



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: June 13, 2013

Agenda Item No. 6: 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 Del Norte 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 regular business meeting held on December 13, 2012, the State Mining and Geology Board (SMGB) received a report from the Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) dated November 21, 2012, on the overall status and performance status of the County of Del Norte (County) Surface Mining and Reclamation Act (SMARA) program. Deficiencies pursuant to PRC Section 2774.4(a) were reported. Based on the SMGB's review of the LART report, the SMGB issued a 45-Day Notice to Correct Deficiencies (Notice) to the County dated December 31, 2012, with a response to the Notice from the County dated February 4, 2013. The SMGB will 1) assess whether the County has adequately addressed all outstanding deficiencies, and 2) consider, based on the response received from the County, whether the SMGB will take appropriate action in accordance with Public Resources Code (PRC) Section 2774.4(a).

STATUTORY AUTHORITY: 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."

PRC 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



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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: The review of the County's SMARA program was performed in 2011, with the LART report completed and forwarded to the County on April 11, 2012. The County responded to the LART report on April 23, 2012. At its regular business meeting held on December 13, 2012, the SMGB received a report from the OMR LART dated November 21, 2012, on the overall status and performance status of the County's SMARA program. Deficiencies were reported. Based on the SMGB's review of the LART report, the SMGB issued a 45-Day Notice to Correct Deficiencies (Notice) to the County dated December 31, 2012, with a response to the Notice from the County dated February 4, 2013. A visit to the County to discuss its SMARA program and visit select sites was performed by the Executive Officer on February 25, 2013.

County of Del Norte SMARA Program: Ten surface mining operations are reported to exist within the jurisdiction of the County (Table 1). The deficiencies noted included, albeit not limited to, the following:

- Failure to approve reclamation plans and financial assurances that were consistent with SMARA;
- Failure to conduct adequate and complete inspections;
- Failure to submit a financial assurance cost estimate;
- Failure to obtain an Interim Management Plan (IMP) for two sites; and
- Failure to take appropriate enforcement action.

**Table 1
 Summary of Surface Mining Operations Situated in the County of Del Norte**

Surface Mine Name	CA Mine Identification Number	Surface Mine Status	Last Inspection Report on File (year)	Approved Acreage	Disturbed Acreage (2008 Annual Report/ Aerial Photo)	Produced Product	Deficiencies Noted
Sultan Bar	#91-15-0001	Idle		5	5/0	Sand and gravel	2
Huffman Bar	#91-08-0002	Active		18	18/0	Sand and gravel	2
Ranch Bar	#91-08-0003	Closed with no intent to resume		0	0/0	Sand and gravel	1,2,4
Crockett Bar	#91-08-0005	Closed with no intent to resume		10	8/10	Sand and gravel	2
Hole Pit	#91-08-0006	Active		17	17/0	Rock	2
Stary Quarry	#91-08-0008	Abandoned		17	16/17	Sand and Gravel	1,2,4
Lopez Rock Quarry	#91-08-0010	Active		6	5/0	Rock	2
Maris Pit	#91-08-0012	Abandoned		4	4/3	Sand and gravel	1,2,4
Scheve Rock Pit	#91-08-0014	Active		12	12/0	Sand and gravel	2
Jacobs Quarry	#91-08-0016	Active		7	7/0	Rock	2

Specific deficiencies are summarized below:

Deficiency 1: The County, in regards to issuance of permits and approval of reclamation plans and amended reclamation plans, has either administered such actions incorrectly, or such actions were not undertaken by the County (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)). Three surface mining operations were allowed by the County to become abandoned with reclamation incomplete. Furthermore, the County failed to require preparation of an amended reclamation plan for the Stary Quarry (CA Mine ID #91-08-0008) following excavation beyond the depth noted in the approved reclamation plan. Surface mining operations affected by this deficiency include:

- Ranch Bar (CA Mine ID #91-08-0003)
- Stary Quarry (CA Mine ID #91-08-0008)
- Maris Pit (CA Mine ID #91-08-0012)

County's Response to Deficiency: The County has certified the Ranch Bar site as reclaimed and subsequently closed. The operators for the Stary Quarry and Maris Pit have indicated an intent to resume mining, and are pursuing active status via SB 108. This deficiency has been adequately addressed.

