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## AGENDA ITEM

**AGENDA DATE:** August 29, 2006

**ITEM NO.** \_\_\_\_\_

**SUBMITTED BY:** Kathleen Bales-Lange  
County Counsel

**DATE:** August 23, 2006

**SUBJECT:** Rescind Tulare County Board of Supervisors Resolution No. 2005-0300 in the matter of certifying and approving the Final Environmental Impact Report for the Kaweah South Project (SCH #2002-051039), adopting project findings, a mitigation monitoring and reporting plan, and a statement of overriding considerations, and approving surface mining permit and reclamation plan (PMR 02-002) and direct staff to revise the Environmental Impact Report and bring the Kaweah South Project application back to the Board for consideration in compliance with the Order Granting Writ of Mandate dated May 12, 2006, in Valley Citizens for Water vs. County of Tulare, et al. Tulare County Superior Court Case No. 05-215123.

## REQUESTS:

1. That the Board of Supervisors accept the Order Granting Writ of Mandate dated May 12, 2006, in Valley Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123 and pursuant thereto rescind Tulare County Board of Supervisors Resolution No. 2005-0300 in the matter of certifying and approving the Final Environmental Impact Report for the Kaweah South Project (SCH #2002-051039) as being in compliance with the California Environmental Quality Act; adopting project findings, a mitigation monitoring and reporting plan, and a statement of overriding considerations; and approving surface mining permit and reclamation plan (PMR 02-002); and

2. That the Board of Supervisors refer the Final Environmental Impact Report prepared in consideration of the Kaweah South Project to the Tulare County Environmental Assessment Officer for revision in compliance with the Order Granting Writ of Mandate dated May 12, 2006, in Valley Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123, for recirculation as deemed appropriate by the Environmental Assessment Officer of all or portions of the resulting revised Draft Environmental Impact

Report and for the preparation of responses to comments in compliance with the California Environmental Quality Act; and

3. That the Board of Supervisors retain jurisdiction for consideration of the application for the discretionary permit and direct the Tulare County Resource Management Agency to set and notice a public hearing in front of the Board of Supervisors for consideration of the revised Draft Environmental Impact Report, proposed revised Final Environmental Impact Report and the application for a surface mining permit and reclamation plan for the Kaweah South Project by the Kaweah River Rock Company upon close of the public comment period on the Revised Draft Environmental Impact Report and preparation of proposed responses to comments.

**SUMMARY:** On July 24, 2005, the Tulare County Board of Supervisors adopted Resolution No. 2005-0300, in the matter of certifying and approving the Final Environmental Impact Report for the Kaweah South Project (SCH #2002-051039) as being in compliance with the California Environmental Quality Act; adopting project findings, a mitigation monitoring and reporting plan, and a statement of overriding considerations; and approving surface mining permit and reclamation plan (PMR 02-002).

On July 8, 2005, Valley Citizens for Water filed and served a lawsuit, Valley Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123, under the California Environmental Quality Act ("CEQA"), challenging the County's certification and approval of the Final Environmental Impact Report for the Kaweah South Project (SCH #2002-051039) as being in compliance with the California Environmental Quality Act. The lawsuit named the County of Tulare, the Tulare County Board of Supervisors and Real-Parties-in-Interest the Kaweah River Rock Company, Hannah Ranch Trust, and Kaweah Delta Water Conservation District.

On May 26, 2006, the County of Tulare received a Notice of Entry of Judgment of a May 12, 2006, Order Granting Writ of Mandate pursuant to a March 27, 2006, Court Ruling on Writ wherein the Court found that the Final Environmental Impact Report relied upon by the County of Tulare to approve the surface mining permit and reclamation plan for the Kaweah South Project failed to comply with the requirements of the California Environmental Quality Act on specific points. The Order Granting the Writ of Mandate directed the County to vacate and remand its prior approvals and prepare a revised Environmental Impact Report adequately addressing the specified violations of the California Environmental Quality Act as stated in the Court's ruling on the Writ, prior to any permit approval.

**FINANCING:** Any attorneys fees or costs awarded against the County of Tulare in this matter will be addressed by an existing agreement between the County and the developer. The costs incurred by the County of Tulare in the revision of the Environmental Impact Report and reconsideration of the permit application will be recovered through the County's Planning and Development fees imposed for consideration of the discretionary land use approvals.

