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6 Attorneys for Plaintiffs, Lehigh Southwest Cement Company,
7 Hanson Permanente Cement, Inc., Associated General Contractors
8 of California, International Union of Operating Engineers,
9 Santa Clara & San Benito Counties Building & Construction Trades Council,
10 and California Alliance for Jobs

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 LEHIGH SOUTHWEST CEMENT COMPANY,
12 a California corporation; HANSON
13 PERMANENTE CEMENT, INC., an Arizona
14 corporation; ASSOCIATED GENERAL
15 CONTRACTORS OF CALIFORNIA, a
16 California non-profit corporation;
17 INTERNATIONAL UNION OF OPERATING
18 ENGINEERS, a California non-profit
19 corporation; SANTA CLARA & SAN BENITO
20 COUNTIES BUILDING & CONSTRUCTION
21 TRADES COUNCIL, a California non-profit
22 corporation; CALIFORNIA ALLIANCE FOR
23 JOBS, a California non-profit corporation,

19 Petitioners and Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF
22 CONSERVATION, a California state agency;
23 DEREK CHERNOW, an individual; and DOES
24 1-100, inclusive;

24 Respondents and Defendants.

CASE NO. 111CV207037

**STIPULATION REGARDING
PRELIMINARY INJUNCTION**

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HARRISON
TEMBLADOR
HUNGERFORD
JOHNSON

1 The parties to this suit, Plaintiffs and Petitioners, Lehigh Southwest Cement Company,
2 Hanson Permanente Cement, Inc. (collectively "Lehigh"), Associated General Contractors of
3 California, International Union of Operating Engineers, Santa Clara & San Benito Counties
4 Building and Construction Trades Council, California Alliance for Jobs, and Respondents and
5 Defendants, the California Department of Conservation, and Derek Chernow, (collectively
6 "Department") by and through counsel, hereby stipulate as follows:

7 1. Plaintiffs and Petitioners filed a complaint and petition for writ of mandate
8 (hereinafter the "Action") against Defendants in Santa Clara Superior Court, Case No.
9 111CV207037 challenging the Department's July 20, 2011 decision that the Hanson Permanente
10 Quarry (the "Quarry") surface mining operation is ineligible for the "AB 3098 List" and alleging
11 that the decision to remove the Quarry from the AB 3098 List was an abuse of discretion,
12 contrary to law, arbitrary and capricious and in violation of the Plaintiffs' and Petitioners'
13 constitutional rights to due process.

14 2. Plaintiffs and Petitioners seek in the Action, among other relief, injunctive relief
15 against the Department ordering it to maintain the status quo pending trial by not removing
16 Quarry from the AB 3098 List.

17 3. The Department continues to maintain that the Quarry is ineligible for the AB 3098
18 List.

19 4. Notwithstanding the respective positions and without admitting the validity or
20 invalidity of any claim or defense, the Parties are mindful of the costs and uncertainty associated
21 with continued litigation and have discussed interim compromise positions that would eliminate
22 the need for further litigation.

23 5. On August 11, 2011, the Parties entered into a stipulation, which has subsequently
24 been extended, to stay any action to remove the Quarry, Mine ID # 91-43-0004, from the "AB
25 3098 List" subject to certain terms. A true and correct copy of this stipulation is attached hereto
26 as Exhibit 1 ("Stipulation"). The Parties signed a further Stipulation and [Proposed] Order
27 requesting that the Court set a mandatory Case Management Conference in June 2012 in the event
28 this Action has not been otherwise resolved. A true and correct copy of this Stipulation and

1 [Proposed] Order is attached hereto as Exhibit 2.

2 6. The Parties now desire to further stipulate as follows:

3 a. Pending trial on the underlying merits of the Action or approval of the Draft
4 Reclamation Plan Amendment (Draft "RPA") discussed below, the Department agrees that it will
5 not remove the Quarry from the AB 3098 List provided that the terms of this amended stipulation
6 are fully complied with by Plaintiffs and Petitioners.

