



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: January 12, 2012

Agenda Item No. 7: Issuance of an Administrative Penalty to the Big Cut Mine (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operator), Joseph and Yvette Hardesty, Rick Churches, and Dan Tankersley (Agents), County of El Dorado, for Failure to Correct Violations Pursuant to the Surface Mining and Reclamation Act.

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 March 10, 2011, the SMGB moved to issue an Order Imposing Administrative Penalty in the amount of \$100,000.00 to the owners/operators of the subject site for failure to comply with previous violations and a subsequent Order to Comply relating to illegal surface mining operations. On April 27, 2011, the office of the SMGB was informed by California Department of Fish and Game (CDFG) staff that apparent surface mining operations at the above referenced property had resulted in an off-site discharge of sediment to Weber Creek. CDFG staff invited Will Arcand, Senior Engineering Geologist with the SMGB, to accompany them during a follow-up site inspection at the Big Cut Mine and adjacent property, which was conducted on April 29, 2011. Mr. Joe Hardesty was present on the Big Cut Mine property during the April 29, 2011 site inspection.

Ongoing and expanded surface mining operations were confirmed to be occurring at the Big Cut Mine site based on observations made during the April 29, 2011 site inspection. Such operations included recent excavation and grading of slopes, ongoing stockpiling of processed aggregate materials and recent construction of water collection and drainage facilities. It was also confirmed that recent drainage facility construction at the site had resulted in discharge of sediment to both an un-named seasonal watercourse and to Weber Creek. The seasonal watercourse is located immediately south of the Big Cut Mine property and is directly tributary to Weber Creek. A Notice of Violation was issued by the Executive Officer on May 5, 2011, via certified mail to the Operators/Agents of record. On May 24, 2011, the Notice of Violation sent to the Hardestys was returned unclaimed to the SMGB office. At the SMGB's June 9, 2011, regular business meeting, a duplicate Notice of Violation was hand delivered to Mr. Daniel Tankersley who was present on behalf of the Big Cut Mine owners/operators. On June 10, 2011, the Notice of Violation sent to Rick Churches was returned unclaimed to the SMGB office.

At its September 8, 2011, regular business meeting, the SMGB determined to issue an Order to Comply (OTC) requiring specific actions to be taken not later than October 10, 2011. On September 13, 2011, letters were transmitted to Joe and Yvette Hardesty and Rick Churches



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via regular and certified mail enclosing the subject OTC. The certified letters were returned as unclaimed to the SMGB office on October 3, 2011, and on October 24, 2011, respectively. The September 8, 2011 Order to Comply was subsequently upheld by the SMGB at its December 8, 2011, regular business meeting.

At the time this report was prepared, the Big Cut Mine site remained out of compliance with SMARA. The SMGB is considering issuance of an additional administrative penalty.

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

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.”

In issuance of an Order to Comply, 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.”



In upholding an Order to Comply, 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.”

In the issuance of an administrative penalty, PRC Section 2774.1(c) states:

“Any operator who violates or fails to comply with an order issued under subdivision (a) after the order’s effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.”

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 is 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.
February 10, 2011	SMGB upholds its December 10, 2010, Order to Comply.
March 10, 2011	SMGB issued Order Imposing Administrative Penalty in the amount of \$100,000.00 to Big Cut Mine owners/operators for failure to obtain required permits, failure to provide a remediation plan to



	correct effects of illegal mining and for failure to provide an adequate financial assurance cost estimate.
April 11, 2011	SMGB receives Petition/Notice of Defense requesting review of SMGB's March 10, 2011 Order Imposing Administrative Penalty.
April 27, 2011	SMGB staff informed by CDFG staff that apparent surface mining operations at subject property had resulted in off-site discharge of sediment to Weber Creek.
April 29, 2011	Ongoing and expanded surface mining operations confirmed to be occurring at the Big Cut Mine site based on observations made by SMGB staff during site inspection with CDFG staff.
May 5, 2011	Notice of Violation issued to Big Cut Mine owners/operators for ongoing and expanded operation of an illegal surface mine.
June 9, 2011	May 5, 2011 Notice of Violation re-issued via hand delivery to Dan Tankersley at SMGB regular business meeting.
September 8, 2011	Order to Comply to Commence Corrective Actions issued to Big Cut Mine owners/operators.
December 8, 2011	September 8, 2011 Order to Comply Upheld by the SMGB.

