



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

For Meeting Date: April 15, 2010

**Agenda Item No. 7: 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 M & T Ranch Proposed Surface Mining Operation, County of Butte.**

**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. M & T Ranch has submitted a request for a one-time exemption from SMARA for removal 150,000 tons of gravel from an existing stockpile to make room for more material which needs to be excavated as soon as possible to protect a water intake and fish screens within the Sacramento River channel. 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.”*



*Executive Officer's Report*

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:

**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 email correspondence dated March 4, 2010, M&T Ranch/Llano Seco requested a one-time exemption from SMARA to remove 150,000 tons of gravel from an existing stockpile to make room for more material which needs to be excavated as soon as possible to protect a water intake and fish screens. The site is located in the County of Butte. A response to the initial request by the County of Butte dated February 26, 2010, is provided in Exhibit A. Site specific information provided by the party requesting the exemption is provided in Exhibit B.

In 2001 and 2007, 200,000 and 100,000 tons, respectively, of material were removed from a migrating gravel bar which was encroaching upon the M&T/Llano Seco water intake and fish screens. The 300,000 tons of material (owned by the State of California) is stored on a 10 acre site on M&T Ranch. In a letter dated October 15, 2001 (copy attached), the Department of Conservation's Office of Mine reclamation (OMR) commented to the State Clearing House that the project, as described in 2001, met the criteria for exemption under Section 2714(b) (Exhibit C). This determination was predicated on the fact that the gravel and sand is being removed from the Sacramento River and will be used only for river habitat and flood channel restoration activities within the Sacramento River Conservation Area.

**DISCUSSION:** It is the Executive Officer's understanding that this is a one-time exemption request and a reclamation plan will be submitted to Butte County at some time in the future that addresses reclamation of the stockpile area. In addition, a competitive bid process will be implemented for the removal and sale of the stockpile into the aggregate market place.

General threshold criteria triggering SMARA is discussed in PRC Section 2714(d), which indicates that 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.*" In this case the removal of 150,000 tons of material from the stockpile is subject to SMARA, unless exempted by the SMGB pursuant to SMARA Section 2714(f). It is acknowledged that there is some urgency to remove additional material from the river channel in order to protect the water intake and fish screens.

**Exemption Criteria:** It is recognized 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; 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:** The materials that have been excavated from the river and stockpiled in 2001 and 2007 were approved under rigorous environmental review by both the state and federal lead agencies, as well as permitted by all regulatory authorities. Both the 2001 and the 2007 projects occurred with required local, state and federal environmental review, including an Environmental Assessment/Initial Study, a Finding of No Significant Impact, State Lands Commission approval, USACE Section 10, 103, and 404 approvals, a Streambed Alteration Agreement and an December 15, 2009 letter from the Department of Conservation exempting the gravel bar excavation from SMARA.

Residual hazards to the public health and safety were eliminated. The proposed removal of 150,000 tons of the existing stockpile will be given the same environmental review for the purposes of this exemption and in anticipation of future stockpile removal to make room for future gravel bar excavations until a long-term protection alternative is approved and constructed.

**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 removal of the stockpile and subsequent gravel bar excavation is, and will be, subject to all necessary lead agency permits. Butte County in their correspondence dated February 26, 2010, is supportive of this one-time exemption request.

The proposed activity of stockpile removal in conjunction with future gravel bar excavation will only be conducted until a long-term solution is approved and constructed; and, future stockpile removal and gravel bar excavations involve only minor surface disturbances which will be identified in the forthcoming environmental review.



**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 the property on which the activity will occur will be allowed to revert back to the original beneficial use of natural riverine habitat which is consistent with the natural environment, local biodiversity, and the enjoyment of the public.

**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:** Stakeholders, including state and federal resource managers, consider that the reintroduction of the entire stockpile into the Sacramento River is not feasible due to the economics of processing to meet spawning gravel requirements, and due to costs associated with hauling to existing approved sites on the Sacramento River.

There is consensus to develop a gravel exchange program whereby a competitive bid will be issued to solicit the removal and sale of the stockpile into the market place. The winning bid will provide the most profit back to the project. This profit will be placed in a trust fund and be made available to the U.S. Bureau of Reclamation, the U. S. Fish and Wildlife Service or the California Department of Fish and Game for purchase of spawning gravels from permitted aggregate operators located near approved reintroduction sites either on the Sacramento River and its tributaries or the San Joaquin River.

All activities associated with the gravel bar excavation and stockpile removal are subject to all permits required by local and state public agencies, and are required to be consistent with the general plan and zoning regulations. Existing stockpiled materials have been quantified and future stockpiled materials will be quantified to ensure that no surplus material is exported from the project site.

The materials that are required to be removed will be available by competitive bid to all mining operations in Butte County for the purpose of creating a “level playing field” and thus an unfair competitive advantage will not be created if the proposed project were granted an exemption.

**CONSIDERATIONS BEFORE THE SMGB:** The Executive Officer can deny a one-time exemption request if, upon review, the request does not meet the criteria set forth in SMGB Resolution No. 93-6. However, such a matter can also be placed before the SMGB if 1) a



request is 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 activity is subject to SMARA. However, it is the Executive Officer's conclusion that the one-time exemption request may meet 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 for removal of stockpiled material and for removal of additional material from the river channel to protect the water intake and fish screens, under the conditions that a permit application, reclamation plan, and adequate financial assurance for all future mining are submitted to Butte County for approval consideration by a specific date, and that all stockpiled material is allocated via a competitive bid process.



**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 M & T Ranch, 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 M & T Ranch, and as described in this report and its attachments, is subject to the requirements of SMARA, but 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 that a permit application, reclamation plan, and adequate financial assurance for all future mining are submitted to Butte County for approval consideration by a specific date, and that the stockpiled material is allocated via a competitive bid process.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer



## **EXHIBITS**

- Exhibit A**                    **Documents submitted by County Planning Department  
dated February 26, 2010**
- Exhibit B**                    **Documents received by M & T Ranch**
- Exhibit C**                    **OMR correspondence dated October 15, 2001.**