7 b. Lehigh agrees to reclaim the Quarry according to the provisions of the Draft
8 RPA which will be submitted by the County of Santa Clara ("County") on or before December
9 15, 2011 to the Department for formal comment, subject to the County's final approval of the
10 Draft RPA. The Draft RPA consists of the draft reclamation plan amendment dated July 2011
11 (the "July 2011 Plan"), which has been reviewed by the Department, as well as further
12 amendments to the July 2011 Plan that incorporate the Department's informal comments that
13 were sent to the County in a letter dated September 9, 2011. This Amended Stipulation is not
14 intended to preclude any other amendments of the Draft RPA required by other local, state or
15 federal law as may be required through the administrative approval process, including but not
16 limited to amendments required pursuant to the California Environmental Quality Act ("CEQA").
17 A true and correct electronic copy of the Draft RPA will be attached hereto as Exhibit 3 when it is
18 submitted by the County on or before December 15, 2011 to the Department for formal comment.

19 c. Lehigh further agrees that it will comply with the Draft Reclamation Plan
20 Amendment Approval Schedule, (the "Approval Schedule") a copy of which is attached as
21 Exhibit 4. Exhibit 4 sets forth the anticipated timing of the process for approval of the Draft
22 RPA. The approval of the Draft RPA is expected to resolve the issues which have given rise to
23 the current legal action.

24 d. The Parties acknowledge that the Approval Schedule may be changed from
25 time to time due to the actions of the County, as the SMARA lead agency, the staffing or other
26 needs of the Department, or legal actions brought by other third-parties that may challenge the
27 final approval of the Draft RPA. Further, all parties acknowledge that the prime driver of the
28 overall Approval Schedule is the CEQA process which depends on public comment and

1 participation and that the Department and Lehigh do not have direct control over the scheduling
2 of the CEQA review process for the Draft RPA. If there is a delay in the Approval Schedule, the
3 Department and Lehigh shall meet and confer, together with the County in the case of a delay that
4 involves the County, and attempt in good faith to agree upon a revised Approval Schedule that
5 reflects the events that have occurred causing the delay. Any such revised Approval Schedule
6 will be incorporated into this Stipulation by the mutual written consent of the Parties. The Parties
7 shall meet and confer within ten (10) business days of a request by either party to meet and
8 confer.

9 e. If the deadline for any of the tasks identified in the Approval Schedule is not
10 achieved within thirty (30) days of the completion date for such task specified in the Approval
11 Schedule, as may be amended pursuant to Paragraph "d" above, the Department and Lehigh shall
12 meet and confer together and with the County as required under paragraph "d" to attempt to agree
13 upon a revised Draft RPA Approval Schedule. If the Parties cannot agree upon a revised
14 Approval Schedule after they meet and confer, then the Department may give written notice to
15 Lehigh of its intent to remove Lehigh from the AB 3098 List. If Plaintiffs and Petitioners intend
16 to challenge Lehigh's removal from the AB 3098 List, they shall, within five (5) calendar days of
17 receipt of the written notice from the Department obtain the first available hearing date following
18 30-days for a duly-noticed preliminary injunction motion and shall provide the Department with
19 notice of the hearing date within two (2) calendar days of receipt of the hearing date and in
20 compliance with legal requirements for noticed motions. If Plaintiffs and Petitioners obtain a
21 preliminary injunction hearing date as provided for herein, and notify the Department of the date
22 for the hearing as provided for herein, Lehigh's removal from the AB 3098 List shall not take
23 effect until a ruling on the merits of a motion for a preliminary injunction. If Plaintiffs and
24 Petitioners do not obtain a preliminary injunction hearing date as provided for herein, Lehigh's
25 removal from the AB 3098 List will take effect thirty (30) calendar days after the Department's
26 written notice of intent to remove Lehigh from the AB 3098 List.