Compliance Status: As noted above, on April 27, 2011, SMGB staff was informed by CDFG staff that activities at the Big Cut property had resulted in off-site discharge of sediment to Weber Creek. During a site inspection with CDFG staff on April 29, 2011, SMGB staff confirmed that ongoing and expanded surface mining operations were occurring, and that such activities had resulted in off-sited discharge of sediment to local watercourses. The following photographs illustrate site conditions as observed during the April 29, 2011, site inspection:



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



Photograph Nos. 2 and 3. Surface water and grading in area of recently installed drainage facility installation.



Photograph Nos. 4 and 5. Fine sediment deposition in unnamed watercourse just south of Big Cut Mine.

Subsequently, on May 5, 2011, the Executive Officer elected to issue a Notice of Violation (NOV) to the owners/operators of the Big Cut Mine. Because no record of receipt of this NOV was received, it was re-issued via hand delivery to Dan Tankersley, an agent of the Big Cut Mine, on June 9, 2011. The NOV directed the operator to immediately cease any and all mining activities, and to provide within 30 days of receipt of the NOV the following items to the SMGB:

1. A Remediation Plan to correct the effects of illegal mining activities on the Big Cut Mine site. Such plan should address all areas disturbed by illegal surface mining operations on the Big Cut Mine property during the past year, and shall include specific measures for restoring off-site watercourses impacted by recent sediment discharges.
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 all costs associated with reclaiming areas currently disturbed by surface mining activities at the Big Cut Mine site, and shall include costs for restoring off-site watercourses impacted by recent sediment discharges.

3. Copies of all permits as deemed required by each respective jurisdiction in order to bring the Big Cut Mine site into compliance with all local, state and federal requirements. If such permits are not available within the above timeframe, then copies of permit applications or other written correspondence establishing that such permits are actively being sought may be acceptable.

To date, the requirements of the May 5, 2011 and June 9, 2011, Notice of Violation have not been addressed. Further, the requirements of the Order to Comply issued by the SMGB on September 8, 2011, and upheld on December 8, 2011, have not been addressed.

EXECUTIVE OFFICER'S ANALYSIS OF ADMINISTRATIVE PENALTY CRITERIA:

Pursuant to PRC Section 2774.1(c), the SMGB must take under consideration several criteria when setting the amount of an administrative penalty. These criteria are discussed below:

A. Nature & Extent (*Degree and substance of violation*)

1. Is the case one of total failure to provide approved reclamation plans or financial assurances, or to report and pay fees? Is the failure one of intentional delay and obfuscation, or refusal to comply?
2. Is the case one of partial failure to provide approved documentation, or pay partial fees? Is the failure a "clerical error," or a misunderstanding of what was required and when?

Analysis: This is a case of an egregious failure on the part of the operator to comply with state law and the SMGB's regulations, by commencing and then continuing surface mining operations without achieving approval of a permit to mine from the County of El Dorado, and without achieving approval of a reclamation plan and financial assurance amount from the SMGB, prior to conducting surface mining operations. No correspondence from the owners/operators, nor documentation of attempts by the owners/operators to address the violations cited in the May 5, 2011 and June 9, 2011 Notice of Violations, has been received by the SMGB. The conduct of the operator continues to manifest an intentional disregard for the law.



B. Circumstances (Outside influences) What are the circumstances affecting the Operator's failure to comply?

1. Were the circumstances avoidable had the Operator acted on his/her own behalf? How responsible was the Operator in attempting to control and to take charge of "circumstances" that directly affected his/her business?

- (a) Should the operator have had a more active role in directing hired consultants?
- (b) Should the operator have had a more active role in obtaining responses from government agencies?

2. Were the circumstances particularly unique, or were they encountered by other operators and could have been anticipated?

- (a) How many other surface mines are already in compliance with the lead agency?
- (b) Is it reasonable to assume that the operator should have been aware of circumstances encountered by other compliant operators?

Analysis: The owners/operators were acting on their own behalf in failing to provide an adequate remediation plan, an adequate financial assurance cost estimate, and copies of required permits, and they are the sole responsible parties. The owners/operators, in lieu of choosing to comply with state and County laws, have escalated surface mining operations at the subject site. The issue faced by the owners/operators is not unlike that faced by every other surface mine operator in the State: the requirement to have a permit to mine issued by the County of El Dorado, the requirement to have a reclamation plan approved by the lead agency, which exemplifies the current status and nature of the proposed surface mining operation in place, and the requirement to have a financial assurance that is acceptable for approval by the lead agency.

