



# STATE MINING AND GEOLOGY BOARD

## DEPARTMENT OF CONSERVATION

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### UPDATED INFORMATIVE DIGEST STATEMENT

Public Resources Code (PRC) section 2207(d)(2)(A) requires an annual reporting fee schedule to be established on an equitable basis reflecting the size and type of mining operations in the state.

PRC section 2207(d)(3) outlines the amount of revenue to be generated by the fee schedule approved by the State Mining and Geology Board (SMGB). The fee schedule must provide for the collection of the amount as proposed in the Governor's Budget for the Department of Conservation's (Department) costs in implementing PRC section 2207 and the Surface Mining and Reclamation Act ("SMARA," PRC section 2710 et seq.). The total revenue generated by the annual reporting fees is restricted to \$8,000,000 with allowance for the amount to be adjusted for the cost of living beginning with the 2017-2018 Fiscal Year (FY), and annually thereafter. Cost of Living Adjustments (COLA) are addressed in statute and allow for increases to help maintain adequate funding for the SMARA programs within the Department. The COLA, or rate of inflation, is measured by the California Consumer Price Index (CPI). It is a measure of inflation experienced by consumers, and an important indicator of the condition of the economy and can be used to adjust other economic data for changes in price level and to convert them into inflation-free dollars. Various government income programs, such as Social Security, use the CPI to adjust payments or income eligibility levels.

Further, if the Director of the Department determines that the revenue collected in the preceding FY was greater or less than the cost to implement SMARA and PRC section 2207, the SMGB shall adjust the fees to compensate for the over or under collection of revenues.

#### Existing Law

California Code of Regulations (CCR) section 3697 sets forth the requirements of when annual reporting fees are due and delinquent. It provides that mining operations are individual discrete operations per each reclamation plan required unless qualified as a "Multiple Site Operation" by meeting certain criteria.

Annual reporting fees are calculated based on CCR section 3698, which was developed by the SMGB in 1991. In addition to establishing the minimum and maximum annual reporting fees for certain categories of mining operations, CCR section 3698 utilizes a 'Factor' to determine the year-to-year fee adjustments. Once calculated, the Factor is applied to one of two formulas

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*The Mission of the State Mining and Geology Board is to Provide Professional Expertise and Guidance, and to Represent the State's Interest in the Development, Utilization and Conservation of Mineral Resources, the Reclamation of Mined Lands, and the Development and Dissemination of Geologic and Seismic Hazard Information to Protect the Health and Welfare of the People of California.*

(Formula 1 or Formula 2 – discussed further below) in order to determine the new fee schedule. Depending on the outcome of the calculation, the fee schedule is theoretically adjusted upwards or downwards.

CCR 3698 currently directs the Department to use the following formula to calculate the Factor:

$$[(AT_{RY}) - (AT_{PY})] / (AT_{PY}) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR Sections 3698(a)(b)(d)(e) and CCR Section 3699, and less a projected amount from mine operations subject to the maximum fee amount in PRC Section 2207.

Where: ATRY is the Adjusted Total for the current “Reporting Year”

Where: ATPY is the Adjusted Total for the “Prior Year”

The Factor is then used in one of two formulas developed and approved by the SMGB:

Formula 1 is to be used if the Factor is positive:

$$\text{Current Year Reporting Fee} = \text{Prior Year Reporting Fee times } (1 + \text{Factor})$$

Formula 2 is to be used if the Factor is negative:

$$\text{Current Year Reporting Fee} = \text{Prior Year Reporting Fee times } (1 - \text{Factor})$$

CCR section 3699, developed by the SMGB in 1992, sets forth the criteria for a mining operation to request a low gross exemption from the method of fee assessment provided in CCR section 3698.

### Proposed Action

In an effort to address several issues under SMARA, on April 18, 2016, the Governor signed SMARA reform bill SB 209 (Pavley) into law. In anticipation of the effect SB 209 (Pavley) would have on the mining operation annual report fee schedules, and due to issues identified in calculating projected fees for the coming years, the Department and SMGB staff determined the established fee calculation formulas needed to be changed. Calculating the reporting fees by means of existing formulas currently required under CCR section 3698 results in a continued increasing fee trend for mining operators, without accounting for a decrease in the reporting fees where appropriate to help maintain a more equitable fee schedule for relatively smaller operations. In order to clean-up regulatory language based on revisions to statute caused by SB 209 (Pavley), to address issues with the fees calculation formula, to reset and adjust the low gross exemption income limit and associated fee based on the cost of living as measured by the CPI, and to clarify regulatory language for consistency, the SMGB must amend CCR sections 3697, 3698, and 3699.

### Anticipated Benefits of the Proposed Amended Regulations

The broad objective of the proposed amended regulatory language is to meet the statutory goals of SB 209 to improve how the SMGB, the Department, and local lead agencies oversee and implement SMARA, specifically in regards to the annual reporting fees calculation and schedule. The SMGB anticipates that the proposed regulatory amendments will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government, the prevention of discrimination, the promotion of fairness or social equity by: ensuring the public will have sufficient and reliable private funding for State oversight of local implementation of surface mining law and adjusting for the cost of living, as measured by the CPI for all urban consumers, calendar year averages, using the percentage change in the previous year.

The proposed amended regulatory language does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication. Furthermore, the proposed amended regulatory language is not inconsistent or incompatible with existing regulations pertaining to the annual mining operation reporting fees calculation and schedule. After conducting a review for any regulations that would relate to or affect this area, SMGB has concluded that these are the only regulations that concern the annual reporting fees calculation and schedule for mining operations in California.