

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME State Mining and Geology Board	CONTACT PERSON Nicholas Lash	EMAIL ADDRESS nicholas.lash@conservation.ca.gov	TELEPHONE NUMBER 916-322-1082
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Vested Rights Determinations			NOTICE FILE NUMBER Z 2017-0613-02

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The State Mining and Geology Board
(Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: (+/-) 9Describe the types of businesses (Include nonprofits): Surface Mining OperationsEnter the number or percentage of total
businesses impacted that are small businesses: (+/-) 4

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____6. Enter the number of jobs created: unknown and eliminated: unknown

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

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ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See Attached

a. Initial costs for a small business: \$ 0 Annual ongoing costs: \$ 0 Years: See Attached

b. Initial costs for a typical business: \$ 0 Annual ongoing costs: \$ 0 Years: See Attached

c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: See Attached

d. Describe other economic costs that may occur: The SMGB is unaware of other economic costs that may occur.

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: See attached.

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: See attached.

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: See attached.

3. What are the total statewide benefits from this regulation over its lifetime? \$ unquantified

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: See attached.

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ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ See C1, C2, C3 Cost: \$ See Section B.

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: See attached.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

*If YES, complete E2. and E3
If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

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FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain See attached.

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FISCAL IMPACT STATEMENT (CONTINUED)

3. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

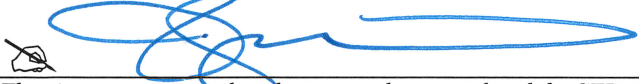
2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

9/19/2017

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

10/2/2017

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

10/27/17

DEPARTMENT OF FINANCE
CAPITAL OUTLAY

17 OCT -2 PM 2:39



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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DEPARTMENT OF CONSERVATION STATE MINING AND GEOLOGY BOARD

TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 15. Vested Rights Determinations

CA DEPARTMENT OF FINANCE STD. 399 ATTACHMENT

Economic Impact Statement

Section B. Estimated Costs

1. The proposed regulation does not create any new regulatory requirements nor does it modify any existing regulatory programs. The proposed regulation merely shifts the forum for holding vested rights determination hearings back to local governments (lead agencies) in those jurisdictions where the State Mining and Geology Board (SMGB) has assumed a lead agency's authorities related to administering the Surface Mining and Reclamation Act of 1975 ("SMARA," Public Resources Code (PRC), section 2710 et seq.) pursuant to PRC section 2774.5. In addition, there are no vested right determination petitions currently pending before the SMGB that would be transferred to a local lead agency. The regulation should therefore have no initial or ongoing annual costs for small businesses, typical businesses, and individuals.

Total statewide costs that businesses and individuals may incur to comply with the regulation over its lifetime are difficult to predict and quantify due to the infrequent number of anticipated petitions for determination of vested mining rights. Moreover, the proposed regulation does not affect businesses and individuals on a statewide basis. The proposed regulation only affects potential claimants of vested mining rights within 7 local lead agencies for which the SMGB has assumed SMARA lead agency status pursuant to PRC section 2774.5. Those 7 local lead agencies are cities located throughout the state: City of Richmond, City of Marina, City of Jurupa Valley, City of Desert Hot Springs, City of Palm Springs, City of San Jose, and City of Santa Paula. In the remaining SMARA lead agencies (i.e. all counties and 61 cities) a claimant of vested mining rights must petition their local

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.

governments, and not the SMGB, to establish the nature and scope of their claimed vested mining right through a public hearing as determined by the decision of California's Third District Court of Appeals in *Calvert v. County of Yuba*, (2007) 145 Cal. App. 4th 613; 51 Cal. Rptr. 3d 797. In this case the Third District Court of Appeals found that Yuba County's failure to provide notice and hearing violated the procedural due process rights of the public. The court in its decision stated that SMARA required the claimant to either prove its claim of vested rights in a public adjudicatory hearing or obtain a permit to conduct surface mining operations based on a public adjudicatory hearing. In addition, the court determined that the SMGB, which had assumed the role of SMARA lead agency from Yuba County by that time pursuant to PRC section 2774.4, was responsible for making the vested rights determination, if petitioned by the operator. Note that the 2016 revision to SMARA through AB 1142 (Gray) has already returned the forum for conducting vested rights determinations to local lead agencies where the SMGB serves as the SMARA lead agency under PRC section 2774.4.

Moreover, vested rights petitioners would likely be incurring the same costs associated with a determination of their vested rights regardless of the forum within which their public hearing would occur. Costs associated with a petition to establish a vested right to mine vary from case to case depending on a number of factors that include the nature and extent of the evidence available to the petitioner, the size and scope of the claimed vested right, the size of the jurisdiction in which the petitioner claims the vested right, and the size and density of the population surrounding the area where the vested right is claimed. In its history, the SMGB has only made two vested right determinations when acting as the SMARA lead agency and can only make reference to the costs it imposed in each of those two cases. In 2008, The SMGB established petition and hearing process regulations that included hearing costs to be paid by any petitioner claiming a vested right. Prior to the establishment of the regulation, the SMGB had never conducted a vested rights determination so the calculation of the cost was designed to be a site-specific estimate, not based on past hearing experience.

The regulation called for two costs associated with a vested rights hearing conducted by the SMGB. The first cost was an initial processing fee of \$5,000 in response to the Request for Determination. This was necessary as compensation for the initial processing and review, confirmation that the request is within the SMGB's jurisdiction, and notification to the operator or the operator's representative that the request has been denied or accepted.

