

**CALENDAR ITEM
C36**

A 18

12/17/09

W 40783

G. Pelka

S 34

V. Perez

**CONSIDERATION OF SETTLEMENT AGREEMENT FOR
REMOVAL OF AGGREGATE FROM STATE'S
MINERAL INTEREST, NEAR THE TOWN OF BAKER,
SAN BERNARDINO COUNTY**

PARTY:

ACJ True Grit, LLC, successor to Jacobson Construction Company
Attention: Ms. Joni Jacobson
P.O. Box 160
Baker, CA 92309

AREA, LAND TYPE, AND LOCATION:

Approximately 44.90 acres of State school lands (APN 544-261-10) located near Baker, San Bernardino County.

BACKGROUND:

Jacobson Construction Company (Jacobson) operated a sand and gravel pit on the southwest outskirts of Baker. In July 1998, California State Lands Commission (Commission) staff received and reviewed Negative Declaration SCH #98051083 prepared by San Bernardino County for a 7.6 acre expansion of the existing 15.4 acre quarry. This expansion included about two acres in APN 544-261-10 (44.90 acres) in which the State reserved a 1/16th mineral interest when the property was patented in 1931. Jacobson purchased the 44.90 acre parcel in 1997. The remainder of the quarry is located on lands patented by the State in 1910 with no mineral reservation.

In December 1998, Commission staff notified Jacobson of the State's 1/16th mineral interest and Jacobson's obligation to pay the State for any minerals removed. In August 2002, Granite Construction Company (Granite) notified staff that it received a large contract from Caltrans for repaving Interstate 15 northeast of Baker. Granite also told staff that it would work with Jacobson to amend and expand the existing Jacobson Quarry Mining and Reclamation Plan with San Bernardino County to supply the aggregate Granite needed. During 2002 and

CALENDAR ITEM NO. C36 (CONT'D)

2003, staff attempted to negotiate a 1/16th mineral agreement with Jacobson, but no agreement was reached. There was a substantial disagreement over the interpretation of the 1921 statute creating the 1/16th reserved mineral interest with respect to the scope of that interest. The aggregate mining proceeded, nonetheless, because a formal lease agreement is not required for the landowner's development of this 1/16th mineral interest.

In 2007, when the mining was completed and reclamation was in progress, staff and Jacobson resumed negotiations to resolve their impasse. Staff had contemplated calculating the volumes of rock removed from the area of the State's reserved 1/16th interest, but the commingling of the aggregate and backfill of waste material made this endeavor futile. Jacobson agreed to provide staff with its lease agreement with Granite. In that lease, Granite had agreed to compensate the State up to \$80,000 for payment of material removed from that portion of the quarry subject to the State's reserved 1/16th interest.

Due to the substantial disagreement over the extent of the State's 1/16th mineral interest under the 1921 statute creating that interest and the absence of data that would support a credible determination of the State's share of the material removed from its mineral interest lands, staff believes that further pursuit of this matter would not be in the State's best interest. The factual problems and the relatively small amount of money at stake make a settlement, even at \$80,000, a more prudent resolution of this particular dispute than pursuing remedies such as litigation. Staff, therefore, presented an offer to ACJ True Grit, LLC (True Grit), successor to Jacobson, to recommend to the Commission acceptance of \$80,000 from either True Grit or Granite as payment in full of the amount due the State for the aggregate removed that is subject to the State's 1/16th reserved mineral interest.

Staff has prepared a settlement agreement that has been properly executed by True Grit, as successor to Jacobson, and Granite (see Exhibit C, attached hereto). Either Granite or True Grit will pay \$80,000 to the State within 30 days of written notification to them that the Commission has approved the agreement. Staff has completed a field exam documenting the current quarry configuration. Staff has told True Grit that any future mining on the lands, subject to the State's 1/16th mineral interest, will require payment to the State for the extraction of the minerals subject to its 1/16th interest upon commencement of mining operations. No mining is presently occurring.

CALENDAR ITEM NO. C36 (CONT'D)

STATUTORY AND OTHER REFERENCES:

- A. Public Resources Code section 6401
- B. Statutes 1921, Chapter 303

OTHER PERTINENT INFORMATION

- 1. True Grit and Granite have properly executed the settlement agreement and will make payment to the State of the \$80,000 within 30 days following notification to them of the Commission's approval of the agreement.
- 2. Staff has completed a field exam documenting the current quarry configuration in the event future mining should occur.
- 3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

- A. Land Description
- B. Site Map
- C. Settlement Agreement

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14,

CALENDAR ITEM NO. C36 (CONT'D)

CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

1. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO EXECUTE THE SETTLEMENT AGREEMENT WITH ACJ TRUE GRIT, LLC AND GRANITE CONSTRUCTION COMPANY PURSUANT TO WHICH THE STATE ACCEPTS \$80,000 AS PAYMENT IN FULL FOR MATERIAL PREVIOUSLY REMOVED THAT IS SUBJECT TO THE STATE'S MINERAL INTEREST.

