “window” excavations. Sampling would include excavation at right angles to pre-existing drill holes or trenches approximately 100-150 feet in length, and approximately 30 feet in depth. Less than 5 cubic yards of material will be removed from the project area for laboratory testing, with surface disturbance estimated to be on the order of 4.48 acres (0.22 acres per drill site or 0.88 acres per drill site, and 1.1 acres at the bulk sampling location). In summary, 19 trenches and one 700 cubic yard bulk test at another mined site, are proposed.

In review of Exhibit C, Project Location Map, it is illustrated that four trenches would be excavated at right angles to five pre-existing drill holes (drill holes DH # 3, 4, 8, 9 and 11). These trenches would be 65 in width at the land surface, 30 feet in depth with 2 horizontal:1 vertical (2H:1V) sides, and approximately 100 to 150 feet in length. It is estimated that a total of approximately 108,333 cubic yards of materials would be excavated, in addition to 500 cubic yards of bulk sampling. Thus, the total amount of material being excavated for representative sampling purposes is on the order of 108,833 cubic yards.



DISCUSSION: The general threshold criteria pursuant to SMARA is discussed in PRC Section 2714(d), SMARA does not apply to operations where “*Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.*” The total amount of material being excavated for representative sampling purposes is on the order of 108,833 cubic yards. The estimated amount of surface disturbance is on the order of 4.48 acres (0.22 acres per drill site or 0.88 acres per drill site, and 1.1 acres at the bulk sampling location).

Exemption Criteria: It is recognized, however, that not all surface mining operations are an efficient “fit” under SMARA, and that many projects of limited size, duration, economic and environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.

The proposed project 1) exceeds SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes, and 2) is not a part of an on-site construction project that may be exempt from SMARA pursuant to the requirements under PRC Section 2714(b); however, one-time exemptions have been granted by the SMGB in the past in instances where such thresholds have been significantly exceeded.

The SMGB must contemplate four specific criteria, as discussed above, in considering granting a one-time exemption:

Criteria No. 1: Pursuant to PRC Section 2712(a), has an environmental review been completed on the proposed activity either separately or as part of a larger project?

Finding No. 1: As part of its SMARA application to the County, California Vision, Inc. stated in their January 25, 2010, correspondence that a Biological Assessment, Traffic Study, Revegetation Plan, Hydrology Study, Storm Water Prevention Plan, and Dust Control Plan, were submitted to the County and BLM. In correspondence dated November 10, 2009, the BLM in their review of the Biological Assessment, will require a plan of operations prior to commencement of sampling and testing activities under a 3809 Mining Notice (43 CFR 3809 regulations). In addition, an application for a surface mining permit and/or reclamation plan has been prepared (Exhibit B).



Criteria No. 2: Pursuant to PRC Sections 2715 and 2770(a), is the proposed activity permitted or otherwise authorized by a local lead agency?

Finding No. 2: The proposed project is not exempt from SMARA, and an application for a surface mining permit and/or reclamation plan has been prepared (Exhibit B).

Criteria No. 3: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the proposed activity is to occur defined?

Finding No. 3: The end use or proposed end use of property on which the activity is proposed is defined as open space.

Criteria No. 4: Pursuant to PRC Sections 2714(b), have the potential impacts on commercial interests resulting from the proposed activity been considered?

Finding No. 4: The materials to be excavated from the mining operation are proposed to be used solely for the extraction of representative materials for geologic sampling and bulk testing. Since the activity being performed is related to site specific testing, no impact on commercial interests or competitive advantage exists.

CONSIDERATIONS BEFORE THE SMGB: The Executive Officer can deny a one-time exemption request if, upon review, the request does not comply with the criteria set forth in PRC Section 2714(d). However, this matter can also be placed before the SMGB should 1) a request be made by one SMGB member; 2) the Executive Officer cannot come to a clear consensus; or 3) if controversy arises surrounding the request.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB considers and must assure that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.



EXECUTIVE OFFICER'S RECOMMENDATION: The proposed exploratory and sampling activity is subject to SMARA. However, an application for a surface mining permit and/or reclamation plan has been prepared and reviewed, and a plan of operations prior to commencement of sampling and testing activities under a 3809 Mining Notice (43 CFR 3809 regulations) will be required by BLM. Thus, it is the Executive Officer's conclusion that the one-time exemption request may meet the requirements of SMARA and the SMGB's criteria for consideration of such exemptions. Based on the information before SMGB staff, and analysis and findings set forth above, it is the Executive Officer's recommendation that the SMGB at this time grant the request for a one-time exemption.

SUGGESTED SMGB MOTION:

To deny the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by California Vision, Inc., and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).

OR

To grant the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by California Vision, Inc., and as described in this report and its attachments, is not subject to the requirements of SMARA, and that the SMGB conditionally grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f), providing complete compliance with the County of Kern and BLM regulations and requirements.

Respectfully submitted:

Stephen M. Testa
Executive Officer



EXHIBITS

Exhibit A **Documents submitted by California Vision, Inc.,
dated January 25, 2010**

Exhibit B **Additional correspondence received**