The operator has conducted unpermitted and illegal surface mining operations at this site on three separate occasions since the SMGB has served as a SMARA lead agency for the County of El Dorado. Since 2007, the owners/operators and their agents demonstrated a general understanding of the requirements of SMARA during several SMGB proceedings, including those undertaken to determine whether the subject site had a vested right to mine. The owners/operators were specifically made aware of the requirements to have an approved reclamation plan, financial assurance and permit in place prior to conducting surface mining operations upon receipt of the SMGBs September 3, 2010, NOV. Such requirements were reiterated to the operator during the SMGBs November 10, 2010, regular business meeting regarding issuance of the OTC. State and County requirements

were also reiterated to the landowner during the site inspection conducted under warrant on January 28, 2011. The May 5, 2011, and June 9, 2011 Notice of Violation was discussed with Dan Tankersley when acting as an agent of the Big Cut Mine site. Finally, requirements of the September 8, 2011 Order to Comply, and general requirements of SMARA were discussed with Mr. William Brewer, attorney for the Big Cut Mine owners/operators, during the December 8, 2011 SMGB meeting. The Big Cut Mine site owners/operator are thus well aware, and have been aware, of these responsibilities.

C. Gravity (Financial costs or economic losses to others)

1. What financial or economic burden has the lead agency had to bear as a result of the non-compliance of this operator?

- (a) Has the lead agency had to expend excessive funds (personnel time and costs) to try to bring the operator into compliance, thus increasing the amount of fees to be collected from the compliant operators to pay for the local SMARA administration?
- (b) Has the lead agency had to redirect personnel from other tasks, thereby delaying the implementation of those tasks and services, in order to deal with the non-compliant operator?

Analysis: SMGB staff has expended significant time, material resources, and finances, attempting to bring the subject mine into compliance with SMARA, including the conduct of physical site inspections in coordination with El Dorado County and CDFG staff. SMGB staff and resources have been diverted from other important tasks because of the operator's willful disregard for the law and failure of the operator to comply with orders issued by the SMGB.

D. Prior Violations (History of compliance/cooperation)

1. Has the Operator received Administrative Penalties in the past?

- (a) For the same violation at the same or a different operation?
- (b) For a different violation at the same or a different operation?

2. Has the operator been cooperative regarding past violations? Has the operator paid previous penalties and made necessary corrections, or had to be referred to the Attorney General's Office for failure to respond?

Analysis: The Big Cut Mine property came under SMGB jurisdiction with the assumption of SMARA lead agency authority from El Dorado County in 2001. In July of 2003, the operator was issued an order imposing an administrative penalty for failure to submit a financial



assurance instrument. In September of 2003, the operator was issued an order imposing an administrative penalty for failing to provide a draft reclamation plan for lands disturbed by surface mining activities.

The operator appealed both of the above orders to the Superior Court, and as such, the matters were referred to the Attorney General's Office for resolution. Ultimately, the operators' appeals were denied by the courts, and penalties in excess of \$220,000 were affirmed. There is no documentation verifying that payment of such administrative penalty was ever received.

As noted above, on March 10, 2011, the SMGB issued an Order Imposing Administrative Penalty in the amount of \$100,000.00 to the owners/operators of the subject site for failure to comply with previous violations and a subsequent Order to Comply relating to illegal surface mining operations. On April 11, 2011, a Petition/Notice of Defense was received from Mr. William Brewer, which appealed the above Administrative Penalty on behalf of the owners/operators. On April 28, 2011, the SMGB notified Mr. Brewer that the \$100,000.00 Administrative Penalty issued by the SMGB cannot be petitioned to the SMGB, and that the owners/operators recourse, in lieu of paying the accrued penalties and reclaiming the lands disturbed, was with the courts. To date no payment has been received by the SMGB for the March 10, 2011 Administrative Penalty.

E. Degree of Culpability (Personal knowledge and behavior)

1. Could it be assumed that a reasonable person in this position should have known that documents or fees were due?
2. How long has the operator known that plans, reports, fees or financial assurances were due prior to the issuance of the penalty?
3. How much notice was given by the Department/Lead Agency?