**ALTERNATIVES:** As an alternative, the County may refer this matter back to the Tulare County Planning Commission for consideration and decision or the County may, upon adoption of finds in support of its decision, deny the permit application based upon the record before it.

**INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:** The Tulare County Environmental Assessment Officer will direct the revision and recirculation of a revised Draft Environmental Impact Report or portions thereof for public comments and direct the preparation of proposed Response to Comments. The Tulare County Resource Management Agency, the County's land use planning agency, will analyze the project application in light of the revised Draft Environmental Impact Report and proposed Responses to Comments,

and bring the matter back to the Board of Supervisors with recommendations for consideration in a duly noticed public hearing. Appropriate County Departments will comment on the revised Draft Environmental Impact Report and project application through the planning review and public hearing process.

**SIGNATURE REQUIREMENTS:**

KATHLEEN BALES-LANGE

By  \_\_\_\_\_  
Julia J. Roberts, Chief Deputy County Counsel

For further information, please contact: Tulare County Resource Management Agency Assistant Director George Finney at 559-733-6291 or Chief Deputy County Counsel Julia J. Roberts at 559-733-6263.

1 **BEFORE THE BOARD OF SUPERVISORS**  
2 **COUNTY OF TULARE, STATE OF CALIFORNIA**

3 In the Matter of Rescinding Board Resolution ) **RESOLUTION**  
4 No. 2005-0300 Pertaining to the Approval of the ) **NO.**  
5 Kaweah South Project Surface Mining Permit and )  
6 Reclamation Plan, Directing the Tulare County )  
7 Environmental Assessment Officer to Direct the )  
8 Preparation of a Revised Environmental Impact )  
9 Report and Directing the Resource Management )  
10 Agency to Return the Matter for Consideration to )  
11 This Board Pursuant to a Noticed Public Hearing )

12 The following is hereby adopted as a Resolution on motion of Supervisor \_\_\_\_\_,  
13 seconded by Supervisor \_\_\_\_\_, at a regular meeting of this Board of  
14 Supervisors held on \_\_\_\_\_, 200\_\_, by the following vote:

15 AYES: \_\_\_\_\_  
16 NOES: \_\_\_\_\_  
17 ABSTAIN: \_\_\_\_\_  
18 ABSENT: \_\_\_\_\_

19 **ATTEST: C. BRIAN HADDIX, COUNTY**  
20 **ADMINISTRATIVE OFFICER/CLERK**  
21 **BOARD OF SUPERVISORS**

22 By: \_\_\_\_\_

23 \* \* \* \* \*

24 1. That the Board of Supervisors accepts the Order Granting Writ of Mandate dated May 12,  
25 2006, in Valley Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No.  
26 05-215123 and pursuant thereto rescind Tulare County Board of Supervisors Resolution No. 2005-  
27 0300 in the matter of certifying and approving the Final Environmental Impact Report for the Kaweah  
28 South Project (SCH #2002-051039) as being in compliance with the California Environmental Quality  
Act; adopting project findings, a mitigation monitoring and reporting plan, and a statement of  
overriding considerations; and approving surface mining permit and reclamation plan (PMR 02-002);  
and

1 2. That the Board of Supervisors refers the Final Environmental Impact Report prepared in  
2 consideration of the Kaweah South Project to the Tulare County Environmental Assessment Officer  
3 for revision in compliance with the Order Granting Writ of Mandate dated May 12, 2006, in Valley  
4 Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123, for  
5 recirculation as deemed appropriate by the Environmental Assessment Officer of all or portions of the  
6 resulting revised Draft Environmental Impact Report and for the preparation of responses to comments  
7 in compliance with the California Environmental Quality Act; and

8 3. That the Board of Supervisors retains jurisdiction for consideration of the application for the  
9 discretionary permit and directs the Tulare County Resource Management Agency to set and notice a  
10 public hearing in front of the Board of Supervisors for consideration of the revised Draft  
11 Environmental Impact Report, proposed revised Final Environmental Impact Report and the  
12 application for a surface mining permit and reclamation plan for the Kaweah South Project by the  
13 Kaweah River Rock Company upon close of the public comment period on the Revised Draft  
14 Environmental Impact Report and preparation of proposed responses to comments.

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