STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

ARNOLD SCHWARZENEGGER
GOVERNOR

For Meeting Date: February 5, 2009

Agenda Item No. 10: Consideration for Issuance of a 45-Day Notice to Correct Deficiencies to the County of SIskiyou.

INTRODUCTION: Siskiyou County is one of the relatively larger surface mining counties in California. In 2007 and 2008, the State Mining and Geology Board (SMGB) received several public complaints pertaining to certain surface mining operations located in Siskiyou County (County). Public complaints were received by the SMGB for three surface mining operations. The complaints alleged that the operations have been in a state of non-compliance with the Surface Mining and Reclamation Act of 1975 (SMARA), and the County, acting as lead agency, had failed to adequately enforce SMARA and bring these sites into compliance. At its July 10, 2008, regular business meeting, in lieu of issuance of a 45-Day Notice of Deficiencies, the SMGB motioned to monitor the County's progress in developing an effective SMARA program. A review of the current status for all surface mines located within the County's jurisdiction, and a summary of the steps taken by the County to improve its SMARA program, is presented herein.

STATUTORY AUTHORITY: Pursuant to Public Resources Code (PRC) Section 2774.4(a), "*If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of the lead agency under this chapter, except for permitting authority*."

BACKGROUND: Siskiyou County is one of the relatively larger surface mining counties in California, albeit, many of the operations are small to moderate in size. In review of the OMR SMARA database, materials produced include sand and gravel, rocks, cinders, bituminous rock, pumice, dimension stone and gold (placer and lode). Based on information provided by OMR, the County has about 43 mines within its jurisdiction, of which 34 are currently active, four are closed with no intent to resume, two are newly permitted, and three are noted as idle.

As reported in the SMGB's Information Report 2007-01, as of 2005, about 75 percent of the surface mines within the County's jurisdiction were inspected, and about 29 percent of the financial assurances were reviewed. As of 2006, about 98 percent of the surface mines had been inspected, with only 19 percent of the sites having had their financial assurances updated.

As noted above, public complaints were received for three surface mining operations located in the County. It was alleged that the operations have been in a state of non-compliance with regards to SMARA, and the County, acting as lead agency, had failed to adequately enforce SMARA and bring

these sites into compliance. The SMGB received a written public complaint dated June 12, 2007, from an adjacent land owner for a surface mining operation known as Timberhitch Pits (CA Mine ID #91-47-0055) located in Siskiyou County. It was alleged that the operation has been in a state of non-compliance with SMARA, and the County acting as lead agency has failed to adequately enforce SMARA and bring this site into compliance. The SMGB also received complaints for two other surface mining operations. In June 2008, local neighborhood group brought forth allegations pertaining to a site known as Truck Village (CA Mine ID # 91-47-0056). It was alleged that this operation had significantly expanded without obtaining the appropriate permits and lead agency approval of an amended reclamation plan and adjusted financial assurance instrument. The SMGB also received a complaint by Ms. Anne Marsh alleging that the County did not enforce SMARA for two sites that were idle, and then deemed abandoned. It was alleged that the County did not enforce SMARA by requesting reclamation for the Tschopp Kidder Creek (CA Mine ID #91-47-0018) and Nash Pit (CA Mine ID #91-47-0057).

ANALYSIS: At the SMGB's regular business meeting held on July 10, 2008, a review of the current status for all surface mines located within the County's jurisdiction was presented. Notably, certain parameters indicative of overall SMARA lead agency performance were evaluated. These parameters reflect upon those minimal activities required by all SMARA lead agencies such as conduct of inspections at least once each calendar year, review and adjustment of financial assurance cost estimates, and enforcement actions. In addition, certain substantial deviations from approved reclamation plans, and those mines initially reported as idle that have since become abandoned, whether that was the operator's intent or not (i.e., no Interim Management Plan (IMP) in place), were also noted. Also, the average reclamation cost per disturbed acre was evaluated to serve as a general indicator as to whether such costs are reasonable or otherwise significantly lower than amounts established elsewhere throughout the state.

In the course of conducting the review, several issues were identified including lack of inspections or inadequate inspections, lack of review and adjustment of financial assurances, lack of enforcement activities (i.e., for operators that have encroached beyond the limits of their respective reclamation plans, and for operator that failed to commence reclamation for sites that are abandoned), and not recognizing and addressing unstable slopes at certain sites, among others. These issues are further addressed below.

