



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, TUCSON, AZ 85701-1317
(520) 740-8661 FAX (520) 740-8171

C. H. HUCKELBERRY
County Administrator

September 1, 2005

Richard Ahern
Arizona State Land Department
Minerals Section, Natural Resources Division
1616 West Adams Street
Phoenix, Arizona 85007

Re: **Application for Renewal of Mineral Lease 11-023880 (120 acres) by California Portland Cement Company**

Dear Mr. Ahern:

Thank you for the opportunity to comment on the above referenced mineral lease renewal application in the Cienega Creek watershed. In a letter dated January 11, 2005, I stated Pima County's objection to several mineral lease renewals, including this one, in an area of such great biological and cultural importance in Pima County. Since that date, a State Trust land reform map and associated language has been finalized for an initiative that will likely be placed on the ballot in November 2006 for voter approval. The above mineral lease renewal is located on lands identified as "provisional lands" in this reform initiative. As I understand, if the initiative is successful and Congress amends the enabling act, Pima County will have the opportunity to purchase these lands from the State Land Department. Because of their biological significance, these lands are eligible for purchase via the bond funds approved by Pima County voters in May 2004. In the meantime, by renewing mineral leases such as this the State Land Department is permitting the degradation of the land, and therefore diminishing the value that could be gained by the Trust via sale of the lands to Pima County.

Pima County is also concerned about impacts to the Cienega Creek, a unique water of the State, via increased sediment in two tributary streams and the potential for collection ponds to provide habitat to non-native invasive species (see attached letter from the Pima County Flood Control District).

Richard Ahern

Application for Renewal of Mineral Lease 11-023880 (120 acres) by California Portland Cement Company

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Again, Pima County objects to the renewal of this mineral lease. As a fiduciary of the Trust, the State Land Department should consider the continued negative impacts of mineral extraction to the value of these lands, as opposed to the revenue that could be generated via sale to Pima County or other entities in the future.

Sincerely,

A handwritten signature in black ink that reads "C.H. Huckelberry". The signature is written in a cursive style with a large initial "C" and "H".

C.H. Huckelberry
County Administrator

CHH/jj

Attachments

c: Jan Leshar, Director, Governor's Southern Arizona Office
Mark Winkleman, State Land Commissioner
John Bernal, Deputy County Administrator for Public Works



**PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT
201 NORTH STONE AVENUE, FOURTH FLOOR
TUCSON, ARIZONA 85701-1207**

SUZANNE SHIELDS
DIRECTOR

PHONE: (520) 740-6350
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September 1, 2005

Mr. Richard Ahern
Arizona State Land Department
Minerals Section, Natural Resources Div.
1616 W. Adams Street
Phoenix, Arizona 85007

**Re: Application for Renewal of Mineral Lease 11-023880 (120 Acres)
by California Portland Cement Company**

Dear Mr. Ahern,

Thank you for the opportunity to comment on the referenced application by the California Portland Cement Company for the purposes of mining lands located within Sections 14 and 23 of Township 16 South, Range 17 East in Pima County, Arizona. As in their review of other recent applications for mineral leases in nearby areas, Pima County (County) staff is opposed to any new or renewed mining activities within the Cienega Creek watershed. Much of the County's concerns were highlighted in a letter, dated January 11, 2005, that was sent by the County Administrator to Mr. Michael Rice and yourself. In regards to its review of the subject application, County staff provides the following comments:

1. The proposed mining activity occurs on State Lands that are identified in the 2004 Pima County Open Space Bond Program as a secondary priority for protection. Protection could occur directly through acquisition of the land using the bond program or indirectly through the State Land Reform Act. Based on this designation, the County would prefer to see low-intensity uses (e.g., grazing) on this property as opposed to high-intensity uses, such as mining, which permanently impair the landscape. Noting that this particular property is already scarred by past mining activity, the continuance of allowing mining on the site will only help to further the degradation of the land and make future restoration efforts much more costly. If renewed mining activities, including roads, were

restricted to the existing footprint, then this could protect adjacent natural cover and still allow for some mineral extraction. However, the lease does not appear to restrict the mine to the existing disturbed area.

