

November 30, 2010

VIA FEDERAL EXPRESS

U.S. Bureau of Land Management
El Centro Field Office
1661 South Fourth Street
El Centro, CA 92243-4561

Attn: Margaret L. Goodro

Re: CACA 49292; 3610; CCA 610-39; Padre Madre Waste Stockpile

Dear Ms. Goodro:

I have your letter of November 3, 2010, enclosing a Supplemental Report of Hazmat Characterization of the Padre-Madre Waste Stockpile sold to Pyramid Construction and Aggregates in June 2008, which you state was prepared in response to my earlier comments and, "... addresses salient issues you and your clients had regarding mining operations under mineral contract CACA 49292."

You further state that, "BLM's additional testing of the rock samples does not show characteristics of toxicity necessary to manage the rock as a Resource Conservation and Recovery Act (RCRA) hazardous material or a material under the CERCLA that would adversely affect health or the environment."

You request any information that my clients may have that relates to the toxic or hazardous characteristics of the rock material under contract CACA 49292 that supports our contention that extraction and use would constitute a potential CERCLA liability. You requested this information by December 3, 2010.

In our view, this is not a matter of BLM needing on-site information to mitigate potential CERCLA liability there. The work done in that respect is already in County and Regional Water Board files. All our closure activities there specifically addressed in-place closure, and not indiscriminate use elsewhere under all exposure scenarios.

The problem is that BLM keeps missing the point of our objection to removing this material from the site, which the IBLA fully understood in its July 14, 2010 decision,

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setting aside the FONSI and Decision Record for the sale, and remanding the matter back to the BLM for further action.

Therefore, our comments on the Supplemental Report necessarily are in the negative as to what BLM still fails to do, and not what we can provide additionally to enhance invalid premises.

The Supplemental Report still bases its conclusions on RCRA hazardous waste testing, and does not address the fundamental issue raised by us; that is, that this is a CERCLA issue, requiring a different analysis of potential impacts from off-site uses. It simply jumps to the same conclusion that, "Mining the rock stockpile from the Pyramid Construction site would have no deleterious effect on humans or natural environments when used as an aggregate admixture to concrete and asphalt concretes [which we have not contested], or used as fill, rip-rap, or ballast applications [which we have]." Soluble results from leach tests of the rock material do not determine the issue of potential exposure under CERCLA, and that is all the BLM has.

Indeed, the IBLA succinctly picked up on this point in its decision at page 306: "Whether BLM's conclusion that this waste rock is not hazardous waste under Federal and State law is correct or sustainable, it does not otherwise address the issues raised by MK concerning CERCLA and CERCLA "hazardous substances." This same point is made elsewhere in the decision.

It appears to us, therefore, that in spite of our detailed comments regarding the fallacy of the BLM's analysis in the draft EA, our comments regarding BLM's failure to rectify this analysis in our Statement and Supplemental Statement of Reasons on Appeal, and which were endorsed in the IBLA's decision, the BLM still does not get it.

We remain at a total loss as to why neither the BLM nor the project proponents are not willing to grant either indemnifications or waivers, as appropriate, if they consider the material sales and associated operational proposals to be innocuous as to potential future CERCLA liability.

We reserve further comment if a revised EA is distributed for public review.

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Very truly yours,



James E. Good, for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

cc: Daryl Dickerson
Pyramid Construction Company
839 Dogwood Road
Heber, CA 92249

Clients