



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT

For Meeting Date: November 14, 2013

**Agenda Item No. 12: Public Hearing: Consideration of an Appeal for a Low Gross Exemption Pursuant to California Code of Regulations Section 3699 for the Timm Mines (CA Mine ID #91-09-0006), Lamplight (Operator), Mr. Cole McGowan (Agent), Ms. Maybelle Timm Eley (Owner), County of El Dorado.**

**INTRODUCTION:** Pursuant to Public Resources Code (PRC) Section 2207, each mine operator must submit an Annual Reporting Fee by July 1 of each year. The Annual Fee amount is provided for under California Code of Regulations (CCR) Section 3695 et seq. This Annual Fee amount generally is based upon the previous calendar year's production. A special exemption from the annual fee amount is provided for under CCR Section 3699. On September 27, 2013, the Department of Conservation, Office of Mine Reclamation (OMR) denied a Low Gross Exemption (LGE) request for the Timm Mines (CA Mine ID #91-09-0006), located in the County of El Dorado. OMR denied the request for a LGE for failure of the operator to have an approved Interim Management Plan (IMP). The Operator is appealing that denial to the SMGB pursuant to CCR Section 3699.

**STATUTORY AND REGULATORY AUTHORITY:** PRC Section 2207 requires the SMGB to impose an annual reporting fee on each active and idle mining operation.

The SMGB's regulations pursuant to CCR Section 3699(a) provides for a Low Gross Exemption from the full annual fee amount based on four criteria as follows:

*“For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:*

- (1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and*
- (2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and*
- (3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a*



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*completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and*

*(4) the owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.”*

CCR Section 3699(c)(d) provides for the operator to appeal the denial of the Low Gross Exemption request to the SMGB; and provides for the SMGB to either grant the Low Gross Exemption, or uphold the denial of the exemption request.

PRC Section 671 notes that the director shall have no power to amend or repeal any order, ruling, or directive of the SMGB.

Pursuant to SMARA, specifically, PRC Section 2727.1

*“Idle” means that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years during which an interim management plan has not been approved.”*

PRC Section 2770(h)(1) noted

*“Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of Division 13 (commencing with Section 21000). The approved interim management plan shall be considered an amendment to the surface mining operation’s approved reclamation plan, for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.”*



**APPEAL PETITION:**

**In the Matter of:**

**Timm Mines vs. Director, DOC  
(CA Mine ID #91-09-0006)**

**Petitioner's Request:** On September 27, 2013, the Department of Conservation, Office of Mine Reclamation (OMR) denied a Low Gross Exemption (LGE) request for the Timm Mines (CA Mine ID #91-09-0006), located in the County of El Dorado. The Operator is appealing that denial to the SMGB pursuant to CCR Section 3699.

**Director's Actions:** The Director has denied the Petitioner's request because the operator did not have an approved Interim Management Plan (IMP).

**Past SMGB Actions on this Appeal:** There have been no past actions set forth by the SMGB on this appeal.

**Proceedings:** The purpose of this Proceeding is to allow the Petitioner and the Department of Conservation to present arguments regarding the denial by the Director of a request for a Low Gross Exemption. Pursuant to CCR Section 3699, the SMGB may affirm the denial of the Low Gross Exemption, or may by its own actions grant the request for Low Gross Exemption.

Following the presentations, the SMGB will consider the issues before it and may ask questions of the participants.

**The Order of the Proceedings will be as follows:**

1. Identification of the Record by the Department of Conservation;
2. Statements on Behalf of the Petitioner;
3. Statements on Behalf of the Director;
4. Statements on Behalf of the Lead Agency;
5. Statements on Behalf of the Public;
6. Rebuttal on Behalf of the Petitioner;
7. Rebuttal on Behalf of the Director;
8. Motion to close the public hearing.



Notwithstanding the above, the Chairman or the Chairman's designee for the purposes of conducting these procedures may, in the exercise of discretion, determine the order of these proceedings, and set time limits.

**BACKGROUND:** The Timm Mine is an underground hard rock lode gold mine, specializing in specimen gold samples. Timm Mine activities are subject to SMARA due to the fact that operations have resulted in greater than one acre of surface disturbance. The mine is reached from Traverse Creek Road via unpaved roads referred to as Timm Mine Road, the Old Truck Trail and the Mine Road. The site sits on the west flank of a generally north-south trending canyon that contains southerly-flowing Travers Creek. The site occupies approximately three acres, and ranges in elevation from about 1,450 feet to 2,550 feet above mean sea level (MSL). Underlying bedrock is predominantly metasediments (i.e., schists and slates) and metavolcanics of the Calaveras Complex of Paleozoic age.