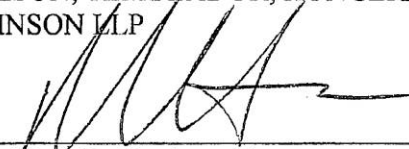
27 f. Pursuant to the terms of the Approval Schedule, Lehigh shall submit to the
28 County and the Department a financial assurance cost estimate for the Draft RPA. After

1 appropriate review by the County and the Department, Lehigh shall post an interim financial
2 assurance mechanism on an interim basis according to the Approval Schedule, subject to timing
3 requirements of the surety company. Lehigh agrees to replace the interim financial assurance
4 mechanism following approval of the Draft RPA, as may be amended according to SMARA and
5 the Approval Schedule. The interim financial assurance mechanism shall include the currently
6 approved financial assurance plus any additional amounts reflecting the Department's informal
7 comments identified in the Department's letter dated September 9, 2011 and incorporated within
8 the Draft RPA. This interim financial assurance mechanism shall be subject to Public Resources
9 Code §2773.1(b) – (e) until the final financial assurance mechanism is approved pursuant to
10 SMARA.

11 g. This Stipulation shall become effective on December 15, 2011 and shall
12 supersede all prior extension stipulations attached hereto as Exhibit 1, contingent upon the
13 County's submittal of the Draft RPA to the Department as specified in paragraph 6.b herein.

14 Dated: November 15, 2011

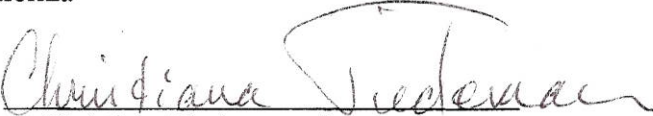
HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP

16
17 By: 
Mark D. Harrison, Esq.

18 Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
19 Cement Company, Hanson Permanente Cement, Inc.,
20 Associated General Contractors of California, International
21 Union of Operating Engineers, Santa Clara & San Benito
22 Counties Building & Construction Trades Council, and
California Alliance for Jobs

23 Dated: November 15, 2011

KAMALA D. HARRIS, Attorney General of the State of
California

25 By: 
26 Christiana Tiedemann, Esq.

27 Attorneys for Respondents and Defendants, California
28 Department of Conservation, Derek Chernow

HARRISON
TEMBLADOR
HUNGERFORD
& JOHNSON

EXHIBIT 1

AMENDED STIPULATION REGARDING PRELIMINARY INJUNCTION

Case # 111CV207037

1 MARK D. HARRISON, SBN 142958
SEAN K. HUNGERFORD, SBN 200268
2 BRADLEY B. JOHNSON, SBN 257220
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5 Facsimile: (916) 446-4535

6 Attorneys for Plaintiffs, Lehigh Southwest Cement Company,
Hanson Permanente Cement, Inc., Associated General Contractors
7 of California, International Union of Operating Engineers,
8 Santa Clara & San Benito Counties Building & Construction Trades Council,
and California Alliance for Jobs

9
10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 LEHIGH SOUTHWEST CEMENT COMPANY,
a California corporation; HANSON
13 PERMANENTE CEMENT, INC., an Arizona
corporation; ASSOCIATED GENERAL
14 CONTRACTORS OF CALIFORNIA, a
California non-profit corporation;
15 INTERNATIONAL UNION OF OPERATING
ENGINEERS, a California non-profit
16 corporation; SANTA CLARA & SAN BENITO
COUNTIES BUILDING & CONSTRUCTION
17 TRADES COUNCIL, a California non-profit
corporation; CALIFORNIA ALLIANCE FOR
18 JOBS, a California non-profit corporation,

19
20 Petitioners and Plaintiffs,

21 v.