Analysis: The record clearly demonstrates that the owners/operators had known of the necessity to comply with SMARA's requirements to secure an approved reclamation plan and financial assurance, and the necessity to obtain a permit to mine from the County, prior to conducting surface mining operations, since at least September 7, 2010. On June 10, 2010, the SMBG adopted Resolution No. 2010-05 denying the claim of vested right for Big Cut Mine proposed surface mining operation. The operator was aware of the need for acquiring a permit to mine from the County of El Dorado, among other requirements, prior to conducting

surface mining operations, well before SMGB adoption of Resolution No. 2010-05. As early as 2007 enforcement actions taken by the SMGB on the subject site involved the current owners/operators. As noted above, the NOV issued by the SMGB on September 3, 2010, was received by the owner/operator on September 7, 2010. The matter was discussed at the SMGBs regular business meeting on November 10, 2010, at which the operator was present and provided verbal comments. An Order to Comply was issued on December 10, 2010, which was upheld on February 10, 2011, and an Order Imposing an Administrative Penalty in the amount of \$100,000.00 was issued on March 10, 2011. Agents of the Big Cut Mine were present at SMGB hearings discussing these matters on November 10, 2010, February 10, 2011 and March 10, 2011. In addition, an attorney representing the Big Cut Mine owners/operators was present during the December 8, 2011 Public Hearing in which the September 8, 2011 Order to Comply was upheld by the SMGB. In summary, the owners/operators of the Big Cut mine site were fully aware of the requirements and violations well before issuance of the NOV on June 9, 2011.

F. Economic Savings (Financial or economic gains to self)

1. Has the operator received a financial or economic benefit from avoiding SMARA requirements?

- (a) Not preparing a reclamation plan (reclamation plan and CEQA).
- (b) Not posting a financial assurance (actual value or paying premiums).
- (c) Not securing local permits (permitting fees and inspection costs).
- (d) Not paying annual reporting fees to Lead Agency and State.

2. What length of time has the operator enjoyed these economic savings? The extent of any economic savings realized by the operator may depend on the length of time the appellant has been out of compliance.

Analysis: From April 1, 2010, to November 21, 2011 (over twenty months), the operator has continuously conducted some level of surface mining activity at the site. Based on the extent of operations observed on April 29, 2011, it is estimated that the operator has conducted significantly accelerated surface mining operations beginning in mid- to late November of 2010 (at least twelve months).

The operator has enjoyed an economic and financial benefit from not being in compliance with certain requirements adhered to by other operators both locally and throughout the state. The operator's overhead costs and capital outlay have thus been reduced.



G. Any Other Matters Justice May Require -- This criterion is necessary to ensure that “the quality of justice/mercy is not strained” in either direction.

SMARA has been in effect since 1976 and the requirements of AB 3551 (i.e., PRC Section 2207) have been in effect since 1990. Ignorance of the existence of these laws and their requirements may not make a reasonable argument.

1. Has the non-compliant mining operation caused, or has the potential to cause, serious property damage to neighboring lands, roads, or other community facilities; or caused, or has the potential to cause, irreparable damage to the environment, if left to operate as is; or threatened, or has the potential to threaten, the safety or health of humans?
2. How truthful is the operator in his/her request? Does the argument seem reasonable and logical and supported by documented facts, or is the operator trying to obfuscate facts or events?
3. What is the culpability of the lead agency in allowing the continuance of a non-complying operator? Although the operator ultimately must bear full responsibility for his/her operation and its effects, what steps did the lead agency take to encourage or discourage compliance?
4. Has the operator truly made “good-faith” efforts to comply, or continually missed deadlines for compliance? Has the operator repeatedly ignored direct warnings from the lead agency or from the Department?
5. Have unforeseen and unavoidable personal circumstances delayed or prohibited the operator from complying fully?

Analysis: Based on the evidence, the Executive Officer believes with respect to the criteria cited above:

- (1) The noncompliance of the surface mining operation with its operator’s disregard to obtain a permit to mine, an approved reclamation plan and financial assurance prior to conducting surface mining activities, has the potential to bring long-term harm to the site and the natural environment, and to create a safety hazard due to the existence of steep slopes and unsupported historical underground workings. The amount and cost of mitigation work has steadily increased since at least April of 2010. Sediment discharges off of the Big Cut Mine property and into

waters of the state were confirmed during the April 29, 2011 site visit by CDFG and SMGB staff.

