



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

For Meeting Date: March 14, 2013

**Agenda Item No. 3: Review of Lead Agency Response to the State Mining and Geology Board's Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mariposa Pursuant to the Surface Mining and Reclamation Act (SMARA). Following Review, the Board may take appropriate action in accordance with Public Resources Code section 2774.4(a).**

**INTRODUCTION:** At its June 14, 2012 regular business meeting, the State Mining and Geology Board (SMGB), based on the May 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on Mariposa County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County of Mariposa (County) pursuant to Public Resources Code (PRC) Section 2774.4(a). The Notice was issued on June 21, 2012, and a response from the County was received on August 23, 2012. At its September 13, 2012 regular business meeting, and based on review of the County's response to the Notice, the SMGB moved to continue this matter to March 2013. The SMGB also directed the County to be prepared in March 2013 to address the status of its SMARA program, the County's efforts to incorporate a funding mechanism into its ordinance to support such program, and for the County to forward copies of the next round of inspection reports to the SMGB for review by the Executive Officer.

**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 that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

*"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."*

Public Resources Code Section 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*



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*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."*

**BACKGROUND:** At its June 14, 2012, regular business meeting, the SMGB, based on the May 2012 LART Report on Mariposa County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County pursuant to PRC Section 2774.4(a). The Notice was issued on June 21, 2012, and a response from the County was received on August 23, 2012.

**COUNTY OF MARIPOSA SMARA PROGRAM:** Eight surface mining operations were reported to exist within the jurisdiction of the County (Table 1). Five were characterized as active, two abandoned, and one idle. The commodities produced include sand and gravel, with some stone, silica and gold (Table 1).

In review of the LART report for the County of Mariposa, several deficiencies are reported. Deficiencies noted by LART included out-of-date financial assurance cost estimates, out-of-date financial assurance mechanisms, lack of adequate documentation demonstrating approval of reclamation plans, absence of Interim Management Plans (IMPs), no demonstration of issuance of a Conditional Use Permit, inconsistencies in providing inspection reports, inadequate inspection reports, and failure to enforce SMARA (Table 1).

Table 1 Summary of Surface Mining Operations situated in the County of Mariposa								
Surface Mine Name	Mine Identification Number	Operator	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage	Produced Product	Deficiencies Noted
Colorado Quartz Mine	CA Mine ID#91-22-0004	Colorado Quartz Gold Corporation	Active	2011	Not noted	1.1	Gold placer	1,2,4
Bear Valley Quarry	CA Mine ID#91-22-0005	Mariposa Aggregates	Abandoned	2011	20	60	Silica	1,2,4
Mount Bullion Quarry	CA Mine ID#91-22-0006	Mariposa Aggregates	Idle	No report noted	250	0	Not reported	2
Yosemite Slate Quarry	CA Mine ID#91-22-0007	Mariposa Flagstone/Mariposa Slate	Active	2011	1.61	1.6	Dimension stone	2
Mount Gaines	CA Mine ID#91-22-0008	Mount Gaines Rock	Active	2010	40	8.75	Aggregate, stone and fill dirt	1,2
Fremont Long Consolidated	CA Mine ID#91-22-0009	Mark Long	Active	2011	9.22	19	Decomposed granite	2,4
Iron Springs Consolidated	CA Mine ID#91-22-0010	Mark Long	Active	2011	18	3.5	Stone	2
Bear Creek Slate Quarry	CA Mine ID#91-22-0011	Mariposa Decco Rock, Inc.	Abandoned	2011	9.9	2.27	Stone	1,2,4

**EXECUTIVE OFFICER'S FINDINGS:** Following issuance of the 45-Day Notice to Correct Deficiencies in June 2012, and reviewing the response provided by the County in August 2012, the following findings were offered at the SMGB's September 13, 2012, regular business meeting:

**Category [ 1 ]** - A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;

**Category [ 2 ]** - A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

**Category [ 3 ]** - A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

**Category [ 4 ]** - A lead agency has failed to take appropriate enforcement actions as required by SMARA;

**Category [ 5 ]** - A lead agency has intentionally misrepresented the results of inspections required under SMARA; and

**Category [ 6 ]** - A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

**Category [1] - Finding No. 1:** The County failed to maintain adequate financial assurances as a SMARA lead agency.

This deficiency had been adequately addressed.

**Category [1] - Finding No. 2:** The County continues to fail to identify the key issues and formulate a strategy (i.e., identify need for an amended reclamation plan, commence reclamation and site closure, etc.) to effectively administer and implement SMARA in an efficient and timely manner.

This deficiency had been adequately addressed.

**Category [2] - Finding No. 3:** The County failed to provide adequate inspection reports while serving as a SMARA lead agency.

This deficiency had been adequately corrected, but with comment.

**Category [4] - Finding No. 4:** The County failed to adequately enforce SMARA and the SMGB's regulations.

This deficiency had been adequately addressed.

**SMGB ACTION FOLLOWING REVIEW OF THE COUNTY'S RESPONSE TO THE NOTICE:** At its September 13, 2012, regular business meeting, and based on review of the County's response to the

Notice, the SMGB moved to continue this matter to March 2013. The SMGB also directed the County to be prepared at such time to address the status of its SMARA program, the County's efforts to incorporate a funding mechanism into its ordinance to support such program, and for the County to forward copies of the next round of inspection reports to the SMGB for review by the Executive Officer.

**EXECUTIVE OFFICER'S RECOMMENDATIONS:** A SMARA lead agency need only fail in one of the six categories 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. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to take appropriate actions and make a demonstration that the lead agency is committed to maintaining an effective SMARA program, and to fulfilling its obligations and responsibilities as a lead agency in accordance with SMARA and the SMGB's regulations.

The consideration before the SMGB is whether the County has clearly demonstrated that it has the resources and commitment to adequately fulfill its SMARA responsibilities, to the satisfaction of the SMGB. The Executive Officer, based on review of the administrative record contained herein, recommends that the SMGB finds that the County has demonstrated its commitment to fulfilling its responsibilities and obligations as a lead agency pursuant SMARA. The Executive Officer does not recommend that the SMGB consider assumption in accordance with PRC Section 2774.4(a).

The SMGB was complimentary toward the County in its initial response, and the County has implemented significant steps and actions to improve on its SMARA program. However, in light of not having an opportunity to review the most recent round of inspection reports, it is the Executive Officer's recommendation that the SMGB request for the County to forward copies of the next round of inspection reports to the SMGB for review by the Executive Officer remain, and upon review by the Executive Officer, report back to the SMGB promptly.

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

Option No. 1 – Deficiencies corrected:

[Should the SMGB determine that the County is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

*Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the County of Mariposa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the City has addressed the deficiencies to the satisfaction of the Board.*

[or]

Option No. 2 – Defer action:

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

*Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that the County of Mariposa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that the most recent round of inspection reports have not been provided for review and comment by the Executive Officer.*

[or]

Option No. 3 – Deficiencies not corrected and need to schedule a public hearing:

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

*Mr. Chairman, I move that the SMGB, in light of the evidence presented before it today and contained in the Executive Officer's Report, find that it has determined that the County of Mariposa has not corrected the deficiencies to the satisfaction of the board, and direct the Executive Officer to schedule a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public, pursuant to Public Resources Code Sections 2774.4(c).*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer