



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: February 10, 2011

Agenda Item No. 6: Public Hearing: Consideration of an Order to Comply issued to the Big Cut Mine (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operator), Joseph and Yvette Hardesty and Rick Churches (Agent), County of El Dorado, to Correct Violations of the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

INTRODUCTION: The State Mining and Geology Board (SMGB) acts as the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710 et seq.) for all surface mining operations in the County of El Dorado. On April 1, 2010, SMGB staff inspected the Big Cut Mine site and observed evidence of unpermitted surface mining operations. Such operations included dewatering of underground tunnels and discharge of such flows into surface impoundments, and use and storage of mining equipment, among other activities, which cumulatively entailed surface disturbance exceeding one acre. A Notice of Violation (NOV) was issued by the Executive Officer on September 3, 2010, and was subsequently received by the Operator on September 7, 2010. The SMGB at its November 10, 2010, regular business meeting, determined to issue an Order to Comply (OTC) should corrective actions not be commenced to reclaim the site by December 10, 2010. At the time this report was prepared, the Big Cut Mine site remained out of compliance with SMARA. The SMGB is considering upholding its Order to Comply.

STATUTORY AND REGULATORY AUTHORITY: Surface mining operations pursuant to SMARA, PRC Article 2, Section 2735, are defined as

"...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 or 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"*



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PRC Article 5, 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 2774.1(a) further states:

“Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.”

Finally, PRC Section 2774.1(b) states:

“An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.”

BACKGROUND:

Description of Subject Property: The Big Cut Mine site encompasses 149.75 acres, and is located off Big Cut Road, approximately 1.5 miles south of the town of Placerville, and about 2 miles northwest of Diamond Springs, in El Dorado County, California. The site and vicinity are underlain by meta-sedimentary basement rocks of Paleozoic age (230 to 600 million years before present; mybp), which are overlain by three sedimentary rock formations of Tertiary age (1 to 63 mybp), including extensive deposits of auriferous gravels belonging to

the Valley Springs formation. Such auriferous gravels were extensively mined during the latter half of the 19th Century for gold and other heavy minerals. Relatively younger portions of the gravel deposits would later be mined to produce road base and surfacing materials. In summary, historically, previous property owners mined both gold and aggregate from the Big Cut Mine site and vicinity. The Big Cut Mine site is situated on a south-facing slope, and characterized by two distinct east-west oriented benches. Current operations are primarily located on the lower of these two benches at an elevation of approximately 1,950 feet above mean sea level (msl).

Chronology of Pertinent Events and Actions: A chronology of pertinent events and actions pertaining to recent activities is as follows:

June 14, 2007	SMGB approves Interim Financial Assurance Cost Estimate amount of \$166,931.50 for reclamation of areas previously disturbed by unpermitted surface mining activities. Such Interim Financial Assurance subsequently received by SMGB on January 31, 2008.
September 11, 2008	Surface Mining Standards Committee of the SMGB moves to recommend approval of the proposed Reclamation Plan for the Big Cut Mine pending completion of an environmental study pursuant to the requirements of the California Environmental Quality Act (CEQA).
March 2, 2009	Administrative Draft Initial Study and Proposed Mitigated Negative Declaration: Big Cut Mine Reclamation Plan, dated February 2009, received by SMGB. Further CEQA work put on hold pending outcome of requested vested rights determination.
April 1, 2010	Big Cut Mine site inspected by SMGB staff.
April 15, 2010	SMGB determined that a preponderance of evidence did not exist that demonstrated Big Cut Mine has vested rights.
June 10, 2010	SMBG adopted Resolution No. 2010-05 denying the claim of vested right for Big Cut Mine's proposed surface mining operation.



September 3, 2010	SMGB issued NOV to Big Cut Mine owners/operators for operating a surface mine without possession of an approved Reclamation Plan, Financial Assurance, and County Permit to Mine. NOV subsequently received by owner/operator on September 7, 2010.
November 10, 2010	SMGB moved to issue OTC to cease unauthorized surface mining activities and commence corrective actions to bring activities at Big Cut Mine site into compliance with SMARA. SMGB also moved to set Public Hearing date for OTC of February 10, 2011.
December 10, 2010	OTC issued by SMGB, and subsequently received by owner/operator on December 16, 2010.
January 19, 2011	SMGB receives additional Interim Financial Assurance Cost Estimate in partial response to 12/10/10 OTC. Additional estimate is in amount of \$20,683.00, and applies only to areas outside of proposed Reclamation Plan boundaries.
January 20, 2011	SMGB staff is denied permission to inspect Big Cut Mine site.
January 21, 2011	SMGB and El Dorado County staff access neighboring property to north of Big Cut Mine site, and observe apparent active surface mining activities occurring.
January 28, 2011	SMGB staff accompanies El Dorado County personnel to inspect Big Cut Mine site under warrant. Property owner is cited for violating two County ordinances (mining without a Special Use Permit and grading without a permit). Extensive illegal surface mining activities are confirmed to be occurring on site.

