For Meeting Date: November 14, 2013

Agenda Item No. 18: Consideration to Adjust the SMARA Lead Agency Administrative Fee Pursuant to Public Resources Code Section 2207(e).

INTRODUCTION: To prevent Surface Mining and Reclamation Act of 1975 (SMARA), and Chapter 2 of the Public Resources Code (PRC), from being unfunded State mandated programs, a lead agency is provided authority to impose a fee upon each mining operation within its jurisdiction to cover the reasonable costs incurred in implementing Chapter 2, commencing with PRC Section 2200, and Chapter 9 (SMARA), commencing with PRC Section 2710.

In September 2004, the State Mining and Geology Board (SMGB) determined that the basis for the flat fee was $184, the total hourly resource cost required to operate the SMGB, times the average hours spent on each mine per year (25.68 hours). The resulting flat fee would calculate to be approximately $4,725, or $12.95 per day; however, the SMGB expected that approximately one-half of this hourly cost, as it pertains solely to the SMGB's lead agency activities, would be offset by additional funds reallocated from portions of the Surface Mining and Reclamation Account (SMRA) funds previously used by the California Geological Survey and from the Office of Mine Reclamation. Therefore, the cost imposed to mine operations was to be $92 per hour times 25.68 hours or $2,363 per year, or approximately $6.50 per day. Thus, the SMGB established regulation for a flat fee to be set at $7.00 per day (rounded to nearest dollar) per mine for each day the mine was subject to the SMGB's SMARA jurisdiction. In 2007, the flat fee was adjusted to $14.00 per day. This equates to $5,110 per mine site per year. The SMGB is considering whether such flat fee should be adjusted.

REGULATORY AUTHORITY:

PRC Section 2207(e) states "*The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).*"

Title 14, CCR Section 3696.5 states "*Board Administration Fee. Each surface mining operation, as defined in Public Resources Code sections 2719, 2727.1, and 2735, and, Title 14 California Code of Regulations, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed each January 31 an annual administration fee of $14 (fourteen dollars) per day for each day of the previous calendar year that the surface mine operation was under the board's jurisdiction as lead agency pursuant to Chapter 9, commencing with Section 2710. The administration fee is due and payable to the State Mining and Geology Board not later than April 1 each year by the surface mine's owner or operator of record on the preceding December 31.*"

BACKGROUND: SMARA and PRC Section 2710 et seq. was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated, and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies (cities, counties, San Francisco Bay Conservation and Development Commission (BCDC), State Mining and Geology Board (SMGB)) for approval, a plan for reclaiming mined lands as well as proof of financial assurances to ensure those mined lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit and reclamation requirements. The Department of Conservation (DOC) and the SMGB provide SMARA lead agency assistance and oversight.

SMARA is a State law that is designed to be implemented primarily by local lead agencies. A lead agency is defined in PRC Section 2200.5 (Chapter 2) and PRC Section 2728 (Chapter 9) as a city, county, the SMGB, and the San Francisco BCDC. To prevent SMARA, and Chapter 2 of the PRC, from being unfunded State mandated programs, a lead agency is provided authority to impose a fee upon each mining operation within its jurisdiction to cover the reasonable costs incurred in implementing Chapter 2, commencing with PRC Section 2200, and Chapter 9 (SMARA), commencing with PRC Section 2710.

<u>Review of Past Funding for SMARA Lead Agency Program Implementation</u>: Throughout the State, lead agencies have established in their local ordinances schedules of specific fees to cover the cost of performing a lead agency service that is related to the running of the lead agency's SMARA program. These service related fees are imposed on each surface mining operation. The nature of a fee varies from a flat fee per specific service, or an hourly-rate fee to perform a service, to a combination of flat fee plus hourly-rate fee. There are 62 cities and 55 counties that are SMARA lead agencies, for a total of 103 SMARA lead agencies. This includes the SMGB, which serves as a SMARA lead agency for three counties, 8 cities and the BCDC, encompassing 49 sites. Not all agencies have fees for the same services.

SMARA provides for, in some instances, the SMGB to assume the role of lead agency for the administration of the Act when a local lead agency is not able to perform that role (ref. PRC Sections 2774.4 and 2774.5). PRC Section 2207(e) specifically provides for the SMGB to impose a fee upon each mining operation to cover its reasonable costs in implementing Chapter 2 and Chapter 9 of the PRC when the SMGB is acting in the capacity of SMARA lead agency.

From 1998 through 2001, the SMGB did not find it necessary to impose an administration fee on those mines within the SMGB's SMARA lead agency jurisdictions to cover the costs of administering the Act. Funds adequate to cover the SMGB's operating costs were derived solely from the Surface Mining and Reclamation Account (SMRA) in the General Fund. This Account received its money from Federal royalty payments to the State under the Mineral Lands Leasing Act. Money from this Account was also used to pay for the DOC's SMARA mineral programs managed by the California Geological Survey (formerly the Division of Mines and Geology) and the Office of Mine Reclamation.