The second cost was a fee for conducting the actual vested right determination in its entirety. This fee was established on a case-by-case basis, depending on the size and scope of the proceeding, as identified from the information required in the Request for Determination. It included estimated labor costs for actual review of the administrative record, determination of findings of facts derived from review of the administrative record, public notification and conduct of public hearings, review and analysis of additional documents submitted during the course of the public hearing(s), and a determination by the SMGB. It also included a cost if the SMGB employed an administrative hearing officer, special master, or committee of board members. This fee was to be paid to the SMGB before it released a vested right determination. Both costs imposed on the petitioner as fees were onetime, not ongoing.

The total costs for each of the two vested right determinations made by the SMGB varied significantly as they were different in scope and nature. At its March 11, 2010, regular business meeting, the SMGB adopted its final decision on vested rights pertaining to the Western Aggregates, LLC surface mining operation located in Yuba County. The total estimated onetime cost for conducting this vested right determination was \$140,466. This included the initial \$5,000 processing fee and the estimated second determination fee broken down as follows: 1) \$96,977 for California Geological Survey staff review of the administrative record, determination of findings, and presentation of such findings to the SMGB, 2) \$33,617 for SMGB's legal counsel, and 3) \$10,162 for SMGB member travel and SMGB staff time.

At its June 10, 2010, regular business meeting, the SMGB adopted its final decision on vested rights pertaining to the Big Cut Mine surface mining operation located in El Dorado County. The total estimated onetime cost for conducting this vested right determination was \$16,000. This included the initial \$5,000 processing fee and the estimated second determination fee broken down as follows: 1) \$3,000 for SMGB staff time for review of the administrative record, determination of findings, and presentation of such findings to the SMGB, 2) \$4,000 for SMGB's legal counsel, and 3) \$4000 for Direct costs (copying, SMGB member and SMGB staff travel, etc.).

Out of the two vested right determinations mentioned above, the SMGB would consider the Big Cut Mine's determination and associated costs as a more typical vested rights determination a local lead agency might conduct as a result of the regulation. The SMGB would consider the Western Aggregates, LLC determination and associated costs as relatively high because of the significantly large administrative record associated with the claim as a result of California's Third District Court of Appeals decision in *Calvert v. County of Yuba*, (2007) 145 Cal. App. 4th 613; 51 Cal. Rptr. 3d 797.

If the local lead agency chooses to impose a onetime fee upon the small business, typical business, or individual to cover the reasonable costs of implementing SMARA, specifically making the vested rights determination, it may choose to do so in the same fashion as the SMGB. The SMGB can only provide the estimated costs of fees it imposed in the two cases mentioned above as a basis for local lead agencies to impose their own fees. The fees will likely vary across local lead agencies depending on the resources available to each agency. Thus, the SMGB is unable to determine the costs a small business, typical business, or individual may incur as a result of the regulation over its lifetime.

5. By Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation (Department), and the SMGB, SMARA and its implementing regulations and federal law are coordinated to eliminate duplication. The proposed regulation is not inconsistent or incompatible with federal regulations.

Section C. Estimated Benefits

1. The regulation is intended to meet the statutory goals of AB 1142 (Gray) to improve how the SMGB, the Department, and local lead agencies oversee and implement SMARA. The regulation would make specific that recognition of vested mining rights (similar in nature to

the issuance of mining permits) remains with the local land-use decision making authority regardless if the SMGB acts as the SMARA lead agency. This is especially true in light of the fact that currently, vested right determinations throughout the state are overwhelmingly made at the local level. This proposed regulation would create uniformity for the mining industry and vested rights claimants no matter where that right is claimed to exist.

The SMGB anticipates that shifting the forum for conducting vested rights determinations to the local governmental agency may lower overall hearing costs. In cases where the SMGB would conduct a hearing, it must travel to the jurisdiction where the vested right is claimed. That cost would be eliminated under this proposed regulation. In addition, local lead agencies may be able to assign their own staff and employees to review, gather, and assess evidence likely to be the subject of the hearing. The SMGB has only an Executive Officer and one geologist on staff who are already operating at full capacity and would therefore be a need for the SMGB to contract out for additional expertise. Those costs would be reduced under this proposal. The SMGB anticipates specific non-monetary benefits from the proposed action such as the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government by shifting the hearing forum to the local lead agency where the petitioner resides and has been conducting the activity for which the vested right is claimed.

2. Adjacent property owners benefit as a result of California's Third District Court of Appeals determination in *Calvert v. County of Yuba*, (2007) 145 Cal. App. 4th 613; 51 Cal. Rptr. 3d 797 and by the 2016 revision to PRC 2774.4, not by the regulation alone. The regulation allows for and promotes the local government's assessment of the vested right claim and how it affects local land-use zoning and permitting.

Section D. Alternatives to the Regulation

1. An alternative of taking no action was considered by the SMGB, however was rejected as it would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication and be contrary to amended PRC section 2774.4.

3. No annual ongoing costs are created by this regulation. The SMGB can only rely on the estimated onetime costs mentioned in Section B of this form. Quantification issues are present due to the small number of mining operations and claimants that may be affected by the regulation.

Fiscal Impact Statement

Section A. Fiscal Effect on Local Government

6. See Section B above in the Economic Impact Statement