



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: October 11, 2012

Agenda Item No. 7: Consideration of Proposed Regulatory Language Regarding the Administrative Appeal Process for Removal of Surface Mining Operations from the AB 3098 List.

INTRODUCTION: The Department of Conservation (Department), Office of Mine Reclamation (OMR) periodically publishes a list of mines regulated under the Surface Mining and Reclamation Act (SMARA) that meet provisions set forth under California's Public Resources Code (PRC), Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates, or other mined materials, to state or local agencies. The need for a due process for the removal and reinstatement of a surface mining operation from the AB 3098 List has been recognized by the State Mining and Geology Board (SMGB).

At its November 10, 2010, meeting, the Policy and Legislation Committee (Committee) considered preliminary regulatory concepts and directed its Executive Officer and legal counsel to provide a proposed regulation for the Committee's consideration for its December 9, 2010, meeting. Further discussions were held at the Committee's December 9, 2010, and January 13, February 10, March 10, July 26, and December 8, 2011, scheduled meetings. The Committee, at its July 26, 2011 meeting, moved for the Executive Officer to hold several workshops throughout the state to receive comment on the preliminary proposed language. Due to other commitments and scheduling conflicts, no such workshops were scheduled. At its March 8, 2012, meeting, the Committee concurred with the recommendation of the Executive Officer to defer further consideration of proposed regulations pending resolution of a legislative consideration. In addition, the Department was requested to provide a status report to the Committee as to the progress being made.

Currently, efforts to resolve the issue pertaining to "due process" via legislative action have not been accomplished. A status report was provided by the Department at the Committee's meeting held on September 13, 2012. Revised proposed regulatory language was also considered. Although no specific comments were provided, written correspondence was received by the California Construction and Industrial Materials Association (CalCIMA) was received, questioning the legal authority under SMARA for the SMGB to adopt regulations governing the Department in this area, and expressing a commitment to work collaboratively with the SMGB and the Department toward a solution to the AB 3098 due process issue.



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CONSIDERATION BEFORE THE SMGB: The most recent version of proposed draft regulatory language is before the SMGB. Should such language be deemed acceptable to address due process when the Department is considering removal of a surface mining operation from the AB 3098 list, the SMGB can forward such language to the Department for review and consideration.

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

Recommendation to whole SMGB:

Mr. Chairman, in light of the evidence presented before the State Mining and Geology Board today and contained in the Executive Officer's Report, I move to recommend acceptance of the proposed regulatory language, and for Board to direct its Executive Officer to forward such proposed language to the Director for review and consideration.

Respectfully submitted:



Stephen M. Testa
Executive Officer