



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: May 12, 2011

Agenda Item No. 12: Approval of Recommended Statutory Language to Clarify Public Resources Code Section 2774(c) pertaining to Lead Agency Certification of Reclamation Plans pursuant to the Surface Mining and Reclamation Act.

INTRODUCTION: At its March 10, 2011, meeting the State Mining and Geology Board (SMGB) Policy and Legislation Committee (Committee) discussed Public Resources Code (PRC) Section 2774(c) under the Surface Mining and Reclamation Act (SMARA), which requires a lead agency to certify to the Director of the Department of Conservation (DOC) and also submit to the director for use in reviewing the reclamation plan or plan amendments 1) information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information; and 2) a reclamation plan is in compliance with the applicable requirements of Article 1 of the SMGB, regulations, commencing with CCR Section 3500. Specifically, the issue is that staff of the local agency cannot make a conclusory determination that a reclamation plan is complete and in compliance with SMARA. Only the decision-makers can make such a conclusory determination. Thus, an amendment to this statute was considered that interprets this requirement to mean that the Planning Director of an agency makes a preliminary determination subject to later consideration by the decision-makers in a public hearing. Proposed amended legislative language was proposed for the whole SMGB approval consideration.

Following discussion among Committee members, the following amended language for PRC Section 2774(c), with strikeouts and italicized additions, was proposed.

“Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. ~~The lead agency~~ *An authorized representative of the lead agency shall certify, on a preliminary basis,* to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.”



Executive Officer's Report

Committee Member Garner moved for the proposed amended language to be forwarded to the whole SMGB for approval consideration. Committee Member Licari seconded and the motion carried with a unanimous voice vote.

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer characterizes the proposed amended language, and that such proposed amended change cleans up a procedural error in existing statute. The Executive Officer concurs with the Committee's recommendation and recommends that the whole SMGB approves the Committee's proposed amended language to PRC Section 2774(c). Should the SMGB approve the proposed amended language, such language will be forwarded to the DOC for consideration in a clean-up bill.

RECOMMENDED MOTION:

To approve the recommended amended language to PRC Section 2774(c):

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the Board approve the proposed amended legislative language to Public Resources Code 2774(c), and upon approval forward such language to the Director of the Department of Conservation for consideration in a clean-up bill.

Respectfully submitted:

Stephen M. Testa
Executive Officer