2. The entire subject parcel is designated as Biological Core within Pima County's Conservation Land System. Biological core areas have a very high importance that is distinguished by high potential habitat for five or more priority vulnerable species (plants and wildlife that are most vulnerable to extinction because of human-related stresses) and special elements (e.g., caves, perennial streams, cottonwood forests). The County's focus regarding land use and management within these areas is on conservation, restoration and enhancement of the natural communities, with provision for other land uses consistent with improvement of conditions for native species, soils and native vegetation. Expansion of the mining area is not considered to be a land use that would fit in with this goal.
3. The subject parcel is located within Priority Conservation Areas (PCAs) designated for seven species listed as priority vulnerable species in Pima County's Sonoran Desert Conservation Plan: Lowland leopard frog (1), Bell's vireo (1), cactus ferruginous pygmy-owl (1), Swainson's hawk (1), lesser long-nosed bat (2), Pale Townsend's big-eared bat (1), and Mexican long-tongued bat (1). Priority Conservation Areas are specific areas designated by the local science community as significant for the conservation of the listed priority vulnerable species. The number in parenthesis represents one of the six tiers of PCAs: (1) indicating areas that contain populations that must be included in the reserve system and (2) indicating areas that would be of value to the reserve system.
4. The referenced mineral lease is within the channels of and/or adjacent to a couple of tributary streams to Cienega Creek. Cienega Creek is designated as a Unique Water of the State of Arizona. Under Arizona Administrative Code R18-11-107D, the water quality of unique waters are to be maintained and protected; limited degradation is not allowed. Mining activity has the high potential of increasing sediment loads in the two tributary streams, which will eventually reach the main channel of Cienega Creek and increase the risk of impairing its water quality.
5. As with the other mining proposals, it would appear that much of the water runoff on the disturbed areas will be captured in collection ponds within the quarry. Although these ponds are beneficial for keeping fine sediment out of the watercourses and can provide water to neighboring wildlife, they also provide habitat for non-native, invasive species such as bullfrogs and tamarisk. These species are highly damaging to native ecosystems and wildlife, and have been noted by County personnel within other mining sites in the area. We would like

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to see actions whereby permanent ponds are not created or are managed to be periodically drained. Alternatively, the pits should be filled. The Arizona Game and Fish Department may be able to assist in the design of a program to control non-native species in these areas.

The County appreciates the opportunity to provide comments on the subject application for a mineral lease renewal on State Trust lands. Please contact me at 520-740-6350 if you have any comments or concerns.

Sincerely,

David Scalero, Senior Hydrologist
Water Resources Division

DS/jf

cc: C. H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator
Suzanne Shields, Director, Regional Flood Control District
Thomas J. Helfrich, Division Manager, Water Resources
Julia Fonseca, Environmental Planning Manager
Greg Hagen, Parks and Recreation Planner



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C. H. HUCKELBERRY
County Administrator

January 11, 2005

Michael Rice, Minerals Section Manager, and
Richard Ahern, Geologist, Minerals Section
Arizona State Land Department
1616 West Adams Street
Phoenix, Arizona 85007

**Re: Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816,
and -079817; PBY 11-908, -1022, -1456, -0157**

Dear Messrs. Rice and Ahern:

Thank you for the opportunity to comment on the above referenced mineral lease applications in the Cienega Creek watershed. The preponderance of applications in this significant area for renewals (and the circumstances around some of these renewals) raises a number of concerns and questions and deserves a larger perspective on the issue, which we are pleased to provide. We would like to discuss how we can work toward a common goal of continued conservation and increased revenues to the Trust beneficiaries.

Since 1986, Pima County has worked to conserve the natural and cultural resources of the Cienega Creek watershed, including Davidson Canyon. Our vision has been to establish a watershed-based network of conserved lands extending from the Santa Rita Mountains to the Whetstone Range, and from the headwaters of Cienega Creek south of Sonoita, north to the Rincon Mountains, herein called the Cienega Valley Reserve (Attachment 1). This vision is becoming a reality through efforts of many organizations and local citizens working together to bring the concept to reality. Indeed, this treasured landscape recently received national recognition as one of seven "Endangered Cultural Landscapes" in America.

Mineral leasing runs counter to the vision, and will irretrievably damage the integrity of this national treasure, and most importantly for your role as fiduciary of the State Land trust, ultimately diminish the potential net gain to the State Trust.

Michael Rice/Richard Ahern

Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816, and -079817; PBY 11-908, -1022, -1456, -0157

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At the time we began this effort, there was only the framework provided by distinct units of the Coronado National Forest, sheltering the incomparable diversity of southern Arizona's "sky islands." Since that time, Pima County and the federal government have invested millions of dollars to assemble the Cienega Valley Reserve. This work commenced with the Cienega Creek Natural Preserve, established in 1986 by the Board of Supervisors to conserve the aquatic and riparian habitat of the last low-level perennial stream reaches in Arizona.

Since then, the County has acquired numerous other parcels in the vicinity, and is in the immediate process of acquiring several others, for a total Pima County investment of \$31 million, of which approximately \$3.6 million ran to the benefit of the State Trust (Attachment 1).