SMARA Mine Inspections: Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. For year 2007, inspections were not performed on a total of 23 surface mine sites, or 53 percent of all sites within the County requiring inspection. Although requested, current 2008 mine inspection reports were not provided to the Executive Officer for review and comment at the time this Executive Officer's report was prepared, thus, the comments provided are based on review of the 2007 mine inspection reports.

Adequate inspection reports are the foundation upon which site conditions are clearly characterized, financial assurance amount are recommended for adjustment as deemed necessary, and administrative and compliance/enforcement actions are clearly identified. The following general observations are offered:

- Reference to Compliance/Enforcement Triggers: No reference, or in some cases inadequate reference, to reclamation or performance requirements as set forth in the approved reclamation plan, Conditions of Approval, or permit requirements, are referenced in the past mine inspection reports. The inspection reports will benefit if specific performance standards and conditions noted in the approved reclamation plan and Conditions of Approval are specifically referenced and/or quoted (i.e., all slopes should not be steeper than 2H:1V). Without such references, the inspection report upon review fails to assure the reader that the site conditions meet the requirements of the approved reclamation plan, Conditions of Approval, and permit requirements. It should be noted that some sites have numerous Conditions of Approval, many of which are directly relevant to reclamation such as steepness of slopes, setbacks, safety requirements, and revegetation performance standards.

- Quantification of Site Conditions: SMGB regulations (CCR Section 3504.5(f)) states that "*Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.*" Issues associated with slopes that typically need to be addressed include slopes that are over steepened and/or unstable, that could potentially present safety hazards. Inspection reports need to quantify the current configuration of cut slopes and reclaimed slopes, including certain geologic parameters such as existing height of slopes and steepness or gradient, quantification of erosion features, amount of off-site encroachment, and volume of waste piles.

- Adequate Identification of Violations: If a violation or substantial deviation from the existing approved reclamation plan or any Conditions of Approval is observed at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary), a violation should be noted at time of inspection. The County can then determine upon review of the inspection report whether enforcement or other compliance actions are warranted. Without specific violations being noted, the County, acting as the SMARA lead agency, is not in a position to consider and implement the appropriate SMARA compliance/enforcement action(s).

Financial Assurance Annual Review and Adjustment: Pursuant to PRC Section 2773.1(a)(3) SMARA requires that the financial assurance cost estimate for all surface mining operations be

reviewed and adjusted annually, as appropriate. For year 2007, a total of 41 surface mine sites, or 95 percent of all sites within the County, required their financial assurance cost estimates to be reviewed and adjusted, but such tasks were not performed.

SMARA Inspection and Financial Assurance Review and Adjustment: A total of 22 surface mine sites, or 51 percent of the surface mine sites within the County did not receive both the required inspection and financial assurance cost estimate review and adjustment for year 2007.

Reclamation Cost per Disturbed Acre: Financial assurance amounts vary from as low as $1,000 to $64,543 for sites within the County. The financial assurance amount per disturbed acre ranged from $192.30 to $10,756.00. Excluding four specific sites where the financial assurance amounts were significantly larger than what was deemed adequate (i.e., reflective of financial assurance amount for total reclamation costs in lieu of an amount solely for disturbed acreage), the upper range is on the order of $5,492.25, with an average amount on the order of approximately $1779.62 per acre. Including all 34 sites where both an approved financial assurance amount and amount of disturbed acreage was reported, the average cost
for reclamation per disturbed acre was $2,698.17. OMR has historically used $5,000 per acre as a general and reasonable cost for reclamation of land disturbed by surface mining with a proposed end use as open space.

Enforcement: A preliminary evaluation of enforcement related activities was reviewed in regards to off-site encroachment beyond the approved reclamation plan boundary, and commencement of reclamation in situations where a mine characterized as idle became abandoned since no IMP was submitted by the operator and subsequently approved by the County in a timely manner.