22 CALIFORNIA DEPARTMENT OF
CONSERVATION, a California state agency;
DEREK CHERNOW, an individual; and DOES
23 1-100, inclusive;

24 Respondents and Defendants.
25

CASE NO. 111CV207037

**SECOND EXTENSION OF
STIPULATION RE: TEMPORARY
RESTRAINING ORDER**

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SECOND EXTENSION OF STIPULATION RE: TEMPORARY RESTRAINING ORDER

Case # 111CV207037

1 On August 11, 2011, the parties to this suit, Plaintiffs and Petitioners, Lehigh Southwest
2 Cement Company, Hanson Permanente Cement, Inc. (collectively "Lehigh"), Associated General
3 Contractors of California, International Union of Operating Engineers, Santa Clara & San Benito
4 Counties Building and Construction Trades Council, California Alliance for Jobs, and
5 Respondents and Defendants, the California Department of Conservation, and Derek Chernow,
6 (collectively "Department") by and through their counsel entered into the Stipulation Re:
7 Temporary Restraining Order ("Stipulation") attached hereto and incorporated herein by reference
8 as Exhibit A.

9 On October 28, 2011, Plaintiffs and Petitioners entered into an Extension of the Stipulation,
10 which is also attached hereto and incorporated herein by reference as Exhibit B. Pursuant to the
11 Extension, Plaintiffs and Petitioners scheduled a preliminary injunction hearing for December 20,
12 2011, in anticipation of expiration of the extended Stipulation.

13 The parties now agree that the date for a hearing on a preliminary injunction will be moved
14 to January 19, 2012 and they hereby extend until January 19, 2012, or decision by the Court on
15 the preliminary injunction motion, the date upon which the Stipulation will expire, absent further
16 agreement between the parties.

17
18 Dated: November 9, 2011

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP

19
20
21 By: 

Mark D. Harrison

22 Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
23 Cement Company, Hanson Permanente Cement, Inc.,
24 Associated General Contractors of California, International
25 Union of Operating Engineers, Santa Clara & San Benito
26 Counties Building & Construction Trades Council, and
27 California Alliance for Jobs
28

1 Dated: November 8, 2011

KAMALA D. HARRIS, Attorney General of the
State of California

2
3 By: Christiana Tiedemann
Christiana Tiedemann

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5 Attorneys for Respondents and Defendants, California
6 Department of Conservation, Derek Chernow
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EXHIBIT A

SECOND EXTENSION OF STIPULATION RE: TEMPORARY RESTRAINING ORDER
Case # 111CV207037

1 MARK D. HARRISON, SBN 142958
SEAN K. HUNGERFORD, SBN 200268
2 BRADLEY B. JOHNSON, SBN 257220
HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP
3 400 Capitol Mall, Suite 1800
Sacramento, CA 95814-4413
4 Telephone: (916) 492-5050
5 Facsimile: (916) 446-4535

6 Attorneys for Plaintiffs, Lehigh Southwest Cement Company,
Hanson Permanente Cement, Inc., Associated General Contractors
7 of California, International Union of Operating Engineers,
Santa Clara & San Benito Counties Building & Construction Trades Council,
8 and California Alliance for Jobs

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 LEHIGH SOUTHWEST CEMENT COMPANY,
12 a California corporation; HANSON
PERMANENTE CEMENT, INC., an Arizona
13 corporation; ASSOCIATED GENERAL
CONTRACTORS OF CALIFORNIA, a
14 California non-profit corporation;
INTERNATIONAL UNION OF OPERATING
15 ENGINEERS, a California non-profit
corporation; SANTA CLARA & SAN BENITO
16 COUNTIES BUILDING & CONSTRUCTION
TRADES COUNCIL, a California non-profit
17 corporation; CALIFORNIA ALLIANCE FOR
18 JOBS, a California non-profit corporation,

19 Petitioners and Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF
CONSERVATION, a California state agency;
22 DEREK CHERNOW, an individual; and DOES
1-100, inclusive;
23

24 Respondents and Defendants.

CASE NO. [PENDING]

**STIPULATION RE: TEMPORARY
RESTRAINING ORDER**

25
26 Plaintiffs and Petitioners, LEHIGH SOUTHWEST CEMENT COMPANY, a California
corporation; HANSON PERMANENTE CEMENT, INC., an Arizona corporation;
27 ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, a California non-profit
28