Pima County Acquisitions

Cienega Creek Natural Preserve(north of I-10)	3196 acres	\$6.1 million
Empirita Ranch (CCNP, S of I-10)	880 acres	\$2.5 million
Colossal Cave Mountain Park	1679 acres	\$5.1 million
Posta Quemada Ranch	470 acres	\$2.5 million
Walden Property	470 acres	\$1.4 million
Bar V Ranch	1763 acres	\$8.7 million
<u>McKenzie - exchange property</u>	<u>1689 acres</u>	<u>\$5.0 million</u>
Total	10,147 acres	\$31.3 million

One of the properties that we are in the immediate process of acquiring is the Bar V Ranch. The Bar V Ranch includes some 1,763 acres along Davidson Canyon and other tributaries of Cienega Creek, as well as 12,674 acres of state grazing leases (Attachment 1).

The federal government's involvement in assembling the Cienega Valley Reserve has been even greater. In 1999, Congress established the Las Cienegas National Conservation Area, some 75,000 acres of State Trust and BLM lands which are managed as a single unit for the conservation of grassland and riparian ecosystems, and the protection the ranchland's cultural heritage. The same legislation provides for future friendly land condemnations, and a potential expansion of the federal government's ability to acquire land within the Sonoita Valley Acquisition Planning District.

In 2001, the United States Bureau of Reclamation acquired 160 acres of limestone outcrops and mesquite forest for perpetual conservation, near Colossal Cave Mountain Park.

With bipartisan support, Congressmen Kolbe and Grijalva have introduced HR 4943, the Pima County Land Exchange Act. HR 4943 would conserve additional 2,660 acres of private land near the Whetstone Mountains via a land trade to the Bureau of Land Management.

Michael Rice/Richard Ahern

Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816, and -079817; PBY 11-908, -1022, -1456, -0157

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Participants in conservation of the area have also included the State Land Department. In early 1990, State Land Commissioner Jean Hassell worked with Pima County to sell parcels of state land to Pima County for the Cienega Creek Natural Preserve (284 acres valued at \$623,000) and to establish the Colossal Cave Mountain Park (1,218 acres of State Trust Land sold at \$3,030,000). Mr. Hassell also set up the original agreement committing the State Land Department to work with the Bureau of Land Management to improve grazing management in the Cienega Creek watershed, an effort that has had great success.

In May of 2004, Pima County voters approved \$38 million in general obligation bonds for acquisitions in the area of the Cienega Valley Reserve. Specific parcels, called Habitat Protection Priorities, were identified in the bond ordinance for purchase with these funds. Over 200,000 acres of these are State Trust land parcels (Attachment 2).

Recently, Commissioner Winkleman worked with numerous stakeholders to develop a proposal to reform the laws regarding State Trust land administration. The reform proposal identified much of the northern Cienega Creek watershed for immediate conservation through the State Trust Land Reform Act (Attachment 3).

Your department had provided us with the precise locations of five mineral lease renewals and one new application as shown in the table below. Five of the six are within the Reserve area and are located within the lands that your department identified for conservation (Attachment 3). The sixth, W. R. Henderson, is within the Habitat Protection Priorities, which were identified in the 2004 bond ordinance approved by voters last May (Attachment 2).

Table 1

Mineral and Special Land Use Lease Applications Within the Cienega Creek Watershed

<u>Owner</u>	<u>Lease Number(s)</u>	<u>Application Type</u>
Charles P. Seel	11-003227	Renewal
Phoenix Brickyard	11-908, 11-1022, 11-1456 and 11-1457	Renewal
Portland Cement	11-035596, 11-035597, 11-079816 and 11-079817	Renewal
Phoenix Brickyard	11-98753, 11-98754, 11-98755 and 11-98756	New
New Portland Cement	11-23880	Renewal
W. R. Henderson	23-109779	Renewal

I suggest that the overall benefits of the State Land reform efforts to the Trust's fiduciary responsibilities would outweigh the short-term revenue generation opportunity presented by individual mining proposals.

Michael Rice/Richard Ahern

Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816, and -079817; PBY 11-908, -1022, -1456, -0157

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Several specific questions arise as a result of this recent interest in mineral leasing in this sensitive area. What has triggered the interest? Are lessees attempting to bypass the Trust land reform proposal, is some of this activity a clean-up of old files awaiting processing, or has the State Land Department solicited lease renewals in this area?

A number of the leases in this area appear to have expired in 1988 and subsequent years. What qualifies them for renewal? How long may a lease lapse before the State Land Department requires the applicant to initiate a new application, rather than a renewal? Overlooking expired leases would be contrary to due process, particularly given the exceedingly constrained public involvement provided for in the State Land Department's leasing process.

Active and abandoned mineral operations pose a continuing threat to the ecological integrity of the Reserve by damaging native plant cover and soils. By separate letter dated October 21, 2004, the United States Fish and Wildlife Service described the significance of the area to wildlife and vegetation, and enumerated some of the federally listed species which occur in the area. In addition, State lands also harbor some rare species with limited legal protection, such as the Needle-spined Cactus (*Echinomastus erectocentrus* var. *erectocentrus*), which is considered a Priority Vulnerable Species under the Sonoran Desert Conservation Plan.