Off-site Encroachment from the Approved Reclamation Plan Mining Footprint: Seven out of 43 surface mining operations (16 percent) have reported disturbed acreage in excess of the amount of acreage set forth in their respective approved reclamation plan. Overall, about 69 acres outside the approved reclamation plan footprint for seven sites are reported as disturbed. These surface mining operations, and associated disturbed and approved acreages, are:

- Hart Quarry (CA Mine ID #91-47-0001) reports 30 disturbed acres out of an approved 7 acres.
- Wolford Pit (CA Mine ID #91-47-0005) reports 9.25 acres out of an approved 7.8 acres.
- Yreka Transit Mix, Inc. (CA Mine ID #91-47-0009) reports 40 disturbed acres out of an approved 35 acres.
- Hopkins Pit (CA Mine ID #91-47-0019) reports 10 disturbed acres out of an approved 7.9 acres.
- Menne Pit (CA Mine ID #91-47-0033) reports 22 disturbed acres out of an approved 4 acres.

- M1 South Pit (CA Mine ID #91-47-0039) reports 2.24 disturbed acres out of 2 approved acres.

- Soda Springs Quarry (CA Mine ID #91-47-0061) reports 30 disturbed acres out of 10.90 approved acres.

Idle Mines: Three mines are noted as idle.

- Silva Quarry (CA Mine ID #91-47-0002) was idle as of December 1, 2002, and subsequently certified reclaimed by the County in December 3, 2004.

- The Kidder Creek Mine (CA Mine ID #91-47-0018) encompasses a reported 5 acres, and was reported as idle on December 12, 2001. The reclamation plan and financial assurance amount is noted as pending. This mine is characterized as a streambed mining operation. There is no IMP in place, reclamation is noted as not started, and the site is now deemed abandoned.

- Timberhitch Pits (CA Mine ID #91-47-0055) encompasses a reported 5 acres, and is reported as idle since September 15, 2002. The reclamation plan was approved on March 3, 1993, with a financial assurance instrument established for the amount of $2,600 on May 1, 2002, and last reviewed by the County on July 21, 2006. There is no IMP in place, and the site is now deemed abandoned.

AB 3098 Status: OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates or other mined materials to state or local agencies. For OMR to place a mining operation on the AB 3098 List, the surface mining operation must meet all of the following conditions:

- The operation has an approved reclamation plan;

- The operation has an approved financial assurance;

- The operation has filed its annual report;

- The operation has paid its reporting fee; and

- The operation has had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The surface mining operation may be on the AB 3098 List if it has a pending appeal with the SMGB regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations, are not listed, and thus, are deficient in one or more of the conditions outlined above. A total of 30 surface mine sites, or 70 percent of all sites within the County, are listed on the AB 3098 list.

Comparison with Other Lead Agencies: As noted in the SMGB's Information Report 2007-01 pertaining to SMARA lead agency performance, it was noted, based on 2005 data, that statewide performance of lead agencies in the area of performing inspections of surface mine sites within their respective jurisdiction, at least once each calendar year, is moderate (66-75 percent), with the overall quality of such inspections inferred to be poor. Lead agencies performance in the annual review and adjustment of financial assurances was poor, averaging 29 percent, with 91 percent of the lead agencies performing below 50 percent. Furthermore, as of 2002, overall financial assurances were un-realistically low. Enforcement of SMARA in regards to enforcement of IMPs was deemed almost non-existent.

In regards to overall performance of the County as a SMARA lead agency in 2007 in comparison with other lead agencies, the following findings were offered:

- The County was performing significantly below the state average in regards to inspections (53 percent of the sites within the County's jurisdiction in comparison to the state average of 66-75 percent as of 2005).

- The County was performing significantly below the state average in regards to annual review and adjustment of financial assurances (5 percent of the sites within the County's jurisdiction in comparison to the state average of 29 percent).

- A total of 22 surface mine sites, or 51 percent of the surface mine sites within the County, did not receive both a required inspection and an required financial assurance cost estimate review and adjustment for year 2007.

- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports revealed un-realistically low numbers. This is reflective of inadequate review and adjustment of the financial assurance amount, albeit consistent with such evaluation of the cost per acre set aside for reclamation statewide.

- In regards to the County's efforts to enforce SMARA, 1) seven out of 43 surface mining operations (16 percent) have reported disturbed acreage in excess of the amount of acreage set forth in their respective approved reclamation plans, 2) two sites may be deemed abandoned since their IMPs were approved, and 3) as of 2005, 20 percent of the sites within the County were noted as requiring IMPs.

- The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations, were not listed, and thus, are deficient in one or more of the conditions required to be on the AB 3098 List.

CURRENT CONSIDERATIONS: In its January 22, 2009, correspondence the County summarized its achievements since July 10, 2008.

- Securing necessary resources to meet its statutory obligations. Resources for allocation of a .75 staff to the program were attained, and steps to incorporate SMARA facilities into the County's existing data management system have been taken. In addition, Pacific Municipal Consultants (PMC) was retained in September 2008 to perform on-site mine inspections, review annual financial assurance cost estimates, review financial assurance mechanisms, and conduct training of County staff.

- 40 out of 41 inspections were performed in 2008. Despite several violations that have been reported (i.e., unpermitted and illegal expansion of an existing surface mining operation beyond the boundaries as defined by the existing approved reclamation plan, inadequate financial assurance amount, etc.), no inspection has been performed for Truck Village (CA Mine ID # 91-47-0056) at the time this Executive Officer's report was prepared. The Executive Officer understands that the County is preparing to inspect the site, and has invited OMR to participate in such inspection, albeit enforcement action will be required.

- Inspection reports were filed for 23 of the mine sites by end of 2008, with the reminder anticipated to be filed by end of January 2009.

- Written notice to all operators by the County was issued advising of the need for updating financial assurances cost estimates. Twenty-nine responses have been received as of January 22, 2009, with 25 of these approved by the County, and four not approved due to deficiencies in the reporting information. Notices of Violations are being considered for those operators who have been non-responsive.

- Various enforcement actions have been taken toward Tschopp Kidder Creek (CA Mine ID # 91-47-0018), Timberhitch/Butte Creek Minerals, Ltd. (CA Mine ID #91-47-0055), and Truck Village (CA Mine ID #91-47-0056). However, efforts to bring certain sites into compliance, notably, Truck Village have not been timely.

The County has indicated in its January 22, 2009, correspondence that it plans to:

- Continue its review and evaluation of financial assurance cost estimates;

- Continue enforcement efforts, as appropriate;

- Complete remaining inspections and enforcement actions, as appropriate;

- Continue ongoing training of staff;

- Continue use of consultants to assist in the County's SMARA program;
- Resolve issues pertaining to the status of the Tschopp Kidder Creek with the County's Planning Commission and OMR; and
- Update the County's fee program for mine operators.

EXECUTIVE OFFICER'S RECOMMENDATION: The County has made significant progress in fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and facilitating compliance among the surface mining operations within its jurisdiction. The County is conducting site inspections at least once each calendar year, and adjusting the financial assurances annually, as appropriate. Several areas for improvement have been identified and considerations to enhance the County's overall program and efforts have been provided in this Executive Officer's report.

Several issues have been raised by concerned parties for the Tschopp Kidder Creek Mine, Nash Pit, Timberhitch/Butte Creek Minerals, Ltd., and Truck Village. Should the County not address these issues in an appropriate manner, SMARA provides a mechanism in which the Director of the Department of Conservation (DOC; or OMR on behalf of DOC) can consider issuance of a 15-Day Notice. PRC Section 2774.1(f) states:

> "T*he lead agency has primary responsibility for enforcing this chapter and Section 2207. In cases where the board is not the lead agency pursuant to Section 2774.4, enforcement actions may be initiated by the director pursuant to this section only after the violation has come to the attention of the director and either of the following occurs:*
>
> *(1) The lead agency has been notified by the director in writing of the violation for at least 15 days, and has not taken appropriate enforcement action.*
>
> *(2) The director determines that there is a violation which amounts to an imminent and substantial endangerment to the public health of safety, or to the environment…"*

When imminent and substantial endangerment exists, PRC Section 2774.1(d) states:

> "*If the lead agency or the director determines that a surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the Attorney General, on behalf of the director, may seek an order from a court of competent jurisdiction enjoining that operation.*"

In summary, it is the Executive Officer's opinion that the County's performance as a lead agency has much improved and is considered to be functioning at a moderate level. Thus, it is the Executive Officer's recommendation that no further action is taken by the SMGB in regards to the County's ability to fulfill its obligations and responsibilities under SMARA.

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that to its satisfaction, no deficiencies remain uncorrected]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, that the deficiencies previously noted have been corrected to the satisfaction of this Board, and that no further action is required by this Board.

[or]

[Should the SMGB determine that the County is making significant progress, but certain deficiencies remain uncorrected, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the Board continue to monitor the County's progress.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make appreciable progress, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to Siskiyou County pursuant to Public Resources Code Section 2774.4(a)(c).

Respectfully submitted:

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Stephen M. Testa
Executive Officer