APR 2004
FILED
MAY 2004
1 7/2004

(00322900; 1)

STIPULATION FOR TEMPORARY RESTRAINING ORDER

1 corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS, a California non-
2 profit corporation; SANTA CLARA & SAN BENITO COUNTIES BUILDING &
3 CONSTRUCTION TRADES COUNCIL, a California non-profit corporation; CALIFORNIA
4 ALLIANCE FOR JOBS, a California non-profit corporation (collectively, "Petitioners"), and
5 Respondents and Defendants, the CALIFORNIA DEPARTMENT OF CONSERVATION, a
6 California State Agency and DEREK CHERNOW, an individual (collectively, "Respondents"),
7 hereby agree and stipulate as follows:

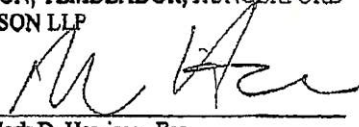
8 1. Petitioners have filed an action in Superior Court for the County of Santa Clara. The
9 action seeks, among other things temporary and permanent injunctive relief against Respondents
10 in connection with the "AB 3098 List."

11 2. Petitioners have informed Respondents of their intent to seek a temporary restraining
12 order ex parte on August 12, 2011, at 8:15 a.m., Room 104 in the Superior Court of Santa Clara.
13 Respondents are willing to agree that Permanente Quarry, Mine ID# 91-43-0004, and any
14 associated production facilities to the extent applicable, shall remain on the AB 3098 List pending
15 a preliminary injunction hearing on this case. The parties will cooperate on setting a prompt
16 mutually agreeable hearing date, consistent with the Court's calendar and briefing considerations,
17 no later than October 31, 2011. If a hearing date is not available from the Court on or before
18 October 31, 2011, the parties agree that they will set the preliminary injunction hearing on the
19 first available Court date in November 2011. If a hearing is not set on a preliminary injunction on
20 or before November 30, 2011, this stipulation shall expire on November 30, 2011, absent further
21 agreement between the parties.

22 SO STIPULATED.

23 Dated: August 11, 2011

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP

24
25
26 By: 
Mark D. Harrison, Esq.

27 Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
28 Cement Company, Hanson Permanente Cement, Inc.,

00322900; 1

(00322900; 1)

STIPULATION FOR TEMPORARY RESTRAINING ORDER

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Associated General Contractors of California, International
Union of Operating Engineers, Santa Clara & San Benito
Counties Building & Construction Trades Council, and
California Alliance for Jobs

Dated: August 11, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: Christiana Tiedemann
CHRISTIANA TIEDEMANN

Attorneys for Respondents and Defendants, California
Department of Conservation, Derek Chernow

POWER
OF
ATTORNEY

(00322900; 1)

STIPULATION FOR TEMPORARY RESTRAINING ORDER

EXHIBIT B

SECOND EXTENSION OF STIPULATION RE: TEMPORARY RESTRAINING ORDER
Case # 111CV207037

1 MARK D. HARRISON, SBN 142958
SEAN K. HUNGERFORD, SBN 200268
2 BRADLEY B. JOHNSON, SBN 257220
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400 Capitol Mall, Suite 1800
4 Sacramento, CA 95814-4413
Telephone: (916) 492-5050
5 Facsimile: (916) 446-4535

6 Attorneys for Plaintiffs, Lehigh Southwest Cement Company,
7 Hanson Permanente Cement, Inc., Associated General Contractors
of California, International Union of Operating Engineers,
8 Santa Clara & San Benito Counties Building & Construction Trades Council,
and California Alliance for Jobs

9
10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 LEHIGH SOUTHWEST CEMENT COMPANY,
a California corporation; HANSON
13 PERMANENTE CEMENT, INC., an Arizona
corporation; ASSOCIATED GENERAL
14 CONTRACTORS OF CALIFORNIA, a
California non-profit corporation;
15 INTERNATIONAL UNION OF OPERATING
ENGINEERS, a California non-profit
16 corporation; SANTA CLARA & SAN BENITO
COUNTIES BUILDING & CONSTRUCTION
17 TRADES COUNCIL, a California non-profit
corporation; CALIFORNIA ALLIANCE FOR
18 JOBS, a California non-profit corporation,

19 Petitioners and Plaintiffs,

20 v.