Deficiency 2: The County has failed to inspect or cause adequate inspection of all surface mining operations within their jurisdiction as required by SMARA. Inspection reports must make reference to any reclamation or performance requirements, as set

forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. Such inspection reports must also include any quantification of site conditions, where applicable. SMGB regulations (CCR Section 3504.5(f)) state 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.”*

Inspection reports failed to identify substantial deviations from respective approved reclamation plan. Such violations included exceeding depth of mining, encroachment beyond reclamation plan boundaries, mine abandonment, among others. Furthermore, the County continues to maintain a conflict of interest where the County has a financial interest in one surface mining operation (Maris Pit; CA Mine ID #91-08-0012). Inadequate inspection reports exist for the following surface mining operations:

- Sultan Bar (CA Mine ID #91-08-0001)
- Huffman Bar (CA Mine ID #91-08-0002)
- Ranch Bar (CA Mine ID #91-08-0003)
- Crockett Bar (CA Mine ID #91-08-0005)
- Hole Pit (CA Mine ID #91-08-0006)
- Stary Quarry (CA Mine ID #91-08-0008)
- Lopez Rock Quarry (CA Mine ID #91-08-0010)
- Maris Pit (CA Mine ID #91-08-0012)
- Scheve Rock Pit (CA Mine ID #91-08-0014)
- Jacobs Quarry (CA Mine ID #91-08-0016)

County’s Response to Deficiency: The Surface Mining Inspection Reports for 2012 were reviewed. Although completely filled out, the inspection reports lack supportive documentation and information per CCR Section 3504.4(f), and could be significantly improved upon. The anticipated approval by the SMGB of a revised inspection report form will serve as a useful tool for lead agencies in providing more informative reports.

Deficiency 4: The County failed to take appropriate enforcement actions as required by SMARA. The County failed to take appropriate enforcement action for the Stary Quarry (CA Mine ID #91-08-0008) following excavation beyond the depth noted in the approved reclamation plan.

Based on violations observed by OMR LART staff during conduct of site visits to three specific surface mining operations, the County 1) has not fulfilled its responsibilities and obligations as a SMARA lead agency, and 2) has not demonstrated an ability to administer its SMARA program in an appropriate manner consistent with the intent of SMARA and the SMGB’s regulations. No Notice of Violation or subsequent Order-to-Comply, has ever been issued by the County to certain surface mine operations within

its jurisdiction where violations have been identified (refer to Deficiency No. 2; Category 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6)). Surface mining operations that have been identified where the County failed to take appropriate enforcement actions include:

- Ranch Bar (CA Mine ID #91-08-0003)
- Stary Quarry (CA Mine ID #91-08-0008)
- Maris Pit (CA Mine ID #91-08-0012)

County's Response to Deficiency: Based on the County's response to Deficiency No. 1, this Deficiency has been adequately addressed.

EXECUTIVE OFFICER'S RECOMMENDATIONS: It is the opinion of the Executive Officer that the County has addressed all deficiencies, with exception to the completeness and adequacy of inspection reports. The Surface Mining Inspection Reports for 2012 were reviewed. Although completely filled out, the inspection reports lack supportive documentation and information per CCR Section 3504.4(f), and could be significantly improved upon. Thus, it is recommended that the County provide the SMGB copies of all 2013 inspection reports, upon completion by the County, for review and comment, and that the Executive Officer can bring this matter back to the SMGB should any issues remain unresolved.

In review of the County's response to the 45-Day Notice to Correct Deficiencies, the Executive Officer does not recommend the SMGB take action in accordance with PRC Section 2774.4(a), and recognize that the County has adequately addressed the deficiencies to the satisfaction of the SMGB.

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

Option No. 1 – Deficiencies addressed to the satisfaction of the SMGB:

[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 Del Norte is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the County has addressed the deficiencies to the satisfaction of the Board.

[or]

Option No. 2 – Deficiencies partially corrected to the satisfaction of the SMGB:

[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 Del Norte is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and can address remaining deficiencies to the satisfaction of the SMGB by working with the Executive Officer, provide copies of all 2013 inspection reports to the Executive Officer for review upon completion, and that the Executive Officer bring this matter back to the SMGB should any issues remain unresolved.

[or]

Option No. 3 – Deficiencies not corrected to the satisfaction of the SMGB:

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County has failed 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, has determined that the County of Del Norte 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:



Stephen M. Testa
Executive Officer