Compliance Status:

Issuance of a Notice of Violation: As noted above, on September 3, 2010, the Executive Officer elected to issue a Notice of Violation to the operator of the Big Cut Mine to cease immediately any and all mining activities, and to provide within 30 days of receipt of the Notice of Violation the following items to the SMGB:

1. A draft Reclamation Plan that substantially complies with the requirements of SMARA and Title 14, California Code of Regulations, Sections 3500 et seq., and 3700 et seq.
2. A Financial Assurance Cost Estimate that substantially complies with SMARA and Title 14, California Code of Regulations, Section 3804. (A copy of the SMGB's *Financial Assurance Guidelines* is available on our website to assist you in preparing the cost estimate.)
3. A copy of a Permit to Mine issued by El Dorado County, or a copy of an application for such a permit, if one is deemed necessary by the County.

Alternatively, the Notice of Violation provided that, should the operator decide that no further mining related activities will occur, and there is no intent to conduct such activities on this property in the future, then they must provide the SMGB office with confirmation that all reclamation-related activities to address land already disturbed had been completed within 30 days from receipt of the Notice of Violation. Provision of proof that all mining-related equipment and debris had been removed from the site, or documentation that any permit(s) required from the County of El Dorado to store such equipment had been procured, was also requested.

Such Notice of Violation was received by the owner/operator via certified letter on September 7, 2010, and also hand delivered to the operator on September 9, 2010. To date, the requirements of the Notice of Violation have not been addressed.

Issuance of an Order to Comply: At their regular business meeting on November 10, 2010, the SMGB moved to direct the Executive Officer to issue an OTC to the Big Cut Mine owner/operators should corrective actions not be commenced to reclaim the site by December 10, 2010. The SMGB further directed the Executive Officer to schedule a Public Hearing for such OTC on February 10, 2011. No corrective actions were taken by December 10, 2010, and as such, on December 14, 2010, a letter enclosing an OTC was transmitted to the owner/operators of the Big Cut Mine. The OTC included the following requirements:

“Specifically, you must cease immediately any and all surface mining activities at the site that are not authorized according to law, and you are to provide to the State Mining and Geology Board (SMGB) by January 19, 2011, the following items:

1. A Remediation Plan to correct the effects of illegal mining activities on the Big Cut Mine site.



2. A Financial Assurance Cost Estimate that substantially complies with SMARA and Title 14, California Code of Regulations, Section 3804. (A copy of the SMGB's *Financial Assurance Guidelines* is available on our website to assist you in preparing the cost estimate.) Such Financial Assurance Cost Estimate must be of a sufficient amount to cover costs associated with reclaiming areas recently disturbed by surface mining activities at the Big Cut Mine site, and shall be independent from the existing financial assurance currently held by the SMGB for past mining disturbances at the site."

On January 19, 2011, the SMGB office received an additional Interim Financial Assurance Cost Estimate in partial response to 12/10/10 OTC. The additional estimate is in amount of \$20,683.00, and clearly indicated that it applies only to areas outside of proposed Reclamation Plan boundaries. In order to verify the validity of the additional estimate with current site conditions, in a telephone conversation on January 20, 2011, SMGB staff requested permission from the Big Cut Mine operator to inspect the site. Permission to inspect the site was not provided.

Subsequently, on January 20, 2011, based in part on recent complaints made to both the SMGB office and the El Dorado County Planning Department, SMGB and El Dorado County staff was able to access adjacent parcels to the north of the Big Cut Mine property in order to observe site conditions. At such time visual evidence of extensive grading, pond excavation and assembly of mining equipment was gathered.

Based on the evidence gathered on January 20, 2011, El Dorado County issued an inspection warrant and commanded its Code Enforcement Officer to inspect the Big Cut Mine property. The inspection warrant specified the following purpose:

"To verify the existence of an illegal mining operation in violation of County Ordinance 08.36.200 and CA Public Resources Code Section 2770. There are also grading violations of County Ordinance 15.14 regarding the lack of a permit for the road and encroachment onto Big Cut Road, possible Hazardous Materials Mgmt violations of County Ordinance 08.38.020, and Storm Water violations of Section 13399 of the CA Water Code."

Further Enforcement Activity: On January 28, 2011, SMGB staff accompanied El Dorado County staff to the Big Cut Mine site, where the above warrant was served to Mr. Joe Hardesty, and a complete inspection of the property was conducted. During this inspection SMGB staff confirmed that an extensive expansion of illegal surface mining activities had occurred, and was continuing, at the subject site. It is estimated that thousands of cubic yards of material has been recently graded, and approximately 15 acres have been recently disturbed by surface mining activities. A fully operational aggregate processing plant had

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been recently assembled, and numerous pieces of heavy equipment (including a D11 bulldozer, several front-end loaders, hydraulic excavators, cranes and maintenance vehicles) were in use. Additional storage of significant amounts of mining equipment was also noted to be ongoing on the property. The following select pictures were taken by SMGB staff during the January 28, 2011 inspection:



Photograph No. 1. Recent excavations, heavy equipment and processing plant (viewing southwest).