21 CALIFORNIA DEPARTMENT OF
22 CONSERVATION, a California state agency;
DEREK CHERNOW, an individual; and DOES
23 1-100, inclusive;

24 Respondents and Defendants.
25

CASE NO. 111CV207037

**EXTENSION OF STIPULATION RE:
TEMPORARY RESTRAINING
ORDER**

26 On August 11, 2011, the parties to this suit, Plaintiffs and Petitioners, Lehigh Southwest
27 Cement Company, Hanson Permanente Cement, Inc. (collectively "Lehigh"), Associated General
28

{00323844; 3} 1

EXTENSION OF STIPULATION RE: TEMPORARY RESTRAINING ORDER/Case # 111CV207037
{00323844; 1}

1 Contractors of California, International Union of Operating Engineers, Santa Clara & San Benito
2 Counties Building and Construction Trades Council, California Alliance for Jobs, and
3 Respondents and Defendants, the California Department of Conservation, and Derek Chernow,
4 (collectively "Department") by and through their counsel entered into the Stipulation Re:
5 Temporary Restraining Order ("Stipulation") attached hereto and incorporated herein by reference
6 as Exhibit A.

7 Plaintiffs and Petitioners have scheduled a preliminary injunction hearing for December 1,
8 2011, in anticipation of expiration of the Stipulation on November 30, 2011. The parties agree
9 that the date for a hearing on a preliminary injunction will be moved to December 20, 2011 and
10 they hereby extend until December 20, 2011, or decision by the Court on the preliminary
11 injunction motion, the date upon which the Stipulation will expire, absent further agreement
12 between the parties.

13 Dated: October 21, 2011

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON, LLP

14
15
16 By: 

Mark D. Harrison

17 Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
18 Cement Company, Hanson Permanente Cement, Inc.,
19 Associated General Contractors of California, International
20 Union of Operating Engineers, Santa Clara & San Benito
21 Counties Building & Construction Trades Council, and
22 California Alliance for Jobs

23
24
25 Dated: October 21, 2011

KAMALA D. HARRIS, Attorney General of the
State of California

26
27
28 By: 

Christiana Tiedemann

Attorneys for Respondents and Defendants, California
Department of Conservation, Derek Chernow

1 Contractors of California, International Union of Operating Engineers, Santa Clara & San Benito
2 Counties Building and Construction Trades Council, California Alliance for Jobs, and
3 Respondents and Defendants, the California Department of Conservation, and Derek Chernow,
4 (collectively "Department") by and through their counsel entered into the Stipulation Re:
5 Temporary Restraining Order ("Stipulation") attached hereto and incorporated herein by reference
6 as Exhibit A.

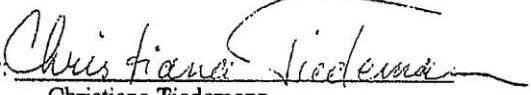
7 Plaintiffs and Petitioners have scheduled a preliminary injunction hearing for December 1,
8 2011, in anticipation of expiration of the Stipulation on November 30, 2011. The parties agree
9 that the date for a hearing on a preliminary injunction will be moved to December 20, 2011 and
10 they hereby extend until December 20, 2011, or decision by the Court on the preliminary
11 injunction motion, the date upon which the Stipulation will expire, absent further agreement
12 between the parties.

