



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 13, 2012

Agenda Item No. 5: Assumption Consideration Following Issuance of a 45-Day Notice to Correct Deficiencies to the County of Mariposa Pursuant to the Surface Mining and Reclamation Act (SMARA).

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. The SMGB will consider, based on the response received from the County, whether the SMGB will assume any or all of the powers of the County under the Surface Mining and Reclamation Act (SMARA), with exception to permitting.

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



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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.”

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 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, limited or lack of internal technical expertise, and overall low priority. As of March 2011, LART commenced review of 18 SMARA lead agencies.

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

ISSUANCE OF THE 45-DAY NOTICE TO CORRECT DEFICIENCIES: At its June 12, 2012, regular business meeting, the SMGB moved to issue a 45-Day Notice to Correct Deficiencies to the County pursuant to PRC Section 2774.4. The 45-Day Notice to Correct Deficiencies, dated June 21, 2012, was forwarded to the County. The County subsequently responded on August 23, 2012.

There are six categories of violations listed in PRC Section 2774.4 under which the SMGB may determine to assume the lead agency’s responsibilities and obligations, with exception to permitting. These six categories are:

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;

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

COUNTY OF MARIPOSA RESPONSE TO THE 45-DAY NOTICE TO CORRECT DEFICIENCIES: The following specific deficiencies in the County's administration of SMARA are identified with respect to these surface mines within the County's jurisdiction:

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)). Notably, such deficiencies included out-of-date financial assurance cost estimates and mechanisms (CA Mine ID# 91-22-0011), lack of adequate documentation demonstrating approval of reclamation plans (CA Mine ID #91-22-0010 and CA Mine ID #91-22-0011), failure to amend reclamation plans (CA Mine ID #91-22-0005 and CA Mine ID #91-22-0008), failure to approve Interim Management Plans or commence reclamation (CA Mine ID #91-22-0004 and CA Mine ID #91-22-0011), and allowing conduct of surface mining operations without a permit issued by the County (CA Mine ID #91-22-0010). Surface mining operations affected by one or several of these deficiencies include:

- Colorado Quartz Mine (CA Mine ID #91-22-0004)
- Bear Valley Quarry (CA Mine ID #91-22-0005)
- Mount Gaines (CA Mine ID #91-22-0008)
- Iron Springs Consolidated (CA Mine ID #91-22-0010)
- Bear Creek Quarry (CA Mine ID #91-22-0011)

Analysis Based on County's Response: The County concurs that it has either administered actions incorrectly, or actions were not taken by the County. The County has taken all reasonable actions at this time to resolve this deficiency. Remaining actions include:

- **Colorado Quartz Mine (CA Mine ID #91-22-0004):** The County alleges confusion as to what constitutes an idle mine since the County states that the County was not copied by the operator on Annual Reports. Regardless, the operator has indicated intent to

resume mining and is pursuing re-classification as offered under SB 108.

- Bear Valley Quarry (CA Mine ID #91-22-0005): The County has taken the necessary steps to proceed toward site closure which is anticipated to be completed by April 2013.
- Mount Gaines (CA Mine ID #91-22-0008): The County has taken appropriate steps to process an amended reclamation plan which it anticipates to be completed by end of 2012.
- Iron Springs Consolidated (CA Mine ID #91-22-0010): No deficiency exists.
- Bear Creek Quarry (CA Mine ID #91-22-0011): The County has taken steps to revoke the mining permit and seize the financial assurances since this site is considered abandoned. However, another public hearing is scheduled for September 7, 2012, since the operator has indicated intent to resume mining and to pursue re-classification as offered under SB 108. Should this not be the case, the County has indicated it is prepared to deem the site abandoned, revoke the permit, and commence reclamation and site closure.

Deficiency 2: The County has failed to inspect or cause the inspection of all surface mining operations within their jurisdiction as required by SMARA since 2003. 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.*” Such information must be provided in the inspection reports. Inadequate inspection reports exist for the following surface mining operations:

- Colorado Quartz Mine (CA Mine ID #91-22-0004)

- Bear Valley Quarry (CA Mine ID #91-22-0005)
- Mount Bullion (CA Mine ID #91-22-0007)
- Mount Gaines (CA Mine ID #91-22-0008)
- Fremont Long Consolidated (CA Mine ID #91-22-0009)
- Iron Springs Consolidated (CA Mine ID #91-22-0010)
- Bear Creek Quarry (CA Mine ID #91-22-0011)

Analysis Based on County's Response: The County has inspected some of the sites since such time, but not all at least once each calendar year. Specific comments are:

- Colorado Quartz Mine (CA Mine ID #91-22-0004): The County claims that no deficiency exists. The site has been inspected every year; however, in review of the inspection report for this site, it remains incomplete and not in full compliance with SMARA and the SMGB's regulations.
- Bear Valley Quarry (CA Mine ID #91-22-0005): The County concurs that inspections have been episodic in nature.
- Mount Bullion (CA Mine ID #91-22-0007): The County concurs that inspections have not been conducted at least annually each calendar year. This site is anticipated to be closed by October 2012, and subsequently confirmed by OMR.
- Mount Gaines (CA Mine ID #91-22-0008): The County concurs that inspections have not been conducted at least annually each calendar year.
- Fremont Long Consolidated (CA Mine ID #91-22-0009): The County concurs that inspections have not been conducted at least annually each calendar year.
- Iron Springs Consolidated (CA Mine ID #91-22-0010): The County concurs that inspections have not been conducted at least annually each calendar year.
- Bear Creek Quarry (CA Mine ID #91-22-0011): The County concurs that inspections have not been conducted at least annually each calendar year.



The inspection reports do not 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.*” Such information was not provided in the inspection reports.

