

MINUTE ITEM

This Calendar Item No. C23
was approved as Minute Item
No. 23 by the State Lands
Commission by a vote of 3
to 0 at its 4/24/86
meeting.

CALENDAR ITEM

A 7
S 5

C23

04/24/86
W 23694 PRC 5974
Martinez
Frey

MINERAL EXTRACTION LEASE

APPLICANT: Calaveras County Water District
Attn: Steve Fette, General Manager
P.O. Box 846
San Andreas, California 95242

AGENT: George Huberty, Attorney at Law
P.O. Box 667
San Andreas, California 95249

AREA, TYPE LAND AND LOCATION:
Approximately 120 acres of patented mineral
reserve school lands NE of Murphys in portions
of Section 36, T4N R14E, MDM, Calaveras County.

LAND USE: Extraction of minerals other than oil, gas, and
geothermal for and during construction of a
water conveyance tunnel and surge shaft as a
segment of the Calaveras County Water
District's North Fork Stanislaus River Project
which will divert water from the North Fork
Stanislaus River for power generation. The
extracted material will be disposed of on
adjacent federally-owned lands and used for
road construction by the Applicant.

TERMS OF PROPOSED LEASE:
Initial period: 49 years beginning May 1,
1986.

Public liability insurance: Lessor is a named
insured on the Lessee's existing liability and
property insurance policies covering the
proposed project.

CALENDAR ITEM NO. C 23 (CONT'D)

CONSIDERATION: \$30 per acre per annum.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Adm. Code 2003.

APPLICANT STATUS:

Applicant is owner of the surface rights of the subject patented lands.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing fee has been received.

STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Adm. Code: Title 2, Div. 3; Title 14, Div. 6.

AB 884: 05/12/86.

OTHER PERTINENT INFORMATION:

1. A staff analysis of the mineral value of the project site determined that there are no known valuable minerals of significant commercial quantity in the vicinity of the proposed activity. Therefore, it is staff's belief that it is in the best interest of the State to issue the proposed long-term lease authorizing the project.
2. An Environmental Impact Report (SCH No. 78010925 was prepared and adopted for this project by the Calaveras County Water District. The State Lands Commission staff has reviewed such document and believe that it complies with the requirements of the CEQA.

APPROVALS OBTAINED:

Federal Energy Regulatory Commission, Bureau of Land Management, California Department of Fish and Game, U.S. Forest Service, U.S. Army Corps of Engineers, California Regional Water Quality Control Board.

CALENDAR ITEM NO. **C23** (CONT'D)

- EXHIBITS:
- A. Land Description.
 - B. Location Map.
 - C. Lease Agreement.
 - D. CEQA Findings.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN EIR PREPARED AND ADOPTED FOR THIS PROJECT BY THE CALAVERAS COUNTY WATER DISTRICT AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THERE.
2. ADOPT THE FINDINGS HERETO ATTACHED AS EXHIBIT "D" IN CONNECTION WITH THE PROJECT IN COMPLIANCE WITH THE CEQA (P.R.C. SECTIONS 2100, ET SEQ) AND THE STATE EIR GUIDELINES.
3. DETERMINE THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
4. AUTHORIZE STAFF TO ISSUE TO THE CALAVERAS COUNTY WATER DISTRICT THE MINERAL LEASE ON FILE IN THE OFFICES OF THE COMMISSION. SAID LEASE SHALL AUTHORIZE REMOVAL OF MINERALS OTHER THAN OIL, GAS, AND GEOTHERMAL FOR AND DURING CONSTRUCTION OF THE WATER TUNNELS, SURGE SHAFT, AND ADIT, AS PART OF THE LESSEE'S NORTH FORK STANISLAUS RIVER PROJECT. MATERIAL REMOVED SHALL BE DISPOSED OF ON ADJACENT FEDERALLY-OWNED LANDS. AN ANNUAL RENTAL OF \$30 PER ANNUM SHALL BE CHARGED. SUCH PERMITTED ACTIVITY IS CONTINGENT UPON THE APPLICANT'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATIONS, OR LIMITATIONS ISSUED BY FEDERAL, STATE, AND LOCAL GOVERNMENT AGENCIES.