13 Dated: October ____, 2011 HARRISON, TEMBLADOR, HUNGERFORD
14 & JOHNSON LLP

15 By: _____
16 Mark D. Harrison

17 Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
18 Cement Company, Hanson Permanente Cement, Inc.,
19 Associated General Contractors of California, International
20 Union of Operating Engineers, Santa Clara & San Benito
21 Counties Building & Construction Trades Council, and
22 California Alliance for Jobs

23 Dated: October 28, 2011 KAMALA D. HARRIS, Attorney General of the
24 State of California

25 By: 
26 Christiana Tiedemann

27 Attorneys for Respondents and Defendants, California
28 Department of Conservation, Derek Chernow

EXHIBIT 2

AMENDED STIPULATION REGARDING PRELIMINARY INJUNCTION

Case # 111CV207037

1 MARK D. HARRISON, SBN 142958
2 SEAN K. HUNGERFORD, SBN 200268
3 BRADLEY B. JOHNSON, SBN 257220
4 HARRISON, TEMBLADOR, HUNGERFORD
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2011 NOV 10 AM 9:08

By M. Taurer
Attorney for Court

6 Attorneys for Plaintiffs, Lehigh Southwest Cement Company,
7 Hanson Permanente Cement, Inc., Associated General Contractors
8 of California, International Union of Operating Engineers,
9 Santa Clara & San Benito Counties Building & Construction Trades Council,
10 and California Alliance for Jobs

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SANTA CLARA**

13 LEHIGH SOUTHWEST CEMENT COMPANY,
14 a California corporation; HANSON
15 PERMANENTE CEMENT, INC., an Arizona
16 corporation; ASSOCIATED GENERAL
17 CONTRACTORS OF CALIFORNIA, a
18 California non-profit corporation;
19 INTERNATIONAL UNION OF OPERATING
20 ENGINEERS, a California non-profit
21 corporation; SANTA CLARA & SAN BENITO
22 COUNTIES BUILDING & CONSTRUCTION
23 TRADES COUNCIL, a California non-profit
24 corporation; CALIFORNIA ALLIANCE FOR
25 JOBS, a California non-profit corporation,

26 Petitioners and Plaintiffs,

27 v.

28 CALIFORNIA DEPARTMENT OF
CONSERVATION, a California state agency;
DEREK CHERNOW, an individual; and DOES
1-100, inclusive;

Respondents and Defendants.

CASE NO. 111CV207037

**STIPULATION AND EX PARTE
REQUEST FOR ORDER SETTING
CASE MANAGEMENT
CONFERENCE AND EXTENDING
TIME TO RESPOND TO PETITION
AND COMPLAINT; [PROPOSED]
ORDER**

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STIPULATION AND [PROPOSED] ORDER REGARDING CMC and EXTENSION OF TIME TO RESPOND

Case No. 111CV207037

1 The parties to this suit, Plaintiffs and Petitioners, Lehigh Southwest Cement Company, Hanson
2 Permanente Cement, Inc. (collectively "Lehigh"), Associated General Contractors of California,
3 International Union of Operating Engineers, Santa Clara & San Benito Counties Building and
4 Construction Trades Council, California Alliance for Jobs, and Respondents and Defendants, the
5 California Department of Conservation, and Derek Chernow, (collectively "Department") by and
6 through counsel, hereby stipulate as follows:

7 1. Plaintiffs and Petitioners filed a complaint and petition for writ of mandate
8 (hereinafter the "Action") against Defendants in Santa Clara Superior Court, Case No.
9 111CV207037 challenging the Department's July 20, 2011 decision that the Hanson Permanente
10 Quarry (the "Quarry") surface mining operation is ineligible for the "AB 3098 List" and alleging
11 that the decision to remove the Quarry from the AB 3098 List was an abuse of discretion,
12 contrary to law, arbitrary and capricious and in violation of the Plaintiffs' and Petitioners'
13 constitutional rights to due process.

14 2. Plaintiffs and Petitioners seek in the Action, among other relief, injunctive relief
15 against the Department ordering it to maintain the status quo pending trial by not removing
16 Quarry from the AB 3098 List.

17 3. The Department continues to maintain that the Quarry is ineligible for the AB 3098
18 List.

