

**YOLO COUNTY CCAP MINING AND RECLAMATION PERMITS
INTERIM REVIEW PROCESS
September 26, 2005**

**DISCUSSION PAPER #2
Analysis of Regulatory Changes**

Introduction

The Cache Creek Area Plan (CCAP) was adopted by the Yolo County Board of Supervisors (BOS) in August of 1996 and approved by County voters in November of 1996. The CCAP is comprised of the Off-Channel Mining Plan (OCMP) which is a mining and reclamation plan and the Cache Creek Resources Management Plan (CCRMP) which is a creek management plan. The OCMP was accompanied by two implementing ordinances: the Off-Channel Surface Mining Ordinance (Mining Ordinance) and the Surface Mining Reclamation Ordinance (Reclamation Ordinance).

Under the authority of the OCMP and both implementing ordinances, the BOS approved five off-channel Mining and Reclamation Permits (Permits) in November of 1996. These permits were each for a 30-year period and they were contingent on individual Development Agreements (DAs) which were executed in January of 1997.

Among the many terms of the Permits, one was the requirement for "Interim Permit Review". Section 10-4.605 of the Mining Ordinance and 10-5.814 of the Reclamation Ordinance mirror one another in requiring specified interim reviews of the Permits. Such reviews were required at 10 years, 20 years, and 30 years. A discretionary review is allowed at 15 years. The DAs establish the effective date of each of the Permits as January 1, 1997. Therefore, the following schedule is applicable:

January 1, 1997	Effective date.
January 1, 2007	Date by which 10-year interim review must be complete.
January 1, 2012	Date by which 15-year discretionary review must be complete, if required.
January 1, 2017	Date by which 20-year interim review must be complete.
January 1, 2027	Date by which 30-year interim review must be complete.
January 1, 2027	Expiration date for Permits unless extended.

In order to prepare for the upcoming 10-year interim review, this discussion paper is the second in a series. The topics are intended to explore relevant issues in detail in order to allow for extensive public involvement, education, understanding, and input as a part of the review process. The topics may be expanded or modified as determined necessary, as the process moves along in order to be responsive to public inquiry and input.

Method

This paper examines changes in environmental regulations and/or statutes that have occurred since November 1996 when the off-channel mining and reclamation permits were originally approved. In order to ascertain whether there have been any such

changes and whether any that have occurred merit application to the operations at this time, a written inquiry was sent to each of the following agencies on May 31, 2005 (see Attachment A, Sample Agency Letter):

- U.S. Army Corps of Engineers
- California Department of Fish and Game
- California Department of Conservation
- State Lands Commission
- State Reclamation Board
- Central Valley Regional Water Quality Control Board
- Yolo-Solano Air Quality Management District
- Yolo County

These agencies were chosen because they have particular authority over a relevant environmental/natural resource (see Discussion Paper #1, Scope of the Interim Review) and were specifically cited in the County's regulations. Each agency was asked to provide input regarding:

- 1) Any new or revised environmental circumstances or regulations that have occurred since 1996, related to the protection of environmental resources over which the agency has jurisdiction; and
- 2) Whether those changed circumstances or regulations should be applied to gravel mining permits that were issued by the County in 1996 for mining operations along lower Cache Creek within Yolo County and are currently up for limited interim review.

As a follow-up to the letter, staff requested to meet with representatives from each agency. The results are provided below.

Results

U.S. Army Corps of Engineers – A letter was sent to William Guthrie, Regulatory Branch on May 31, 2005. Approximately ten attempts to schedule a phone conference or meeting were made with Mr. Guthrie through June and July. A final voice mail message was left on August 10, 2005 indicating that we would proceed assuming the Corps had no issues, unless we were contacted. No call back was received. A second round of calls was made in September to again try to establish contact. James Baker, Engineer with the Flood Control Project Management Division of the Corps requested a call back from Mr. Guthrie, on behalf of the County. No call back was received. Staff also initiated a call to Mr. Guthrie's supervisor Mike Finan, however no call back from Mr. Finan was received either.

