



**RESOURCE MANAGEMENT  
AGENCY  
COUNTY OF TULARE  
PLANNING COMMISSION  
SUMMARY**

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**PLANNING COMMISSION**

CHAIRMAN: Ed Dias  
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(ALUC)

Doug Silveria  
Vacancy

<b>Project Number:</b> PMR 98-003	<b>Agenda Date:</b> 12/10/14	
<b>Applicant:</b> CEMEX Construction Materials Pacific, LLC	<b>Agenda Item Number:</b>	
<b>Agent:</b> N/A	<b>AGENDA ITEM TYPE</b>	
<b>Subject:</b> Review of Permit Conditions for PMR 98-003 and the Interim Management Plan for the Stillwell Mine.  <b>Exceptions:</b> N/A  <b>Waiver:</b> N/A  <b>Environmental Review:</b> N/A	Presentation	
	Consent Calendar	
	Unfinished Business	
	New Business	
	Public Hearing	X
	Continued Public Hearing	
	Discussion	
<b>Motion(s):</b> (1) Motion to adopt and approve the Interim Management Plan (2) Motion to make changes to permit conditions 48, 49, and 55 of PMR 98-003	<b>ACTION REQUESTED</b>	
	Recommendation to Board of Supervisors	
<b>Contact Person:</b> Michael Spata		

**RECOMMENDATIONS:**

Based on the evidence to be heard, the Planning Commission can "consider potential action" regarding PMR No. 98-003 including, but not limited to, the following:

1. Revocation of PMR 98-003 for possible violation of permit conditions;
2. Modification of PMR 98-003 permit conditions;
3. Initiation of Enforcement action, including litigation and administrative fines / penalties regarding permit PMR No. 98-003 for possible violation of permit conditions; or
4. Referral of the matter back to staff for further action; or
5. No action; and
6. Any other relevant matter that may come before the Planning Commission.

If the Planning Commission is inclined to recommend Item 1 (Revocation) or Item 2 (Modification), then the public hearing would have to be continued to allow a full and fair opportunity to be heard consistent with due process. With respect to Item 3 (Enforcement Action or Litigation), staff recommends that ultimately the Board of Supervisors would have to direct such action.

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**SUMMARY:**

Surface Mining Permit and Reclamation Plan PMR 98-03 was approved by the Planning Commission on August 12, 2002 (Planning Commission Resolution No. 7961). The permit allowed the excavation of rock, sand and gravel on 127 acres of a 496 acre site, with reclamation to lakes, located north of Lomitas Drive and Highway 198, in Lemon Cove. (See Attachment 1 for Maps). The mine owner operator, CEMEX, has posted financial assurances in the amount of \$52,588.00 in the form of a Letter of Credit (See Attachment 2 for the 2013 Financial Assurance Cost Estimate for Stillwell Mine).

In reviewing the below Project Timeline, it is helpful to note that the initial complaint by the neighboring properties surrounding the Stillwell Mine occurred in January 2014. The complaint alleges that the water in the wells was diminishing based on CEMEX's failure to fill a recharge ditch (also known as the "V" ditch) adjacent to the Project, in violation of CEMEX's conditions of approval. Staff had CEMEX conduct a hydrogeologic study.

Staff conducted a meeting with the neighbors. Staff then conducted a meeting with CEMEX and the neighbors to try to resolve this matter. An offer by CEMEX to the neighbors affected was presented, but the offer was rejected when the neighbors went to the Board of Supervisors about the alleged violation. Staff has conducted its own peer review to the CEMEX study.

In addition, staff was successful in getting CEMEX to fill the V Ditch in September of 2014. CEMEX has placed well data loggers on neighboring properties to monitor adjacent wells while water is pumped into the recharge ditch.

CEMEX may have been in violation of the following permit conditions from September 2013 to September 2014:

***Condition #48:** Implementation of the Groundwater Monitoring Plan, including data on the amount of water delivered to the recharge trench.*

***Condition #49** Water level, yield, or water quality of any well.*

***Condition #55:** The recharge trench shall contain a sufficient amount of water to maintain water levels.*

As such, staff suggests that to remedy this situation from happening again, the following changes to conditions are suggested.

- (#XX) In compliance with condition # 55, so long as there is available water in the mine, the "V" ditch shall contain a sufficient amount of water at all times in order to establish a groundwater mound to maintain water levels in neighboring wells during mining operation, under an Interim Management Plan, abandonment or during reclamation of the site, prior to completion of the Reclamations Plan "created lakes."
- (# XX) Compliance monitoring and investigation by Tulare County Staff of any condition during operation, IMP, abandonment, or reclamation, shall be funded by the mine operator.

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- (#XX) A peer review of any engineering or hydrology report provided by the mine operator to the County during operation, IMP, abandonment, or reclamation, shall be funded by the mine operator.

### **PROJECT HISTORY:**

Surface Mining Permit and Reclamation Plan No. PMR 98-003 was approved by the Planning Commission on August 14, 2002 by Resolution 7961. It allowed the excavation of approximately 137 acres of rock, sand and gravel on a 496 acre parcel with reclamation to lakes and grazing land.

The project was appealed to the Board of Supervisors in which the Board held public hearings on October 1 and 2, 2002. On November 5, 2002 the Board upheld the decision of the Planning Commission, denied the appeals and approved the project with conditions, as described in Resolution 2002-0833. See Attachment 3 for Planning Commission Resolution 7961 and Board Resolution 2002-0833.

### **TIMELINE:**

- **May 2014:** Cemex apparently stopped actively operating the Stillwell Mine
- **September 2008-September 2013:** water pumped into the V ditch (5 days in June 2013 no water pumped because of stolen wires).
- **September 4, 2013:** CEMEX ceased operation of the V ditch.
- **January 29-30th 2014:** Initial correspondence from neighboring residents.
- **February 11, 2014:** RMA staff inspected the Stillwell mine site.
- **February 20, 2014:** RMA requested CEMEX provide a hydrological report.
- **February 26, 2014:** RMA received hydrology report from EMKO Environmental, Inc.
- **March 14-30, 2014:** Neighbors response to EMKO Hydrology Report.
- **March 24, 2014:** RMA Hydrogeologic Evaluation of Current Groundwater conditions at the CEMEX Stillwell Quarry.
- **April 3, 2014:** RMA meeting with neighboring residents.
- **April 6-14, 2014:** Letters from surrounding neighboring residents for Stillwell and the RMC Pacific Mine site.
- **April 10, 2014:** Email stating options to CEMEX in refilling the V ditch (Aaron Bock to Pete Locastro).
- **May 15, 2014:** Mitchell Chadwick letter proposing well agreement with neighboring residents.
- **May 16, 2014:** Meeting between CEMEX and the neighboring residents including residence from the RMC Pacific Site. CEMEX proposal to drill new well.
- **May 21, 2014:** Letters from Tom Cairns (representing the neighbors) in response to the May 16, 2014: meeting and the EMKO report.
- **June 19, 2014:** Mitchell Chadwick letter responding to Tom Cairns letter.
- **June 20, 2014:** Mitchell Chadwick letter responding to neighboring residents.
- **July 3, 2014:** RMA discussion with CEMEX regarding 2nd meeting with neighboring residents.
- **July 8, 2014:** Public Complaint by the neighbors before the Board of Supervisors.
- **July 9, 2014:** Well Data to Mr. Morton.
- **July 16, 2014:** Letter from RMA Associate Director Michael C. Spata in response to July 8 neighboring resident's comments.
- **Week of July 14, 2014:** RMA agreement with Tully and Young Inc. for peer review of the EMKO hydrology report.

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- **August 15, 2014:** RMA received CEMEX Interim Management Plan for the Stillwell site.
- **August 26, 2014:** 30 day public review period of the Tully and Young Peer Review Report.
- **August 26, 2014:** CEMEX letter to residents requesting to install well data loggers.
- **September 2, 2014 week of:** CEMEX starts refilling the V ditch.
- **September 30, 2014:** 30 day public comment period for peer review ends. RMA received comment letters for Peer review.
- **October 1, 2014:** Response from Mitchell Chadwick to peer review comment letters.
- **October 15, 2014:** Extension of Time for Peer Review to October 31, 2014
- **December 1, 2014:** Final Summary Analysis and Conclusions for the Peer Review, Tully & Young
- **November 24, 2014:** Public Notice Mailed and Published in Newspaper
- **December 10, 2014:** Planning Commission Meeting regarding Stillwell Mine site.

**PERMIT CONDITIONS:**

The Resource Management Agency (RMA) received written complaints on January 31, 2004 from adjacent property owners to the CEMEX Stillwell Mine (CA Mine ID#91-54-0034) located north of Lomitas Drive and Highway 198, in Lemon Cove (See Attachment 4 Neighbor Letters). The neighbors' complaints were in regard to depleted well groundwater levels believed to be a result of the CEMEX Stillwell Mine (Mine) de-activating (no longer operating) the dewatering pumps at the mine site.

Condition No. 46 of the CEMEX Stillwell Permit establishes a "V" ditch along the east side of the project site designed to be utilized to replenish groundwater supplies to neighboring properties. Condition No. 55 requires the Mine to establish a "Groundwater Monitoring Plan to assess the effectiveness of the V-ditch design in maintaining groundwater levels in wells along the east and southeast boundary of the site, and in monitoring the quality of water supply recharging the local aquifer."

An inspection was conducted by RMA staff (Henry Dong, Planner II) on February 11, 2014. Through discussions with the mine operator, it was determined that the mine was non-operational since May, and that Cemex stopped pumping water in the ditch, on September 4, 2013.

Cemex stopped pumping water when their power lines operating the water pumps were stolen for the second time. The mining activities included operating water pumps utilized to fill the "V" ditch along the adjacent properties.

On February 20, 2014, RMA requested CEMEX provide a report from a licensed hydrologist as outlined in Condition No. 49 of the permit. Condition No. 49 states "upon receipt of a written complaint from any owner of a pre-existing well which details an alleged impact to the well's water level, yield, or water quality, the RMA shall request a report from a licensed hydrologist explaining the effects of the mining operation on the adjacent property owner's water wells." The Resource Management Agency request a licensed hydrologist provide the hydrology report by March 7, 2014.

RMA received the "Hydrogeological Evaluation of Current Groundwater Conditions at the CEMEX Stillwell Quarry" report, dated February 26, 2014, from EMKO Environmental, Inc. (See Attachment 5, Hydrogeological Evaluation EMKO Environmental Inc.).

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**EMKO HYDROLOGICAL EVALUATION:**

According to the hydrogeologic report, “dewatering at the Stillwell Quarry began in September 2008. Water from the mining excavation was pumped into a holding basin to allow fines to settle out. The water in the holding basin was then pumped to the recharge trench. Pumping to the recharge trench occurred continuously until June 17, 2013, when the wiring to the pumps was stolen. The wiring was replaced and the pumps restarted on June 21, 2013. The wiring was stolen a second time on September 4, 2013. A decision was made at that time to leave the pumps off and to cease dewatering of the Stillwell Quarry.”

The hydrogeologic report states that the “evaluation of historical rainfall data for Lemoncove shows that the last two water years have been two of the driest ever recorded based on California Data Exchange Center (CDEC) data. In addition, the first four months of the current (2013-2014) water year have been the driest October – January period measured in Lemoncove since 1923.”

The hydrogeologic report states that “an evaluation of hydrologic conditions on the Kaweah River demonstrates that releases from Terminus Dam and flows within the river have been diminishing over the last three water years and that there have not been any releases to the river above base-flow levels since July 2013. These hydrologic conditions on the Kaweah River indicate that groundwater recharge has been decreasing for several years and that there was likely been little or no recharge of groundwater for at least the last six months.”

The Hydrogeologic Evaluation concludes that:

*“based on the data presented in this report, the declining water levels in the wells in the Lemoncove area occurred in 2012, and in 2013. The declining trend in 2013 began as early as February, six months before discharge of water to the recharge trench was stopped. There is not a correlation between the cessation of discharge to the recharge trench and the water levels in the wells. Evaluation of local rainfall and river flow data shows that the Lemoncove area has been experiencing the most severe drought conditions ever recorded in the area. Substantially diminished rainfall amounts and curtailed flows in the Kaweah River have reduced, if not eliminated, local groundwater recharge. The historically low rainfall and river discharge amounts are the most likely cause of the lower groundwater levels observed in the wells in the area.”*

**COUNTY ACTION:**

Upon receiving the hydrological report from EMKO, the County submitted the report for public review. It is noted that an internal memo was completed suggesting it was possible that the conclusions reached in the report may be true based on the reports analysis in regards to drought and existing conditions in the area (See Attachment 6, Resource Management Agency Memoranda, Hydrogeologic Evaluation of Current Groundwater Conditions at the CEMEX Stillwell Quarry, March 24, 2014).