19 4. Notwithstanding the Parties' respective positions and without admitting the validity
20 or invalidity of any claim or defense, the Parties are mindful of the costs and uncertainty
21 associated with continued litigation and are currently engaged in productive settlement efforts
22 relating to timely approval of an acceptable amended reclamation plan for the Quarry.

23 5. In light of the parties productive settlement discussions and in order to avoid
24 unnecessary litigation, the Parties stipulate and request the Court to order as follows:

25 a. That a mandatory Case Management Conference be set for a date convenient
26 for the Court in June 2012, at which time the Parties will know whether they have achieved a
27 successful resolution of the issues raised in this litigation.

28 b. That Respondents' and Defendants' time to respond to the Petition and

STIPULATION AND (PROPOSED) ORDER REGARDING CMC AND EXTENSION OF TIME TO
RESPOND

1 Complaint be extended until a date to be set at the June 2012 Case Management Conference.

2 IT IS SO STIPULATED.

3 Dated: November 9, 2011

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP

By: [Signature]
Mark D. Harrison, Esq.

Attorneys for Petitioners and Plaintiffs, Lehigh Southwest
Cement Company, Hanson Permanente Cement, Inc.,
Associated General Contractors of California, International
Union of Operating Engineers, Santa Clara & San Benito
Counties Building & Construction Trades Council, and
California Alliance for Jobs

12 Dated: November 9, 2011

KAMALA D. HARRIS, Attorney General of the State of
California

By: [Signature]
Christiana Tiedemann, Esq.

Attorneys for Respondents and Defendants, California
Department of Conservation, Derek Chernow

ORDER

19 1. A mandatory Case Management Conference is set for June 12, 2012 at 10:00 in
20 Department 9.

21 2. Respondents' and Defendants' time to respond to the Petition and Complaint be
22 extended until a date to be set at the June 2012 Case Management Conference.

23 **IT IS SO ORDERED**

25 Dated: 11-10-11

JOSEPH H. HUBER
Judge of the Superior Court

STIPULATION AND [PROPOSED] ORDER REGARDING CMC AND EXTENTSION OF TIME TO RESPOND

STIPULATION AND [PROPOSED] ORDER REGARDING CMC AND EXTENTSION OF TIME TO RESPOND

EXHIBIT 3

**Draft Reclamation Plan
[To Be Inserted 12/15/11]**

EXHIBIT 4

AMENDED STIPULATION REGARDING PRELIMINARY INJUNCTION

Case # 111CV207037

Exhibit 4

Permanente Quarry Draft Reclamation Plan Approval Schedule

Deadline	Action	Status
Reclamation Plan Amendment Process		
8/29/2011	Application submittal - 30 day County review "complete"	Complete
9/9/2011	OMR submittal for preliminary tech review - 30 day	Complete
12/15/2011	County forwards certified compliant RPA to OMR for formal review	
12/15/2011	Operator forwards proposed FACE for RPA to County and OMR for informal comment.	
1/15/2012	OMR completes formal review of RPA and informal review of FACE	
2/9/2012	Operator posts interim FA in an amount deemed adequate by OMR and the County	
2/20/2012	County reviews and submits formal response to OMR's RPA comments	
2/20/2012	County reviews and submits informal response to OMR FACE comments	
2/20/2012	County provides OMR date of hearing for RPA approval	
3/22/2012	CEQA- Planning Commission certification	
4/24/2012	CEQA - Board of Supervisors action - if appealed	
4/24/2012	RPA approved	
	Within 30-days of RPA approval, County's provides "Final Response" to OMR comments.	
	Within 30-days of RPA approval, operator submits FACE to County and OMR.	
	County reviews FACE and provides notice of adequacy within 45 days of receipt.	
	OMR to provide written comments on FACE within 45 days of receipt of notice of adequacy	
	Upon receipt of OMR's comments, County provides OMR date of hearing for FACE approval.	
	County to provide OMR response to comments 30 days prior to hearing on FACE.	
	Within 30-days of FACE approval, County provides "Final Response" to OMR comments.	
	Operator posts FA approved mechanism based on FACE amount within 10 days	