



STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

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INITIAL STATEMENT OF REASONS

GENERAL PURPOSE AND CONDITION ADDRESSED

The SMGB proposes to add § 3506 to the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 1. The regulation provides, clarifies and makes specific an administrative procedure for the State Mining and Geology Board (SMGB) to conduct a vested rights determination when serving as a lead agency under the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code § 2710 et seq.) and Public Resources Code (PRC) § 2776.

SPECIFIC PURPOSE

The proposed regulatory language is intended to make specific the procedure to conduct a vested rights determination at the request of a surface mine operator for when the SMGB is the lead agency under SMARA for that surface mine operation.

§3506– Vested Rights Determination

SMARA provides for, in some instances, the SMGB to assume the role of lead agency for the administration of the Act when a local lead agency is not able to perform that role (PRC §2774.4, §2774.5). PRC §2776 specifically provides conditions for a lead agency to determine whether a person has a vested right to conduct surface mining operations. Since 1998, the SMGB has assumed the role of SMARA lead agency 49 times. Currently, the SMGB is the SMARA lead agency for 11 dredging operations in the San Francisco Bay Area, two counties, and 6 cities, encompassing 47 mines.

This section is necessary since it provides the administrative procedure for the SMGB to conduct of a vested right determination, which is to be established in a public proceeding whereas the Claimant shall assume the burden of proof, for any person

claiming a vested right to conduct surface mining operations in a jurisdiction where the SMGB is lead agency pursuant to PRC § 2774.4. The information in this section provides a definition of vested right, procedures for filing of a request for determination, review and determination fee, determination of jurisdiction, notice of pending determination, public hearing, selection of hearing officer if appropriate, hearing schedule and procedure, and effect of the determination.

STATEMENT OF NECESSITY

In a 3rd District Court of Appeal's (DCA) Ruling in the matter of William Calvert et al. v. County of Yuba et al., 145 Cal.App.4th 613, the DCA placed upon the SMGB the task of conducting a public hearing and making a determination of vested rights for the Western Aggregates surface mining operation located in Yuba County. In correspondence dated February 8, 2007, a Notice of Intent to seek confirmation of Western Aggregate's vested rights was received by the SMGB. In addition, requests for a vested rights determination to be made by the SMGB for two surface mining operations located in El Dorado County have also been received by the SMGB. Without an administrative procedure to conduct such a hearing, there would be no procedure or a funding mechanism for which the SMGB could conduct such hearings when serving as a lead agency under SMARA as mandated by the DCA.

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

In order to determine the range, diversity, and purpose of administrative procedures and funding mechanisms available to the SMGB as a lead agency, the SMGB conducted several public hearings between March 8, 2007, and September 14, 2007, to hear preliminary concerns and comments from various stakeholders. These preliminary concerns and comments were reviewed by the SMGB and have been publicly available since March 8, 2007. The preliminary concerns and comments which were considered in this proposed regulation were publicly discussed at the SMGB's Policy and Legislation Committee meetings held on March 8, April 12, May 10, June 14 and September 7, 2007, and by the whole SMGB during its regular business meeting held on September 14, 2007.