The SMGB is also authorized to receive operating funds from the Mine Reclamation Account (MRA), which derives its monies from the annual reporting fees collected by DOC each year, as well as monies collected by the DOC or the SMGB for SMARA related actions such as the imposition of penalties on mine operators, service fees, or interest on accounts (PRC Section 2207(d)(4)(A)).

In 2004, funding to the DOC and the SMGB from the Surface Mining and Reclamation Account was been curtailed by approximately 45 percent, principally because of the effects of statutory triggers that resulted from the sale of Federal petroleum producing properties to private companies, thereby reducing royalty money going into the SMRA. No substitute-funding source was approved.

SMGB Assumption of SMARA Lead Agency Authority: Beginning January 1, 1991, the SMGB has had statutory authority to assume SMARA authority of a local lead agency; however, until 1998 the SMGB had not done so. About that time, the SMGB commenced actively enforcing SMARA's requirement that local lead agencies possess SMARA-compliant mining ordinances. Unless a city or county had a SMGB-certified mining ordinance in accordance with current SMARA, that city or county could not serve as an administrator of SMARA. Beginning in 1998, the SMGB's activities became more focused on the performances of lead agencies in their administration of the Act. Since 1998, the SMGB has assumed the role of SMARA lead agency 49 times. The SMGB currently serves as a lead agency for three counties whose SMARA lead agency authority was assumed by the SMGB, and 8 cities and the BCDC, which do not have certified mining ordinances, encompassing 49 mines.

Since 1998, the SMGB has considered actions on 903 staff reports brought before it (approximately 129 reports per year) of which 323 reports were related directly to the SMGB acting in the capacity as a SMARA lead agency (approximately 36 percent of reports). In the years 2002, 2003, and 2004, when the current SMARA administrative fee of $7 per day was established, about 60 percent of the SMGB's actions on staff reports were directly related to its SMARA lead agency responsibilities (390 staff reports overall; 232 reports dealing with SMGB SMARA oversight). Since September 2004, the SMGB's actions as it relates to its SMARA lead agency responsibilities have remained constant at about 60 percent (214 staff reports overall; 75 reports dealing with SMGB SMARA oversight).

The SMGB's role as a SMARA lead agency has also resulted in substantial increases in overhead costs for record-keeping and file maintenance. At present, approximately 36 percent of the SMGB's active filing system is devoted to lead agencies and mines within those agencies over which the SMGB has SMARA jurisdiction. With time, these file records will continue to grow and consume additional space and maintenance, even if no additional lead agency assumptions are enacted by the SMGB. There has, likewise, been a significant increase in staff time required to maintain and process the necessary billing, accounting, document retrieval, reproduction and storage, correspondence, mailing, etc., associated with lead agency activities. In the last several years, virtually all of the SMGB's involvement in lawsuits directly has been related to its actions as a SMARA lead agency. This has resulted in additional legal expenses for the SMGB to prosecute these cases.

With reductions in its base funding from the SMRA, the SMGB is not able to absorb all of the overhead costs for its activities as a SMARA lead agency, and must turn to funding from another authorized source. This source is provided in PRC Section 2207(e).

Establishment of Current Administrative Fee: City and County SMARA lead agencies charge a variety of fees to fund the cost of implementing Chapter 2 and Chapter 9 (SMARA). In mid-January, 2004, the SMGB commenced a statewide survey of SMARA lead agencies to ascertain the types and amounts of fees charged to surface mine operators by these lead agencies for the administration of their SMARA programs. Although the response was not large, it was inferred to represent a valid spectrum of SMARA lead agencies (6 cities [7%] and 27 counties [47%] responded).

It was previously determined that almost all lead agencies charge a combination fee for a particular service; that is: (1) a basic flat fee that covers minimum time for a service, and then a cost per hour rate for time in excess of the basic flat fee; or (2) the actual cost to produce a report or permit charged by a consultant, plus an hourly rate to cover the lead agency's staff time to process the report or permit. Lead agency hourly staff rates averaged $76 (ranged from $30 to $112 per hour). These rates have not significantly changed since September 2004, and likely increased.

PRC Section 2207(e) provides for the SMGB to impose "a fee" on a surface mine operator under the SMGB's SMARA jurisdiction. The SMGB staff interprets this to mean a single fee, rather than a schedule of fees that range over a variety of services. There are two main types of single fees that may be considered: (1) a flat fee per mine per year, and, (2) an hourly-rate fee for staff time and materials devoted to each mine.

(1) A flat fee may be based on a variety of factors: (a) a fee amount per year; (b) a fee per acre under a reclamation plan; (c) a fee per ton of product mined; or, (d) a service fee per day in which a mine is under SMGB jurisdiction. Each of these types of fees has its positive and negative aspects.

(2) An hourly fee may be based on staff and SMGB time, materials, and office overhead (cost of total resources) computed on an hourly basis. Total resources includes, but is not limited to, staff wages and benefits, consumed materials, rent, utilities, pro-rated SMGB time during hearings, SMGB legal consultation costs, etc.

