

**CALENDAR ITEM  
C61**

A	6	03/25/08 PRC 5733.1 PRC 5871.1 D. Oetzel
S	3	R. Nobles

**AMENDMENT OF LEASES FOR EXTRACTION OF SAND AND GRAVEL**

**LESSEE:**

RMC Pacific Materials, Inc.  
840 Gessner, Suite 1400  
Houston, Texas 77024

**AREA, LAND TYPE, AND LOCATION:**

An aggregate of approximately 895 acres of submerged lands in San Francisco Bay; San Francisco, Marin, Contra Costa, and Solano counties.

**AUTHORIZED USE, EXISTING LEASES:**

Commercial sand and gravel extraction operations.

**LEASE TERM:**

Ten years, beginning July 1, 1998.

**CONSIDERATION:**

The Biannual Royalty is determined according to the following formula:

$$R = 0.23 (W)(Y)$$

Where R = Royalty in dollars and cents paid to Lessor biannually.

W = The weighted average Gross Sales Price, F.O.B. the dock for sales of Sand and Gravel extracted from the Leased Lands. This factor includes both inside and outside sales.

Y = Total cubic yardage of Sand and Gravel extracted from the Leased Lands for the biannual period.

**PROPOSED AMENDMENT:**

**Section 3, Paragraph 1 – Definitions** is amended to delete the following terms and their corresponding definitions: (b) "Outside Sales", (c) "Inside Sales"; (d) "Gross Sales Price"; (h) Minimum Unit royalty" and (e) "Dock".

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**Section 3, Paragraph 1** containing "Definitions" is amended to add the following new term:

"Base Royalty Rate (B) shall be \$2.09 per cubic yard".

**Section 3, Paragraph 2(a) – Royalty and Minimum Annual Royalty** is amended to be delete reference to the Minimum Unit Royalty.

**Section 3, Paragraph 4(b)** – is amended to reflect no Minimum biannual royalty carry-forward credit.

**Section 3, Paragraph 3** – Commencing July 1, 2007, and continuing for the remainder of the current term of the Lease, the royalty shall be calculated as follows:

$$R = (Y)(B)$$

Where R = Royalty in dollars and cents paid to Lessor biannually.

Y = Total cubic yardage of Sand and Gravel extracted from the Leased Lands for the biannual period.

B = \$2.09 per cubic yard.

**Section 3, Subparagraphs 6(a) and 6(b)** providing for the Modification of Royalty and Rent Rates are deleted in their entirety.

All other terms and conditions of the leases shall remain in effect without amendment.

**BACKGROUND:**

On July 1, 1998, the State entered into two sand and gravel extraction Leases, Nos. PRC 5733.1 and PRC 5871.1, (collectively referred to as the "Leases") with Bell Marine Company, Inc. RMC has succeeded to Bell Marine's interest in the Leases. The Leases were granted for a term of ten years with a right to renew for one additional period of ten years upon terms, conditions, including the modification of royalty, which will reasonably protect the interests of the State. The existing term of the Leases ends on June 30, 2008 and the Lessee has elected not to exercise the right to renew the Leases for one additional period of ten years. Therefore, both Leases will expire June 30, 2008.

A dispute exists between the State and RMC as to the proper method for the calculation of royalties due under the Leases and the State has asserted that RMC has dredged sand and gravel from State-owned lands for which it holds no lease and for which no royalties have been paid to the State. RMC has denied any wrongdoing. In order to avoid the

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cost and delay inherent in litigation and to bring closure to the dispute, Commission staff and RMC have engaged in negotiations for settlement of the dispute. While the terms of a proposed settlement remain confidential at this time, final settlement would be dependent upon Commission approval of all terms of settlement, including the amendment of the royalty provisions of the Leases, effective July 1, 2007, and court approval, on or before May 1, 2008, of a stipulated judgment (the "Stipulated Judgment") resolving all issues involved in the dispute.

**OTHER PERTINENT INFORMATION:**

1. 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 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.

2. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq., but such activity will not affect those significant lands.

**EXHIBITS:**

- A. Location and Site Map of PRC 5871.1
- B. Location and Site Map of PRC 5733.1

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

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, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

**SIGNIFICANT LANDS INVENTORY FINDING:**

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

**AUTHORIZATION:**

AUTHORIZE THE AMENDMENT OF LEASE NOS. PRC 5871.1 AND PRC 5733.1, TWO LEASES FOR THE EXTRACTION OF SAND AND GRAVEL FROM THE AREAS AS SHOWN ON EXHIBIT A AND EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE JULY 1, 2007, AS FOLLOWS:

- A) **SECTION 3, PARAGRAPH 1 – DEFINITIONS** IS AMENDED TO DELETE THE FOLLOWING TERMS AND THEIR CORRESPONDING DEFINITIONS - (B) "OUTSIDE SALES", (C) "INSIDE SALES"; (D) "GROSS SALES PRICE"; (H) MINIMUM UNIT ROYALTY" AND (E) "DOCK".

**SECTION 3, PARAGRAPH 1 – DEFINITIONS** IS AMENDED TO ADD THE FOLLOWING NEW TERM:

"BASE ROYALTY RATE (B) SHALL BE \$2.09 PER CUBIC YARD".

**SECTION 3, PARAGRAPH 2(A) – ROYALTY AND MINIMUM ANNUAL ROYALTY** IS AMENDED TO DELETE THE REFERENCE TO THE MINIMUM UNIT ROYALTY.

**SECTION 3, PARAGRAPH 4(B)** – IS AMENDED TO REFLECT NO MINIMUM BIENNIAL ROYALTY CARRY-FORWARD CREDIT.

**SECTION 3, SUBPARAGRAPHS 6(A) AND 6(B)** PROVIDING FOR THE MODIFICATION OF ROYALTY AND RENT RATES ARE DELETED IN THEIR ENTIRETY.

- B) COMMENCING JULY 1, 2007, ROYALTY SHALL BE \$2.09 PER CUBIC YARD MINED.

ALL OTHER TERMS AND CONDITIONS OF THE LEASES WILL REMAIN IN EFFECT WITHOUT AMENDMENT

SUCH AMENDMENT TO BE CONTINGENT UPON COMMISSION APPROVAL OF THE PROPOSED SETTLEMENT AND ENTRY OF JUDGMENT INCORPORATING THE SUBSTANTIVE TERMS OF A COMMISSION SETTLEMENT APPROVAL, ON OR BEFORE MAY 1, 2008.