- (2) The owners/operators have not been forthcoming, and have exhibited disregard for state law and County ordinances.
- (3) The SMGB as the lead agency conducted follow-up with the operator during the process since September 2010 via telephone calls, e-mails and written correspondence. SMGB staff has been readily available to address any and all issues and questions the owners/operators may have had.
- (4) Overall, the owners/operators have not been proactive or timely in their response to the SMGB's multiple requests. On January 19, 2011, the SMGB office received an additional Interim Financial Assurance Cost Estimate in partial response to the December 10, 2010, OTC. The additional estimate, in the amount of \$20,683.00, 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. Certified mail forwarded to the owners/operators since May 5, 2011, has been consistently returned to the SMGB as unclaimed.
- (5) No unforeseen and unavoidable personal circumstances have delayed or prohibited the operator from complying fully with state and County laws.

EXECUTIVE OFFICER'S RECOMMENDATION: The owners/operators failed to obtain a permit to mine from the County of El Dorado, and failed to obtain an approved remediation plan and financial assurance prior to conducting surface mining operations at the site. In April of 2011, surface mining activities at the Big Cut Mine resulted in discharge of sediment off site and into waters of the state. The owners/operators failed to respond to the SMGB's NOV issued on May 5, 2011 and June 9, 2011, they failed to respond to the SMGB's Order to Comply issued on September 8, 2011. Unpermitted and illegal surface mining activities have been occurring at the Big Cut Mine site during the past twenty months.

According to PRC Section 2774.1(c), an order setting an administrative penalty becomes effective upon issuance. The penalty amount may be assessed from the original date of non-compliance. As authorized by statute, the maximum amount per

violation is \$5,000 per day. The Executive Officer submits that the original date of non-compliance was June 9, 2011, which is the date on which an agent of the owners/operators received the SMGB's June 9, 2011 Notice of Violation. Three separate violations are identified in the June 9, 2011, NOV. Thus, the maximum amount of penalty to be considered is \$3,255,000 [$\$5,000 \text{ per day} \times 217 \text{ days (June 9, 2011, through January 12, 2012)} \times 3 \text{ (number of violations identified in June 9, 2011, NOV)}$].

Based on a preliminary consideration of the above maximum penalty amount, the existing site conditions and the amount of SMGB staff time and resources expended in addressing this matter to date, the Executive Officer recommends that the SMGB issue an order imposing an administrative penalty in the modified amount of \$750,000.

CONSIDERATIONS BEFORE THE SMGB: The SMGB may consider and take the following actions:

1. Determine to issue an order imposing an administrative penalty in the maximum amount of \$3,255,000;

[or]

2. Determine to issue an order imposing an administrative penalty for a modified amount, in whole or in part;

[or]

3. Determine to not issue an order imposing an administrative penalty at this time.



SUGGESTED MOTION LANGUAGE:

Motion to Issue an Order Imposing the Maximum Administrative Penalty:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB accept the analysis, findings, and recommendations contained in the Executive Officer's Report, and move that the SMGB, acting as lead agency with authority provided under PRC Section 2710 et seq., issue an Order imposing an Administrative Penalty of \$3,255,000 to Joseph and Yvette Hardesty, Rick Churches, and Dan Tankersley, the owners/operators of the Big Cut Mine, located in the County of El Dorado, for failure to correct violations pursuant to the Surface Mining and Reclamation Act of 1975. Effective date of the Order shall be January 12, 2012.

Or,

Motion to Issue an Order Imposing an Administrative Penalty of a Modified Amount:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB accept the analysis, findings, and recommendations contained in the Executive Officer's Report, and move that the SMGB, acting as lead agency with authority provided under PRC Section 2710 et seq., issue an Order imposing an Administrative Penalty of [\$_____] to Joseph and Yvette Hardesty, Rick Churches, and Dan Tankersley the owners/operators of the Big Cut Mine, located in the County of El Dorado, for failure to obtain a permit to mine, and for failure to correct violations pursuant to the Surface Mining and Reclamation Act of 1975. Effective date of the Order shall be January 12, 2012.

Or,

Motion to Determine Not to Issue an Order Imposing an Administrative Penalty:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB determine not to issue an Order imposing an Administrative Penalty to Joseph and Yvette Hardesty, Rick Churches, and Dan Tankersley, the owners/operators of the Big Cut Mine, located in the County of El Dorado, for failure to correct violations pursuant to the Surface Mining and Reclamation Act of 1975.

Respectfully submitted:



Stephen M. Testa
Executive Officer

Exhibit A: DRAFT Order Imposing Administrative Penalty

**Exhibit B: Executive Officer's December 13, 2011, Letter to
Mr. William K. Brewer Enclosing the SMGB's
September 8, 2011 Order To Comply**