Flat Fee -- (a) A fee amount per year: This is the simplest type of fee to administer. It provides both a mine operator and the SMGB a known amount of money on an annual basis that will be expended by an operator and received by the SMGB, thus simplifying budgeting processes for both parties. A disadvantage of this method is that some mine operators are under the SMGB's jurisdiction for only a part of a year, perhaps because their local lead agency comes into accordance with SMARA and administration is returned to the local agency. However, the mine operator would still have paid the full annual fee to the SMGB.

(b) A fee per acre under a reclamation plan: This fee basis, also, is a simple matter to calculate and provides both the mine operator and the SMGB a known amount to be expended and received each year. This fee basis also results in smaller mine operations paying less in an annual fee than larger mine operations. However, the SMGB's total resource costs per hour are the same, regardless of mine size. This method results in larger mine operations subsidizing smaller operations.

(c) A fee per ton of product mined: This fee is simple to calculate; however, it contains several disadvantages. First, neither a mine operator nor the SMGB can anticipate, in advance for budgeting purposes, what the amount of the paid fee will be until a production amount has been calculated (whether this is on a monthly, quarterly, or annual basis). Also, this method of fee determination requires extra reporting by the mine operator and additional tracking and associated overhead expenses by the SMGB. As with fee type (b), the SMGB's total resource costs per hour are the same, regardless of a mine's production, and this method results in larger mine operations subsidizing smaller operations. Under this fee regime, an Idle mine with no production may pay no administration fee, yet the SMGB's cost to administer this mine is not similarly reduced to zero.

(d) A service fee per day in which a mine is under SMGB jurisdiction: This fee, also, is simple to calculate. A mine is subject to a flat daily fee for each day that the mine is under the SMGB's SMARA jurisdiction. The fee represents a daily "cost of resources" expended by the SMGB to administer SMARA for each mine. This fee method has the advantage of charging a known cost to each mine for equal services provided regardless of size or production, and charges a mine operation only for the time in which the mine actually is subject to SMGB jurisdiction. A disadvantage is that budget projections become less accurate because some mines will return to local jurisdiction while others may enter SMGB jurisdiction during the course of a year.

Hourly Rate Fee -- This type of fee is determined by the cost of the total resources consumed by the SMGB on an hourly basis, and then applied to a mine operation based on the number of hours spent providing services for that specific mine. For example, annually the SMGB reviews inspection reports and financial assurances for each mine under the SMGB's jurisdiction. In addition to the inspector's costs for the inspection, which are paid by the operator, the SMGB costs for reviewing and processing the inspection report and the financial assurances would be charged to a mine operator. In like manner, SMGB time expended processing enforcement actions would be charged to an operator (this does not include legal costs incurred through the Office of the Attorney General). An advantage of the hourly rate method is that mine operators who "mind their shop" and require little attention by the SMGB would be subject to nominal annual costs. A disadvantage is that some operations may accrue a very large fee amount if the SMGB requires a large amount of time to deal with a particular operation. A major factor in managing this type of fee is that it requires intensive timekeeping and bookkeeping activities. These activities incur additional costs to be included in the "total resource cost" for administration. Based on current figures, the SMGB's hourly total resource cost was determined to be $184. The average time spent on each mine per year for SMGB staff activities was determined to be approximately 25.68 hours.

<u>SMGB Determination of Administrative Fee Approach</u>: For simplicity of calculation and budgeting for both mine operations and the SMGB, the SMGB recommended that a flat fee be imposed. The flat fee method recommended was essentially a service fee per day in which a mine is under SMGB jurisdiction. The basis for the flat fee was the total hourly resource cost required to operate the SMGB of $184; times the average hours spent on each mine per year (25.68 hours). This flat fee would calculate to be approximately $4,725, or $12.95 per day. However, the SMGB expected that approximately one half of this hourly cost, as it pertains solely to the SMGB's lead agency activities, would be offset by additional funds reallocated from portions of the SMRA funds previously used by the California Geological Survey and from the Office of Mine Reclamation. Therefore, the cost imposed to mine operations would be $92 per hour times 25.68 hours or $2,363 per year, or approximately $6.50 per day. The SMGB thus recommended that this flat fee be set at $7.00 per day (rounded to nearest dollar) per mine for each day the mine was subject to the SMGB's SMARA jurisdiction.

<u>Adjustment of Administrative Fee</u>: The total hourly resource cost required to operate the SMGB of $184, times the average number of hours spent on each mine per year (25.68 hours), resulting in a flat fee of $4,725, or $12.95 per day, has not significantly changed since September 2004, with exception of an adjustment for inflation.

Adjustment for inflation based on the California Consumer Pricing Index from September 2004 to June 2006 (6.5 percent) would adjust the flat fee to $5,032, or $13.79 per day. In 2007, an amended regulation to adjust the fee to $14.00 was enacted. This equates to $5,110 per mine site per year. The SMGB is considering whether such flat fee should be adjusted.

<u>EXECUTIVE OFFICER'S RECOMMENDATIONS</u>: The information provided is for the SMGB's review and discussion. No recommendation is offered at this time.

Respectfully submitted:

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Executive Officer