The neighboring residents commented on the report. The County then conducted a series of meetings, discussions and correspondence with the neighboring residents and the mine operator to resolve the dispute. The County met with the neighboring residents on April 3, 2014 to discuss permit conditions of the Stillwell mine site. The County then conducted a meeting with the neighboring residents and the mine operators on May 16, 2014, at which CEMEX proposed partial payment to drill a new well for

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neighbors with acute water problems. Also at this meeting were neighboring residents to discuss the CEMEX Lemon Cove operation, which is under reclamation at this time.

County staff was in the process of setting up another meeting for mid-July with the neighboring residents and the mine operator when the neighboring residents, without prior notification, appeared before the Board of Supervisor on July 8, 2014. Hence, the County provided bottled water to the neighboring residents with acute water needs.

The County proceeded by employing water consultant Tully & Young Inc. to provide a peer review of the EMKO Hydrological Report February 26, 2014. Upon gathering data, from the County, CEMEX and other sources, the Peer Report was completed and distributed for review on August 26, 2014 (See Attachment 7 Peer Review Report).

#### **PEER REVIEW REPORT SUMMARY:**

According to the Peer Review Report (Attachment 8) dated December 1, 2014, the following Conclusions and Recommendations are provided:

#### **Conclusions**

- A direct correlation exists between the discharge of water into the “V” ditch and the maintenance of groundwater elevations in neighboring wells. Lack of “a sufficient amount of water in order to establish a groundwater mound to maintain water levels” (Condition 55), beginning in September 2013 and lasting until September 2014, had a primary adverse impact on groundwater elevations at neighboring wells.
- As stated in the original Report prepared by EMKO “[t]he available data and documentation demonstrate that the concerns identified in the letters received in late January 2014 are not caused by mining activities.” (Report, p. 8). The original Peer Review Memo concluded “[t]hough the conclusion may still be accurate if it were to be reassessed with all relevant facts available, making such conclusions absent them is without merit.” (Peer Review Memo, p. 11).
- As illustrated with the extensive data logger readings, a reassessment with the relevant facts supports the findings of the Peer Review Memo and reasserts that CEMEX mining activities definitely are a cause of the concerns identified in the letters.
- As illustrated with the extensive data logger readings, a reassessment with the relevant facts supports the findings of the Peer Review Memo and reasserts that CEMEX mining activities definitely are a cause of the concerns identified in the letters.

#### **Recommendations**

To help assure CEMEX mining activities do not cause additional problems with groundwater elevations in the neighboring private wells, RMA could consider the following recommendations:

1. As directed by Condition 46 and Condition 48, require full compliance with the reporting detailed in the 2002 RMC Pacific Materials Stillwell Project Groundwater Monitoring

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Program (GMP), prepared by EMKO. Compliance would include preparing all necessary reports and analyses and submitting to the RMA on a timely and routine basis.

