MINUTE ITEM
This Calendar Item No. C83
was approved as Minute Item
No. 83 by the State Lands
Commission by a vote of 3
to 0 at its 3-8-94
meeting.

CALENDAR ITEM

A 80

S 37

C83

03/08/94
W 40695
Willard
Frey

ACCEPT SETTLEMENT OF A MINERAL TRESPASS ON STATE RESERVED MINERAL INTEREST LANDS, RIVERSIDE COUNTY

APPLICANT:

Tarmac California, Inc.
P. O. Box 14050
Palm Desert, California 92255

AREA, TYPE LAND AND LOCATION:

The lands include approximately 560 acres of State one-sixteenth reserved mineral interest lands located in the S 1/2, the NW 1/4, and the W 1/2 of NE 1/4, all in Section 34, T4S, R7E, SBM, and situated about five miles north of Indio, California.

The lands are within the Indio Quarry, a sand and gravel quarrying operation currently owned by Granite Construction Company of Palm Desert, California.

BACKGROUND:

In March 1993, Granite Construction Company (Granite) advised the Commission regarding Granite's purchase of the Tarmac Company, which included certain real property in Riverside County near Indio consisting in part of an active sand and gravel operation at the Indio Quarry. Granite advised that portions of the property included the one-sixteenth interest of reserved mineral lands of the State. The lands were acquired and patented by the State pursuant to Chapter 303, Statutes of 1921, with one-sixteenth of the minerals reserved.

In May and June 1993, Commission staff met with representatives of Granite and Tarmac California, Inc. (Tarmac), the previous owner of the quarry, to discuss a proposed settlement and payment for one-sixteenth of the value of sand and gravel previously extracted from the quarry. For lands sold under Chapter 303, Statues of 1921, the Commission may not issue a lease or permit for mineral extraction, but must rely on the owner of the surface and the fifteen-sixteenth mineral interest to provide the State payment of an undivided one-sixteenth value of the minerals

produced (6.25 percent of full value of the minerals extracted).

Tarmac has stated that it was not aware of the State's one-sixteenth mineral interest until transfer of the lands, that included Indio Quarry, from Tarmac to Granite in June 1992. Inasmuch as P.R.C. Section 6224.2 provides for actual damages liability in the involuntary appropriation of mineral deposits and sets forth a five-year statute of limitations, it was agreed by Granite and Tarmac that the amount of material removed from the subject lands within Indio Quarry would be computed to ascertain the market value of the State's interest for a period dating back five years from the sale of Indio Quarry in June 1992.

Subsequently, Tarmac submitted production and sales information for the five year period from July 1, 1987 to June 30, 1992. Utilizing the production and cost information submitted by Tarmac, Commission staff calculated that the State's share of production amounted to $152,245 for the five year period. In addition to the principal amount due, interest calculated at ten percent per year for the five-year period amounted to $44,008, for a total due the State of $196,253.

In November 1993, Tarmac agreed to pay the full mineral value of $152,245, but requested that the Commission consider waiving payment of interest in order to resolve the inadvertent mineral trespass in a timely manner. Tarmac and Granite have voluntarily come to the State and negotiated in good faith once they became aware of the trespass. Based on the good faith bargaining in this matter, Commission staff recommends that interest, in the amount of $44,008, be waived and the mineral value of $152,245 be accepted as payment in full for the State's minerals.

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:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this 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. Code Regs. 15378.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY 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.

2. ACCEPT AS SETTLEMENT OF A MINERAL TRESPASS IN ACCORDANCE WITH P.R.C. 6224.2 ON CERTAIN STATE RESERVED INTEREST LANDS AT INDIO QUARRY, RIVERSIDE COUNTY, THE PRINCIPAL AMOUNT OF $152,245.