(REVISED 04/23/86)

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EXHIBIT "A"

LAND DESCRIPTION

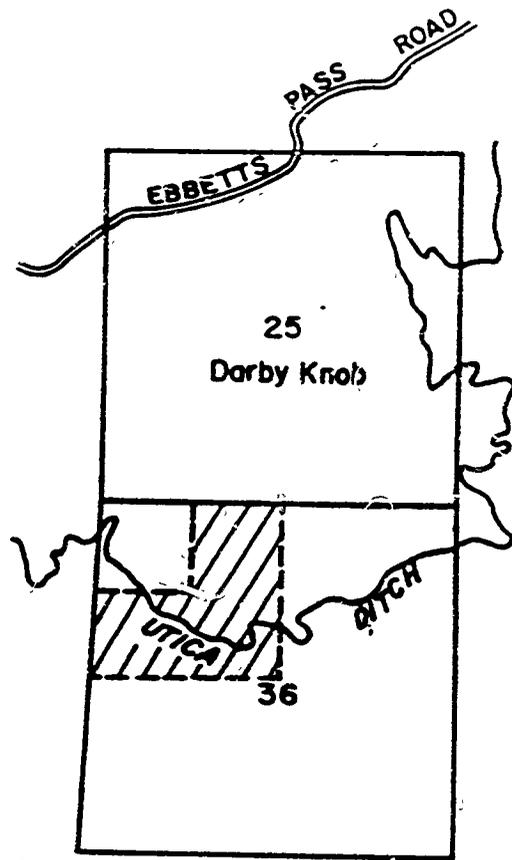
W 23694

A parcel of land in Calaveras County, California described as follows:

SW $\frac{1}{2}$ of NW $\frac{1}{2}$ and E $\frac{1}{2}$ of NW $\frac{1}{2}$ of Section 36, T4N R14E, MDM.

END OF DESCRIPTION

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SECTION 36

TOWNSHIP 4N--RANGE 14E MDM
SW¹/₄ OF NW¹/₄ AND
E¹/₂ OF NW¹/₄ OF SECTION 36

EXHIBIT "B"

W 23694
CALAVERAS COUNTY
WATER DISTRICT
CALAVERAS COUNTY



R.O. 3/86

STATE LANDS COMMISSION
STATE OF CALIFORNIA

LEASE NO. _____

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION, whose address is 245 West Broadway, Suite 425, Long Beach, CA 90802, pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Administrative Code, and for consideration specified in the Lease, does hereby lease, demise and let to CALAVERAS COUNTY WATER DISTRICT, hereinafter referred to as Lessee; whose mailing address is P. O. Box 846, San Andreas, CA 95249, those certain lands described in Section 1 subject to the reservations, terms, covenants and conditions of this lease.

SECTION 1: PROPERTY DESCRIPTION

All of the State of California's interest in the SW 1/4 of NW 1/4 and the E 1/2 of NW 1/4 of Section 36, Township 4N, Range 14E, M.D.B.&M.

SECTION 2: PURPOSE AND TERM OF LEASE

A. This lease shall commence on the first day of the month following the month in which it is executed by the State Lands Commission, which date shall be hereinafter referred to as the "effective date" of this lease, and shall continue for a term of 49 years or so long as

Lessee shall use the premises for its intended purposes, whichever comes first.

B. Lessee shall have the exclusive right to remove so much rock as it requires to construct tunnels associated with its hydroelectric project on the North Fork of the Stanislaus River and to use said tunnels for the purpose of conveying water for energy generation. The rock so excavated and removed may be used in the construction of roads. Said rock used in the construction of roads shall not contain any precious metals of commercial value or other commercially valuable minerals.