Deficiency 3: The County failed to take appropriate enforcement actions as required by SMARA.

Despite numerous violations observed by OMR staff during conduct of site visits to five 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 a surface mine operation within its jurisdiction (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:

- Colorado Quartz Mine (CA Mine ID #91-22-0004)
- Bear Valley Quarry (CA Mine ID #91-22-0005)
- Mount Bullion (CA Mine ID #91-22-0007)
- Mount Gaines (CA Mine ID #91-22-0008)
- Fremont Long Consolidated (CA Mine ID #91-22-0009)
- Iron Springs Consolidated (CA Mine ID #91-22-0010)
- Bear Creek Quarry (CA Mine ID #91-22-0011)

Analysis Based on County’s Response:

- Colorado Quartz Mine (CA Mine ID #91-22-0004): The County alleges confusion as to what constitutes an idle mine since the County states that the County was not copied by the operator on Annual Reports. Regardless, the operator has indicated intent to resume mining and is pursuing re-classification as offered under SB 108.

- Bear Valley Quarry (CA Mine ID #91-22-0005): The County has taken the necessary steps to proceed toward site closure which is anticipated to be completed by April 2013.
- Mount Bullion (CA Mine ID #91-22-0007): This site is anticipated to be closed by October 2012, and subsequently confirmed by OMR.
- Mount Gaines (CA Mine ID #91-22-0008): The County has taken appropriate steps to process an amended reclamation plan which it anticipates to be completed by end of 2012.
- Fremont Long Consolidated (CA Mine ID #91-22-0009): No deficiencies exist.
- Iron Springs Consolidated (CA Mine ID #91-22-0010): No deficiencies exist.
- Bear Creek Quarry (CA Mine ID #91-22-0011): The County has taken steps to revoke the mining permit and seize the financial assurances since this site is considered abandoned. However, another public hearing is scheduled for September 7, 2012, since the operator has indicated intent to resume mining and to pursue re-classification as offered under SB 108. The County is proceeding to process an application following the operator's intent to mine, or commence reclamation and site closure.

Although Notices of Violations have in the past been issued for certain operations, there is no indication that an Order to Comply or Administrative Penalties have ever been issued by the County to any operation.

EXECUTIVE OFFICER'S FINDINGS: In regards to the specific six categories being considered as noted below, the following findings are offered:

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 has 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 has 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 has 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 has been adequately addressed.

EXECUTIVE OFFICER'S RECOMMENDATION: 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. The County has clearly met these criteria. However, the issuance of a 45-Day Notice to Correct Deficiencies by the SMGB allows for an opportunity for a lead agency to make its case that it is committed to maintaining an effective SMARA program, and 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, and

whether the SMGB should assume the County's lead agency responsibilities, in whole or in part, with the exception to permitting. Since receiving the LART Report in May 2012, and subsequent Notice, the County has taken significant steps to improve its SMARA program. At this time, the question is whether the County is prepared to fulfill its role as a SMARA lead agency based on 1) review of the County's response to the 45-Day Notice to Correct Deficiencies, 2) the County's understanding of SMARA administrative and enforcement processes, and 3) the County's willingness to dedicate the necessary resources required for an effective SMARA program.

The Executive Officer has reviewed the overall status of the County's SMARA program and the County's response to the Notice. Based on review of the administrative record contained herein, the Executive Officer does not recommend assumption.

However, adequate inspection reports are the foundation upon which a determination for adjusting the financial assurance is made, and are how administrative and compliance/enforcement actions to be considered by the lead agency (County) are clearly identified. Overall, the inspection reports are inadequate and do not provide sufficient information to provide for an adequate understanding of site conditions, conditions that are deemed out-of-compliance, nor whether the lead agency needs to consider any specific compliance or enforcement actions. The following general observations, meant to be constructive, are offered:

- Reference to Compliance/Enforcement Triggers: The inspection reports did not contain reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. No performance standards set forth in the reclamation plans or permit conditions are noted. Without such references, the inspection report upon review failed to assure the lead agency that the site conditions meet the requirements of the approved reclamation plan and permit requirements. It should be noted that some sites may have had numerous Conditions of Approval or permit conditions, many of which are directly relevant to reclamation such as steepness of slopes, setbacks, safety requirements, and revegetation performance standards.
- Quantification of Site Conditions: The inspection reports did not 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.” Such information was not provided, or limited in nature, in review of the most current inspection reports.

- Adequate Identification of Violations: The inspection reports did not adequately identify violations and corrective measures. Should a violation or substantial deviation from the existing approved reclamation plan or any Conditions of Approval be determined to exist at time of inspection (i.e., encroachment of disturbed land beyond the reclamation plan boundary), a violation should be noted. The County could then determine upon review of the inspection report whether enforcement or other compliance actions are warranted. Without specific violations being noted in the inspection reports, the County acting as the SMARA lead agency is not in a position to consider and implement appropriate SMARA compliance and/or enforcement actions.
- Annotated Images: The inspection reports did not adequately document site conditions observed during conduct of the inspection through the use of annotated photographs.

The Executive Officer thus recommends that the County invest in adequate training (i.e., attending OMR’s Inspection Workshop), recognizing that adequate mine inspections that fulfill the intent of SMARA and the SMGB’s regulations need to be performed for all surface mine operations by a qualified individual (or individuals) pursuant to PRC Section 2774(b), and CCR Section 3504.5(b), (c) and (d).

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 Mariposa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider assumption.

[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 Mariposa 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 assumption at that time.

[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 schedule a public hearing at a location within the County of Mariposa in order to consider assumption pursuant to Public Resources Code Sections 2774.4.

Respectfully submitted:



Stephen M. Testa
Executive Officer