California Department of Fish and Game – A letter was sent to Gary Hobgood, Sacramento Regional Office on May 31, 2005. Mr. Hobgood directed that continued communication should be with Mara Noelle of DFG. Approximately ten attempts to schedule a phone conference or meeting were made with Ms. Noelle through June and July. A final voice mail message was left on August 10, 2005 indicating that we would proceed assuming the Department had no issues, unless we were contacted. No call

back was received. A phone conversation was also held that day with Gary Hobgood who understood our approach and agreed that we should move forward assuming DFG had no issues.

California Department of Conservation – A letter was sent to Roger Le-Hinds, Office of Mine Reclamation on May 31, 2005. A meeting was held with Jim Pompy, Manager, Reclamation Program on August 8, 2005. The conclusion of this meeting was that there did not appear to be any relevant changes in mining law relevant to the off-channel permits other than some technical changes for which the Department had its own enforcement authority. Mr. Pompy was going to look into Williamson Act changes as a follow-up to the meeting. A letter from the Department was received dated August 22, 2005 (see Attachment B). It confirmed the conclusions of the meeting and made no requests for consideration as a part of the interim review process.

The letter included a reference to a new SMARA regulation that requires a “substantial” change to a reclamation plan to be treated as an amendment to that plan which then triggers the incorporation of current reclamation standards for the entire operation. While this could end up being relevant to the County interim permit holders, the Department has its own authority as a part of this regulation and no specific County action was identified as needed or desired.

The letter also identified two Williamson Act changes. The first defines compatible uses as those expressly enumerated within the Williamson Act Contract. The second relates to structures built on contracted land and alternative remedies for breach of contract. In both cases, the determination of Williamson Act compatibility as relevant individually to each of the subject mining operations was addressed in coordination with the Department in 1996 at the time the permits were issued. As previously analyzed in Discussion Paper #1, the mining use including tonnage, acreage, and depth are now vested and thus not open for modification as a part of the interim review process.

State Lands Commission – A letter was sent to Dwight Sanders, Division Chief, Environmental Branch on May 31, 2005. A meeting was held with Mr. Sanders and Steve Jenkins (staff member) on June 29, 2005. The conclusion of this meeting was that the Commission’s authority is related to navigation and public trust issues in-channel. These interests are addressed through the CCRMP and not a subject of the interim review process for the off-channel permits. As such there were no issues of relevance identified for this agency. A letter from the Commission was to follow but no correspondence has been received to date.

State Reclamation Board – A letter was sent to Pete Rabbon, General Manager on May 31, 2005. A meeting was held with Steve Bradley (Chief Engineer), Gerry Snow (Division of Flood Management, Department of Water Resources), and Dick Marshall (Inspection Unit Chief) on June 29, 2005. The conclusion of this meeting was that the Reclamation Board generally has little, if any, authority off-channel and/or behind the levees. The primary interest of the Board was in-channel activity which is regulated through the CCRMP and not a subject of the interim review process. Given the setback requirements of each permit, there did not appear to be any issues of relevance for this entity. A letter from the Board was received dated July 14, 2005 (see Attachment C). It

confirmed the conclusions of the meeting and made no requests for consideration as a part of the interim review process.

Central Valley Regional Water Quality Control Board – A letter was sent to Patrick Gillum, Water Quality Certification on May 31, 2005. A meeting was held with Mr. Gillum and George Day (Senior Engineer) on June 16, 2005. The conclusion of the meeting was that the Board has its own separate permitting authority (Individual Waste Discharge Permits) through which they can apply new relevant regulations or conditions. A letter from the Board was to follow but no correspondence has been received to date. A subsequent contact was made with Janis Cook, Environmental Scientist with the Water Quality Management Program of the CVRWQCB working on new mercury thresholds for Cache Creek. She confirmed on September 21, 2005 that the new mercury regulations are not anticipated to have any effect on off-channel mining operations.