SECTION 3: CONSIDERATION

A. RENTAL

Lessee shall pay the annual rental of \$30.00 per acre or fraction thereof to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

B. MODIFICATION

Lessor may modify the amount or rate of consideration effective on each fifth anniversary of the beginning date of the Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any following fifth anniversary, without prejudice to its right to effect such

modification on the next or any succeeding fifth anniversary. Any modification of the amount or rate of consideration made pursuant to this paragraph shall conform to Title 2, Division 3 of the California Administrative Code, and no such modification shall become effective unless Lessee is given written notice at least sixty (60) days prior to the effective date.

C. PENALTY AND INTEREST

Any installments of rental, royalty, or other consideration accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224.

SECTION 4: GENERAL PROVISIONS

A. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

B. SUBMISSION OF DATA

1. Lessee shall furnish to the State detailed plats, drawings and other pertinent data showing the location and size of the tunnels.

2. Lessee shall submit reports substantiating the volume of rock removed on a quarterly basis on forms supplied by the Lessor (Form 30.9). It is agreed

that the Lessee shall submit said reports on or before the twenty-fifth (25th) day of the month following the end of each lease quarter. The first lease quarter shall be the first three months following the effective date of this Lease, and every three-month period thereafter shall be a lease quarter.

3. It is agreed that the Lessee shall furnish the Lessor with copies of final surveys or copies of any other computations used as a basis to verify volumes removed within twenty-five (25) days of completion of the activity authorized hereunder.

4. Lessee agrees to submit with each quarterly report a geologic rock description and mineral content of the tailings or cuttings resulting from the tunneling operations. Said report shall be signed by a registered geologist.

C. DEPOSITION OF EXCAVATED ROCK

The Lessee agrees to segregate into a separate stockpile on the said SW 1/4 of NW 1/4 and the E 1/2 of NW 1/4 of section 36 any rock containing precious metals or other commercially valuable minerals if such are found in the tailings or cuttings. If a disposal site is unavailable on the said SW 1/4 of NW 1/4 and the E 1/2 of NW 1/4 of section 36, the Lessee agrees to secure for the Lessor, its lessee or permittee, all rights necessary to enter onto other lands where the rock is

stockpiled and to remove the rock therefrom at no cost to the Lessor, its lessee or permittee. In its discretion Lessor shall have the right to remove, sell or otherwise utilize the said excavated rock.

D. LAND USE

1. General:

Lessee shall use the Lease Premises only for the purpose or purposes stated in Section 2 and only for the operation and maintenance of the improvements authorized in Section 2. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease.

2. Repairs and Maintenance:

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and safe condition in accordance with all applicable law.

3. Additions, Alterations and Removal:

Additions -- No improvements other than those expressly authorized in Section 1 of this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them.

4. Enjoyment:

Nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitute a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

E. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

1. Lessor expressly reserves and excepts from this lease all valuable mineral resources in or on the Lease Premises, including but not limited to oil, coal, natural gas and other hydrocarbons, aggregates and geothermal resources, as well as the right to grant leases in and over the Lease Premises for the extraction of such mineral resources; however, such leasing rights shall not be exercised during the term of this Lease.

2. Lessor expressly reserves a right to go on the Lease Premises, and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

3. Encumbrances:

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims, and it is made without warranty by Lessor of title, condition or fitness of the land for the stated intended use.

F. RULES AND REGULATIONS

Lessor and Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

G. INDEMNITY

1. Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, occurring on the Lease Premises or improvements, or arising out of or connected in any way with the issuance of this Lease.

2. Lessee shall give prompt notice to Lessor in case of any accident, injury or casualty on the Lease Premises.

H. LIABILITY INSURANCE

1. Lessee agrees to add the State of California as a named insured to its existing liability and property insurance policies covering its hydroelectric project on the North Fork of the Stanislaus River. Lessee further agrees to provide Lessor with evidence of such coverage. Coverage shall be in an amount satisfactory to Lessor.