2. AUTHORIZE THE EXECUTIVE OFFICER OR HIS DESIGNEE TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT WITH ACJ TRUE GRIT, LLC AND GRANITE CONSTRUCTION COMPANY,

EXHIBIT C

W 40783

AGREEMENT RESOLVING PAYMENT FOR REMOVAL OF AGGREGATE FROM THE STATE'S INTEREST IN THE JACOBSON MINING OPERATION NEAR BAKER, SAN BERNARDINO COUNTY

This Agreement Resolving Payment for Removal of Aggregate from the State's Interest in the Jacobson Mining Operation near Baker, San Bernardino County (Agreement) is made and entered into by and among ACJ True Grit, LLC (True Grit), successor to Jacobson Construction Company (Jacobson); Granite Construction Company (Granite); and the California State Lands Commission (Commission) and is effective on the date it is executed by all parties.

The State of California holds a 1/16th mineral interest in lands in the SW 1/4 of Sec. 36, T14N, R8E, SBB&M, in San Bernardino County near Baker. The State reserved this mineral interest when it sold these lands in 1932. The reservation of this 1/16th mineral interest was required by Chapter 303 of the California Statutes of 1921 (Chapter 303). Chapter 303 also provides how the landowner shall compensate the State in the event the landowner leases the land for mineral development. The Commission has jurisdiction over and administers the State's reserved mineral interest.

The State's reserved mineral interest is located in Assessor's Parcel Number (APN) 544-261-10 containing 44.90 acres and is owned by True Grit, as

successor to Jacobson. Within a portion of this 44.90-acre parcel is a portion of the Jacobson quarry, a source of rock, sand and gravel (aggregate). The quarry extends into other parcels also owned by True Grit but in which the State has no reserved mineral interest.

In 2002, Jacobson entered into a lease with Granite covering the Jacobson lands (now True Grit lands), including the lands in APN 544-261-10 in which the State holds a 1/16th mineral interest and Jacobson has a 15/16th mineral interest. Granite obtained the lease so that it could extract aggregate from the Jacobson lands for use on a construction project for Caltrans involving the repaving of Interstate 15 northeast of Baker. Under the provisions of Chapter 303, Jacobson could enter into the lease that included the State's reserved mineral interest without the consent of the Commission but Jacobson is required to pay to the Commission "an undivided one-sixteenth of the mineral produced or the value thereof at the well or mine."

Granite began mining operations on the Jacobson lands. Granite mined the Jacobson lands as a single mineral source and did not segregate what it took from the lands subject to the State's reserved mineral interest and what it took from the rest of the lands. Jacobson kept no records of the amounts of aggregate removed from the State mineral interest lands. When mining under the lease ended in 2007, Granite used the mining waste as back fill to reclaim the lands. This made it impossible to make any after the fact determination of the volume of aggregate removed from the State mineral interest lands.

There was substantial disagreement between the Commission and Jacobson about the nature of the State's interest created by Chapter 303 and about the meaning of the language in Chapter 303 describing how the minerals produced from lands subject to that interest should be valued. The Commission and Jacobson were unable to agree on a price for valuing the aggregate attributable to the State's reserved mineral interest when mining operations were begun, and this impasse continued through the time when mining operations ended and the land was reclaimed. Jacobson's lease with Granite, however, contained a provision that Granite would agree to pay "California State Lands Commission royalties for material permanently removed from the premises under this lease up to a maximum of \$80,000."

The parties to this Agreement believe that some compensation is due the Commission for the extraction of minerals from the lands subject to the State's 1/16th mineral interest, that an attempt to calculate a reasonable volume of minerals extracted from the lands subject to the State interest is impossible at this time and that there is substantial disagreement over the nature of the State's interest and the value that should be placed on the minerals extracted from it. Therefore, it is in the best interests of all parties to resolve this matter.

Therefore, for good and valuable consideration, the parties agree:

1. Within 30 calendar days after the execution of this Agreement by all parties, True Grit or Granite shall pay to the Commission the sum of \$80,000. Payment shall be made by check payable to the California State

Lands Commission and shall be sent to the Commission's Long Beach office at 200 Oceangate, 12th Floor, Long Beach, CA 90802-4331.

Payment of this amount by True Grit or Granite shall be payment in full of the amount due the State for the removal of aggregate by Granite from the State's 1/16th reserved mineral interest on the Jacobson lands from 2002 through 2007.

2. The Commission, True Grit and Granite release any and all claims they may have against each other in connection with the removal by Granite of aggregate from the State's 1/16th reserved mineral interest on the Jacobson lands from 2002 through 2007.
3. True Grit shall give the State advance notification of any future mining or other extraction activities it may undertake or may permit some third party to undertake on any of its lands subject to the State's 1/16th reserved mineral interest and shall enter into an agreement with the Commission for payment of the value of the State's 1/16th reserved mineral interest in whatever minerals are mined or extracted from these lands before any mining or other extraction activities are begun.
4. This Agreement is made for the sole purpose of settling this specific dispute among the parties. Nothing in this Agreement is intended to be

indicative of any party's interpretation of Chapter 303 or any other law relating to the State's 1/16th reserved mineral interest created by Chapter 303, and nothing in this Agreement shall be used by any party or any third party for the purpose of showing its or anyone else's interpretation of such law.

Dated: _____, 2009

ACJ True Grit, LLC

Joni Jacobson, Managing Member

Dated: _____, 2009

Granite Construction Company

Dated: _____, 2009

California State Lands Commission

Gregory D. Scott, Chief
Mineral Resources Management Division