

MINUTE ITEM C39

W 24075

Ron Small

Don Reese

DENIAL OF APPLICATION AND AUTHORIZATION TO CHALLENGE  
MILL SITE AND MINING CLAIMS

APPLICANT: Viceroy Gold Corporation

This Calendar Item C39 was taken off the Consent Calendar and put on the Regular Calendar.

Mr. Bill Tilden, attorney for Viceroy Gold, and Mr. D. Ross Fitzpatrick, President & CEO for Viceroy Gold, appeared before the Commission to present their concerns regarding the proposed denial of their application by the State Lands Commission. Also, Mr. Robert Anderson, Deputy State Director/Mineral Resources for the Bureau of Land Management, appeared in support of Viceroy Gold's application.

Commissioner Tucker expressed concern with the Item as he felt everyone should be negotiating because of the uncertainty of the State's indemnity selection. He felt it is a significant policy and should be addressed as a policy matter in regards to indemnity selections.

After considerable discussion Commissioners advised staff to work with the Viceroy Gold, and BLM to see if some sort of agreement was possible.

Commission action was deferred to the January 3, 1991 Commission Meeting.

Attachment: Calendar Item C39

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DENIAL OF APPLICATION AND AUTHORIZATION TO  
CHALLENGE MILL SITE AND MINING CLAIMS

APPLICANT:

Viceroy Gold Corporation  
P. O. Box 9457  
Las Vegas, Nevada 89123

BACKGROUND

On October 26, 1987, Viceroy Gold Corporation, a Delaware corporation and wholly owned subsidiary of Viceroy Resource Corporation, a Canadian company, applied to the Commission for a lease to drill up to four water wells to supply a heap-leach gold mining operation on nearby federal lands. In addition, the Applicant sought a right-of-way for access to the water wells, a short service road, and water pipelines. The Applicant has already drilled a trespass well on the State school section and, after a survey had revealed actual location, an application was submitted.

The County of San Bernardino, as CEQA lead agency, and the Bureau of Land Management, as the NEPA lead agency, have prepared a combined Environmental Impact Report and Environmental Impact Statement (EIR/EIS) on Viceroy's proposed Plan of Development for the nearby heap-leach gold mining operation. The County of San Bernardino approved the project on September 27, 1990. Additionally, the State Director, Bureau of Land Management, issued a Record of Decision on October 31, 1990 approving the Plan of Development.

Staff submitted an application on August 13, 1990 for indemnity selection for several parcels of land adjacent to and nearby the State school section. These selections are for federal lands which

are intended to be utilized by the Applicant for water wells and access to the proposed project site. The Commission approved the proposed selection at its August 22, 1990 meeting.

Staff has reviewed the records on file at the State offices of the Bureau of Land Management. These records indicate Viceroy has filed mining claims on some or all of the property selected by the Commission and which claims overlap most of the lands proposed for extraction of water. In addition, Viceroy has already drilled a substantial number of water wells on the federal lands and has filed mill site claims on those water wells.

The mill site claims were filed in October 1988 and October 1985, and the mining claims were filed in May 1981, October 1985, and December 1986. Staff is of the opinion that the mill site claims for purpose of the water wells are invalid. Until these legal and title issues are resolved, staff believes that no lease or right-of-way should be issued to Viceroy.

**STATUTORY AND OTHER REFERENCES:**

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

AB 884: 04/28/91

**OTHER PERTINENT INFORMATION:**

- 1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061, relative to denial of Viceroy's application), the staff has determined that his activity is exempt from the requirements of the CEQA because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: P.R.C. 21080(b)(5) and 14 Cal. Code Regs. 15270.

- 2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061, relative to the

challenge of the mill site, mining claims, and right-of-ways), the staff has determined that his activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065 and 14 Cal. Regs. 15378.

EXHIBIT: A. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY, RELATIVE TO THE DENIAL OF VICEROY'S APPLICATION FOR WATER WELLS, POWERLINE, AND RIGHT-OF-WAY ACROSS STATE SCHOOL LAND, IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 P.R.C. 21080(b)(5) AND 14 CAL. CODE REGS. 15270, PROJECTS WHICH A PUBLIC AGENCY REJECTS OR DISAPPROVES.
2. DENY, WITHOUT PREJUDICE, THE APPLICATION FOR A LEASE FOR WATER WELLS AND ASSOCIATED RIGHT-OF-WAY FOR A WATER-PIPELINE-GATHERING SYSTEM.
3. AUTHORIZE STAFF TO ADVISE THE APPLICANT OF THE COMMISSION'S ACTION TO DENY AND THE APPLICANT'S RIGHT TO REAPPLY.
4. WAIVE THE FILING FEE FOR APPLICANT'S RESUBMITTAL OF APPLICATION.
5. FIND THAT THE ACTIVITY, RELATIVE TO THE CHALLENGE OF MILL SITE, MINING CLAIMS, AND RIGHT-OF-WAYS, IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
6. AUTHORIZE STAFF TO PURSUE ALL REMEDIES, INCLUDING LITIGATION, TO CHALLENGE THE LEGALITY OF ANY RIGHTS-OF-WAY OR OTHER APPROVALS ON LANDS SELECTED BY THE COMMISSION.

7. AUTHORIZE STAFF TO PURSUE ALL REMEDIES, INCLUDING LITIGATION, TO CHALLENGE THE LEGALITY OF ANY MILL SITE AND/OR MINING CLAIMS FILED ON LANDS SELECTED BY THE COMMISSION.
8. AUTHORIZE STAFF TO FILE ADDITIONAL INDEMNITY SELECTIONS TO CONSOLIDATE THE STATE'S OWNERSHIP IN THE AREA OF VICEROY'S PROPOSED PROJECT.
9. AUTHORIZE STAFF TO NEGOTIATE ANY SETTLEMENT AGREEMENTS WITH VICEROY.

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