2. If such coverage cannot be obtained or if the State of California is dropped as a named insured, Lessee shall obtain at its own expense and keep in full force and effect during the Lease term with an insurance company acceptable to Lessor separate comprehensive liability insurance, for categories and amounts, as specified by Lessor, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

3. The insurance policy or policies shall name the State as an additional insured or co-insured party as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current.

4. The liability insurance coverage specified in this Lease shall be in effect at all times during

the Lease term and subsequently until all of the Lease Premises have been either accepted as improved by Lessor or restored pursuant to Paragraph L.

I. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor.

J. DEFAULT AND REMEDIES

1. Default:

The occurrence of any one or more of the following events shall constitute a default or breach of this Lease by Lessee:

a. Lessee's failure to make any payment of rental, or other consideration as required under this Lease.

b. Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease.

c. Lessee's vacation or abandonment of the Lease Premises during the Lease term.

d. Lessee's failure to observe or perform any other term, covenant or condition of this

Lease to be observed or performed by the Lessee when such failure shall continue for a period of sixty (60) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach is such that more than sixty (60) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such sixty (60) day period and diligently proceeds with such cure to completion.

2. Remedies:

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- a. Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises.
- b. Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice, and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor.
- c. Maintain this Lease in full force and effect and recover any rental, royalty, or

other consideration as they become due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the ~~Lease~~ Premises.

d. Exercise any other right or remedy which Lessor may have at law or in equity.

K. LESSEE'S TERMINATION

1. Lessee may terminate this Lease for any reason upon giving Lessor at least sixty (60) days prior written notice and a plan satisfactory to Lessor for abandonment of any tunnels. Lessee agrees that on the effective date of termination it shall responsibly leave and surrender the Lease Premises to Lessor in a state of good order, condition, repair and restoration as provided under Paragraph L. The exercise of such right of termination shall not release Lessee from liability for any unpaid but accrued rental or other consideration which may be due under this Lease or from any other obligations still applicable under the Lease. No portion of any rental paid by Lessee in advance shall be refunded.

2. Lessee may terminate this Lease as to the SW 1/4 of the NW 1/4 and the W 1/2 of the E 1/2 of the NW 1/4 of Section 36 any time after the running of the first five years of this lease by complying with subparagraph K.1. and paragraph L of this Lease. Upon executing and delivering to Lessor a quitclaim deed in a form provided by Lessor, the

annual rental for each succeeding year of the Lease term shall be reduced by a pro rata amount per acre for each acre and fraction thereof which Lessee has quitclaimed to Lessor.

L. RESTORATION OF LEASE PREMISES

1. Upon expiration or sooner termination of this Lease, Lessor may accept all or any portion of the Lease Premises, as then improved with structures, buildings, pipelines, machinery, facilities and fills in place; or Lessor may require Lessee to remove all or any portion of such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense.

2. In removing any such improvements, Lessee shall restore the lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

3. All such removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days of the expiration or sooner termination of this Lease.

M. QUITCLAIM

Lessee shall, within ninety days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease.

Should Lessee fail or refuse to deliver such release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee and all other claimants of the termination of this lease and any rights or interests of Lessee in the Lease Premises.

N. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month-to-month and not an extension of the Lease term and shall be on the terms, covenants and conditions of this Lease with rental, royalty or other consideration payable in advance on the first day of each month, at the rate of one-twelfth (1/12th) of the annual amount.

O. ADDITIONAL PROVISIONS

1. Waiver:

a. No term, covenant or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

b. Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of

any other default or breach of any term, covenant or condition of this Lease.

2. Time:

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

3. Notice:

All notices required to be given under this Lease shall be given in writing, sent by United States mail with postage prepaid, to Lessor at the offices of the State Lands Commission and to Lessee at the address specified above. Lessee shall give Lessor notice of any change in its name or address.

4. Consent:

Where Lessor's consent is required under this Lease, its consent for any one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

5. Charges:

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented by mutual agreement of the parties.