Yolo-Solano Air Quality Management District – A letter was sent to Mat Ehrhardt, Executive Director on May 31, 2005. A meeting was held with Mr. Ehrhardt on June 23, 2005. The conclusion of the meeting was that the District has adequate authority through its own regulations to address relevant environmental concerns. A letter from the District was received dated July 12, 2005 (see Attachment D). It confirmed the conclusions of the meeting and identified two areas for the County to consider during the interim review process: 1) encourage improvements in the electrical utility infrastructure to allow for the use of electrical power (rather than diesel) to crush pea gravel in order to make sand; and 2) continue to encourage the use of cleaner vehicles and equipment and/or the retrofit of existing vehicles and equipment with diesel particulate filters (DPFs).

Yolo County – Letters were sent to John Bencomo, Director, Planning and Public Works and Tom To, Director, Environmental Health Services on May 31, 2005. A meeting was held with John Bencomo on June 23, 2005 and with Bruce Sarazin, Interim Director of Environmental Health on June 30, 2005. The conclusion of these meetings was that there were no changes in planning law, engineering requirements, parks regulations, or environmental health regulations that were relevant to the interim review process. A letter from Environmental Health was received dated June 20, 2005 (see Attachment E). The letter confirmed the conclusions of the meeting and made no further requests for consideration as a part of the interim review process.

Conclusions

Based on the results from coordinating with the various agencies, it appears that there are no significant relevant changes in environmental regulations and/or statutes that have occurred since November 1996 (when the off-channel mining and reclamation permits were originally approved) that merit modification of the permits as a part of the interim review. It should be pointed out that in the course of meeting with the various agency representatives the message was often that the County's original process was thorough and that it continues to serve as a model throughout the state. It was also often pointed out that the conditions of approval and other terms of the permits continue to provide substantial regulatory control and enforcement authority. While there have been regulatory changes in the intervening period, the agencies have indicated that

they separately hold appropriate regulatory or enforcement authority and do not need additional assistance through the County. In only one instance did one of the agencies make recommendations for consideration by the County. The YSAQMD identified the following:

- 1) Encourage improvements in the electrical utility infrastructure to allow for the use of electrical power (rather than diesel) to crush pea gravel in order to make sand; and
- 2) Continue to encourage the use of cleaner vehicles and equipment and/or the retrofit of existing vehicles and equipment with diesel particulate filters (DPFs).

The staff concurs that these two areas merit examination as a part of the interim review process. It should be pointed out that the mining operators and the County are already in discussions with the electrical provider in the area to resolve the problem. In addition, though not necessary, the staff is contemplating addition of a general condition that requires compliance and good standing with the terms of other required agency permits. This would reinforce the importance of compliance with the separate requirements of the other regulatory agencies.

Next Steps

In order to prepare for the interim review hearings, staff has determined that the following steps are necessary:

- Prepare an analysis of whether any unanticipated or unmitigated environmental changes have occurred since the 1996 approvals. It is proposed that this be undertaken by reviewing the annual compliance reports for each permit. The results will be reported for public consideration in a subsequent Discussion Paper #3, Analysis of Unanticipated Environmental Changes).
- Prepare an analysis of whether CEQA is triggered by the interim reviews, and if so, what type of environmental analysis is necessary to provide appropriate CEQA clearance. The results will be reported for public consideration in a subsequent Discussion Paper (#4, Analysis of CEQA Applicability).
- Prepare an analysis of fee revenue and fee expenditures to determine whether actual costs are covered. It is proposed that this be undertaken by reviewing the annual budget documents for the mining fee accounts. The results will be reported for public consideration in a subsequent Discussion Paper (#5, Analysis of Fees).

After each Discussion Paper is released, public outreach and informal meetings with interested parties will commence, followed by Planning Commission workshops to discuss each paper (see Attachment F, Updated Schedule). This will then be followed by Planning Commission final action on the individual interim reviews, and Board of Supervisors action on the fee modifications and Development Agreement amendments, if applicable.

Attachments

- A) Sample Agency Letter
- B) DOC Letter
- C) State Reclamation Board Letter
- D) YSAQMD Letter
- E) County Environmental Health Letter
- F) Updated Schedule