2. Add a meter on the discharge line that fills the "V" ditch so that accurate information regarding the destination of mine dewatering is understood and verifiable. As discussed in the Peer Review Memo and the Response Memo (see Appendix A), simply using the power records cannot be relied upon as proving only flow to the "V" ditch as other use of power and other destinations for water are plausible, yet never explained. [As an added example, Condition 16 requires all loads to be covered or wet down to minimize dust. Condition 6 requires haul roads to be watered regularly. Is water from the mine pit used to satisfy this requirement and, if so, is pumping for these accounted for separately than the provided power records (e.g. is a water truck routinely filled with an on-site pump)?]
3. Clarify the locations of all monitoring wells and private wells associated with this effort and correct all maps as necessary.
4. Evaluate overall operation of the Quarry with regard to Condition 3 to determine if reclamation actions should be undertaken for any completed phases of the Quarry.
5. Modify Condition 55 to clarify that water placed into the "V" ditch can be provided from sources other than mine pit dewatering. As stated in the concluding paragraph of Section 4.4.2 of the Quarry EIR, "[a]lternatively, water from another source will be pumped to the trench."
6. Using the recently proven relationships between water discharged to the "V" ditch and related responses in groundwater elevations, re-evaluate the current reclamation plan to assure continued maintenance of groundwater elevations, as required by Condition 52. The current reclamation plan identifies two lakes with a connecting channel and associated weir structures designed to maintain natural groundwater elevations. As presented in the 2002 Hydrogeologic Data Evaluation Report, prepared by EMKO, the "east lake" would have a water elevation of 483.5 feet msl and the "west lake" would have a water elevation of 481.5 feet msl. For comparison, as presented in the graphic representation of data logger and DellaValle readings, the Morton well is at 483.95 feet msl as of November 19, 2014.

**PEER REVIEW COMMENT LETTERS:**

The following letters were received by the County regarding the Tully and Young Peer Review Report

- September 29, 2014, Kenneth D. Schmidt and Associates representing neighboring residents, Peer Review Report and Addendums CEMEX Stillwell Quarry.
- September 29, 2014 Tulare County Farm Bureau, Comments on CEMEX Peer Review Report
- September 30, 2014 Mitchell Chadwick, Comments on Tully & Young Peer Review of EMKO Environmental Report.
- September 30, 2014 EMKO Environmental, Inc. Technical Comments on Tully & Young Peer Review CEMEX Stillwell Mine.

Responses to these comments are provided by Tully and Young in the Peer Review Report (Attachment 8). Staff will provide further responses to the comment letters at the public hearing.

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**V DITCH:**

CEMEX notified the County and the neighboring residents the week of August 24 that it intended to begin dewatering the Stillwell mine site and discharge the water into the "V" ditch around September 2, 2014. CEMEX installed data loggers into three neighboring wells to collect water level information that can be used to evaluate ground water conditions in the Stillwell mine area and the potential influence of the V ditch on neighboring wells. Data from the well loggers and volume of water from the pumps to the V ditch from September and October 2014 are discussed in the Peer Review Report.

**PEER REVIEW EXTENSION OF TIME:**

On October 14, 2014 CEMEX requested additional time for the Tully & Young peer review to establish date received from the data loggers on wells. In a letter from RMA on October 15, 2014 an extension of the peer review report was granted to October 31, 2014.

**CONCLUSION:**

Based on the evidence to be heard, the Planning Commission can "consider potential action" regarding PMR No. 98-003 including, but not limited to, the following:

- (1) Revocation of PMR 98-003 for possible violation of permit conditions;
- (2) Modification of PMR 98-003 permit conditions;
- (3) Initiation of Enforcement action, including litigation and administrative fines/penalties, regarding permit PMR No. 98-003 for possible violation of permit conditions; or
- (4) Referral of the matter back to staff for further action; or
- (5) No action; and
- (6) Any other relevant matter that may come before the Planning Commission.

If the Planning Commission is inclined to recommend Item 1 (Revocation) or Item 2 (Modification), then the public hearing would have to be continued to allow a full and fair opportunity to be heard consistent with due process. With respect to Item 3 (Enforcement Action or Litigation), the Board of Supervisors would have to direct such action.

PROJECT PLANNER

\_\_\_\_\_  
Chuck Przybylski

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ASSISTANT DIRECTOR -  
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Michael C. Spata



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**ATTACHMENTS:**

- Attachment 1 – Maps and Graphics
- Attachment 2 – 2013 Financial Assurance Cost Estimate for the Stillwell Mine site
- Attachment 3 – Planning Commission Resolution 7961 and Board Resolution 2002-0833
- Attachment 4 – Neighbors Correspondence
- Attachment 5 – EMKO Hydrogeologic Report, February 26, 2014
- Attachment 6 – RMA Memorandum, Hydrogeologic Evaluation of Current Groundwater  
Conditions at the CEMEX Stillwell Quarry, March 24, 2014
- Attachment 7– Public Hearing Notice
- Attachment 8 –Tully and Young Peer Review Report, December 1, 2014
- Attachment 9 – Miscellaneous Document