6. Successors:

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns.

of the respective parties, and, if more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

7. Captions:

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

8. Severability:

If any term, covenant or condition of this Lease is judicially determined to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

This Lease will become binding upon the State only when duly executed on behalf of the State Lands Commission of the State of California;

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By _____

By _____

Title _____

Title _____

Date _____

Date _____

The issuance of this lease
was authorized by the State
Lands Commission on

EXHIBIT "D"
CEQA FINDINGS

The State Lands Commission (SLC) is a Responsible Agency for this project, and has the responsibility for mitigating or avoiding the environmental effects of those portions of the project under SLC jurisdiction. Pursuant to Section 15091 and 15096, Title 14, of the California Administrative Code, staff of the State Lands Commission has made the following findings for each significant effect of such parts of the project.

1. Issue: Water Quality

Impact: Blasting and drilling during construction could produce fine material in the drainage from the tunnel.

Findings: Changes or alterations have been required in or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

Such changes or alterations are within the responsibility and jurisdiction of the Regional Water Quality Control Board. Such changes have been adopted by that agency.

Facts Supporting Finding:

Impacts on water quality during construction of the tunnel will be mitigated by the creation of a series of ponds to achieve removal of the fine material as stipulated in the waste discharge permit issued to the applicant by the Regional Water Quality Control Board pursuant to consultation with the California Department of Fish and Game.

2. Issue: Geologic Hazards

Impact: The primary considerations for geologic hazards are caving and stopping that could be detrimental to the surface, and degradation of groundwater and spring water sources.

Findings: Changes or alterations have been required in or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

Such changes or alterations are within the responsibility and jurisdiction of the U. S. Forest Service and the Regional Water Quality Control Board. Such changes have been adopted by those agencies.

Facts Supporting Finding:

In areas where the geologic structure indicates that tunnel construction is likely to encounter groundwater, fractures and shear zones, the following procedure is to be implemented in compliance with the requirements set forth by the U. S. Forest Service and the Regional Water Quality Control Board.

- A horizontal pilot hole will precede tunnel construction by 40 to 50 feet. This pilot hole will provide information about the condition of the rock before it is tunneled full face. Such information will contribute to the detection of any soft caving, squeezing, or slabbing ground, and the timely installation of an adequate support system.
- Any groundwater, spring water, or high pressure water sources can be detected in advance through the use of the pilot hole. Estimates of the quantity of water and its pressure can be made by directing the water flow from the pilot hole through pressure and flow measurement instruments. If significant sources of groundwater are encountered, this early warning allows measures to be taken in advance to protect the groundwater supply and the tunnel face. Grouting through peripheral springline holes ahead of the face of the tunnel can then be performed to control the groundwater inflow and the general stability of the tunnel before the full face is excavated.

3. Issue: Spoil Disposal.

Impacts: One spoil site will be required to store spoils from the tunnels.

Vehicles transporting spoils to the disposal site will add air emissions and noise to the surrounding environment.

Placement of spoils at the site will create the potential for erosion.

Findings: Changes or alterations have been required in or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

Such changes or alterations are within the responsibility and jurisdiction of the Bureau of Land Management and the Regional Water Quality Control Board. Such changes have been adopted by or can and should be adopted by such agencies.

Facts Supporting Finding:

The site to be used for spoil disposal is an abandoned rock quarry on lands under the jurisdiction of the Bureau of Land Management. Therefore, all activities at the site are to be in compliance with the requirements set forth by the Bureau of Land Management and the Regional Water Quality Control Board in consultation with the U. S. Forest Service and the Department of Fish and Game.

As much spoil material as possible will be temporarily stockpiled and then utilized during construction of other segments of the project.

-- The temporary increase in traffic will be minor since the number of trips required will be limited to approximately two per day and only a few residences exist along the access road.

-- Temporary check dams will be constructed from spoil material at the toe of the spoil pile to collect any eroding sediment, thereby eliminating the potential hazard to water quality.