Another problem is the increased threat of non-native species of plants and animals. The Pima Association of Governments has performed non-native plant species surveys in the area, and found that disturbances of soil are associated with non-native grasses such as Lehmann's lovegrass, buffelgrass, and tamarisk. In addition, the Arizona Game and Fish Department found bullfrogs (*Rana catesbeiana*) and bluegill sunfish (*Lepomis macrochirus*) in ponds created by mining. Both of these species are considered highly detrimental to native aquatic species of Arizona. Please note that a number of endangered fish species exist within the Cienega Creek and could be threatened by the very mining operations now contemplated.

All of the proposed mineral leases are on tributaries to Cienega Creek. Cienega Creek from Interstate Highway 10 downstream to the Pantano Vail dam is considered a Unique Water of the State of Arizona. The Unique Waters designation confers the State's highest level of protection from degradation of water quality. The anti-degradation requirements of AAC R18-11-202 state that no further surface water quality degradation which would interfere with or become injurious to existing uses is allowable.

Several of the leases are close to Davidson Canyon, which is one of the principal tributaries to Cienega Creek. Davidson Canyon's perennial stream reach is situated downstream of some of the mineral leases, with native long-fin dace and leopard frogs present, as well as aquatic plants unique to the area. We attach a map with hillshading to assist in visualizing the proximity of the mineral leases to existing topography (Attachment 4). Pima County intends to submit an application for Unique Waters protection for Davidson Canyon, following acquisition of the land containing the perennial reach in February 2005.

Michael Rice/Richard Ahern

Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816, and -079817; PBY 11-908, -1022, -1456, -0157

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Mining in the area has already left a legacy of permanently scarred landscapes, which has not been addressed by reclamation. For instance, State Land Department records indicate that the State Land Department required restoration and damage bonds to be posted in the amounts of \$5,000 per lease for 11-1456 and 11-1457, amounts which I believe you would agree that today are grossly inadequate relative to what was and still is needed to rectify problems at the sites. In 1990, following community outcry during your tenure at the State Land Department Minerals Branch, the renewal of mining on another lease adjacent to Cienega Creek was suspended. While that prevented further mining, it did not abate the ongoing erosion and other problems caused by the mining. This was a subject of my letter to you dated October 13, 2004, and will not be repeated here.

The damaged landscape left after mining has attracted further abuse in the form of trash dumping, target shooting and off-road vehicular activity. To some degree, both the State and County have incurred further clean-up and control costs, which are unaccounted for in the analyses presented to you by attorneys for Mr. Charles Seel, dated September 28, 2004. Further, the topography map I have attached clearly indicates the Seel lease is directly tributary to Davidson Canyon, contrary to what has been stated in the letter from Mr. Seel's attorney.

In citing a potential revenue of \$3 million to the State Land Department, the Seel attorneys also overlook the permanent damage to the future use of the property. While mining is indeed a temporary and sporadic effort, it precludes other uses for the entire term of the lease, typically twenty years. Furthermore, we would argue that the value of the land left behind is diminished from the perspectives of future grazing or commercial leases, and most particularly future land sales for conservation purposes as part of the proposed Trust reform package. As we both know so well, the State Land Department must consider the total and long-term value of the Trust asset.

I appreciate the opportunity to provide continued comments on these lease renewals and request that the State Land Department take into account not only short-term monetary benefits to the Trust, but also the long-term value of the land and prior efforts at the Federal, State and County levels to assemble a Reserve already worthy of national recognition. I offer to meet with you and your key staff to discuss this matter at your earliest convenience.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

Michael Rice/Richard Ahern

**Seel Lease 11-3227 through 11-3238; CalPC Lease 11-035596, -035597; -079816, and -
079817; PBY 11-908, -1022, -1456, -0157**

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Attachment 1 - Conceptual Cienega Valley Reserve

Attachment 2 - Lease locations relative to Habitat Protection Priorities

Attachment 3 - Lease locations relative to State Trust Land Reform Act lands

Attachment 4 - Topography map of Charles Seel Lease area

**c: The Honorable Chair and Members, Pima County Board of Supervisors
Chair and Members, Conservation Acquisition Commission
Mark Winkleman, State Land Commissioner
Jan Leshner, Director, Governor's Southern Arizona Office
John Bernal, Deputy County Administrator - Public Works
Carmine DeBonis, Development Services Director
Rafael Payan, Natural Resources, Parks and Recreation Director
Suzanne Shields, Regional Flood Control District Director
Arlan Colton, Planning Official, Development Services Department
Nicole Fyffe, Special Staff Assistant, County Administrator's Office**