



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 10, 2010

Agenda Item No. 8: Acceptance of Inspection Report for Santa Paula Rock (CA Mine ID #91-56-00XX), Mr. Al Bitetti (Agent), Santa Paula Rock, Gravel & Sand, LLC (Operator), City of Santa Paula.

INTRODUCTION: The State Mining and Geology Board (SMGB) is the lead agency pursuant to the Surface Mining and Reclamation Act (SMARA, Public Resources Code (PRC) Section 2710 et seq.) for the City of Santa Paula. SMGB staff has become aware of a surface mining operation within the City of Santa Paula's jurisdiction that does not have an approved reclamation plan or financial assurance in place. A preliminary review of documents pertaining to the subject operation has commenced, and a preliminary site inspection has been conducted by SMGB staff.

REGULATORY AUTHORITY: 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."

PRC Section 2774(a) states:

"Every lead agency shall adopt ordinances in accordance with state policy that establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy."

PRC Section 2774.5 states:

"(a) If, upon review of an ordinance, the board finds that it is not in accordance with state policy, the board shall communicate the ordinance's deficiencies in writing to the lead agency. Upon receipt of the written communication, the lead



Executive Officer's Report

agency shall have 90 days to submit a revised ordinance to the board for certification as being in accordance with state policy. The board shall review the lead agency's revised ordinance for certification within 60 days of its receipt. If the lead agency does not submit a revised ordinance within 90 days, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(b) If, upon review of a lead agency's revised ordinance, the board finds the ordinance is still not in accordance with state policy, the board shall again communicate the ordinance's deficiencies in writing to the lead agency. The lead agency shall have a second 90-day period in which to revise the ordinance and submit it to the board for review. If the board again finds that the revised ordinance is not in accordance with state policy or if no revision is submitted, the board shall assume full authority for reviewing and approving reclamation plans submitted to the lead agency until the time the lead agency's ordinances are revised in accordance with state policy.

(c) In any jurisdiction in which the lead agency does not have a certified ordinance, no person shall initiate a surface mining operation unless a reclamation plan has been submitted to, and approved by, the board. Any reclamation plan, approved by a lead agency under the lead agency's ordinance which was not in accordance with state policy at the time of approval, shall be subject to amendment by the board or under the ordinance certified by the board as being in accordance with state policy."

The SMGB's reclamation regulations, under California Code of Regulations (CCR) Section 3501, define surface mining operations in the following way:

"In addition to the provisions of Section 2735 of the Act[SMARA], borrow pitting, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations."

Finally, CCR Section 3505(a)(2) states:

"The purpose of this subdivision is to define the criteria of a "flood control facility," the clean out of which is exempt from the requirements of the Surface Mining and Reclamation Act of 1975 under PRC 2714(a) and (b). It is intended that cleaning out of a previously engineered, constructed facility for which approved design plans exist is an activity to restore the usefulness of that flood



control facility to its original design purpose. It is not the intent of this subsection to exempt the removal of materials from natural channels.

The removal of post construction accumulated materials from a responsible public agency approved, managed, engineered, constructed facility intended for the purpose of water retention or detention, debris retention, or from a flood water conveyance, where the post extraction condition, capacity or grade of the facility or conveyance does not exceed the as-built approved design specification contained in the approved documents for the facility or conveyance, shall be exempt from the provisions of the Act.”

DISCUSSION: On September 29, 2009, the U.S. Army Corps of Engineers (USACE) awarded a contract for the Santa Paula Creek Improvements Sediment Removal Project to Rick Garcia Construction Company (RGCC). Such contract involves the removal of approximately 330,000 cubic yards of accumulated alluvial material from Santa Paula Creek for the purposes of restoring hydraulic capacity and fish passage to the engineered channel and decreasing flood risk to the adjacent community. On October 29, 2009, the City of Santa Paula granted a Temporary Use Permit (TUP) to the Hawkstone Company doing business as Santa Paula Rock to stockpile, screen, sort and sell alluvial material excavated from Santa Paula Creek by RGCC. The TUP allows for the processing and selling of approximately 330,000 cubic yards of aggregate material from the current Santa Paula Rock site over a period of two years.

In February and April of 2010, the SMGB office received copies of correspondence from Stoel Rives, LLP to the Office of Mine Reclamation (OMR), alleging illegal surface mining operations were occurring at the Santa Paula Rock site, and requesting that OMR take enforcement actions. Additionally, on March 16, 2010, the SMGB received notification from Stoel Rives, LLP of pending litigation, in the form of a Verified Petition for Writ of Mandate filed by the Coalition for Responsible Development against the City of Santa Paula. The Petition alleged that the City of Santa Paula violated the California Environmental Quality Act (CEQA) in issuing the Santa Paula Rock TUP without conducting required environmental review and analysis of potentially significant impacts.

After confirming that the SMGB is currently the SMARA lead agency for the City of Santa Paula, and that the subject operation (i.e. the stockpiling, screening, sorting and selling of alluvial material excavated from the Santa Paula Creek channel) is required to comply with SMARA, SMGB staff requested to conduct a site inspection. Such inspection was conducted on May 27, 2010.

RESULTS OF SITE INSPECTION: No reclamation plan or financial assurance currently exists for the Santa Paula Rock surface mining operation. As such, the following violations were noted at time of inspection on May 27, 2010:

1. Santa Paula Rock is conducting surface mining operations without an approved reclamation plan as required by PRC Section 2770(a).
2. Santa Paula Rock is conducting surface mining operations without an approved financial assurance for reclamation as required by PRC Section 2770(a).

A Notice of Violation (NOV) is currently being prepared regarding the above issues, and upon completion such NOV will be forwarded to the operator.

EXECUTIVE OFFICER'S RECOMMENDATION: Since early April of 2010, the Executive Officer has determined that the City of Santa Paula's surface mining ordinance is deficient, and has confirmed that the SMGB currently acts as the SMARA lead agency for any and all surface mining operations within the City's jurisdiction. Also, it was determined that contracted excavation activities within the USACE Santa Paula Creek Improvement Sediment Removal Project are exempt from the requirements of SMARA under CCR Section 3505(a)(2). However, the subsequent stockpiling, screening, sorting and selling of alluvial material after it has been excavated from the Santa Paula Creek channel meets the definition of "Surface Mining Operations" per CCR Section 3501. An inspection of the Santa Paula Rock surface mining operation was conducted on May 27, 2010, and a NOV for conducting surface mining operations without an approved reclamation plan or financial assurance is being prepared for issuance to the operator. Considering the above discussions it is the Executive Officer's recommendation that at this time the SMGB accept the Santa Paula Rock site inspection report as complete.

SUGGESTED MOTION LANGUAGE:

To accept the inspection report:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB accept the site inspection report for the Santa Paula Rock surface mining operation, and transmit the findings to the local lead agency and to the mine operator.

Respectfully submitted:

Stephen M. Testa
Executive Officer