Photograph No. 2. Recently assembled processing plant (viewing northeast).



Photograph No. 3. Process water settling pond (viewing west).



Photograph No. 4. Extensive recent grading in south central portion of property (viewing east).



Photograph No. 5. Overview of illegal surface mining operations at Big Cut Mine (viewing southeast).

CONSIDERATIONS BEFORE THE SMGB: Pursuant to PRC Section 2774.1(b), the SMGB shall conduct a public hearing to determine, based on the record before it, if the evidence before the SMGB substantially supported the basis for the Order to Comply at the time the Order was issued. Two options are before the SMGB.

If the SMGB finds that the evidence in the record supports the issuance of the order, the SMGB shall uphold the order and any effective date contained in the Order. If no effective date is contained in the order, then the Board shall set a date upon which the Order takes effect.

Or,

If the SMGB finds that the evidence in the record does not substantially support the order, then the SMGB shall not uphold the order.

EXECUTIVE OFFICER'S RECOMMENDATION: As of the date of the preparation of this Executive Officer's Report, the SMGB serving as the SMARA lead agency for the Big Cut Mine site has not approved a reclamation plan, and no permit to mine has been obtained from the County. In addition, at the time this report was prepared the disturbance caused by unpermitted surface mining activities has not been remedied or reclaimed, and in fact, has been significantly expanded. Finally, neither the Interim Financial Assurance currently held by the SMGB, nor the additional Interim Financial Assurance Cost Estimate, are considered adequate to reclaim the Big Cut Mine site. The Executive Officer recommends that the SMGB uphold the Order to Comply requiring the operator to cease immediately any and all surface mining activities and to commence corrective actions to bring the Big Cut Mine site into compliance with SMARA.

SUGGESTED MOTION LANGUAGE:

Motion No. 1 - To uphold the Order to Comply:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board uphold the Order to Comply issued to Joseph and Yvette Hardesty and Rick Churches, owners/operators of the Big Cut Mine (CA Mine ID #91-09-00XX) for failing to commence corrective actions at the site by December 10, 2010, and for failing to provide by January 19, 2011, items as specified in the Order to Comply.

Motion No. 2 - To not uphold the Order to Comply:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board not uphold the Order to Comply issued to Joseph and Yvette Hardesty and Rick Churches, operators of the Big Cut Mine (CA Mine ID #91-09-00XX).

Respectfully submitted:

Stephen M. Testa
Executive Officer

In the Matter of:
BIG CUT MINE
California Mine ID No. 91-09-00XX

Notice of Violation: Issued September 3, 2010.

Order: Order to Comply to Commence Corrective Actions issued on December 10, 2010.

Past SMGB Actions on this Review:

April 1, 2010	Big Cut Mine site inspected by SMGB staff.
September 3, 2010	SMGB issued NOV to Big Cut Mine owners/operators for operating a surface mine without possession of an approved Reclamation Plan, Financial Assurance, and County Permit to Mine. NOV subsequently received by owner/operator on September 7, 2010.
November 10, 2010	SMGB moved to issue OTC to cease unauthorized surface mining activities and commence corrective actions to bring activities at Big Cut Mine site into compliance with SMARA. SMGB also moved to set Public Hearing date for OTC of February 10, 2011.
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January 28, 2011

SMGB staff accompanies El Dorado County personnel to inspect Big Cut Mine site under warrant. Property owner is cited for violating two County ordinances (mining without a Special Use Permit and grading without a permit). Extensive illegal surface mining activities are confirmed to be occurring on site.

Considerations before the SMGB:

Public Resources Code Section 2774.1(a): The board when acting as lead agency may issue orders to comply with the Act:

Public Resources Code Section 2774.1(b): Any order of the board does not become effective until a public hearing is conducted by the board concerning the alleged violations.

Public Resources Code Section 671: The director shall have no power to amend or repeal any order, ruling, or directive of the board.

The SMGB is to determine the following:

First: Based on evidence presented, were the statements of violations in the SMGB's order substantially true and correct at the time of issuance of the Order.

Second: If the statements of violations contained in the Order were substantially true and correct at the time of issuance, the SMGB shall sustain the Order as issued and announce an Effective Date for the Order.

Third: If the statements of violations contained in the Order were NOT substantially true and correct at the time of issuance, the SMGB shall indicate specifically which allegations were incorrect, remand the order back to the SMGB for corrections, and shall not set an Effective Date.

**EXHIBIT A: SMGB's December 10, 2010, Order To Comply,
with Attachments and with Cover Letter Dated
December 14, 2010**

**EXHIBIT B: El Dorado County's October 7, 2010, Notice of
Violation**

