



# STATE MINING AND GEOLOGY BOARD

## EXECUTIVE OFFICER'S REPORT

For Meeting Date: May 10, 2012

### **Agenda Item No. 11: Office of Mine Reclamation, Lead Agency Review Team (LART) Reports on County of Colusa.**

**INTRODUCTION:** In 2007, the Department of Conservation, Office of Mine Reclamation (OMR) established the Lead Agency Review Team (LART). An overview of the LART program was previously presented to the State Mining and Geology Board (SMGB) in July 2009. The LART has completed its lead agency review report for the County of Colusa. LART will provide a summary of the results of its review of this SMARA lead agencies.

**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 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*



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*lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207.”*

**BACKGROUND:** California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA pursuant to Public Resources Code (PRC) Section 2728 defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a surface mining operation or reclamation plan. Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled “*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*” This evaluation assessed the lead agency’s performance of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including primarily financial constraints, and limited or lack of technical expertise. As of March 2011, LART has commenced review of 18 SMARA lead agencies.

**County of Colusa SMARA Program:** Thirteen surface mining operations are located within the jurisdiction of the County of Colusa. Five are characterized as active, two idle, three closed with no intent to resume mining, and three certified closed and reclaimed. The primary commodity is sand and gravel, with some dimension stone.

The LART report for the County of Colusa has been completed. Five of the 13 surface mining operations were visited. Notably, LART reports that no SMARA surface mining operation within the jurisdiction of the County has been inspected since 2003 (Deficiency No. 2). Other deficiencies included inadequate financial assurances (Deficiency No. 2), failure to issue a permit to mine (Deficiency No. 1), and failure to take any enforcement actions (Deficiency No. 4). LART is prepared to provide an overview of their review of the County’s SMARA program.

**EXECUTIVE OFFICER’S RECOMMENDATION:** The information being provided by OMR is for the SMGB’s information. However, based on the current status of the SMARA program in the County of Colusa, the Executive Officer recommends that a 45-Day Notice to Correct Deficiencies (Notice) be issued to the County. Should the lead agency not correct the deficiencies to the satisfaction of the SMGB within the 45-day period, a public hearing be scheduled pursuant to PRC Section 2774.4(c).



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

[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 the Board today and contained in the Executive Officer's Report, find that the County of Colusa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.*

[or]

[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 the Board today and contained in the Executive Officer's Report, find that the County of Colusa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.*

[or]

[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 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 County of Colusa pursuant to Public Resources Code Sections 2774.4(a) and (c).*

Respectfully submitted:



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Stephen M. Testa  
Executive Officer

## **Exhibit A**

# **LART Report on the County of Colusa**

