



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

**For Meeting Date: March 10, 2011**

### **Agenda Item No. 6: Approval of Draft Agreement Between the State Mining and Geology Board and the County of Alpine Pertaining to Lead Agency Status Pursuant to the Surface Mining and Reclamation Act.**

**INTRODUCTION:** In 2007, the Department of Conservation, Office of Mine Reclamation (OMR) established the Lead Agency Review Team (LART). The LART completed its Lead Agency Review Report for the County of Alpine (County), and provided a summary to the SMGB of its audit of the County's Surface Mining and Reclamation Act (SMARA) program to the SMGB at its December 9, 2010, regular business meeting. The SMGB upon receiving the LART report directed the Executive Officer to prepare a 45-Day Notice to Correct Deficiencies for the SMGB's consideration at its next scheduled meeting. The County has indicated that it would forfeit its SMARA lead agency responsibilities and obligations to the SMGB, with exception to permitting, assuming that an agreement could be reached to allow a mechanism for the transfer of their SMARA lead agency role. By reaching agreement for a voluntary assumption of lead agency authority by the SMGB, the parties will save considerable time and money which otherwise would be necessary if the administrative takeover process had to be followed. The SMGB is considering draft agreement language, which upon approval, would be forwarded to the County for their review and concurrence.

**STATUTORY AUTHORITY:** Public Resources Code (PRC) Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states:

*“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 that lead agency under this chapter, except for permitting authority.”*



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*(b) If, no sooner than three years after the board has taken action pursuant to subdivision (a), the board finds, after a public hearing, that a lead agency has corrected its deficiencies in implementing and enforcing this chapter, and the rules and regulations adopted pursuant to this chapter, the board shall restore to the lead agency the powers assumed by the board pursuant to subdivision (a)."*

Public Resources Code Sections 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

*"(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207."*

PRC Sections 2774.4(d) and (e) provide an administrative process for a public hearing and adoption of findings for assumption of certain SMARA powers of the lead agency, following issuance of the 45-Day Notice of Deficiencies, and states:

*"(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.*

*(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a) the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:*

- (1) The action to be taken by the board.*
- (2) Why the board decided to take the action.*
- (3) Why the action is authorized by, and meets the requirements of, subdivision (a).*

*In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and*



*exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.*

*(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency."*

**EXECUTIVE OFFICER'S RECOMMENDATION:** A SMARA lead agency need only fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a), for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority. Based on discussions with the County, the County, for a variety of reasons, wishes to forfeit its SMARA lead agency responsibilities and obligations, and would like to pursue an agreement between the County and the SMGB to transfer its SMARA responsibilities.

By reaching agreement for a voluntary assumption of lead agency authority by the SMGB, the parties will save considerable time and money which otherwise would be necessary if the administrative takeover process had to be followed. Thus, the Executive Officer recommends that the SMGB approve the draft agreement between the County and the SMGB for the transfer of the County's SMARA lead agency role, direct the Executive Officer to work with the SMGB's legal counsel and the County, in finalizing the agreement. Once finalized, the agreement would be placed before the SMGB's Chairman for signature.

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

Motion No. 1 – Approval of the draft agreement:

*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, approve the draft agreement between the County of Alpine and the SMGB for the transfer of the County's SMARA lead agency role.*



**And,**

Motion No. 2 – Direct Executive Officer to finalize the agreement:

*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 work with the board's legal counsel and the County of Alpine in preparation of a final agreement with the intent to transfer the County of Alpine SMARA lead agency obligations and responsibilities to the SMGB.*

Respectfully submitted:

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Stephen M. Testa  
Executive Officer