The site includes a gated and locked mine portal providing underground access, ore processing and milling buildings, compressor shed, muck dump station, narrow gauge rail system, storage sheds, water storage tank, and equipment staging areas near the mine portal. A former tailings settling pond is situated southeast of the Mill structure adjacent to Travers Creek.

The reclamation plan and subsequently an Interim Management Plan (IMP) was approved by the County of El Dorado in 1999. The SMGB approved an IMP in 2005 and again in 2007 for a five-year period, terminating in 2011. The site became active in 2011. The site includes approximately three acres as noted in the approved reclamation plan, with 2.5 acre reported disturbed in the 2012 Mine Inspection Report. The financial assurance cost amount approved by the SMGB in 2012 is for \$10,672.00.

On November 1, 2011, the SMGB office received a letter dated October 30, 2011, from Ms. Maybelle Timm Eley, owner of the Timm Mines, stating that the subject mining operation would be moving from idle to active status upon expiration of their previously approved IMP on November 15, 2011. The letter also identified a new operator for the mining operation, Mr. Cole McGowan. Since November 15, 2011, the operator of the Timm Mines has been actively conducting underground mining operations in search of lode gold, and has been steadily removing waste rock from the underground workings. However, the operator has produced waste rock, but has not been successful in locating producible gold product to date, and has therefore reported active status but zero production on their 2011 and 2012 Mining Operation Annual Reports.

Because they have not had any gold production to report for the last two calendar years (2011 and 2012), and because their last approved IMP expired on November 15, 2011, the DOC determined that their request for Low Gross Exemption for the 2012 reporting period does not meet the requirements of CCR Section 3699(a)(1).

**CONSIDERATIONS OF THE SMGB:** The SMGB is to determine the following:

- 1.) Based on evidence presented by the Petitioner and the Director, and any other interested parties, are the findings for the Director's determination to deny the Low Gross Exemption substantially true and correct; and



- a. If the Director's findings are substantially true and correct, the SMGB must uphold the denial and order the Petitioner to pay the annual fee calculated under CCR Section 3698 within 30 days of notification.

Or,

- 2.) If the Director's findings are NOT substantially true and correct, the SMGB may grant the Low Gross Exemption based on its own findings.

**EXECUTIVE OFFICER'S RECOMMENDATION:** The subject site comes under SMARA since there is over one acre of surface disturbance. However, with lode mines, a mine can be deemed active but only generate waste rock for some time before the substance of interest (i.e., gold) is produced. Low Gross Exemptions are typically directed toward aggregate mines with few exceptions, the Timm Mines being an exception; whereas, the operator has commenced production of waste rock without to date achieving its ultimate goal of producing gold. As appropriate, the operator has noted the mine status as active on both its 2011 and 2012 Annual Mining Operation Reports, although having zero production. Another perspective is since the operator has been active but not produced any reportable gold, there has been no reduction of production (i.e., 90% reduction in production from a baseline of zero production, is still zero).

In light of the unique circumstances pertaining to lode mines, the Executive Officer recommends that the SMGB grant the Low Gross Exemption reflecting the unique nature of this type of operation.

**SUGGESTED MOTION LANGUAGE:**

Motion 1A: To determine whether the Director's findings are substantially true and correct:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board determine that the Director's findings are true and correct.*

And,

Motion 1B: To uphold the Director's denial:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board uphold the denial and order the Petitioner, Timm Mines (CA Mine ID #91-09-0006), to pay the annual fee calculated under CCR Section 3698 within 30 days of notification.*



Motion 2A: To determine whether the Director’s findings are substantially not true and correct:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board determine that the Director’s findings are not true and correct.*

**And,**

Motion 2B: To grant the Low Gross Exemption:

*Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board grant the Low Gross Exemption to Timm Mines (CA Mine ID #91-09-0006).*

Respectfully submitted:



Stephen M. Testa  
Executive Officer

## **Exhibits**

- Exhibit A**                    **Petitioner’s Documentation dated September 27, 2013.**
- Exhibit B**                    **Office of Mine Reclamation Staff Report**
- Exhibit C**                    **SMGB Chairman’s Determination of Jurisdiction**

