



# STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: [conservation.ca.gov/smgb](http://conservation.ca.gov/smgb)

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## INITIAL STATEMENT OF REASONS

### PROPOSED AMENDED REGULATIONS

### 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 8. Fees Schedule

### STATEMENT OF PURPOSE AND CONDITIONS ADDRESSED

As required by Section 11346.2(b) of the Government Code, the State Mining and Geology Board (SMGB) sets forth below the reasons for the adoption of amended regulations for fees calculation. Public Resources Code (PRC) section 2207(d) provides that the SMGB shall impose by regulation an annual reporting fee on each mining operation. Specifically, PRC section 2207(d)(1) currently states the following:

*“The board shall impose, by regulation... an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed four thousand dollars (\$4,000) annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter.”*

As required by PRC section 2207(d)(1), the SMGB promulgated section 3698 of Title 14 of the California Code of Regulations (CCR) which established a formula to calculate annual mining fees. CCR section 3698 establishes a range of applicable fees based on the production of mineral materials and sets a maximum fee cap at \$4,000. The section also establishes a formula and two “Factors” used to determine year-to-year adjustments.

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*The Mission of the State Mining and Geology Board is to Represent the State’s Interest in the Development, Utilization and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Participation.*

PRC section 2207(d)(1) was amended by Senate Bill 209 (Pavley), and such amendment was signed into law by Governor Brown on April 18, 2016, with an effective date of January 1, 2017. PRC Section 2207(d)(1) as amended states the following:

*“The board shall impose, by regulation... an annual reporting fee on, and method for collecting annual fees from, each active or idle mining operation. The maximum fee for any single mining operation may not exceed **ten thousand dollars (\$10,000)** annually and may not be less than one hundred dollars (\$100) annually, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, **except that the maximum fee for any single mining operation shall not exceed six thousand dollars (\$6,000) in the 2017-18 fiscal year and eight thousand dollars (\$8,000) in the 2018-19 fiscal year.**”*

The proposed rulemaking would delete “Formula 2” from CCR section 3698, as well as all references to “Formula 2” within CCR section 3698.

In anticipation of the SMARA reform legislation increasing the maximum fee, Department staff calculated a projected fee schedule for the coming years. These calculations require use of Formula 2. However Department and SMGB staff now recognize that Formula 2 will not allow for a reduction of fees due to its mathematical structure. Specifically, because CCR 3698 does not indicate that the absolute value of the calculated Factor should be utilized, when Formula 2 is applied the resulting annual fee multiplier is positive and the resulting annual fee increases when it should decrease for certain production categories. In order to achieve greater flexibility with fee adjustments, the SMGB is proposing deletion of Formula 2 from the CCR 3698 language. Use of a single Formula, which is identical in mathematical structure to the existing Formula 1, will result in appropriate adjustments to annual fees imposed on surface mining operators.

In addition, Department staff and SMGB staff have determined that the redundant reference to the cost of living adjustment in CCR section 3698 is unnecessary as that adjustment requirement is clearly set forth in PRC section 2207(d)(1), as amended under SB 209. The proposed rulemaking would delete references to annual adjustments beginning in the 2005-2006 fiscal year in line with this recently revised statute.

The proposed rulemaking would delete existing specific references within CCR section 3698 regarding the maximum reporting fee of \$4,000, and replace them with a general reference to the maximum fee outlined in PRC section 2207, which will increase during the next three fiscal years as a result of the passage of SB 209. In order to eliminate any potential for confusion when calculating annual fees and to ensure that the existing formula is consistent with existing law, these extraneous provisions of existing regulatory language should be deleted.

The proposed amendment to CCR Section 3698 is intended to bring the regulation into conformance with the recently amended language of PRC Section 2207, and streamline mathematical formulas utilized within CCR Section 3698 to calculate annual reporting fees for mining operations.

These changes are necessary to implement the statutory goals of establishing equitable fees for mining operations and ensuring that the Department and SMGB are able to carry out provisions of the Surface Mining and Reclamation Act (SMARA) which include protection and utilization of key mineral resources and reclamation of mined lands.

## **CEQA COMPLIANCE**

This proposed regulatory amendment follows statutory changes approved by the Legislature and signed into law by the Governor (SB 209) on April 18, 2016. The proposed amended regulatory language will not result in direct or indirect physical changes to the environment. As such, the SMGB has determined that this rule making action is not a project as defined in Title 14, CCR, Section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

## **ECONOMIC IMPACT ANALYSIS**

Currently, annual surface mining fees are established under PRC section 2207(d)(1) and are set at a maximum of \$4,000 per mining operation with an adjustment for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter. SB 209 amends this provision of the Public Resources Code by increasing the maximum annual fee in three incremental yearly steps starting with \$6,000 in the 2017-18 fiscal year. None of the proposed amendments establish new formulas or calculations in establishing annual mining fees imposed on existing or new mining operations. Instead, the proposed amendments will streamline annual calculations, provide clarity for currently regulated mining operations and ensure the equitable assessment of mining fees as required by PRC section 2207(d)(1). The SMGB notes that the proposed amendments to the regulation follow specific changes made to PRC section 2207 by the Legislature as discussed above – they do not discretely raise or lower costs, or decrease or increase regulatory liability. The proposed amendments will not allow for the creation of new jobs or businesses, nor will they directly cause for the elimination of existing jobs or businesses. Further, because the proposed amendments follow approved statutory changes, they will not cause or require expansion of businesses currently doing business in California. As such, the SMGB concludes that the proposed amendments will not have a significant adverse economic impact directly affecting business.

The proposed regulations satisfy the SMGB's statutory mandate to impose annual fees upon surface mining operators, and to establish a fee schedule on an equitable basis reflecting the size and type of the operation. Further, imposition of equitable annual mine fees ensures that the Department and SMGB are able to carry out the provisions of SMARA which include protection and utilization of key mineral resources and reclamation of mined lands. The proposed amended regulation meets the statutory goals of SB 209 by allowing for increased maximum annual fees for larger operations, while streamlining and simplifying fees calculation and potentially lowering annual fees for smaller operations. Further, Department and SMGB staff have determined that the proposed regulatory amendment will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government. Specifically, the benefits are as follows:

- The public will be ensured of sufficient and reliable private funding for State oversight of local implementation of surface mining law.
- Mine operators would be able to more easily determine any adjustments to annual fees with increased confidence on the underlying fee assessment methodology.

## **IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED**

No studies or reports have been relied upon by the SMGB in preparing the proposed amendment. The text of PRC Section 2207, as amended, and review of the existing formula under CCR section 3698, was utilized by Department staff and SMGB staff in development of this proposed regulatory change.

At its April 28, 2016, regular business meeting, the SMGB considered initiation of the rulemaking process for the proposed amendments to CCR 3698. A Staff Report for this agenda item was prepared and presented to the SMGB for their consideration. The Staff Report includes an attachment (Attachment A) that details the specific proposed amendments to CCR 3698. The Staff Report is available on the SMGB's web page at <http://www.conservation.ca.gov/smgb/> and at the SMGB office.

## **ALTERNATIVES CONSIDERED**

In accordance with Government Code section 11346.5, subdivision (a)(13), the SMGB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed. In addition, the SMGB must determine that no alternative would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

A proposed alternative of taking no action would result in unnecessary and potentially confusing provisions of existing regulatory requirements remaining in publication.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

## **DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

This regulation change 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, and the SMGB, SMARA and its implementing regulations and federal law are coordinated to eliminate duplication.